



2006 OCT -5 PM 5:17

TO: Fellow Councilmembers
FROM: Councilmember Jane Brunner, Vice Mayor Jean Quan
DATE: October 17, 2006

RE: AN ORDINANCE ADDING CHAPTER 17.109 TO THE OAKLAND PLANNING CODE TO ESTABLISH AN INCLUSIONARY HOUSING REQUIREMENT AND ESTABLISH TWO NEW HOMEOWNERSHIP PROGRAMS FOR OAKLAND TEACHERS, MAKING RELATED AMENDMENTS TO THE OAKLAND PLANNING CODE, AMENDING SECTION 15.68.100 OF THE OAKLAND MUNICIPAL CODE TO PERMIT AFFORDABLE HOUSING TRUST FUNDS TO BE USED TO ADMINISTER AND ENFORCE THE INCLUSIONARY HOUSING REQUIREMENT, AND AMENDING THE MASTER FEE SCHEDULE TO ESTABLISH AN INCLUSIONARY HOUSING IN-LIEU FEE

A REDEVELOPMENT AGENCY RESOLUTION RESTRICTING THE USE OF LOW AND MODERATE INCOME HOUSING FUNDS TO UNITS FOR HOUSEHOLDS AT 60% OF AREA MEDIAN INCOME WITH A PREFERENCE FOR HOUSEHOLDS AT 30% OF AREA MEDIAN INCOME

SUMMARY

This report, and the accompanying City Ordinance and Agency Resolution, seek to create an Inclusionary Housing Requirement for residential development in the City of Oakland and to create a policy restricting the use of Redevelopment Agency Low and Moderate Income Housing Funds to housing units that serve households at 60% of the Area Median Income (AMI), with a preference for units that serve households at 30% of the Area Median Income (AMI).

Inclusionary Zoning (IZ) requires developers to make a percentage of housing in new residential developments affordable to low- and moderate-income households. By linking the production of affordable housing to private market development, IZ expands the supply of affordable housing while dispersing affordable units throughout the City to broaden opportunity and foster mixed-income communities.

IZ was included as a policy option to increase the supply of affordable housing in Oakland as early as 2000, when the Housing Development Task Force recommended the adoption of an IZ policy for Oakland. The City Council last considered IZ in July, 2006. The Ordinance presented with this report

includes a number of important changes over the version considered in July. It has incorporated additional public input as well as recommendations from the City Planning Commission.

Inclusionary Zoning is a policy that has proven successful at providing housing that is affordable to low- and moderate-income households. However, it is not as effective at providing housing for very low- and extremely low- income households. As IZ will be used to serve households at 60% AMI Income and above, this report includes an accompanying ORA resolution to restrict the use of Agency Low and Moderate Income Housing Funds to projects that serve households at 50% AMI, with a preference for households at 30% AMI.

By taking these two actions, the City will have a balanced policy towards affordable housing development: low and moderate income units from Inclusionary Zoning, and very low and extremely low income units from projects funded by City and Redevelopment Agency funds.

BACKGROUND INFORMATION

Included with this short report are a number of important documents for your review. These documents will provide more in-depth information on how Inclusionary Zoning policies work, the rationale behind them and the projected results of such a policy. Most of these documents have been before the Council in the past. In reverse chronological order, they are:

- **The Current proposal** in two forms: one as a *red-lined version* of the July Ordinance introduced by Councilmember Brunner, Vice Mayor Quan and President De La Fuente, and the other as a *clean copy*, without redlined changes. (Attachment A.1 and A.2)
- The Proposed ORA Resolution restricting the use of Redevelopment affordable housing funds to units at 50% AMI or lower, with a preference for households at 30% AMI. (Attachment B)
- **The Planning Director's Report** from the September 6th Planning Commission meeting. This memo addressed questions raised by the Commission in July. (Attachment C)
- **A July 12th Memo from the Planning Commission** with their recommendations on Inclusionary Zoning. (Attachment D)
- **The July 12th report to the Planning Commission.** This includes, as attachments, the original Brunner, Quan and De La Fuente Inclusionary Zoning Ordinance, a summary of that Ordinance, and a copy of the April 25th staff report to the Community and Economic Development Committee entitled "An Information Report and Analysis of the Inclusionary Zoning Recommendations Submitted By The Oaklanders For Affordable Housing Coalition." (Attachment E)
- **A June 27th Memo from City Attorney John Russo** commenting on the proposals from Councilmembers Brunner and Reid, below. (Attachment F)

- **A June 27th Memo from Councilmember Brunner** proposing some modifications to the Ordinance. (Attachment G)
- **A June 21st Memo from Councilmember Reid** proposing a modification to the Ordinance. (Attachment H)
- **The June 13th staff report to the Community and Economic Development Committee** presenting the Ordinance from Councilmember Brunner, Vice Mayor Quan and President De La Fuente. This same report was presented to City Council. (Attachment I)

SUMMARY OF KEY CHANGES

The following summarizes the changes that have been made in the Inclusionary Zoning Ordinance since the version sponsored by Councilmember Brunner, Vice Mayor Quan and President De La Fuente was brought to Council in July.

1. **OMC vs Planning Code:** The July version placed the IZ policy in the Oakland Municipal Code. The version in this report accepts the recommendation of the City Planning Commission from their July, 2006 meeting, to include IZ in the Oakland Planning Code.
2. **On-Site Rental:** The July version required all inclusionary rental housing built *on-site* to be affordable to households at 80% AMI. The version presented here requires that the average income of all households renting inclusionary units on-site be 60% AMI.
3. **Off-Site Rental:** The July version required all inclusionary rental housing built *off-site* to be affordable to households at 80% AMI. The version presented here requires that the average income of all households renting inclusionary units off-site be 60% AMI.
4. **In-Lieu Fee:** The July version required 20% of any in-lieu fees collected to be dedicated to assisting Oakland teachers, with the balance placed in the Affordable Housing Trust Fund. The version presented here accepts the recommendation of the City Planning Commission that the funds not used for teacher housing be restricted to funding projects for households at 50% AMI and at 30% AMI, or the Council may consider 60% AMI and 30% AMI.(Attachment J)
5. **Trigger Date:** The July version exempted all projects that receive vested rights by September 30, 2006, or unless the covered development project received a discretionary land use approval not later than 12 months from the date of final adoption of the Inclusionary Housing Ordinance, provided that a building permit is issued for such housing units not later than 18 months from the date the first such discretionary land use approval is received for the project. The version presented here states that the IZ policy will not apply to projects which receive vested rights by May 1, 2007. The July version exempted all transit villages. The version presented here makes reference to exemption for specific transit villages.

6. **Policy Review:** The July version did not have a provision for staff tracking and annual review of the IZ policy by the City Council. The version presented here includes both.
7. **Enforcement:** The July version included a penalty for violation of the Ordinance that was at least equal to the amount of the in lieu fee appropriate to the subject project. The version presented here changes that penalty to \$500 per day for the first 30 days of non-compliance, and thereafter 120% of the in lieu fee, and gives the City the authority to revoke any issued occupancy permit for any portion of the subject project.
8. **Oakland Redevelopment Agency Limitations:** The July Ordinance was not accompanied by an ORA Resolution to restrict the use of Agency Low and Moderate Income Housing Funds after July 1, 2007 to projects serving households at 50% AMI with a preference for households at 30% AMI. The version presented here includes such an accompanying resolution. That Resolution excludes existing housing programs from those restrictions.

CONCLUSION AND RECOMMENDATION:

Ensuring that Oakland has housing affordable to all of its residents continues to be a major policy challenge. Since the Housing Development Task Force of 2000, the City of Oakland has made a number of important policies that have expanded housing opportunities. Inclusionary Zoning is the last of that Task Force's recommendations to be before the Council.

It is the recommendation of this report that the City Council adopt the attached Ordinance and that the Agency adopt the accompanying ORA Resolution.

Respectfully Submitted,

Jane Brunner
Councilmember, District 1

Jean Quan
Vice Mayor

Prepared By:

Justin Horner, Chief of Staff
Office of Councilmember Brunner

Attachment A.1

Proposed Ordinance

Redlined Against June Brunner/Quan/De La
Fuente Proposal

APPROVED AS TO FORM AND LEGALITY:

DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE ADDING CHAPTER 17.109 TO THE OAKLAND PLANNING CODE TO ESTABLISH AN INCLUSIONARY HOUSING REQUIREMENT AND ESTABLISH TWO NEW HOMEOWNERSHIP PROGRAMS FOR OAKLAND TEACHERS, MAKING RELATED AMENDMENTS TO THE OAKLAND PLANNING CODE, AMENDING SECTION 15.68.100 OF THE OAKLAND MUNICIPAL CODE TO PERMIT AFFORDABLE HOUSING TRUST FUNDS TO BE USED TO ADMINISTER AND ENFORCE THE INCLUSIONARY HOUSING REQUIREMENT, AND AMENDING THE MASTER FEE SCHEDULE TO ESTABLISH AN INCLUSIONARY HOUSING IN-LIEU FEE

WHEREAS, the City of Oakland adopted a Consolidated Plan for Housing and Community Development dated May 13, 2005 (the "Consolidated Plan"), which found that there is a severe shortage of affordable housing in Oakland; and

WHEREAS, the Consolidated Plan found that persons who live and/or work in the City have serious difficulty locating housing at prices they can afford; and

WHEREAS, the Consolidated Plan found that existing local, state and federal resources are insufficient to meet the affordable housing need; and

WHEREAS, the Association of Bay Area Governments, through its Regional Housing Needs Allocation, estimated that based on anticipated economic growth, the City would experience demand for 3,207 new housing units affordable to low and very low income households between 1999 and 2006; and

WHEREAS, the City of Oakland adopted a Housing Element to the General Plan, dated June 14, 2004 (the "Housing Element"), which identified a plan to accommodate the City's share of the housing needs of persons at all income levels including strategies and programs to maintain and expand the supply of housing affordable to very-low, low and moderate income households; and

WHEREAS, despite substantial investments of Federal HOME funds and funding from the Redevelopment Agency's Low and Moderate Income Housing Fund, the City has not been able to produce all the units called for in the Regional Housing Needs Allocation; and

WHEREAS, the California Community Redevelopment Law (Health and Safety Code Section 33000, et seq.) requires that in redevelopment project areas adopted on or after January 1, 1976, redevelopment agencies must ensure that at least 15 percent of newly constructed and substantially rehabilitated housing development be affordable to very-low, low and moderate income households; and

WHEREAS, rising land prices in Oakland have been a key factor in preventing development of new affordable housing; and

WHEREAS, new housing construction in the City that does not include affordable units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land and increasing the price of remaining residential land; and

WHEREAS, the Final Report of the Housing Development Task Force, which was adopted by the City Council in July 2000, included a recommendation to adopt a residential inclusionary zoning ordinance; and

WHEREAS, on May 15, 2001, staff presented the City Council with an overview of residential inclusionary housing and the issues associated with the feasibility of implementing such a program in Oakland; and

WHEREAS, on December 9, 2003, staff provided the City Council with a summary of key findings of a comprehensive survey of inclusionary housing published in 2003 by the Non-Profit Housing Association of Northern California (NPH) and the California Coalition of Rural Housing (CCRH); and

WHEREAS, the City wants to balance the burden on private property owners with the demonstrated need for affordable housing in the City by joining over 100 California cities that currently have some form of inclusionary housing requirement and apply an inclusionary housing requirement to all covered development projects containing 20 housing units or more; and

WHEREAS, an inclusionary housing requirement will serve as one component of the City's overall housing strategy and will complement other affordable housing efforts, including preservation of existing assisted housing, development of new assisted housing with public subsidies, first-time homebuyer assistance, rehabilitation loans for low income homeowners and the public housing and Section 8 programs

operated by the Oakland Housing Authority and targeted to the very lowest income households; and

WHEREAS, this the Inclusionary Housing Ordinance will provide rental units affordable to low, very low and extremely low income households with an average income of earning no more than 6080 percent of area median income, and ownership units affordable to moderate, low, very low and extremely low income households with an average income of no more than 100 percent of area median income, thus allowing the City to target its limited affordable housing dollars to extremely low, very low and low income households who have the greatest housing needs and require the greatest subsidies; and

WHEREAS, the City will target its limited affordable housing dollars to extremely low (30 percent of area median income), very low (50 percent of area median income) and low income (80 percent of area median income) households who have the greatest housing needs and require the greatest subsidies; and

WHEREAS, City staff performed a preliminary affordable housing gap analysis to determine the appropriate in-lieu fee for the inclusionary housing ordinance; and

WHEREAS, on April 25, 2006, the Community and Economic Development Committee received and considered a report on inclusionary housing and directed staff to prepare a draft Inclusionary Housing Ordinance based on the recommendations of Council President Ignacio De La Fuente, Councilmember Jane Brunner and Vice Mayor Jean Quan; and

WHEREAS, on June 7, 2006, the Oakland City Planning Commission continued to a later date a duly noticed public hearing on the Inclusionary Housing Ordinance; and

WHEREAS, on July 12, 2006 a continued public hearing on an Inclusionary Housing Ordinance was held before the City Planning Commission, which forwarded its recommendations to the City Council; and

WHEREAS, the Community and Economic Development Committee held public meetings on June 13, 2006 to consider an Inclusionary Housing Ordinance; and

WHEREAS, on October 17, 2006, the Oakland City Council held a duly noticed public hearing; and

WHEREAS, the City Council has received and considered the staff report accompanying this Ordinance, the Planning Commission recommendations as well as public testimony; now therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. This Ordinance shall be known as the "Inclusionary Housing Ordinance."

SECTION 2. Chapter 17.109 is hereby added to the Oakland Planning Code to read as follows:

Chapter 17.109

INCLUSIONARY HOUSING REQUIREMENTS

17.109.010 Title, Purpose, Applicability

This chapter shall be known as the Inclusionary Housing Requirements. The purpose of this chapter is to establish an inclusionary housing program for the City of Oakland to ensure that development projects that include market rate housing units provide units affordable to households of low and moderate income distributed throughout the City's various neighborhoods. These requirements shall apply to projects that construct or establish housing units in all parts of the City.

17.109.020 Definitions

As used in this chapter, the following terms have the following meanings:

"AMI" or "area median income" means the area median income for the Oakland area as determined by the California Department of Housing and Community Development pursuant to California Health and Safety Code Section 50093.

"Affordable housing" means a housing unit that is provided at an affordable rent to a low income household~~households, or sold at an affordable sales price to moderate income households~~ with an average income of not more than 60 percent~~400%~~ of area median income averaged across all of the rental inclusionary units produced as a result of the covered development project, or sold at an affordable sales price to a moderate income household with an average income of not more than 100 percent of area median income averaged across all of the ownership inclusionary units produced as a result of the covered development project, as further described in Section 17.109.110~~400 (Affordability Level and Housing Cost)~~.

"Affordable housing cost" means an annual housing cost~~cost~~ that does not greater than exceed 35 percent of the affordable housing cost~~maximum allowable income specified in Section 17.109.110~~400 (Affordability Level and Housing Cost) for the housing unit, adjusted for family size appropriate to the housing unit pursuant to California Health and Safety Code Section 50052.5, and is not less than 28 percent of the actual gross income of the household. "Housing cost" shall include those items set forth in 25 California Code of Regulations Section 6920.~~~~

"Affordable rent" means a gross rent, including an allowance for tenant-paid utilities, that does not exceed 30 percent of the maximum allowable income specified in Section 17.109.110 (Affordability Level and Housing Cost) for the housing unit, adjusted for family size appropriate to the unit pursuant to shall be as defined in California Health and Safety Code Section 50053(b)(3), and its implementing regulations.~~shall be as defined in California Health and Safety Code Section 50053(b)(3), and its implementing regulations.~~

"Affordable sales price" means the sales price of a housing unit that would permit a household to obtain the housing unit at an affordable housing cost.

"Agency" means the Redevelopment Agency of the City of Oakland.

"City" means the City of Oakland.

"City Administrator" means the City Administrator of the City of Oakland or his or her designees.

"Covered development project" means any facility that includes the construction or establishment of twentyone or more housing units. A change in tenure (rental or ownership) shall not in itself constitute construction or establishment of a housing unit.

"Housing unit" means a living unit within the meaning of Section 17.090.040 of the Planning Code, a joint living and work quarter within the meaning of Section 17.202.190B of the Planning Code, or a joint residential-oriented living and working quarter within the meaning of Section 17.102.195B of the Planning Code.

"Household" means one person living alone or two or more persons sharing residency.

"In-lieu Fee" means a fee to be paid in the amount described in Oakland's Master Fee Schedule as an alternative to providing on-site or off-site inclusionary units.

"Inclusionary housing plan" means that inclusionary housing plan required under Section 17.109.170 (Inclusionary Housing Plan).

"Inclusionary unit" means a housing unit that must be offered at an affordable rent to ~~low income households~~, or sold at an affordable sales price to ~~moderate income households~~, as further specified in Section 17.109.110 (Affordability Level and Housing Cost).

"Low income household" shall be as a "lower income household" is defined in California Health and Safety Code Section 50079.5 and its implementing regulations.

"Market rate units" means housing units constructed in the principal project that are not subject to sales or rental restrictions.

"Moderate income household" shall be as "persons and families of low or moderate income" is defined in California Health and Safety Code Section 50093 and its implementing regulations.

"Off-site unit" means an affordable housing unit constructed pursuant to this chapter on a site other than the site of the principal project.

"On-site unit" means an affordable housing unit constructed pursuant to this chapter on the site of the principal project.

"Ownership unit" means a housing unit that serves or is intended to serve as the primary residence of the owner or owners.

"Principal project" means a covered development project on which a requirement to provide inclusionary units is imposed.

"Project applicant" means any individual, person, firm, partnership, association, joint venture, corporation, limited liability company, entity, combination of entities or authorized representative thereof, who undertakes, proposes or applies to the City for any covered development project.

"Redevelopment project area" means an area governed by a redevelopment plan pursuant to the California Community Redevelopment Law (California Health and Safety Code 33000, et seq.).

"Redevelopment project areas with housing production requirements" means redevelopment project areas subject to the production requirements set forth in California Health and Safety Code Section 33413(b).

"Site" means a parcel or parcels of land which is or may be developed or utilized for a covered development project.

"Very low income household" shall be as "very low income household" is defined in California Health and Safety Code Section 50105 and its implementing regulations.

~~"Transit village development" means a covered development project located within 1,000 feet of a Bay Area Rapid Transit (BART) station.~~

17.109.030 Application

This chapter shall apply to all housing units in covered development projects with 20 or more new housing units, unless (1) the covered development project has acquired or will acquire vested rights to develop under California law on or before May 1, 2007, or (2) ~~unless~~ the covered development project qualifies for an exemption listed in Section 17.109.040 (Exemptions).

17.109.040 Exemptions

This chapter shall not apply to any of the following:

(1) ~~The following~~ Transit village development projects:

(a) A residential development project located in whole that are subject to an executed Disposition and Development Agreement or in part on Owner Participation Agreement with the site of the MacArthur Bay Area Rapid Transit (BART) station;

(b) A residential development project located in whole City or in part on the site of the Coliseum Bay Area Rapid Transit (BART) station; Agency.

(c) A residential development project located in whole or in part on the site of the West Oakland Bay Area Rapid Transit (BART) station;

(d) A residential development project located in whole or in part in the Fruitvale Transit Village that receives a building permit by May 1, 2009.

- (2) The reconstruction or rebuilding of any housing units that have been damaged or destroyed by fire, flood, earthquake or other act of nature unless the damaged or destroyed housing were inclusionary units. Such reconstruction or rebuilding must be commenced no later than four years and completed no later than six years from the date of the damage or destruction.
- (3) A covered development project that is subject to affordability restrictions recorded by the City or the Agency pursuant to funding through the City and Agency's competitive affordable housing funding process.
- (4) A covered development project containing rental units where at least 40 percent of the rental units are restricted for at least 55 years to households with incomes not exceeding 60 percent of AMI, adjusted for household size, with rents not exceeding 30 percent of 60 percent of AMI, adjusted for household size.
- (5) The rehabilitation of existing housing units in which the estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation. Housing units newly constructed or established as part of a project that also includes rehabilitation of existing housing units are not exempt.

17.109.050 On-Site Inclusionary Housing Requirements

For covered development projects covered by Section 17.109.030 (Application), at least 15 percent of all housing units in the covered development project must be affordable housing, with that affordable housing subject to the occupancy restrictions, affordability levels, and terms of affordability set forth in Section 17.109.110 (Affordability Level and Housing Cost). This requirement may be applied no more than once to an approved covered development project, regardless of changes in the character or ownership of the project, provided the total number of housing units does not change.

As an alternative, a project applicant may satisfy the inclusionary requirement of this section through development of off-site units pursuant to Section 17.109.060 (Off-Site Inclusionary Housing), payment of an inclusionary in-lieu fee pursuant to Section 17.109.150 (In-Lieu Fee), or a combination of these alternatives that at least equals the cost of providing off-site inclusionary units.

17.109.060 Off-Site Inclusionary Housing

A project applicant may elect to build affordable housing units on a site other than the site of the principal project to satisfy the requirements of this chapter. If the project

applicant selects this alternative, the number of affordable units developed off-site must be no fewer than 20 percent of all housing units constructed on the principal project site. Off-site units shall be subject to all applicable provisions of this chapter, and shall have the same tenure (rental or ownership) as the housing units in the principal project.

If off-site units are provided in another covered development project subject to the requirements of this chapter, the housing units that qualify as off-site units shall not be included when determining the number of inclusionary housing units required in that covered development project.

17.109.070 Fractional Units

When the inclusionary housing calculation for on-site or off-site units produces a fractional number of units, the project applicant shall (1) round up to the next whole number, in which case that resulting number of affordable units shall be provided as set forth in this chapter, or (2) pay a pro-rata share of the in-lieu fee as set forth in Section 17.109.150 (In-Lieu Fee) for the fractional unit.

17.109.080 Prohibition of Affordable Housing Development Subsidies

No housing unit shall be counted as an inclusionary unit pursuant to this chapter if it receives a development subsidy from any federal, state or local program, including City or Agency programs, established for the purpose of providing affordable housing, to fund the inclusionary units required by this chapter, except to the extent such subsidies are used only to increase the level of affordability of the housing unit beyond the level of affordability required by this chapter.

~~_____ Housing units assisted only with tax-exempt bond financing or 4% low income housing tax credits shall be exempt from the provisions of this section, provided that such units are rented to and occupied only by very low income households as defined in California Health and Safety Code Section 50105 at rents that do not exceed an affordable rent for a very low income households, household adjusted for family size appropriate for the unit pursuant to California Health and Safety Code Section 50053(b)(2).~~

17.109.090 Timing of Provision of Inclusionary Units

On-site and off-site inclusionary housing units required by Sections 17.109.050 and 17.109.060 must be constructed, completed, and ready for occupancy no later than the market rate units in the principal project. If the principal project is constructed in phases, the inclusionary units must be constructed in phases in proportion with the market rate units or sooner.

17.109.100 Unit Comparability

~~Inclusionary housing units shall be comparable to market rate units in the principal project. The number of inclusionary units of each size, as measured by number of bedrooms per unit, shall be at least proportional to the number of market rate units of each size in the principal project, as measured by number of bedrooms per unit. The construction type, tenure (rental or ownership), Exterior appearance and overall quality of construction of the inclusionary units shall be comparable to the market rate units in~~

~~the principal project. The square footage and interior features of inclusionary units do not need to be the same as or equivalent to those in market rate units in the principal project, provided they are of standard construction grade good quality, approved by the City, and consistent with then-current standards for new affordable housing. Project applicants shall endeavor to distribute the inclusionary units proportionately among the market rate units, avoid concentration of inclusionary units; and avoid taking actions that would stigmatize or set apart the inclusionary units.~~

If the housing units in the principal project do not contain bedrooms separated from the living space, the on-site and off-site units shall be comparable in size according to the following equivalency calculation.

Size of Unit	Equivalent Unit
Less than 550 Square Feet	Zero bedroom unit
551 to 750 Square Feet	One bedroom unit
751 to 1,000 Square Feet	Two bedroom unit
1,001 to 1300 Square Feet	Three bedroom unit
More than 1300 Square Feet	Four bedroom unit

17.109.110 Affordability Level and Housing Cost

Rental units_____

Inclusionary units required by this chapter that are rental housing units must:

- (1) ~~be rented to and occupied only by by-low income households, with further maximum household income restrictions that restrict rental inclusionary units produced as a result of a covered development project to a mean average of 60 percent of AMI adjusted for family size appropriate to the unit, averaged across all of the rental inclusionary units produced as a result of the covered development project;~~
- (2) ~~have rents that do not exceed an affordable rent for a low income household at adjusted for family size appropriate for the maximum household income level for the housing unit pursuant to California Health and Safety Code 50053(b)(3); and~~
- (3) be subject to these restrictions on tenant incomes and affordable rents for a period of at least 55 years from the date of initial occupancy.

Ownership units:

Inclusionary ownership units required by this chapter that are ownership units must:

- (1) ~~in accordance with the schedule below, be sold only subject to moderate~~
~~limitations on the maximum allowable income of households, with further~~
~~maximum household income restrictions buying the inclusionary units such~~
~~that restrict the mean limit on incomes of households buying ownership~~
~~inclusionary units units produced as a result of for a covered development~~
~~project to a mean average of project does not exceed 100 percent of of AMI~~
~~adjusted for family size appropriate to the unit, averaged across all of~~
~~the ownership inclusionary units produced as a result of the covered~~
~~development project;~~
- (2) ~~be sold at an affordable sales price in accordance with the schedule below,~~
~~be sold at an affordable sales price for a household at the maximum~~
~~household income level for the housing unit; and~~
- (3) be subject to these restrictions on affordable sales prices and buyer incomes for a period of at least 45 years from the date of initial sale.

Affordability schedule for ownership units:

Maximum Household Income	Affordable Housing Cost
80 percent of AMI	30 percent of 70 percent of AMI
90 percent of AMI	35 percent of 80 percent of AMI
100 percent of AMI	35 percent of 90 percent of AMI
110 percent of AMI	35 percent of 100 percent of AMI
120 percent of AMI	35 percent of 110 percent of AMI

Low income households who are purchasers of inclusionary units that are ownership units shall be permitted by the seller of the unit to utilize homebuyer assistance provided by the City or Agency.

17.109.120 Affordability Restrictions

The occupancy, rent, and sales restrictions imposed by this chapter shall be set forth in a regulatory agreement, affordability agreement, resale controls, declaration of covenants, or similar binding instrument executed by the City and the applicant. Such restrictions shall be recorded against the site or sites containing the inclusionary housing units as covenants running with land, senior in priority to any private liens or encumbrances, and shall be enforceable by the City against the project applicant or the applicant's successors-in-interest to the sites for the full affordability term. Additional restrictions, deeds of trust, rights of first refusal, or other instruments may be required by the City Administrator as reasonably needed to enforce these restrictions. The City Administrator shall have the authority to subordinate such restrictions to other liens and encumbrances if he or she determines that the financing of the inclusionary units would be infeasible without said subordination.

17.109.130 Condominium Projects

If the principal project is developed pursuant to a condominium map, but the housing units in the project are placed in the rental market rather than being sold, the requirements for rental inclusionary units shall apply.

17.109.140 Teacher Housing

For any covered development project producing on-site or off-site ownership inclusionary units located outside of a redevelopment project area with housing production requirements, no fewer than 20 percent of those inclusionary units must be offered for sale first to teachers employed by the Oakland Unified School District or a public charter school in Oakland who are moderate income and otherwise qualify for purchase of the unit under Section 17.109.110 (Affordability Level and Housing Cost).

For units sold to teachers under this section, the owner shall execute a promissory note and the City shall record a deed of trust or other instrument upon the owner's purchase to evidence and secure payment to the City of an amount equal to the difference between the inclusionary unit's fair market value and the affordable sales price for the unit, subject to the shared appreciation provisions below. If the owner of the inclusionary unit remains a teacher employed by the Oakland Unified School District or a public charter school in Oakland for at least five years and continues to occupy the unit as his or her principal residence throughout that period, the City may then remove the 45-year resale restrictions required under Section 17.109.120 (Affordability Restrictions), and the owner shall then be subject only to the repayment and shared appreciation provisions below. If the owner does not remain a teacher as defined above for the five-year period, or the owner sells the inclusionary unit within this five-year period, the 45-year resale restrictions shall remain on the inclusionary unit.

Repayment and Shared Appreciation

After the five-year period referenced above, and after the City has removed the resale restrictions from the inclusionary unit, the owner may sell the inclusionary unit at market rate. However, upon sale of the inclusionary unit or default under any of the conditions imposed in accordance with this chapter-, (1) the owner shall repay to the City the full amount of the promissory note at the time of sale, and (2) -the City and the owner shall share any increase in the fair market value of the inclusionary unit above its fair market value at the time the owner purchased the unit. Beginning in the 6th year of occupancy, the owner shall be entitled to receive 20 percent of the increase in fair market value of the inclusionary unit after deducting an allowance for reasonable and customary selling costs paid by the owner, and the City shall receive the balance. The owner shall be entitled to receive an additional 20 percent of the increase in fair market value for each additional year that the owner occupies the inclusionary unit, up to a maximum of 100 percent of the increase in fair market value.

Any payments received by the City hereunder shall be deposited into the Affordable Housing Trust Fund established pursuant to Section 15.68.100 of the Oakland Municipal Code.

17.109.150 In-Lieu Fee

The requirements of this chapter may be satisfied by paying an in-lieu fee for each unit that would be required if the applicant were to provide off-site inclusionary units pursuant to Section 17.109.060. The in-lieu fee for each inclusionary unit shall be established by the City based on an estimate of the total subsidy required to make units comparable to inclusionary units affordable at the rents or sales prices required by Section 17.109.110 (Affordability Level and Housing Cost). The total subsidy required shall be estimated based on the difference between the estimated cost of developing an inclusionary unit and

- (1) for an ownership inclusionary unit, an affordable sales price; or
- (2) for a rental inclusionary unit, the amount of debt that can be supported by a unit with an affordable rent after payment of operating expenses and a reasonable deposit to reserves.

The initial in-lieu fee shall be established in the City's Master Fee Schedule by the unit size by bedroom, and may be periodically adjusted.

No building permit shall be issued for any residential development that elects to pay an in-lieu fee pursuant to this section until the fee is paid to the City.

17.109.160 Deposit and Use of Fees

All in lieu fees collected by the City pursuant to this chapter shall be deposited to the Affordable Housing Trust Fund established pursuant to Section 15.68.100 of the Oakland Municipal Code.

Twenty percent of the gross in-lieu fee monies shall be designated for an Oakland Teacher Mortgage Assistance Program to be established by the City. The program shall provide teachers employed by the Oakland Unified School District or a public charter school in Oakland with loans to assist in the purchase of ownership units, with shared appreciation provisions comparable to those provided in Section 15.109.140 above. If such monies are not committed to qualified projects or housing units under

—A portion of the Oakland Teacher Mortgage Assistance Program within three years of their receipt, such monies shall be available for use in other affordable housing projects, subject to the limitations of this section.

Up to ten percent of the gross in-lieu fees generated pursuant to this chapter may be used to pay for the City's costs of monitoring and enforcing this chapter.

The remaining in-lieu fee monies shall be used exclusively to fund housing units that serve households at or below 50% of area median income, with a preference for housing units that serve households at or below 30% of area median income.

17.109.170 Inclusionary Housing Plan

A project applicant must include as part of its first application to the City for a development-related permit or approval an inclusionary housing plan that includes

outlining the methods by which the project applicant proposes to meet the requirements of this chapter.

The City shall approve, conditionally approve or reject the proposed inclusionary housing plan as part of its decision on the development-related permit or approval. No application for a development-related permit or approval, including without limitation, a tentative map, parcel map, conditional use permit, Planned Unit Development (Preliminary and Final), Master Plan, variance, design review, or building-related (grading, demolition, building) permit to which this chapter applies may be deemed complete until an inclusionary housing plan is submitted to the City. The inclusionary housing plan must include, at a minimum, the following:

- (1) the location, type of structure (attached, semi-attached, or detached), proposed tenure (ownership or rental), and size of the proposed market-rate units, commercial space and/or inclusionary units and the basis for calculating the number of inclusionary units;
- (2) a floor and site plan depicting the location of the inclusionary units;
- (3) the income levels to which each inclusionary unit will be made affordable;
- (4) for phased covered development projects, a phasing plan that provides for the timely development of the number of inclusionary units proportionate to each proposed phase of development as required by Section 17.109.100 (Unit Comparability) of this chapter;
- (5) any alternative means proposed to meet the inclusionary housing requirement; and
- (6) any other information reasonably requested by the City to assist with evaluation of the plan under the standards of this chapter.

17.109.180 Enforcement and Remedies

This chapter may be enforced pursuant to the provisions of Oakland Planning Code Chapter 17.152 (Enforcement).

A project applicant's failure to comply with the requirements of this chapter shall constitute cause for the City to (a) revoke the certificate of occupancy for the principal project or required inclusionary units, and/or (b) assess a penalty against the applicant or owner in an amount equal to, at a minimum, \$500 per day for the first 30 days of non-compliance, and thereafter 120 percent of the current in-lieu fee provided for under this chapter, as adjusted under this section.

17.109.190 Third Party Rights of Action

If any project applicant violates any provision of this chapter, any person, individually or by class action, may seek relief in a court of appropriate jurisdiction, including injunctive relief, declaratory relief and damages. In any such court proceeding, the prevailing party shall be awarded his or her reasonable attorneys' fees.

17.109.200 Reductions, Adjustment, Waivers and Appeals

A project applicant may request a reduction, adjustment, or waiver of the requirements imposed by this chapter at the time of application. To receive a reduction, adjustment or waiver, the project applicant must demonstrate that it meets one of the following criteria:

- (1) That there is an absence of any reasonable relationship or nexus between the impact of the development and either the inclusionary requirement or the amount of the in-lieu fee charged;
- (2) That the inclusionary requirement would deprive the project applicant of all economically viable use of the property or constitute a taking of the project applicant's property; or
- (3) That application of this chapter to the principal project would otherwise violate either the California or the United States Constitutions.

Any such request, and all supporting materials, shall be made in writing and filed with the City as part of the application for the first development-related permit or approval for the principal project. The request shall set forth in detail all the factual and legal basis for the claim of reduction, adjustment, or waiver. The City shall consider the request along with consideration of the underlying permit or approval application. The project applicant shall bear the burden of presenting appropriate evidence to support the request, including comparable technical information to support applicant's position. If a reduction, adjustment, or waiver is granted, any subsequent change in the approved use within the project shall invalidate the adjustment, reduction or waiver of the fee or inclusionary requirement.

If a request for a reduction, adjustment, or waiver is denied, the project applicant may appeal that decision by following the appeals procedure established for denial of the underlying permit or approval.

If no appeal procedure is provided for the underlying permit or approval, then the applicant may appeal the request for a reduction, adjustment, or waiver to the City Planning Commission within ten calendar days after the date of a decision. In the event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal. Such appeal shall be made on a form prescribed by the City Planning Department and shall be filed with such Department. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the City or wherein its decision is not supported by the evidence in the record. Upon receipt of the appeal, the Secretary of the City Planning Commission shall set the date for consideration thereof. Not less than ten days prior to the date of the Commission's consideration of the appeal, the Secretary shall give written notice to the project applicant/appellant, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as the Secretary deems appropriate, of the date and place of the hearing on the appeal. In considering the appeal, the Commission shall determine whether the project applicant/appellant has met its burden and may grant or deny the requested

reduction, adjustment, or waiver or require such changes in the Inclusionary Housing Plan or impose such reasonable conditions of approval as are in its judgment necessary to ensure conformity to said criteria. The decision of the City Planning Commission is final and not subject to administrative appeal.

17.109.210 Incentives

A project applicant may be entitled to a density bonus and incentives or concessions under the California Density Bonus Law (Government Code Section 6519, et seq.) in return for producing inclusionary units, if and to the extent provided for under the Density Bonus Law. For purposes of calculating the number of inclusionary units required under this chapter, any additional housing units authorized as a density bonus under the Density Bonus Law will not be counted as part of the covered development project.

17.109.220 Administrative Regulations

Notwithstanding any other provision in the Planning Code, the City Administrator is hereby authorized to adopt administrative rules and regulations consistent with this chapter as needed to implement this chapter, and to make such interpretations of this chapter as he or she may consider necessary to achieve the purposes of this chapter. Such rules and regulations may include, without limitation, methods and criteria for certifying incomes of prospective tenants or purchasers of inclusionary units, a method for calculating affordable sales prices, selection, occupancy and rent-setting standards, methods of imposing and monitoring affordability restrictions on inclusionary units, procedures and criteria for reviewing inclusionary housing plans, and guidelines for implementation of the teacher housing programs described in Sections 17.109.140 (Teacher Housing) and 17.109.150 (In-Lieu Fee).

17.109.230 Annual Reporting

The City Administrator shall report to the City Council annually on the results of the Inclusionary Housing Requirements, including, but not limited to, a report on the following items:

- (1) The number of, location of, and project applicant for every housing project to which this Ordinance applied, and the number of market rate units and the number of affordable on-site and off-site units provided, including the location of all of the affordable units, or the amount of in-lieu fee paid for the project; and
- (2) The number of, location of, and project applicant for housing projects which applied for a waiver, adjustment, or reduction from the requirements of this Ordinance and the number of, location of, and project applicant for housing projects which were granted such a waiver, adjustment, or reduction and, if a reduction, to what percentage."

SECTION 3. The record before this Council relating to this Ordinance and supporting the findings made herein includes, without limitation, the following:

1. Association of Bay Area Governments, Regional Housing Needs Determinations: 1999-2006 Housing Element Period, third official release dated June 1, 2000.
2. The report to City Council titled "Informational Report on the Final Recommendations of the Housing Development Task Force" and dated July 18, 2000.
3. The report to City Council titled "An informational staff report on inclusionary zoning programs for affordable housing" and dated May 15, 2001
4. California Coalition for Rural Housing and Non-Profit Housing Association of Northern California, "Inclusionary Housing in California: 30 Years of Innovation," 2003.
5. The report to City Council titled "A staff report describing inclusionary zoning programs in other California jurisdictions and a recommendation that the City Council not take any further action on inclusionary zoning" and dated December 9, 2003.
6. "City of Oakland Housing Element", dated June 14, 2004.
7. "Consolidated Plan for Housing and Community Development" dated May 13, 2005.

SECTION 4. The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision, and are hereby adopted as findings.

SECTION 5. The custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) the Community and Economic Development Agency, Housing and Community Development Division, 250 Frank H. Ogawa Plaza, 5th floor, Oakland, California; and (b) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, California.

SECTION 6. The provisions of this Ordinance are severable, and if any clause, sentence, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is held to be invalid or preempted by state or federal law, such holding shall not impair or invalidate the remainder of this Ordinance. If any provision of this Ordinance is held to be inapplicable to any specific development project or applicant, the provisions of this Ordinance shall nonetheless continue to apply with respect to all other covered development projects and applicants. It is hereby declared to be the legislative intent of the City Council that this Ordinance would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from its coverage.

SECTION 7. The City Council finds and determines that this Ordinance complies with the California Environmental Quality Act (CEQA) based upon the following, each of which provides a separate and independent basis, (1) reliance upon the Environmental Impact Report prepared for the Land Use and Transportation Element of the General Plan that was certified by the City Council on March 24, 1998; (2) reliance upon the Environmental Impact Report prepared for the Estuary Policy Plan that was

certified by the City Council on June 8, 1999; (3) reliance upon the Mitigated Negative Declaration prepared and approved for the Housing Element of the General Plan on June 14, 2004; (4) CEQA Guidelines section 15061(b) (3); and (5) CEQA Guidelines section 15183.

SECTION 8. The Oakland Master Fee Schedule is hereby amended to provide for the following initial inclusionary housing in-lieu fee:

Unit Size By Bedroom	In-Lieu Fee
0 Bedroom	\$ 195,000
1 Bedroom	\$ 240,000
2 Bedroom	\$ 265,000
3 Bedroom	\$ 305,000
4 Bedroom	\$ 315,000

No later than ~~May 1, 2007~~ December 31, 2006, the City shall retain a consultant and complete a study to determine an appropriate in-lieu fee in accordance with the provisions of Section 17.109.150 (In-Lieu Fee) of the Inclusionary Housing Requirements and the above fee shall then be adjusted by ordinance if warranted. The City may update this study periodically as necessary.

In lieu of such periodic updates of the in-lieu fee study, the fee shall be adjusted annually according to the provisions for annual increases in the Jobs/Housing Impact Fee contained in Section 15.68.050 of the Municipal Code.

SECTION 9. Section 15.68.100 of the Municipal Code (Affordable Housing Trust Fund) is hereby amended to add the following:

Twenty percent of gross funds deposited to the Affordable Housing Trust Fund as a result of in-lieu fees collected pursuant to Section 17.109.150 of the Oakland Planning Code shall be reserved for the Teacher Mortgage Assistance Program authorized by Section 17.109.160 of the Oakland Planning Code. Any funds received by the City in connection with the Teacher Mortgage Assistance Program shall also be deposited to the Affordable Housing Trust Fund for this same purpose. Notwithstanding any other provision contained in this chapter, funds reserved for the Teacher Mortgage Assistance Program may be used to assist persons and families of moderate income as defined in California Health and Safety Code Section 50093 and its implementing regulations. If such monies are not committed to qualified projects or housing units under the Oakland Teacher Mortgage Assistance Program within three years of their receipt, such monies shall be available for use in other affordable housing projects, subject to the limitations of this section. Up to ten percent of the gross in-lieu fees generated pursuant to Section 17.109.150 of the Oakland Planning Code may be used to pay for the City's costs of monitoring and enforcing the Inclusionary Housing Requirements. The remaining in-lieu fee monies collected pursuant to Section 17.109.150 of the Oakland Planning Code shall be used exclusively to fund housing units that serve households at or below 50% of area median income, with a preference for housing units that serve households at or below 30% of area median income.

SECTION 10. The first sentence of the third paragraph of Section 15.68.100 of the Municipal Code (Affordable Housing Trust Fund) is hereby amended to read as follows (additions are indicated by underlined text):

Funds may also be used to cover reasonable administrative or related expenses of the city not reimbursed through processing fees, including costs of administering or enforcing the Inclusionary Housing Requirements contained in Chapter 17.109 of the Oakland Planning Code.

SECTION 11. Section 17.152.070.A of the Oakland Planning Code is amended to add the Inclusionary Housing Ordinance as follows:

- 1. 17.109.010 through 17.109.220;
- 42. 17.112.010 through 17.112.060;
- 23. 17.134.010 through 17.134.120;
- 34. 17.136.010 through 17.136.130;
- 45. 17.140.010 through 17.140.120;
- 56. 17.142.010 through 17.142.090;
- 67. 17.146.010 through 17.146.060; and,
- 78. 17.148.010 through 17.148.110

SECTION 12. This Ordinance shall be effective upon its adoption if it receives at least six affirmative votes; otherwise, it shall be effective upon the seventh day after final adoption; but as set forth above shall **not** be applied to covered development projects that have acquired or will acquire vested rights to develop under California law on or before May 1, 2007.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2006

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL,
QUAN, REID, AND PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the
Council
of the City of Oakland, California

AN ORDINANCE ADDING CHAPTER 17.109 TO THE OAKLAND PLANNING CODE TO ESTABLISH AN INCLUSIONARY HOUSING REQUIREMENT AND ESTABLISH TWO NEW HOMEOWNERSHIP PROGRAMS FOR OAKLAND TEACHERS, MAKING RELATED AMENDMENTS TO THE OAKLAND PLANNING CODE, AMENDING SECTION 15.68.100 OF THE OAKLAND MUNICIPAL CODE TO PERMIT AFFORDABLE HOUSING TRUST FUNDS TO BE USED TO ADMINISTER AND ENFORCE THE INCLUSIONARY HOUSING REQUIREMENT, AND AMENDING THE MASTER FEE SCHEDULE TO ESTABLISH AN INCLUSIONARY HOUSING IN-LIEU FEE

NOTICE AND DIGEST

This Ordinance adds Chapter 17.109 to the Oakland Planning Code to establish an inclusionary housing requirement and establish two new homeownership programs for Oakland teachers, makes certain related amendments to Section 17.052.170.A of the Oakland Planning Code and Section 15.68.100 of the Oakland Municipal Code, makes certain findings in support of its enactment, and amends the City's Master Fee Schedule to establish an inclusionary housing in-lieu fee.

Attachment A.2

Proposed Ordinance

Clean Copy

APPROVED AS TO FORM AND LEGALITY:


DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE ADDING CHAPTER 17.109 TO THE OAKLAND PLANNING CODE TO ESTABLISH AN INCLUSIONARY HOUSING REQUIREMENT AND ESTABLISH TWO NEW HOMEOWNERSHIP PROGRAMS FOR OAKLAND TEACHERS, MAKING RELATED AMENDMENTS TO THE OAKLAND PLANNING CODE, AMENDING SECTION 15.68.100 OF THE OAKLAND MUNICIPAL CODE TO PERMIT AFFORDABLE HOUSING TRUST FUNDS TO BE USED TO ADMINISTER AND ENFORCE THE INCLUSIONARY HOUSING REQUIREMENT, AND AMENDING THE MASTER FEE SCHEDULE TO ESTABLISH AN INCLUSIONARY HOUSING IN-LIEU FEE

WHEREAS, the City of Oakland adopted a Consolidated Plan for Housing and Community Development dated May 13, 2005 (the "Consolidated Plan"), which found that there is a severe shortage of affordable housing in Oakland; and

WHEREAS, the Consolidated Plan found that persons who live and/or work in the City have serious difficulty locating housing at prices they can afford; and

WHEREAS, the Consolidated Plan found that existing local, state and federal resources are insufficient to meet the affordable housing need; and

WHEREAS, the Association of Bay Area Governments, through its Regional Housing Needs Allocation, estimated that based on anticipated economic growth, the City would experience demand for 3,207 new housing units affordable to low and very low income households between 1999 and 2006; and

WHEREAS, the City of Oakland adopted a Housing Element to the General Plan, dated June 14, 2004 (the "Housing Element"), which identified a plan

to accommodate the City's share of the housing needs of persons at all income levels including strategies and programs to maintain and expand the supply of housing affordable to very-low, low and moderate income households; and

WHEREAS, despite substantial investments of Federal HOME funds and funding from the Redevelopment Agency's Low and Moderate Income Housing Fund, the City has not been able to produce all the units called for in the Regional Housing Needs Allocation; and

WHEREAS, the California Community Redevelopment Law (Health and Safety Code Section 33000, et seq.) requires that in redevelopment project areas adopted on or after January 1, 1976, redevelopment agencies must ensure that at least 15 percent of newly constructed and substantially rehabilitated housing development be affordable to very-low, low and moderate income households; and

WHEREAS, rising land prices in Oakland have been a key factor in preventing development of new affordable housing; and

WHEREAS, new housing construction in the City that does not include affordable units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land and increasing the price of remaining residential land; and

WHEREAS, the Final Report of the Housing Development Task Force, which was adopted by the City Council in July 2000, included a recommendation to adopt a residential inclusionary zoning ordinance; and

WHEREAS, on May 15, 2001, staff presented the City Council with an overview of residential inclusionary housing and the issues associated with the feasibility of implementing such a program in Oakland; and

WHEREAS, on December 9, 2003, staff provided the City Council with a summary of key findings of a comprehensive survey of inclusionary housing published in 2003 by the Non-Profit Housing Association of Northern California (NPH) and the California Coalition of Rural Housing (CCRH); and

WHEREAS, the City wants to balance the burden on private property owners with the demonstrated need for affordable housing in the City by joining over 100 California cities that currently have some form of inclusionary housing requirement and apply an inclusionary housing requirement to all covered development projects containing 20 housing units or more; and

WHEREAS, an inclusionary housing requirement will serve as one component of the City's overall housing strategy and will complement other affordable housing efforts, including preservation of existing assisted housing, development of new assisted housing with public subsidies, first-time homebuyer assistance, rehabilitation loans for low income homeowners and the public housing and Section 8 programs operated by the Oakland Housing Authority and targeted to the very lowest income households; and

WHEREAS, this Inclusionary Housing Ordinance will provide rental units affordable to low, very low and extremely low income households with an average income of no more than 60 percent of area median income, and ownership units affordable to moderate, low, very low and extremely low income households with an average income of no more than 100 percent of area median income, thus allowing the City to target its limited affordable housing dollars to extremely low, very low and low income households who have the greatest housing needs and require the greatest subsidies; and

WHEREAS, the City will target its limited affordable housing dollars to extremely low (30 percent of area median income), very low (50 percent of area median income) and low income (80 percent of area median income) households who have the greatest housing needs and require the greatest subsidies; and

WHEREAS, City staff performed a preliminary affordable housing gap analysis to determine the appropriate in-lieu fee for the inclusionary housing ordinance; and

WHEREAS, on April 25, 2006, the Community and Economic Development Committee received and considered a report on inclusionary housing and directed staff to prepare a draft Inclusionary Housing Ordinance based on the recommendations of Council President Ignacio De La Fuente, Councilmember Jane Brunner and Vice Mayor Jean Quan; and

WHEREAS, on June 7, 2006 the City Planning Commission continued to a later date a duly noticed public hearing on the Inclusionary Housing Ordinance; and

WHEREAS, on July 12, 2006 a continued public hearing on an Inclusionary Housing Ordinance was held before the City Planning Commission, which forwarded its recommendations to the City Council; and

WHEREAS, the Community and Economic Development Committee held a public meeting on June 13, 2006 to consider an Inclusionary Housing Ordinance; and

WHEREAS, on October 17, 2006, the Oakland City Council held a duly noticed public hearing; and

WHEREAS, the City Council has received and considered the staff report accompanying this Ordinance, the Planning Commission recommendations as well as public testimony; now therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. This Ordinance shall be known as the "Inclusionary Housing Ordinance."

SECTION 2. Chapter 17.109 is hereby added to the Oakland Planning Code to read as follows:

Chapter 17.109

INCLUSIONARY HOUSING REQUIREMENTS

17.109.010 Title, Purpose, Applicability

This chapter shall be known as the Inclusionary Housing Requirements. The purpose of this chapter is to establish an inclusionary housing program for the City of Oakland to ensure that development projects that include market rate housing units provide units affordable to households of low and moderate income distributed throughout the City's various neighborhoods. These requirements shall apply to projects that construct or establish housing units in all parts of the City.

17.109.020 Definitions

As used in this chapter, the following terms have the following meanings:

"AMI" or "area median income" means the area median income for the Oakland area as determined by the California Department of Housing and Community Development pursuant to California Health and Safety Code Section 50093.

"Affordable housing" means a housing unit that is provided at an affordable rent to a low income household with an average income of not more than 60 percent of area median income averaged across all of the rental inclusionary units produced as a result of the covered development project, or sold at an affordable sales price to a moderate income household with an average income of not more than 100 percent of area median income averaged across all of the ownership inclusionary units produced as a result of the covered development project, as further described in Section 17.109.110 (Affordability Level and Housing Cost).

"Affordable housing cost" means an annual housing cost that is not greater than the affordable housing cost specified in Section 17.109.110 (Affordability Level and Housing Cost) for the housing unit, adjusted for family size appropriate to the housing unit pursuant to California Health and Safety Code Section 50052.5, and is not less than 28 percent of the actual gross income of the household. "Housing cost" shall include those items set forth in 25 California Code of Regulations Section 6920.

"Affordable rent" means a gross rent, including an allowance for tenant-paid utilities, that does not exceed 30 percent of the maximum allowable income specified in Section 17.109.110 (Affordability Level and Housing Cost) for the housing unit, adjusted for family size appropriate to the unit pursuant to California Health and Safety Code Section 50053.

"Affordable sales price" means the sales price of a housing unit that would permit a household to obtain the housing unit at an affordable housing cost.

"Agency" means the Redevelopment Agency of the City of Oakland.

"City" means the City of Oakland.

"City Administrator" means the City Administrator of the City of Oakland or his or her designees.

"Covered development project" means any facility that includes the construction or establishment of twenty or more housing units. A change in tenure (rental or ownership) shall not in itself constitute construction or establishment of a housing unit.

"Housing unit" means a living unit within the meaning of Section 17.090.040 of the Planning Code, a joint living and work quarter within the meaning of Section 17.202.190B of the Planning Code, or a joint residential-oriented living and working quarter within the meaning of Section 17.102.195B of the Planning Code.

"Household" means one person living alone or two or more persons sharing residency.

"In-lieu Fee" means a fee to be paid in the amount described in Oakland's Master Fee Schedule as an alternative to providing on-site or off-site inclusionary units.

"Inclusionary housing plan" means that inclusionary housing plan required under Section 17.109.170 (Inclusionary Housing Plan).

"Inclusionary unit" means a housing unit that must be offered at an affordable rent, or sold at an affordable sales price, as further specified in Section 17.109.110 (Affordability Level and Housing Cost).

"Low income household" shall be as a "lower income household" is defined in California Health and Safety Code Section 50079.5 and its implementing regulations.

"Market rate units" means housing units constructed in the principal project that are not subject to sales or rental restrictions.

"Moderate income household" shall be as "persons and families of low or moderate income" is defined in California Health and Safety Code Section 50093 and its implementing regulations.

"Off-site unit" means an affordable housing unit constructed pursuant to this chapter on a site other than the site of the principal project.

"On-site unit" means an affordable housing unit constructed pursuant to this chapter on the site of the principal project.

"Ownership unit" means a housing unit that serves or is intended to serve as the primary residence of the owner or owners.

"Principal project" means a covered development project on which a requirement to provide inclusionary units is imposed.

"Project applicant" means any individual, person, firm, partnership, association, joint venture, corporation, limited liability company, entity, combination of entities or

authorized representative thereof, who undertakes, proposes or applies to the City for any covered development project.

“Redevelopment project area” means an area governed by a redevelopment plan pursuant to the California Community Redevelopment Law (California Health and Safety Code 33000, et seq.).

“Redevelopment project areas with housing production requirements” means redevelopment project areas subject to the production requirements set forth in California Health and Safety Code Section 33413(b).

“Site” means a parcel or parcels of land which is or may be developed or utilized for a covered development project.

“Very low income household” shall be as “very low income household” is defined in California Health and Safety Code Section 50105 and its implementing regulations.

17.109.030 Application

This chapter shall apply to all housing units in covered development projects, unless (1) the covered development project has acquired or will acquire vested rights to develop under California law on or before May 1, 2007, or (2) the covered development project qualifies for an exemption listed in Section 17.109.040 (Exemptions).

17.109.040 Exemptions

This chapter shall not apply to any of the following:

- (1) The following development projects:
 - (a) A residential development project located in whole or in part on the site of the MacArthur Bay Area Rapid Transit (BART) station;
 - (b) A residential development project located in whole or in part on the site of the Coliseum Bay Area Rapid Transit (BART) station;
 - (c) A residential development project located in whole or in part on the site of the West Oakland Bay Area Rapid Transit (BART) station;
 - (d) A residential development project located in whole or in part in the Fruitvale Transit Village that receives a building permit by May 1, 2009.
- (2) The reconstruction or rebuilding of any housing units that have been damaged or destroyed by fire, flood, earthquake or other act of nature unless the damaged or destroyed housing were inclusionary units. Such reconstruction or rebuilding must be commenced no later than four years and completed no later than six years from the date of the damage or destruction.

- (3) A covered development project that is subject to affordability restrictions recorded by the City or the Agency pursuant to funding through the City and Agency's competitive affordable housing funding process.
- (4) A covered development project containing rental units where at least 40 percent of the rental units are restricted for at least 55 years to households with incomes not exceeding 60 percent of AMI, adjusted for household size, with rents not exceeding 30 percent of 60 percent of AMI, adjusted for household size.
- (5) The rehabilitation of existing housing units in which the estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation. Housing units newly constructed or established as part of a project that also includes rehabilitation of existing housing units are not exempt.

17.109.050 On-Site Inclusionary Housing Requirements

For covered development projects covered by Section 17.109.030 (Application), at least 15 percent of all housing units in the covered development project must be affordable housing, with that affordable housing subject to the occupancy restrictions, affordability levels, and terms of affordability set forth in Section 17.109.110 (Affordability Level and Housing Cost). This requirement may be applied no more than once to an approved covered development project, regardless of changes in the character or ownership of the project, provided the total number of housing units does not change.

As an alternative, a project applicant may satisfy the inclusionary requirement of this section through development of off-site units pursuant to Section 17.109.060 (Off-Site Inclusionary Housing), payment of an inclusionary in-lieu fee pursuant to Section 17.109.150 (In-Lieu Fee), or a combination of these alternatives that at least equals the cost of providing off-site inclusionary units.

17.109.060 Off-Site Inclusionary Housing

A project applicant may elect to build affordable housing units on a site other than the site of the principal project to satisfy the requirements of this chapter. If the project applicant selects this alternative, the number of affordable units developed off-site must be no fewer than 20 percent of all housing units constructed on the principal project site. Off-site units shall be subject to all applicable provisions of this chapter.

If off-site units are provided in another covered development project subject to the requirements of this chapter, the housing units that qualify as off-site units shall not be included when determining the number of inclusionary housing units required in that covered development project.

17.109.070 Fractional Units

When the inclusionary housing calculation for on-site or off-site units produces a fractional number of units, the project applicant shall (1) round up to the next whole

number, in which case that resulting number of affordable units shall be provided as set forth in this chapter, or (2) pay a pro-rata share of the in-lieu fee as set forth in Section 17.109.150 (In-Lieu Fee) for the fractional unit.

17.109.080 Prohibition of Affordable Housing Development Subsidies

No housing unit shall be counted as an inclusionary unit pursuant to this chapter if it receives a development subsidy from any federal, state or local program, including City or Agency programs, established for the purpose of providing affordable housing, to fund the inclusionary units required by this chapter, except to the extent such subsidies are used only to increase the level of affordability of the housing unit beyond the level of affordability required by this chapter.

Housing units assisted only with tax-exempt bond financing or 4% low income housing tax credits shall be exempt from the provisions of this section, provided that such units are rented to and occupied only by very low income households at an affordable rent for very low income households.

17.109.090 Timing of Provision of Inclusionary Units

On-site and off-site inclusionary housing units required by Sections 17.109.050 and 17.109.060 *must be constructed, completed, and ready for occupancy no later than the market rate units in the principal project.* If the principal project is constructed in phases, the inclusionary units must be constructed in phases in proportion with the market rate units or sooner.

17.109.100 Unit Comparability

The number of inclusionary units of each size, as measured by number of bedrooms per unit, shall be at least proportional to the number of market rate units of each size in the principal project, as measured by number of bedrooms per unit. The construction type, tenure (rental or ownership), square footage and interior features of inclusionary units do not need to be the same as or equivalent to those in market rate units in the principal project, provided they are of standard construction grade quality, approved by the City, and consistent with then-current standards for new affordable housing. Project applicants shall endeavor to distribute the inclusionary units proportionately among the market rate units, avoid concentration of inclusionary units; and avoid taking actions that would stigmatize or set apart the inclusionary units.

If the housing units in the principal project do not contain bedrooms separated from the living space, the on-site and off-site units shall be comparable in size according to the following equivalency calculation.

Size of Unit	Equivalent Unit
Less than 550 Square Feet	Zero bedroom unit
551 to 750 Square Feet	One bedroom unit
751 to 1,000 Square Feet	Two bedroom unit
1,001 to 1300 Square Feet	Three bedroom unit
More than 1300 Square Feet	Four bedroom unit

17.109.110 Affordability Level and Housing Cost

Rental units

Inclusionary units required by this chapter that are rental housing units must:

- (1) be rented to and occupied only by low income households, with further maximum household income restrictions that restrict rental inclusionary units produced as a result of a covered development project to a mean average of 60 percent of AMI adjusted for family size appropriate to the unit, averaged across all of the rental inclusionary units produced as a result of the covered development project;
- (2) have rents that do not exceed an affordable rent for a household at the maximum household income level for the housing unit; and
- (3) be subject to these restrictions on tenant incomes and affordable rents for a period of at least 55 years from the date of initial occupancy.

Ownership units:

Inclusionary units required by this chapter that are ownership units must:

- (1) in accordance with the schedule below, be sold only to moderate income households, with further maximum household income restrictions that restrict ownership inclusionary units produced as a result of a covered development project to a mean average of 100 percent of AMI adjusted for family size appropriate to the unit, averaged across all of the ownership inclusionary units produced as a result of the covered development project;
- (2) in accordance with the schedule below, be sold at an affordable sales price for a household at the maximum household income level for the housing unit; and
- (3) be subject to these restrictions on affordable sales prices and buyer incomes for a period of at least 45 years from the date of initial sale.

Affordability schedule for ownership units:

Maximum Household Income	Affordable Housing Cost
80 percent of AMI	30 percent of 70 percent of AMI
90 percent of AMI	35 percent of 80 percent of AMI
100 percent of AMI	35 percent of 90 percent of AMI
110 percent of AMI	35 percent of 100 percent of AMI
120 percent of AMI	35 percent of 110 percent of AMI

Low income households who are purchasers of inclusionary units that are ownership units shall be permitted by the seller of the unit to utilize homebuyer assistance provided by the City or Agency.

17.109.120 Affordability Restrictions

The occupancy, rent, and sales restrictions imposed by this chapter shall be set forth in a regulatory agreement, affordability agreement, resale controls, declaration of covenants, or similar binding instrument executed by the City and the applicant. Such restrictions shall be recorded against the site or sites containing the inclusionary housing units as covenants running with land, senior in priority to any private liens or encumbrances, and shall be enforceable by the City against the project applicant or the applicant's successors-in-interest to the sites for the full affordability term. Additional restrictions, deeds of trust, rights of first refusal, or other instruments may be required by the City Administrator as reasonably needed to enforce these restrictions. The City Administrator shall have the authority to subordinate such restrictions to other liens and encumbrances if he or she determines that the financing of the inclusionary units would be infeasible without said subordination.

17.109.130 Condominium Projects

If the principal project is developed pursuant to a condominium map, but the housing units in the project are placed in the rental market rather than being sold, the requirements for rental inclusionary units shall apply.

17.109.140 Teacher Housing

For any covered development project producing on-site or off-site ownership inclusionary units located outside of a redevelopment project area with housing production requirements, no fewer than 20 percent of those inclusionary units must be offered for sale first to teachers employed by the Oakland Unified School District or a public charter school in Oakland who are moderate income and otherwise qualify for purchase of the unit under Section 17.109.110 (Affordability Level and Housing Cost).

For units sold to teachers under this section, the owner shall execute a promissory note and the City shall record a deed of trust or other instrument upon the owner's purchase to evidence and secure payment to the City of an amount equal to the difference between the inclusionary unit's fair market value and the affordable sales price for the unit, subject to the shared appreciation provisions below. If the owner of the inclusionary unit remains a teacher employed by the Oakland Unified School District or a public charter school in

Oakland for at least five years and continues to occupy the unit as his or her principal residence throughout that period, the City may then remove the 45-year resale restrictions required under Section 17.109.120 (Affordability Restrictions), and the owner shall then be subject only to the repayment and shared appreciation provisions below. If the owner does not remain a teacher as defined above for the five-year period, or the owner sells the inclusionary unit within this five-year period, the 45-year resale restrictions shall remain on the inclusionary unit.

Repayment and Shared Appreciation

After the five-year period referenced above, and after the City has removed the resale restrictions from the inclusionary unit, the owner may sell the inclusionary unit at market rate. However, upon sale of the inclusionary unit or default under any of the conditions imposed in accordance with this chapter, (1) the owner shall repay to the City the full amount of the promissory note at the time of sale, and (2) the City and the owner shall share any increase in the fair market value of the inclusionary unit above its fair market value at the time the owner purchased the unit. Beginning in the 6th year of occupancy, the owner shall be entitled to receive 20 percent of the increase in fair market value of the inclusionary unit after deducting an allowance for reasonable and customary selling costs paid by the owner, and the City shall receive the balance. The owner shall be entitled to receive an additional 20 percent of the increase in fair market value for each additional year that the owner occupies the inclusionary unit, up to a maximum of 100 percent of the increase in fair market value.

Any payments received by the City hereunder shall be deposited into the Affordable Housing Trust Fund established pursuant to Section 15.68.100 of the Oakland Municipal Code.

17.109.150 In-Lieu Fee

The requirements of this chapter may be satisfied by paying an in-lieu fee for each unit that would be required if the applicant were to provide off-site inclusionary units pursuant to Section 17.109.060. The in-lieu fee for each inclusionary unit shall be established by the City based on an estimate of the total subsidy required to make units comparable to inclusionary units affordable at the rents or sales prices required by Section 17.109.110 (Affordability Level and Housing Cost). The total subsidy required shall be estimated based on the difference between the estimated cost of developing an inclusionary unit and

- (1) for an ownership inclusionary unit, an affordable sales price; or
- (2) for a rental inclusionary unit, the amount of debt that can be supported by a unit with an affordable rent after payment of operating expenses and a reasonable deposit to reserves.

The initial in-lieu fee shall be established in the City's Master Fee Schedule by the unit size by bedroom, and may be periodically adjusted.

No building permit shall be issued for any residential development that elects to pay an in-lieu fee pursuant to this section until the fee is paid to the City.

17.109.160 Deposit and Use of Fees

All in lieu fees collected by the City pursuant to this chapter shall be deposited to the Affordable Housing Trust Fund established pursuant to Section 15.68.100 of the Oakland Municipal Code.

Twenty percent of the gross in-lieu fee monies shall be designated for an Oakland Teacher Mortgage Assistance Program to be established by the City. The program shall provide teachers employed by the Oakland Unified School District or a public charter school in Oakland with loans to assist in the purchase of ownership units, with shared appreciation provisions comparable to those provided in Section 15.109.140 above. If such monies are not committed to qualified projects or housing units under the Oakland Teacher Mortgage Assistance Program within three years of their receipt, such monies shall be available for use in other affordable housing projects, subject to the limitations of this section.

Up to ten percent of the gross in-lieu fees generated pursuant to this chapter may be used to pay for the City's costs of monitoring and enforcing this chapter.

The remaining in-lieu fee monies shall be used exclusively to fund housing units that serve households at or below 50% of area median income, with a preference for housing units that serve households at or below 30% of area median income.

17.109.170 Inclusionary Housing Plan

A project applicant must include as part of its first application to the City for a development-related permit or approval an inclusionary housing plan that includes outlining the methods by which the project applicant proposes to meet the requirements of this chapter.

The City shall approve, conditionally approve or reject the proposed inclusionary housing plan as part of its decision on the development-related permit or approval. No application for a development-related permit or approval, including without limitation, a tentative map, parcel map, conditional use permit, Planned Unit Development (Preliminary and Final), Master Plan, variance, design review, or building-related (grading, demolition, building) permit to which this chapter applies may be deemed complete until an inclusionary housing plan is submitted to the City. The inclusionary housing plan must include, at a minimum, the following:

- (1) the location, type of structure (attached, semi-attached, or detached), proposed tenure (ownership or rental), and size of the proposed market-rate units, commercial space and/or inclusionary units and the basis for calculating the number of inclusionary units;
- (2) a floor and site plan depicting the location of the inclusionary units;
- (3) the income levels to which each inclusionary unit will be made affordable;
- (4) for phased covered development projects, a phasing plan that provides for the timely development of the number of inclusionary units

proportionate to each proposed phase of development as required by Section 17.109.100 (Unit Comparability) of this chapter;

- (5) any alternative means proposed to meet the inclusionary housing requirement; and
- (6) any other information reasonably requested by the City to assist with evaluation of the plan under the standards of this chapter.

17.109.180 Enforcement and Remedies

This chapter may be enforced pursuant to the provisions of Oakland Planning Code Chapter 17.152 (Enforcement).

A project applicant's failure to comply with the requirements of this chapter shall constitute cause for the City to (a) revoke the certificate of occupancy for the principal project or required inclusionary units, and/or (b) assess a penalty against the applicant or owner in an amount equal to, at a minimum, \$500 per day for the first 30 days of non-compliance, and thereafter 120 percent of the current in-lieu fee provided for under this chapter, as adjusted under this section.

17.109.190 Third Party Rights of Action

If any project applicant violates any provision of this chapter, any person, individually or by class action, may seek relief in a court of appropriate jurisdiction, including injunctive relief, declaratory relief and damages. In any such court proceeding, the prevailing party shall be awarded his or her reasonable attorneys' fees.

17.109.200 Reductions, Adjustment, Waivers and Appeals

A project applicant may request a reduction, adjustment, or waiver of the requirements imposed by this chapter at the time of application. To receive a reduction, adjustment or waiver, the project applicant must demonstrate that it meets one of the following criteria:

- (1) That there is an absence of any reasonable relationship or nexus between the impact of the development and either the inclusionary requirement or the amount of the in-lieu fee charged;
- (2) That the inclusionary requirement would deprive the project applicant of all economically viable use of the property or constitute a taking of the project applicant's property; or
- (3) That application of this chapter to the principal project would otherwise violate either the California or the United States Constitutions.

Any such request, and all supporting materials, shall be made in writing and filed with the City as part of the application for the first development-related permit or approval for the principal project. The request shall set forth in detail all the factual and legal basis for the claim of reduction, adjustment, or waiver. The City shall consider the request along

with consideration of the underlying permit or approval application. The project applicant shall bear the burden of presenting appropriate evidence to support the request, including comparable technical information to support applicant's position. If a reduction, adjustment, or waiver is granted, any subsequent change in the approved use within the project shall invalidate the adjustment, reduction or waiver of the fee or inclusionary requirement.

If a request for a reduction, adjustment, or waiver is denied, the project applicant may appeal that decision by following the appeals procedure established for denial of the underlying permit or approval.

If no appeal procedure is provided for the underlying permit or approval, then the applicant may appeal the request for a reduction, adjustment, or waiver to the City Planning Commission within ten calendar days after the date of a decision. In the event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal. Such appeal shall be made on a form prescribed by the City Planning Department and shall be filed with such Department. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the City or wherein its decision is not supported by the evidence in the record. Upon receipt of the appeal, the Secretary of the City Planning Commission shall set the date for consideration thereof. Not less than ten days prior to the date of the Commission's consideration of the appeal, the Secretary shall give written notice to the project applicant/appellant, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as the Secretary deems appropriate, of the date and place of the hearing on the appeal. In considering the appeal, the Commission shall determine whether the project applicant/appellant has met its burden and may grant or deny the requested reduction, adjustment, or waiver or require such changes in the Inclusionary Housing Plan or impose such reasonable conditions of approval as are in its judgment necessary to ensure conformity to said criteria. The decision of the City Planning Commission is final and not subject to administrative appeal.

17.109.210 Incentives

A project applicant may be entitled to a density bonus and incentives or concessions under the California Density Bonus Law (Government Code Section 6519, et seq.) in return for producing inclusionary units, if and to the extent provided for under the Density Bonus Law. For purposes of calculating the number of inclusionary units required under this chapter, any additional housing units authorized as a density bonus under the Density Bonus Law will not be counted as part of the covered development project.

17.109.220 Administrative Regulations

Notwithstanding any other provision in the Planning Code, the City Administrator is hereby authorized to adopt administrative rules and regulations consistent with this chapter as needed to implement this chapter, and to make such interpretations of this chapter as he or she may consider necessary to achieve the purposes of this chapter. Such rules and regulations may include, without limitation, methods and criteria for certifying incomes of prospective tenants or purchasers of inclusionary units, a method

for calculating affordable sales prices, selection, occupancy and rent-setting standards, methods of imposing and monitoring affordability restrictions on inclusionary units, procedures and criteria for reviewing inclusionary housing plans, and guidelines for implementation of the teacher housing programs described in Sections 17.109.140 (Teacher Housing) and 17.109.150 (In-Lieu Fee).

17.109.230 Annual Reporting

The City Administrator shall report to the City Council annually on the results of the Inclusionary Housing Requirements, including, but not limited to, a report on the following items:

- (1) The number of, location of, and project applicant for every housing project to which this Ordinance applied, and the number of market rate units and the number of affordable on-site and off-site units provided, including the location of all of the affordable units, or the amount of in-lieu fee paid for the project; and
- (2) The number of, location of, and project applicant for housing projects which applied for a waiver, adjustment, or reduction from the requirements of this Ordinance and the number of, location of, and project applicant for housing projects which were granted such a waiver, adjustment, or reduction and, if a reduction, to what percentage."

SECTION 3. The record before this Council relating to this Ordinance and supporting the findings made herein includes, without limitation, the following:

1. Association of Bay Area Governments, Regional Housing Needs Determinations: 1999-2006 Housing Element Period, third official release dated June 1, 2000.
2. The report to City Council titled "Informational Report on the Final Recommendations of the Housing Development Task Force" and dated July 18, 2000.
3. The report to City Council titled "An informational staff report on inclusionary zoning programs for affordable housing" and dated May 15, 2001
4. California Coalition for Rural Housing and Non-Profit Housing Association of Northern California, "Inclusionary Housing in California: 30 Years of Innovation," 2003.
5. The report to City Council titled "A staff report describing inclusionary zoning programs in other California jurisdictions and a recommendation that the City Council not take any further action on inclusionary zoning" and dated December 9, 2003.
6. "City of Oakland Housing Element", dated June 14, 2004.
7. "Consolidated Plan for Housing and Community Development" dated May 13, 2005.

SECTION 4. The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision, and are hereby adopted as findings.

SECTION 5. The custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) the Community and Economic Development Agency, Housing and Community Development Division, 250 Frank H. Ogawa Plaza, 5th floor, Oakland, California; and (b) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, California.

SECTION 6. The provisions of this Ordinance are severable, and if any clause, sentence, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is held to be invalid or preempted by state or federal law, such holding shall not impair or invalidate the remainder of this Ordinance. If any provision of this Ordinance is held to be inapplicable to any specific development project or applicant, the provisions of this Ordinance shall nonetheless continue to apply with respect to all other covered development projects and applicants. It is hereby declared to be the legislative intent of the City Council that this Ordinance would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from its coverage.

SECTION 7. The City Council finds and determines that this Ordinance complies with the California Environmental Quality Act (CEQA) based upon the following, each of which provides a separate and independent basis, (1) reliance upon the Environmental Impact Report prepared for the Land Use and Transportation Element of the General Plan that was certified by the City Council on March 24, 1998; (2) reliance upon the Environmental Impact Report prepared for the Estuary Policy Plan that was certified by the City Council on June 8, 1999; (3) reliance upon the Mitigated Negative Declaration prepared and approved for the Housing Element of the General Plan on June 14, 2004; (4) CEQA Guidelines section 15061(b) (3); and (5) CEQA Guidelines section 15183.

SECTION 8. The Oakland Master Fee Schedule is hereby amended to provide for the following initial inclusionary housing in-lieu fee:

Unit Size By Bedroom	In-Lieu Fee
0 Bedroom	\$ 195,000
1 Bedroom	\$ 240,000
2 Bedroom	\$ 265,000
3 Bedroom	\$ 305,000
4 Bedroom	\$ 315,000

No later than May 1, 2007, the City shall retain a consultant and complete a study to determine an appropriate in-lieu fee in accordance with the provisions of Section 17.109.150 (In-Lieu Fee) of the Inclusionary Housing Requirements and the above fee shall then be adjusted by ordinance if warranted. The City may update this study periodically as necessary.

In lieu of such periodic updates of the in-lieu fee study, the fee shall be adjusted annually according to the provisions for annual increases in the Jobs/Housing Impact Fee contained in Section 15.68.050 of the Municipal Code.

SECTION 9. Section 15.68.100 of the Municipal Code (Affordable Housing Trust Fund) is hereby amended to add the following:

Twenty percent of gross funds deposited to the Affordable Housing Trust Fund as a result of in-lieu fees collected pursuant to Section 17.109.150 of the Oakland Planning Code shall be reserved for the Teacher Mortgage Assistance Program authorized by Section 17.109.160 of the Oakland Planning Code. Any funds received by the City in connection with the Teacher Mortgage Assistance Program shall also be deposited to the Affordable Housing Trust Fund for this same purpose. Notwithstanding any other provision contained in this chapter, funds reserved for the Teacher Mortgage Assistance Program may be used to assist persons and families of moderate income as defined in California Health and Safety Code Section 50093 and its implementing regulations. If such monies are not committed to qualified projects or housing units under the Oakland Teacher Mortgage Assistance Program within three years of their receipt, such monies shall be available for use in other affordable housing projects, subject to the limitations of this section. Up to ten percent of the gross in-lieu fees generated pursuant to Section 17.109.150 of the Oakland Planning Code may be used to pay for the City's costs of monitoring and enforcing the Inclusionary Housing Requirements. The remaining in-lieu fee monies collected pursuant to Section 17.109.150 of the Oakland Planning Code shall be used exclusively to fund housing units that serve households at or below 50% of area median income, with a preference for housing units that serve households at or below 30% of area median income.

SECTION 10. The first sentence of the third paragraph of Section 15.68.100 of the Municipal Code (Affordable Housing Trust Fund) is hereby amended to read as follows (additions are indicated by underlined text):

Funds may also be used to cover reasonable administrative or related expenses of the city not reimbursed through processing fees, including costs of administering or enforcing the Inclusionary Housing Requirements contained in Chapter 17.109 of the Oakland Planning Code.

SECTION 11. Section 17.152.070.A of the Oakland Planning Code is amended to add the Inclusionary Housing Ordinance as follows:

1. 17.109.010 through 17.109.220;
42. 17.112.010 through 17.112.060;
23. 17.134.010 through 17.134.120;
34. 17.136.010 through 17.136.130;
45. 17.140.010 through 17.140.120;
56. 17.142.010 through 17.142.090;
67. 17.146.010 through 17.146.060; and,
78. 17.148.010 through 17.148.110

SECTION 12. This Ordinance shall be effective upon its adoption if it receives at least six affirmative votes; otherwise, it shall be effective upon the seventh day after final adoption; but as set forth above shall **not** be applied to covered development projects that have acquired or will acquire vested rights to develop under California law on or before May 1, 2007.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2006

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL,
 QUAN, REID, AND PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the
Council
of the City of Oakland, California



AN ORDINANCE ADDING CHAPTER 17.109 TO THE OAKLAND PLANNING CODE TO ESTABLISH AN INCLUSIONARY HOUSING REQUIREMENT AND ESTABLISH TWO NEW HOMEOWNERSHIP PROGRAMS FOR OAKLAND TEACHERS, MAKING RELATED AMENDMENTS TO THE OAKLAND PLANNING CODE, AMENDING SECTION 15.68.100 OF THE OAKLAND MUNICIPAL CODE TO PERMIT AFFORDABLE HOUSING TRUST FUNDS TO BE USED TO ADMINISTER AND ENFORCE THE INCLUSIONARY HOUSING REQUIREMENT, AND AMENDING THE MASTER FEE SCHEDULE TO ESTABLISH AN INCLUSIONARY HOUSING IN-LIEU FEE

NOTICE AND DIGEST

This Ordinance adds Chapter 17.109 to the Oakland Planning Code to establish an inclusionary housing requirement and establish two new homeownership programs for Oakland teachers, makes certain related amendments to Section 17.052.170.A of the Oakland Planning Code and Section 15.68.100 of the Oakland Municipal Code, makes certain findings in support of its enactment, and amends the City's Master Fee Schedule to establish an inclusionary housing in-lieu fee.

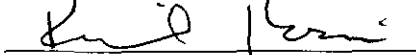
Councilmember Brunner
October 17, 2006

7

Attachment B

Proposed ORA Resolution

ITEM # _____
ORA/COUNCIL
October 17, 2006


AGENCY COUNSEL

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION No. _____ C.M.S.

A RESOLUTION RESTRICTING THE USE OF LOW AND MODERATE INCOME HOUSING FUNDS TO UNITS FOR HOUSEHOLDS AT 60% OF AREA MEDIAN INCOME, WITH A PREFERENCE FOR HOUSEHOLDS AT 30% OF AREA MEDIAN INCOME

WHEREAS, the City of Oakland's Consolidated Plan for Housing and Community Development indicates that there is a need for affordable housing, and has identified this activity as a priority; and

WHEREAS, the Redevelopment Agency desires to increase the amount of funding available for affordable housing to meet the need for low income, very low income, and extremely low income housing in the City of Oakland; and

WHEREAS, a comprehensive affordable housing strategy includes policies that provide housing affordable to low income, very low income and extremely low income households, all of which make up significant portions of Oakland's population; and

WHEREAS, upon the adoption of an Inclusionary Housing Requirement, the City of Oakland will have a proven strategy for providing housing affordable to moderate and low income households; and

WHEREAS, as the Inclusionary Housing Requirement serves households at an average of 60% of area median income, for rental housing, and an average of 100% of area median income, for ownership housing, the Agency can secure housing opportunities for low, very low and extremely low income households through the targeted use of its Low and Moderate Income Housing Funds; now, therefore, be it

RESOLVED: That the Agency hereby restricts the use of the Low and Moderate Income Housing Fund to housing units that serve households at or below 60% of area median income, with a preference for housing units that serve households at or below 30% of area median income; and be it further

RESOLVED: That these restrictions shall apply to allocations of Low and Moderate Income Housing Funds made by the Agency's governing board after July 1, 2007, including funds allocated to development projects under the Agency's Notice of Funding Availability program after this date; and be it further

RESOLVED: That these restrictions shall not apply to Low and Moderate Income Housing Funds allocated currently or in the future to any housing programs established by the Agency or City prior to July 1, 2007, that provide direct assistance to homeowners or first-time homebuyers, or that provide assistance for rental rehabilitation (other than rental rehabilitation assistance provided under the Agency's Notice of Funding Availability program), including without limitation any such housing programs described in any implementation plan adopted prior to July 1, 2007; and be it further

RESOLVED: That these restrictions shall not apply to Low and Moderate Income Housing Funds allocated to any affordable housing developed within the Wood Street Zoning District or the Oak to Ninth Avenue District.

IN AGENCY, OAKLAND, CALIFORNIA, _____, 2006

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND
CHAIRPERSON DE LA FUENTE,

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
Secretary of the Redevelopment Agency
of the City of Oakland

Attachment C

Director's Report

September 6th Planning Commission

SUMMARY

On July 19th, the Planning Commission discussed the proposed inclusionary housing ordinance and amendments. At that time, the Planning Commission requested additional information regarding various affordable housing issues in the City. The following report addresses the Planning Commission's questions.

The City of Oakland Housing Element and the Consolidated Plan for Housing and Community Development provide in-depth information about the City's housing programs. Both are available for your reference on CEDA's Housing and Community Development Division website.

KEY ISSUES AND IMPACTS

Following in italics are the questions and comments raised at the July 19, 2006 Planning Commission meeting, with staff response following each:

- 1. What other programs are currently available to affordable housing (such as Section 8, Redevelopment money, State money, other)?*

Multiple sources of funding are available for affordable housing activities. The Redevelopment Agency's Low and Moderate Income Housing Fund and federal HOME funds are the primary sources of housing funds utilized to support the City's housing development programs. The City also receives federal Community Development Block Grant (CDBG) and other program grant funds (Emergency Shelter Grant and Housing Opportunities for Persons with Aids) that are allocated for the City's housing rehabilitation programs, provide housing for the homeless, fair housing and other housing counseling activities, and fund social services for families and special needs households.

Although state law requires that redevelopment agencies devote 20 percent of tax increment funds to affordable housing, the Agency has allocated 25 percent of gross tax increment to affordable housing activities since 2001. The City uses its Low and Moderate Income Housing and HOME funds to leverage other affordable housing development funds from federal and state governments and private entities. These funds including low income housing tax credits; HUD Section 202 and Section 811 programs for seniors and persons with disabilities; State of California programs administered by the Department of Housing and Community Development and the California Housing Finance Agency; foundation grants; and private lending programs.

The City of Oakland leveraged the third highest amount of Proposition 46 funds of all jurisdictions in the state. (Proposition 46, the Housing and Emergency Shelter Trust Fund Action of 2002, is a \$2.1 million bond measure that was passed by California voters in November 2002).

The Oakland Housing Authority (OHA) owns and operates 3,308 public housing units and administers the Section 8 Certificates and Vouchers Program, which assists 11,142 families to rent housing from private owners. The Section 8 and conventional public housing programs are funded by HUD and provide deep subsidies to residents and, regardless how low their incomes are, ensure that households pay only 30 percent of their incomes for rent.

- 2. What are the "tools in the affordable housing toolbox"?*

CEDA's Housing and Community Development Division implements numerous programs to address the affordable housing needs of Oakland's residents. These "tools" include programs for the Development and Preservation of Affordable Housing, First Time Homebuyer Assistance and Housing Rehabilitation.

Attached to this report is additional information about the specific Housing and Community Development Division housing programs. Please refer to the attachment for more detailed descriptions of the programs.

The Department of Human Services operates a number of programs that provide assistance to the homeless population.

- Emergency Shelter Grant Program, which provides shelter and other forms of temporary housing and support services to the City's homeless population.
- Matilda Cleveland Transitional Housing Program provides temporary housing for homeless families.
- Supportive Housing Program provides a continuum of services, shelter and transitional housing to homeless families.
- Winter Relief Program gives emergency food and temporary shelter during the winter months.

Furthermore, as noted above, the Oakland Housing Authority (OHA) owns and operates 3,308 public housing units and administers 11,142 Section 8 Certificates and Vouchers.

3. *What is the City's bonding capacity for the pursuing an affordable housing bond?*

In 2000, the City of Oakland issued an affordable housing bond in the amount of \$39.5 million. In 2006, a \$55 million affordable housing bond was issued. The majority of the bond funds were used for the development of new affordable housing and the rehabilitation of existing affordable units. Both of these bonds were tax increment bonds that are backed by (and repaid with) the annual deposits to the Agency's Low and Moderate Income Housing Fund. The City plans to issue additional bonds to fund the affordable housing component of the Oak to Ninth project and other large development projects. This bond issuance is also anticipated to be a tax increment bond.

4. *What is Los Angeles proposing with their housing bond? Could Oakland pursue something similar?*

On July 31, 2006, the Los Angeles City Council unanimously voted to place a \$1 billion housing bond proposal on the November ballot. This general obligation bond is believed to be the largest of its kind ever pursued by a municipality. If approved, funds will be used for affordable housing development projects and to establish a homebuyer loan program.

To date, the City of Oakland has not pursued a general obligation bond. A bond of this type would require a ballot measure and two-thirds voter approval. General obligation bonds are secured by the City's full faith and credit and those debt service obligations could make it more difficult to pay for City services funded from the General Fund.

5. *What is the current number of affordable units in Oakland? What are the affordability levels of these units?*

The following table outlines the number of affordable units in Oakland and the affordability levels of these units.

Affordable Housing Units in the City of Oakland

	Total Units ^a	City Assisted Units	Units Assisted with Section 8 ^b	Affordability Level (% AMI)
Family	2,572	1,813	1,152	30 – 80% AMI ^c
Senior	3,914	1,099	3,504	0 – 50% AMI
Supportive	157	145	68	0 – 50% AMI
Single-Room Occupancy (SRO)	679	572	504	0 – 50% AMI
Transitional	90	90	0	0 – 50% AMI
Public Housing	3,308	N/A	N/A	0 – 80% AMI ^d

Total	10,712	3,719	5,228	N/A
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- a. Some projects contain units that are both City-assisted and assisted by Section 8 funds. As a result, the sum of the City Assisted and Section 8 Assisted columns does not equal the total units column.
 - b. Project-based Section 8 guarantees affordability for even the lowest income households.
 - c. City-assisted family units target households between 30% and 80% Area Median Income, although the large majority of the units are occupied by households below 60% Area Median Income. Some family units are also assisted by Section 8 rental assistance that ensures affordability to households between 0% and 50% Area Median Income.
 - d. Most public housing units are occupied by extremely low income households.
6. *The Planning Commission would like some analysis as to how the proposed inclusionary housing ordinance would affect current housing in Oakland.*

CEDA is currently working with a consultant to prepare an inclusionary housing feasibility study. The scope of this study includes analyzing prototypical housing development projects in the City and determining the economic impact of the proposed inclusionary zoning ordinance on market rate housing projects. The study is anticipated to be completed in the fall.

7. *How would the inclusionary housing ordinance affect the City's current affordable housing obligations in our Redevelopment Areas?*

As of June 2006, three Oakland Redevelopment Project Areas had a surplus of affordable housing units for their respective 10-year compliance periods.¹ The Broadway/MacArthur/San Pablo Redevelopment Project Area currently has a deficit of 21 affordable housing units (very low, low and moderate income units) and 15 units specifically for very low income households. The proposed MacArthur BART Transit Village development is anticipated to include sufficient affordable housing to cover the deficit and meet the affordable housing production requirements of the ten-year compliance period.

The proposed inclusionary housing ordinance will help ensure that the Redevelopment Agency will meet its affordable housing requirements for all of the Project Areas subject to production obligations. Furthermore, the units constructed under the proposed inclusionary housing ordinance will free up the City's limited affordable housing funds so they can be focused on very low and low income housing, rather than moderate income housing.

8. *What are neighboring cities along the BART corridor doing for affordable housing (i.e. Berkeley, San Leandro, Hayward, Emeryville, Fremont)?*

Research was recently performed by the Housing and Community Development Department on affordable housing production in 11 cities and towns in Alameda and Contra Costa Counties from 2000 through 2005. It is important to note that the accuracy of this data is unknown, since each city collects and provides its affordable housing production information differently. Some cities, such as Oakland, dedicate considerable amounts of staff time and resources to consistently and accurately track its data, while these efforts may not be priorities for other cities.

The housing production information listed below was gathered from city websites, discussions with housing staff and reviews of annual performance reports. This data does not include units provided under inclusionary zoning or density bonus programs and public housing units that are owned and operated by local housing authorities.

¹ The three Project Areas with an affordable housing surplus are Central City East, Coliseum and West Oakland. Only project areas that were adopted after January 1, 1976 have affordable housing production requirements. It is anticipated that the Oakland Army Base and Oak Knoll Project Areas will fulfill their requirements as housing development projects are completed; .

Affordable Housing Units Completed 2000 through 2005

City	Rental Units	Ownership Units	Total Units
Alameda	122	95	217
Berkeley	187	5	192
Dublin	113	105	218
Emeryville	137	126	263
Fremont	231	0	231
Hayward	397	22	419
Livermore	375	22	397
Oakland	1,168	316	1,484
Richmond	438	147	585
San Leandro	179	47	226

9. *Please comment on the Bay Area's Council's recent report on deficit levels for various cities, including Oakland.*

The Bay Area Council recently released the Bay Area Housing Profile (Third Edition). This report is a rough measure of cities' progress towards meeting its Regional Housing Needs Determination (RHND), also known as fair share allocations.

Jurisdictions were graded based on the extent to which those needs had been met, based on building permits issued. Oakland received an overall grade of B+.

It is important to note that State housing element law requires cities to plan to accommodate anticipated housing needs, but does not require Cities to ensure that the units are actually built. Cities must identify sufficient land with suitable zoning and infrastructure to accommodate the required housing for a range of income levels, and must take actions to remove constraints to development.

The extent to which actual production matches the RHND numbers depends on a variety of factors, most of which are beyond the control of municipal jurisdictions. In particular market conditions and the relationship between housing prices and the cost of development pose a particular constraint.

Oakland's Housing Element was approved by the State in February 2004 (with no comments or requests for changes) and the City is in full compliance with Housing Element law.

While Oakland has not produced all the housing units allocated to it by the RHND, it has produced or approved more housing units in the past five years than is true for any comparable period in several decades.

Compared to many cities, Oakland has few governmental barriers or constraints on housing development; for example, parking requirements are relatively modest and the City does not charge development impact fees on residential development.

SUMMARY

Staff of Housing and Community Development will be available to discuss the responses to these questions and to answer any additional questions from the Planning Commission.

Respectfully submitted:

Claudia Cappio
Development Director

Sean Rogan
Deputy Director of Housing & Community
Development

Prepared by:

Jeffrey Levin
Housing Policy & Programs Coordinator

Attachments:

- A. Directory of Housing Programs, April 2006

Attachment D

Planning Commission Recommendations

July 12, 2006

MEMORANDUM

TO: Oakland City Council
FROM: Members of the Oakland Planning Commission
RE: Recommendations Pertaining to Proposed Inclusionary Housing Ordinance
DATE: July 12, 2006

On July 12, 2006, the Planning Commission held a public hearing to review and consider the proposed Inclusionary Housing Ordinance. The Commission agreed on the following four recommendations to forward to the City Council:

- 1) If adopted, the proposed ordinance should be contained within the Zoning Code.
- 2) If an in-lieu fee is incorporated as part of the ordinance, it should be reserved for use to provide housing for very low and extremely low income households.
- 3) Housing for low income seniors should be considered in the inclusionary ordinance.
- 4) Part of the administration of the inclusionary ordinance should provide for periodic reports to the Planning Commission and the City Council with information such as the number of inclusionary units approved, number of units constructed and type of households served. The first such report should be submitted within 36 months of adoption.

Attachment E

Planning Commission Report

July 12, 2006

MEMORANDUM

Date: July 12, 2006
To: Planning Commission
From: Scott Miller, Zoning Manager *SM.*
Subject: Inclusionary Housing Item (Agenda Item #1)

At the July 5, 2006 Planning Commission meeting, the Commission voted to place this item on the July 12, 2006 agenda. As you will recall, this item was on the June 7, 2006 Planning Commission agenda and was continued. Attached as Exhibits A through E are the following documents:

- A. City Council Report dated June 13, 2006
- B. Proposed Draft Ordinance dated May 25, 2006 (accompanying June 13th report)
- C. Proposed amendment from Councilmember Reid dated June 21, 2006
- D. Proposed amendment from Councilmembers Brunner, De La Fuente, and Quan dated June 27, 2006
- E. City Attorney opinion dated June 27, 2006

As you are aware, this item is scheduled to return to the City Council on July 18, 2006. Any comments from or action by the Planning Commission will be forwarded to the City Council.

CITY OF OAKLAND
AGENDA REPORT

OFFICE OF THE CITY CLERK
2006 MAY 31 PM 5:11

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: June 13, 2006

RE: **An Ordinance Adding Chapter 17.109 To The Oakland Planning Code To Establish An Inclusionary Housing Requirement And Establish Two New Homeownership Programs For Oakland Teachers, Making Related Amendments To The Oakland Planning Code, Amending Section 15.68.100 of the Oakland Municipal Code, And Amending The Master Fee Schedule To Establish An Inclusionary Housing In-Lieu Fee**

SUMMARY

In response to direction from the City Council's Community and Economic Development Committee, staff has prepared a proposed Inclusionary Zoning Ordinance. The ordinance follows the parameters of the proposal announced by Councilmembers Brunner, De La Fuente, and Quan on April 24, 2006.

Given the continued strength of the City's housing market and the pace of new development of market rate housing, it appears that market conditions are conducive to adoption of an inclusionary housing program similar to what is already in place in over 100 California cities and counties.

The proposal announced by Councilmembers Brunner, De La Fuente and Quan takes many of its parameters from San Francisco's inclusionary housing ordinance, and staff has used that ordinance as a starting point for crafting the particulars of the proposed Oakland ordinance. This is especially true with respect to the percentage of units required on site and off site, the affordability levels, and the methodology for calculating in-lieu fees. The proposed ordinance is consistent with the approach and parameters used by many other jurisdictions throughout the State. **A summary of the key provisions of the ordinance is contained in Attachment A.**

The proposed ordinance also contains two new innovative programs designed to provide affordable homeownership opportunities for teachers who commit to teaching in the Oakland Unified School District for at least five years. One program would require that a portion of inclusionary homeownership units be marketed to teachers. The second program would use 20 percent of any in-lieu fees generated by the inclusionary housing requirements to provide loans to assist teachers purchase homes. Both programs would provide increasing shares of the appreciation in the homes to borrowers after the initial five year period ends.

Item: _____
CED Committee
June 13, 2006

ATTACHMENT A

The proposed Inclusionary Housing Ordinance will add another component to the City's wide range of programs designed to address the affordable housing needs of Oakland's low and moderate income residents. While inclusionary housing can not meet the full spectrum of the City's affordable housing needs, it will work well as a complement to other affordable housing efforts including development of new and preservation of existing affordable housing; first-time homebuyer assistance; rehabilitation loans for homeowners; and the public housing and Section 8 programs operated by the Oakland Housing Authority. By requiring developers of market-rate housing to include housing affordable to low and moderate income households, the City can *promote the goal of providing economic integration in neighborhoods experiencing substantial development*. Inclusionary housing can also allow the City to focus its own affordable housing funds on extremely low and very low income households who have the greatest housing needs, but also require affordability levels that are generally below what is economically feasible for inclusionary zoning.

FISCAL IMPACT

The full fiscal impact of the proposed ordinance is difficult to assess. Because it will require housing units that otherwise would be market rate to be sold or rented at affordable rates, it will result in a small and probably negligible decrease in revenues from property taxes and real estate transfer tax. To the extent that developers choose to pay an in-lieu fee instead of building inclusionary units, there will be no impact on tax revenues, and the City will receive substantial new revenue that will allow it to develop more affordable housing.

Revenues from collection of the in-lieu fee will be deposited to the Affordable Housing Trust Fund (Fund 7450) originally established when the Jobs/Housing Impact Fee was enacted. Those funds are reserved for affordable housing activities and appropriations must be approved by the City Council.

Implementation and enforcement of the ordinance will require staff resources in the Community and Economic Development Agency and the Office of the City Attorney. No additional staffing is proposed at this time and initially the program costs will be absorbed by existing programs. As the inclusionary housing program grows, additional staff costs can be recovered from a portion of the in-lieu fee revenue.

BACKGROUND

The issue of inclusionary zoning and suggestions that Oakland adopt such a policy has come before the City Council on a number of occasions.

The Final Report of the Housing Development Task Force, which was adopted by the City Council in July 2000, included a recommendation to adopt an inclusionary zoning ordinance.

On May 15, 2001, staff presented the City Council with an overview of inclusionary zoning programs and the issues associated with the feasibility of implementing such a program in Oakland.

In December 2003, staff provided the City Council with a summary of key findings of a comprehensive survey of inclusionary zoning published by the Non-Profit Housing Association of Northern California (NPH) and the California Coalition for Rural Housing (CCRH). That study is the most thorough study of inclusionary zoning in California conducted in over a decade. While NPH is currently working to update the data, it remains the most definitive source of information regarding existing inclusionary policies and programs in cities and counties throughout the state.

On April 25, 2006, staff presented to the Community and Economic Development Committee an informational report regarding an inclusionary housing policy proposed by the Oaklanders for Affordable Housing Coalition. At that time, the Committee directed staff to return with an ordinance to implement a proposal that was announced on April 24, 2006 by Councilmembers Brunner, De La Fuente and Quan.

KEY ISSUES AND IMPACTS

The City faces a number of inter-related affordable housing issues that will be addressed in part by the proposed ordinance.

Unmet Housing Needs

The City's Consolidated Plan for Housing and Community Development identifies substantial housing needs of existing residents, particularly those with very low, low and moderate income. Over 30,000 very low and low income households experience housing problems including overcrowding, substandard conditions and overpayment (housing costs greater than 30 percent of household income).

Housing to Accommodate New Growth

The City's Housing Element identifies projected housing needs for the period 1999 through 2006 (the state has recently extended the time frame by an additional two years through mid-2008). The City's Regional Housing Need Allocation calls for production of over 7,700 units. Over 3,000 of these units must be affordable to very low and low income people. While the State's Housing Element law does not require the City to build these units, it does require that the City ensure that there are adequate sites with appropriate zoning to meet this need, and it requires that the City remove public policy barriers and develop and implement affirmative programs to meet its housing needs, including the need for affordable housing.

Redevelopment Law Requirements

Under California Redevelopment Law, redevelopment project areas adopted after 1976 are subject to a requirement to include affordable housing in the project areas. These requirements mandate that 15 percent of all housing units newly constructed or substantially rehabilitated in the project area over a 10-year period must be affordable and targeted to low to moderate income households, with at least 6 percent of units targeted to very low income households. The law requires that affordable units be built within the project area, but does not necessarily require that units be included within each market rate project in the project area. (It is possible to provide the units outside the project area, but twice as many units are required in that case.) Oakland has a number of redevelopment project areas subject to these requirements: Coliseum, Broadway/MacArthur/San Pablo, Oakland Army Base, West Oakland, Central City East and Oak Knoll. Many redevelopment agencies use inclusionary housing programs to meet this requirement, and the redevelopment plans for these project areas all authorize the Agency to impose inclusionary requirements on market rate projects to meet the area production requirements.

At present a number of large residential development projects are either underway or proposed in these areas. These projects collectively contain over 7,500 housing units, and will generate an obligation for production within these redevelopment areas of over 1,000 units of affordable housing, including nearly 500 units for very low income households.

Promotion of Mixed-Income Development

Inclusionary requirements are specifically designed to encourage residential development that includes housing for a range of income levels. Inclusionary requirements for redevelopment areas are applied to the entire redevelopment area, and inclusionary zoning laws require income mixing within individual developments. Inclusionary housing can serve as an important mechanism for providing fair housing opportunities for minorities outside areas of racial concentration and can help promote a deconcentration of low income people by providing opportunities to live in neighborhoods that would otherwise consist largely of middle- and upper-income households.

Inclusionary Housing Programs in California

Inclusionary housing programs have been in place in California for over 30 years. As of March 2003, 107 jurisdictions had some kind of inclusionary housing program, and the rate of adoption has increased over the past ten years as cities and counties have sought innovative ways to meet their affordable housing needs.

Many jurisdictions, particularly the larger cities, use inclusionary housing programs to complement and augment their other housing efforts. Typically, inclusionary programs do not meet the full spectrum of needs. Other programs and funding sources, such as Federal grant funds and redevelopment agency housing set-aside funds, are used to provide deeper subsidies to develop and preserve housing affordable to income levels lower than are feasible to reach through inclusionary programs.

While there is considerable variation in these programs, some general features can be described:

- Half of all programs require at least 15 percent of units to be affordable; including roughly one-fourth that require 20 percent or more.
- Most programs target low income (50% to 80% of median income, or between \$38,000 and \$60,000 for a three-person household) and moderate income (80% to 120% of median income, or between \$60,000 and \$90,000 for a three-person household). Just under half of all programs provide some targeting to very low income households (30% to 50% of median income, or between \$23,000 and \$38,000 for a three-person household). Targeting to extremely low income households (less than 30% of median income, or less than \$23,000 for a three-person household) is not commonly found.
- Rental housing is generally targeted to very low and low income, while ownership housing is generally targeted to low and moderate income.
- Most jurisdictions require long-term affordability covenants. Many cities have amended their programs to ensure that projects remain affordable for at least as long as required for affordable housing under California redevelopment law (45 years for homeownership, 55 years for rental).
- Many jurisdictions exempt smaller projects (ranging from 3 to 10 units) from inclusionary requirements, while others require in-lieu fees to be paid for smaller projects. Some jurisdictions require larger percentages of affordable housing for larger development projects.
- Many jurisdictions require that affordable units be built at the same time as market rate units.
- Most programs provide for alternatives to on-site construction within the market-rate project. Common alternatives include off-site construction, land dedication, and payment of in-lieu fees.
- Most jurisdictions provide incentives to developers to help offset the cost of providing affordable units. The most common incentive is density bonuses that allow projects to exceed the allowable density in order to provide affordable units by reducing the per unit costs of development. Other incentives include fast track processing; direct subsidies; design flexibility and relaxation of development standards; and fee waivers, reductions or deferrals. In some jurisdictions, inclusionary units may be of a smaller size or may require only standard grade

finishes and features to reduce their cost. Some larger cities, such as San Diego and San Francisco, do not provide incentives.

DESCRIPTION OF PROPOSED INCLUSIONARY HOUSING PROGRAM

The proposed ordinance is consistent with best practices in other California jurisdictions. It includes the following provisions.

Applicability

The policy would apply to any development project that creates 20 or more housing units. Lofts and live/work units are included. The ordinance will not apply to projects that secure "vested rights" to develop prior to May 1, 2007. Under current California law, a project acquires "vested rights" in one of three ways: (1) the developer and the city enter into a development agreement pursuant to the California Government Code for the project, (2) the developer obtains a vesting tentative map under the California Government Code for the project, or (3) the developer obtains a building permit for the project and has performed substantial work and incurred substantial liabilities in good faith reliance on the permit.

Exemptions

Certain types of development projects would be exempt from the ordinance:

- Transit village developments (i.e., projects within 1,000 feet of a BART station) that are subject to Disposition and Development Agreements or Owner Participation Agreements with the City or Agency.
- Affordable housing projects that are funded through the City's competitive process for funding affordable housing (the annual Notice of Funding Availability or "NOFA" process). These projects typically provide much higher percentages of affordable housing and deeper income targeting than would be required by the inclusionary housing program.
- Affordable rental housing projects with funding from sources other than City or Agency affordable housing funds, provided at least 40 percent of the units are restricted at affordable rents to households with incomes at less than 60 percent of median, for a period of at least 55 years.
- The reconstruction or rebuilding of housing units damaged or destroyed by natural disaster, provided construction is started within four years and completed within six years of the damage.

- Rehabilitation of existing housing units, unless the estimated cost of rehabilitation is more than 75 percent of the estimated replacement cost after rehabilitation, in which case the project would be treated as new construction.
- Conversion of existing rental units to condominiums (unless it entails substantial rehabilitation that qualifies as new construction as described above).

Inclusionary Requirement

Projects subject to the ordinance would be required to provide 15 percent of the units as affordable housing, using income and rent or sales price limits consistent with California Redevelopment Law. Use of these definitions ensures that inclusionary housing units can be counted toward the affordable housing production requirements for the City's redevelopment project areas.

Inclusionary units must generally be comparable to market rate units in a project and should be distributed throughout the development. Inclusionary units must be developed in tandem with the market rate units.

Affordability Restrictions

Occupancy of inclusionary rental housing would be restricted to low income households with incomes less than 80 percent of area median income (as noted below, consistent with California redevelopment law, rents will be set at levels affordable to households with incomes of 60 percent of median income).

Ownership housing would be restricted to moderate income households (maximum income of 120 percent of median income), and each development would be required to have an average income limit of 100 percent of median income.

These are maximum incomes; based on staff's experience with City-assisted developments, the units can and most likely will be occupied with households with incomes below these limits.

The current income limits are as follows:

INCOME LEVEL	INCOME LIMITS ADJUSTED FOR HOUSEHOLD SIZE					
	One Person	Two Persons	Three Persons	Four Persons	Five Persons	Six Persons
60% of Area Median Income	\$35,220	\$40,200	\$45,240	\$50,280	\$54,300	\$58,320
80% of Area Median Income (Low Income)	\$46,350	\$53,000	\$59,600	\$66,250	\$71,550	\$76,850
100% of Area Median Income (Median Income)	\$58,700	\$67,000	\$75,400	\$83,800	\$90,500	\$97,200
120% of Area Median Income (Moderate Income)	\$70,440	\$80,400	\$90,480	\$100,560	\$108,600	\$116,640

Length of Affordability Restrictions

Rental units would be required to remain affordable for 55 years.

Ownership units would be required to remain affordable for 45 years (except in some cases for units made available to Oakland teachers; see below).

Affordable Rents

All inclusionary rental units would be required to have rents that do not exceed 30 percent of 60 percent of area median income, which is consistent with State law definitions of housing affordable to low income households.

Based on current median income, the maximum allowable rents would be as follows (and must be further adjusted downwards by an allowance for utilities paid by the tenant).

Maximum Allowable Rents				
0 Bdrm	1 Bdrm	2 Bdrm	3 Bdrm	4 Bdrm
\$880	\$942	\$1,131	\$1,307	\$1,458

These rents are substantially below the rents that are projected for many of the market rate developments currently proposed or underway in the City.

Affordable Sales Prices

Sales prices will be established using formulas prescribed by California redevelopment law to determine affordable housing cost, which takes into account mortgage payments, hazard insurance, taxes, homeowners' association dues, utilities and an allowance for maintenance. Currently these formulas result in the following sales prices for households earning no more than 100 percent of median income.



\$143,290	\$170,970	\$198,983	\$226,997	\$249,340
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These prices are substantially lower than market prices for new ownership units. It should be noted that in practice, based on underwriting practices of most mortgage lenders, these sales prices are affordable to households at incomes less than median income. Experience with the City's own assisted homeownership developments shows that units are typically purchased by families with incomes below the maximum income limit.

In addition, households with incomes less than 80 percent of median income could use the City's first-time homebuyer assistance program to purchase inclusionary ownership units.

Alternative: Off-Site Development

Developers could also meet the inclusionary requirement by building a higher percentage of units (20 percent) on some other site in the City. Off-site units would be required to be comparable to any units that would be required on site.

Alternative: In-Lieu Fee

Developers could choose to pay an in-lieu fee equal to the full amount of the "financing gap," defined as the difference between the total cost to develop comparable units off site and (a) for ownership housing, the affordable sales prices, or (b) for rental housing, the amount of debt that can be supported by affordable rents. The fee would be required to be paid for each affordable unit that would be required if the developer built off-site inclusionary units (i.e., 20 percent of the total units in the market-rate project). For example, for a project containing 100 2-bedroom market rate units, the in-lieu fee would be $20 \times \$265,000 = \$5,300,000$.

The ordinance requires that the City hire a consultant to conduct and complete a study by December 31, 2006 to establish the appropriate fee amount. The fee would be indexed annually to increases in residential construction costs, and the City could conduct new studies periodically as needed to recalibrate the fee.

Until the study is completed, the proposed ordinance sets an initial fee based on staff's estimate of the "financing gap" based on projects recently funded under the City's annual affordable housing funding competition.

Initial In-Lieu Fee Pending Completion of Study

0 Bedroom	\$ 195,000
1 Bedroom	\$ 240,000
2 Bedroom	\$ 265,000
3 Bedroom	\$ 305,000
4 Bedroom	\$ 315,000

Use of In-Lieu Fees

In-lieu fees would be deposited to the Affordable Housing Trust Fund first established by the Jobs/Housing Impact Fee Ordinance in July 2002.

Fees would be reserved for development of housing projects affordable to low and very low income households, subject to approval by the City Council, with a preference for units serving very low income households (less than \$41,900 per year for a family of four).

Twenty percent of in-lieu fees would be set-aside for a new Teacher Mortgage Assistance Program described below, which would be affordable to households up to 100 percent of median income.

A portion of the in-lieu fees could also be used to pay reasonable costs of administering, monitoring and enforcing the inclusionary housing program.

Prohibition on Use of Affordable Housing Funds

The ordinance prohibits the use of federal, state or local affordable housing funds to provide inclusionary units. Such funds could be used to provide additional affordable units above the minimum required by the ordinance, or to provide a deeper level of affordability than that required by the ordinance. Rental projects whose sole source of affordable housing funds is tax-exempt bond proceeds or 4 percent low income housing tax credits would not be subject to this limitation provided that at least 20 percent of the units are rented to very low income households (less than \$41,900 per year for a family of four) at an affordable rent.

New Teacher Homeownership Programs

The ordinance provides for the creation of two new programs designed to provide homeownership opportunities as an incentive for teachers to remain within the Oakland Unified School District.

The first program would require 20 percent of most ownership inclusionary units, whether built on-site or off-site, to be marketed to Oakland teachers. The units would be sold initially at the same affordable prices described above. If the teacher continues working in the Oakland Unified School District for the next five years, the sales price restrictions will be removed, and in years six through ten the teacher/homeowner would receive an increasing share of the appreciation in the market value of the unit. After 10 years, the City would be

repaid only the amount that represents the initial gap between market rate and the affordable sales price, with all of the increase in market value going to the owner.

California redevelopment law does not permit ownership units that are not subject to the full 45-year resale restrictions from being counted towards the Agency's affordable housing production requirements. As a result, the requirement for teacher housing would apply only to on-site or off-site inclusionary units built outside those redevelopment project areas that have affordable housing production obligations.

The second program would use 20 percent of the in lieu fee revenues to fund first time homebuyer loans to assist teachers with the purchase of units anywhere in the City. The loans would be structured with provisions similar to those just described for construction of teacher housing.

Both programs differ from existing City homebuyer programs because (a) they would provide greater amounts of financial assistance (up to the entire "financing gap" as described in the discussion on in-lieu fees), and (b) after ten years there would be no interest or shared appreciation due the City.

These programs are intended to provide financial incentives for teachers to remain in the OUSD and to reduce the rate of teacher turnover in the District.

Implementation, Monitoring and Enforcement

The ordinance contains provisions that would authorize staff to implement the program, monitor the affordable housing units for ongoing compliance, and enforce the requirements for long term affordability.

Developers will be required to submit an inclusionary housing plan as part of their first application for a development-related permit from the City. The permit cannot be approved unless the inclusionary housing plan is approved. The inclusionary obligations will be enforced through regulatory agreements, resale controls, or similar restrictions recorded against the inclusionary housing units.

The City would be able to take a range of actions to enforce the ordinance, including revoking development approvals and assessing a fine equal to the full amount of the in-lieu fee otherwise required for the project.

The proposed ordinance also allows third parties (including members of the public) to sue project owners if they fail to comply with the requirements of the ordinance.

Finally, the ordinance grants the City Administrator the authority to develop regulations and procedures for implementing the ordinance.

RECOMMENDATIONS AND RATIONALE

For many years, development conditions in Oakland were not conducive to adoption of inclusionary housing requirements. During the 1990s there was very little unsubsidized housing development except for rebuilding of homes destroyed in the 1991 Oakland Hills firestorm. Since 1999, however, there has been a substantial increase in development of market rate housing throughout many areas of the city, including areas that had not seen new development for many decades. Over 2,000 market rate units have been completed in this period, with thousands more under construction, approved, or in the planning stages. Competition for land has become so strong that developers are now seeking to convert industrial land in many parts of the City to residential uses.

Given the continued strength of the market for new housing development, it appears that conditions are more conducive to adoption of an inclusionary housing ordinance. It is anticipated that the market will be able to absorb the costs of the proposed requirements without jeopardizing the feasibility of continued development.

The proposed inclusionary housing program should be viewed as one component of a City's overall housing strategy. The program will serve as a complement to other affordable housing efforts, including preservation of existing assisted rental housing serving very low and extremely low income households; development of new assisted housing for extremely low, very-low, low and moderate income households; first-time homebuyer assistance for low income households; rehabilitation loans for very low and low income homeowners; and the public housing and Section 8 programs operated by the Oakland Housing Authority and targeted to the very lowest income households.

Oakland currently invests substantial amounts of money to assist in the development of affordable housing, most of it to very low and low income households. In 2001, the Agency increased the affordable housing set-aside from the legally-required 20 percent of tax increment funds to a figure of 25 percent, effectively increasing the Agency's efforts by one-fourth. In 2000, the Agency issued \$40 million in bonds backed by those affordable housing funds; all of those funds have been spent or are committed to projects that are underway. Earlier this year, the Agency issued a second round of affordable housing bonds that yielded another \$55 million. Combined with existing HOME and tax increment funds, this allowed the City and Agency to provide funding of \$40 million to 11 projects in this year's affordable housing funding allocation, mostly for rental housing serving households with incomes between 25 percent and 60 percent of median income. There is a balance of \$35 million available for future projects.

Since 1999, over 1,200 units of affordable housing have been constructed or substantially rehabilitated with City financial assistance. An additional 1,000 units are in the development pipeline. This does not include more than 650 units of existing assisted housing that is being rehabilitated and preserved with affordability restrictions for another 55 years, including the

these units are affordable to households with incomes less than 80 percent of median income (most less than 60 percent), and more than half are affordable to households with incomes less than 50 percent of median; many are affordable to households earning less than 30 percent of median income.

Despite these substantial efforts, the City has not been able to meet all of its affordable housing needs, and in recent years there has been growing pressure to devote an increasing share of these funds to support ownership housing for moderate income households. The enactment of an inclusionary housing ordinance provides the City with another tool to meet the need for low income rental housing and moderate income homeownership. This would allow the City to better target its own affordable housing funds, including some of the in-lieu fees generated by inclusionary housing, to extremely low and very low income households while still maintaining balance across its overall housing program.

SUSTAINABLE OPPORTUNITIES

Economic The economic impact of inclusionary zoning is difficult to gauge. There are no empirical studies, but the experience of other cities that have inclusionary requirements suggests that a well crafted inclusionary housing program does not reduce development activity.

Environmental Inclusionary zoning can serve to further sustainable development and smart growth policies by encouraging higher density development in appropriate locations, when zoning constrains density. This is because inclusionary units are often made feasible through such mechanisms as density bonuses and higher density development. In areas of Oakland, where allowable density is not a barrier, there would be little environmental benefit because inclusionary zoning probably would not lead to higher densities.

Equity Inclusionary zoning promotes greater housing opportunities for economically disadvantaged segments of the population. In addition, by producing mixed income housing, it contributes to a more equitable distribution of affordable housing and may help to reduce concentrations of lower income people while also providing safeguards against displacement caused by development in gentrifying areas.

DISABILITY AND SENIOR CITIZEN ACCESS

To the extent that inclusionary zoning results in production of more affordable housing, it will also produce more affordable housing opportunities for low income seniors and persons with disabilities.

ACTION REQUESTED OF THE CITY COUNCIL

It is recommended that the City Council adopt the proposed ordinance, which would establish an inclusionary housing obligation, authorize the creation of two new homeownership programs for Oakland teachers, make necessary technical amendments to the Planning Code, amend provisions of the Municipal Code to allow in-lieu fees to be deposited to the Affordable Housing Trust Fund, establish an initial in-lieu fee, and require staff to hire a consultant to complete an in-lieu fee study by December 31, 2006.

Respectfully submitted,



DANIEL VANDERPRIEM

Director of Redevelopment, Economic
Development and Housing

Reviewed by: *SKA*
Sean Rogan, Director of Housing and
Community Development

Prepared by:
Jeffrey P. Levin, Housing Policy and
Programs Coordinator
Housing & Community Development Division

APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:


OFFICE OF THE CITY ADMINISTRATOR

Attachment A
Summary of Key Provisions of Inclusionary Housing Ordinance

Units Covered	<ul style="list-style-type: none"> • Housing developments with at least 20 units (including loft and live/work conversions of non-residential buildings) • Applies to units that gain vested development rights after May 1, 2007
On-site inclusionary units required	<ul style="list-style-type: none"> • 15% of total units in project
Off-site inclusionary units required	<ul style="list-style-type: none"> • 20% of total units in project
Affordability Levels – Ownership Housing	<ul style="list-style-type: none"> • Maximum income = 120% of median income (moderate income); average income limit within each project not to exceed 100% of median income • Sales prices affordable to same income ranges using Redevelopment Law formula
Affordability Levels – Rental Housing	<ul style="list-style-type: none"> • Maximum income = 80% of median income (low income) • Rents set at 30% of 60% of median income using Redevelopment Law formula
Term of Affordability Controls	<ul style="list-style-type: none"> • 45 years for ownership housing • 55 years for rental housing
Timing and Comparability	<ul style="list-style-type: none"> • Inclusionary units must be developed and marketed no later than market-rate units • Inclusionary units must be generally comparable to market rate units • Units should be distributed throughout the development to avoid economic segregation
In-Lieu Fees	<ul style="list-style-type: none"> • Based on full subsidy required to reduce development cost to the affordable sales prices or rent levels • City consultant to complete an in-lieu fee study no later than December 31, 2006 • Fees indexed to annual increases in construction costs, with in-lieu fee study updated periodically as needed • Fees deposited to Affordable Housing Trust Fund for affordable housing only

Use of Federal, State or Local Affordable Housing Funds	<ul style="list-style-type: none"> • Prohibited, except for tax-exempt bonds or 4% tax credits if project provides 20% of units at 50% of median income
Exemptions	<ul style="list-style-type: none"> • Certain City/Agency sponsored transit village projects • Publicly-assisted rental housing projects funded under City/Agency NOFA or meeting tax-credit requirements (40% at 60% AMI) • Reconstruction of units damaged by natural disaster • Minor and moderate rehabilitation of existing housing • Condominium conversions
Administration and Enforcement	<ul style="list-style-type: none"> • No permits issued without approved inclusionary housing plan or payment of in-lieu fee • Recorded restrictions to ensure affordability • For non-compliance, City may revoke permits, assess a penalty equal to the full in-lieu fee, or take other actions • Third parties have right to take action to enforce the requirements
Teacher Housing Programs	<ul style="list-style-type: none"> • 20 percent of inclusionary ownership units (except in certain redevelopment project areas) targeted to Oakland teachers. • 20 percent of in-lieu fees used for homebuyer assistance program for Oakland teachers • Teachers must remain in Oakland school district for 5 years • In years 6 through 10, teachers earn increasing share of appreciation in market value • Principal amount of the price reduction or homebuyer loan repaid to City

OFFICE OF THE CITY CLERK
OF OAKLAND

2006 MAY 31 PM 5:11

APPROVED AS TO FORM AND LEGALITY:


DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE ADDING CHAPTER 17.109 TO THE OAKLAND PLANNING CODE TO ESTABLISH AN INCLUSIONARY HOUSING REQUIREMENT AND ESTABLISH TWO NEW HOMEOWNERSHIP PROGRAMS FOR OAKLAND TEACHERS, MAKING RELATED AMENDMENTS TO THE OAKLAND PLANNING CODE, AMENDING SECTION 15.68.100 OF THE OAKLAND MUNICIPAL CODE, AND AMENDING THE MASTER FEE SCHEDULE TO ESTABLISH AN INCLUSIONARY HOUSING IN-LIEU FEE

WHEREAS, the City of Oakland adopted a Consolidated Plan for Housing and Community Development dated May 13, 2005 (the "Consolidated Plan"), which found that there is a severe shortage of affordable housing in Oakland; and

WHEREAS, the Consolidated Plan found that persons who live and/or work in the City have serious difficulty locating housing at prices they can afford; and

WHEREAS, the Consolidated Plan found that existing local, state and federal resources are insufficient to meet the affordable housing need; and

WHEREAS, the Association of Bay Area Governments, through its Regional Housing Needs Allocation, estimated that based on anticipated economic growth, the City would experience demand for 3,207 new housing units affordable to low and very low income households between 1999 and 2006; and

WHEREAS, the City of Oakland adopted a Housing Element to the General Plan, dated June 14, 2004 (the "Housing Element"), which identified a plan to accommodate the City's share of the housing needs of persons at all income

levels including strategies and programs to maintain and expand the supply of housing affordable to very-low, low and moderate income households; and

WHEREAS, despite substantial investments of Federal HOME funds and funding from the Redevelopment Agency's Low and Moderate Income Housing Fund, the City has not been able to produce all the units called for in the Regional Housing Needs Allocation; and

WHEREAS, the California Community Redevelopment Law (Health and Safety Code Section 33000, et seq.) requires that in redevelopment project areas adopted on or after January 1, 1976, redevelopment agencies must ensure that at least 15 percent of newly constructed and substantially rehabilitated housing development be affordable to very-low, low and moderate income households; and

WHEREAS, rising land prices in Oakland have been a key factor in preventing development of new affordable housing; and

WHEREAS, new housing construction in the City that does not include affordable units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land and increasing the price of remaining residential land; and

WHEREAS, the Final Report of the Housing Development Task Force, which was adopted by the City Council in July 2000, included a recommendation to adopt a residential inclusionary zoning ordinance; and

WHEREAS, on May 15, 2001, staff presented the City Council with an overview of residential inclusionary housing and the issues associated with the feasibility of implementing such a program in Oakland; and

WHEREAS, on December 9, 2003, staff provided the City Council with a summary of key findings of a comprehensive survey of inclusionary housing published in 2003 by the Non-Profit Housing Association of Northern California (NPH) and the California Coalition of Rural Housing (CCRH); and

WHEREAS, the City wants to balance the burden on private property owners with the demonstrated need for affordable housing in the City by joining over 100 California cities that currently have some form of inclusionary housing requirement and apply an inclusionary housing requirement to all covered development projects containing 20 housing units or more; and

WHEREAS, an inclusionary housing requirement will serve as one component of the City's overall housing strategy and will complement other affordable housing efforts, including preservation of existing assisted housing, development of new assisted housing with public subsidies, first-time homebuyer assistance, rehabilitation loans for low income homeowners and the public housing and Section 8 programs operated by the Oakland Housing Authority and targeted to the very lowest income households; and

WHEREAS, the Inclusionary Housing Ordinance will provide rental units affordable to households earning no more than 80 percent of area median income and ownership units affordable to moderate income households with an average income of no more than 100 percent of area median income, thus allowing the City to target its limited affordable housing dollars to extremely low, very low and low income households who have the greatest housing needs and require the greatest subsidies; and

WHEREAS, City staff performed a preliminary affordable housing gap analysis to determine the appropriate in-lieu fee for the inclusionary housing ordinance; and

WHEREAS, on April 25, 2006, the Community and Economic Development Committee received and considered a report on inclusionary housing and directed staff to prepare a draft Inclusionary Housing Ordinance based on the recommendations of Council President Ignacio De La Fuente, Councilmember Jane Brunner and Vice Mayor Jean Quan; and

WHEREAS, the City Council has received and considered the staff report accompanying this Ordinance; now therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. This Ordinance shall be known as the "Inclusionary Housing Ordinance."

SECTION 2. Chapter 17.109 is hereby added to the Oakland Planning Code to read as follows:

Chapter 17.109

INCLUSIONARY HOUSING REQUIREMENTS

17.109.010 Title, Purpose, Applicability

This chapter shall be known as the Inclusionary Housing Requirements. The purpose of this chapter is to establish an inclusionary housing program for the City of Oakland to ensure that development projects that include market rate housing units provide units affordable to households of low and moderate income distributed throughout the City's various neighborhoods. These requirements shall apply to projects that construct or establish housing units in all parts of the City.

17.109.020 Definitions

As used in this chapter, the following terms have the following meanings:

"AMI" or "area median income" means the area median income for the Oakland area as determined by the California Department of Housing and Community Development pursuant to California Health and Safety Code Section 50093.

households with an average income of not more than 100% of area median income as further described in Section 17.109.100 (Affordability Level and Housing Cost) .

"Affordable housing cost" means an annual housing cost that does not exceed 35 percent of the maximum allowable income specified in Section 17.109.100 (Affordability Level and Housing Cost), adjusted for family size appropriate to the unit pursuant to California Health and Safety Code Section 50052.5, and is not less than 28 percent of the actual gross income of the household. "Housing cost" shall include those items set forth in 25 California Code of Regulations Section 6920.

"Affordable rent" shall be as defined in California Health and Safety Code Section 50053(b)(3), and its implementing regulations.

"Affordable sales price" means the sales price of a housing unit that would permit a household to obtain the unit at an affordable housing cost.

"Agency" means the Redevelopment Agency of the City of Oakland.

"City" means the City of Oakland.

"City Administrator" means the City Administrator of the City of Oakland or his or her designees.

"Covered development project" means any facility that includes the construction or establishment of one or more housing units. A change in tenure (rental or ownership) shall not in itself constitute construction or establishment of a housing unit.

"Housing unit" means a living unit within the meaning of Section 17.090.040 of the Planning Code, a joint living and work quarter within the meaning of Section 17.202.190B of the Planning Code, or a joint residential-oriented living and working quarter within the meaning of Section 17.102.195B of the Planning Code.

"Household" means one person living alone or two or more persons sharing residency.

"In-lieu Fee" means a fee to be paid in the amount described in Oakland's Master Fee Schedule as an alternative to providing on-site or off-site inclusionary units.

"Inclusionary housing plan" means that inclusionary housing plan required under Section 17.109.170 (Inclusionary Housing Plan).

"Inclusionary unit" means a housing unit that must be offered at an affordable rent to low income households, or sold at an affordable sales price to moderate income households, as further specified in Section 17.109.110 (Affordability Level and Housing Cost).

"Low income household" shall be as a "lower income household" is defined in California Health and Safety Code Section 50079.5 and its implementing regulations.

"Market rate units" means housing units constructed in the principal project that are not subject to sales or rental restrictions.

"Moderate income household" shall be as "persons and families of low or moderate income" is defined in California Health and Safety Code Section 50093 and its implementing regulations.

"Off-site unit" means an affordable housing unit constructed pursuant to this chapter on a site other than the site of the principal project.

"On-site unit" means an affordable housing unit constructed pursuant to this chapter on the site of the principal project.

"Ownership unit" means a housing unit that serves or is intended to serve as the primary residence of the owner or owners.

"Principal project" means a covered development project on which a requirement to provide inclusionary units is imposed.

"Project applicant" means any individual, person, firm, partnership, association, joint venture, corporation, limited liability company, entity, combination of entities or authorized representative thereof, who undertakes, proposes or applies to the City for any covered development project.

"Redevelopment project area" means an area governed by a redevelopment plan pursuant to the California Community Redevelopment Law (California Health and Safety Code 33000, et seq.).

"Redevelopment project areas with housing production requirements" means redevelopment project areas subject to the production requirements set forth in California Health and Safety Code Section 33413(b).

"Site" means a parcel or parcels of land which is or may be developed or utilized for a covered development project.

"Transit village development" means a covered development project located within 1,000 feet of a Bay Area Rapid Transit (BART) station.

17.109.030 Application

This chapter shall apply to all covered development projects with 20 or more new housing units, unless the covered development project has acquired or will acquire vested rights to develop under California law on or before May 1, 2007, or unless the covered development project qualifies for an exemption listed in Section 17.109.040 (Exemptions).

17.109.040 Exemptions

This chapter shall not apply to any of the following:

- (1) Transit village development projects that are subject to an executed Disposition and Development Agreement or Owner Participation Agreement with the City or Agency.
- (2) The reconstruction or rebuilding of any housing units that have been damaged or destroyed by fire, flood, earthquake or other act of nature unless the damaged or destroyed housing were inclusionary units. Such reconstruction or rebuilding must be commenced no later than four years and completed no later than six years from the date of the damage or destruction.
- (3) A covered development project that is subject to affordability restrictions recorded by the City or the Agency pursuant to funding through the City and Agency's competitive affordable housing funding process.
- (4) A covered development project containing rental units where at least 40 percent of the rental units are restricted for at least 55 years to households with incomes not exceeding 60 percent of AMI, adjusted for household size, with rents not exceeding 30 percent of 60 percent of AMI, adjusted for household size.
- (5) The rehabilitation of existing housing units in which the estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation. Housing units newly constructed or established as part of a project that also includes rehabilitation of existing housing units are not exempt.

17.109.050 On-Site Inclusionary Housing Requirements

For covered development projects covered by Section 17.109.030 (Application), at least 15 percent of all housing units in the covered development project must be affordable housing, with that affordable housing subject to the occupancy restrictions, affordability levels, and terms of affordability set forth in Section 17.109.110 (Affordability Level and Housing Cost). This requirement may be applied no more than once to an approved covered development project, regardless of changes in the character or ownership of the project, provided the total number of housing units does not change.

As an alternative, a project applicant may satisfy the inclusionary requirement of this section through development of off-site units pursuant to Section 17.109.060 (Off-Site Inclusionary Housing), payment of an inclusionary in-lieu fee pursuant to Section 17.109.150 (In-Lieu Fee), or a combination of these alternatives that at least equals the cost of providing off-site inclusionary units.

17.109.060 Off-Site Inclusionary Housing

A project applicant may elect to build affordable housing units on a site other than the site of the principal project to satisfy the requirements of this chapter. If the project applicant selects this alternative, the number of affordable units developed off-site must be no fewer than 20 percent of all housing units constructed on the principal project site.

Off-site units shall be subject to all applicable provisions of this chapter, and shall have the same tenure (rental or ownership) as the housing units in the principal project.

If off-site units are provided in another covered development project subject to the requirements of this chapter, the housing units that qualify as off-site units shall not be included when determining the number of inclusionary housing units required in that covered development project.

17.109.070 Fractional Units

When the inclusionary housing calculation for on-site or off-site units produces a fractional number of units, the project applicant shall (1) round up to the next whole number, in which case that resulting number of affordable units shall be provided as set forth in this chapter, or (2) pay a pro-rata share of the in-lieu fee as set forth in Section 17.109.150 (In-Lieu Fee) for the fractional unit.

17.109.080 Prohibition of Affordable Housing Development Subsidies

No housing unit shall be counted as an inclusionary unit pursuant to this chapter if it receives a development subsidy from any federal, state or local program, including City or Agency programs, established for the purpose of providing affordable housing, to fund the inclusionary units required by this chapter, except to the extent such subsidies are used only to increase the level of affordability of the housing unit beyond the level of affordability required by this chapter. Housing units assisted only with tax-exempt bond financing or 4% low income housing tax credits shall be exempt from the provisions of this section, provided that such units are rented to and occupied only by very low income households as defined in California Health and Safety Code Section 50105 at rents that do not exceed an affordable rent for a very low income household adjusted for family size appropriate for the unit pursuant to California Health and Safety Code Section 50053(b)(2).

17.109.090 Timing of Provision of Inclusionary Units

On-site and off-site inclusionary housing units required by Sections 17.109.050 and 17.109.060 must be constructed, completed, and ready for occupancy no later than the market rate units in the principal project. If the principal project is constructed in phases, the inclusionary units must be constructed in phases in proportion with the market rate units or sooner.

17.109.100 Unit Comparability

Inclusionary housing units shall be comparable to market rate units in the principal project. The number of inclusionary units of each size, as measured by number of bedrooms per unit, shall be at least proportional to the number of market rate units of each size in the principal project, as measured by number of bedrooms per unit. Exterior appearance and overall quality of construction of the inclusionary units shall be comparable to the market rate units in the principal project. The square footage and interior features of inclusionary units do not need to be same as or equivalent to those in market rate units in the principal project, provided they are of good quality and consistent with then-current standards for new affordable housing. Project applicants shall endeavor to distribute the inclusionary units proportionately among the market rate units,

avoid concentration of inclusionary units; and avoid taking actions that would stigmatize or set apart the inclusionary units.

If the housing units in the principal project do not contain bedrooms separated from the living space, the on-site and off-site units shall be comparable in size according to the following equivalency calculation.

Size of Unit	Equivalent Unit
Less than 550 Square Feet	Zero bedroom unit
551 to 750 Square Feet	One bedroom unit
751 to 1,000 Square Feet	Two bedroom unit
1,001 to 1300 Square Feet	Three bedroom unit
More than 1300 Square Feet	Four bedroom unit

17.109.110 Affordability Level and Housing Cost

Rental units

Inclusionary units required by this chapter that are rental housing units must:

- (1) be rented to and occupied only by low income households;
- (2) have rents that do not exceed an affordable rent for a low income household adjusted for family size appropriate for the unit pursuant to California Health and Safety Code 50053(b)(3); and
- (3) be subject to these restrictions on tenant incomes and affordable rents for a period of at least 55 years from the date of initial occupancy.

Ownership units:

Inclusionary ownership units required by this chapter that are ownership units must:

- (1) in accordance with the schedule below, be subject to limitations on the maximum allowable income of households buying the inclusionary units such that the mean limit on incomes of households buying ownership inclusionary units produced for a covered development project does not exceed 100 percent of AMI;
- (2) be sold at an affordable sales price in accordance with the schedule below; and
- (3) be subject to these restrictions on affordable sales prices and buyer incomes for a period of at least 45 years from the date of initial sale.

Affordability schedule for ownership units:

Maximum Household Income	Affordable Housing Cost
80 percent of AMI	30 percent of 70 percent of AMI
90 percent of AMI	35 percent of 80 percent of AMI
100 percent of AMI	35 percent of 90 percent of AMI
110 percent of AMI	35 percent of 100 percent of AMI
120 percent of AMI	35 percent of 110 percent of AMI

17.109.120 Affordability Restrictions

The occupancy, rent, and sales restrictions imposed by this chapter shall be set forth in a *regulatory agreement, affordability agreement, resale controls, declaration of covenants, or similar binding instrument* executed by the City and the applicant. Such restrictions shall be recorded against the site or sites containing the inclusionary housing units as covenants running with land, senior in priority to any private liens or encumbrances, and shall be enforceable by the City against the project applicant or the applicant's successors-in-interest to the sites for the full affordability term. Additional restrictions, deeds of trust, rights of first refusal, or other instruments may be required by the City Administrator as reasonably needed to enforce these restrictions. The City Administrator shall have the authority to subordinate such restrictions to other liens and encumbrances if he or she determines that the financing of the inclusionary units would be infeasible without said subordination.

17.109.130 Condominium Projects

If the principal project is developed pursuant to a condominium map, but the housing units in the project are placed in the rental market rather than being sold, the requirements for rental inclusionary units shall apply.

17.109.140 Teacher Housing

For any covered development project producing on-site or off-site ownership inclusionary units located outside of a redevelopment project area with housing production requirements, no fewer than 20 percent of those inclusionary units must be offered for sale first to teachers employed by the Oakland Unified School District or a public charter school in Oakland who are moderate income and otherwise qualify for purchase of the unit under Section 17.109.110 (Affordability Level and Housing Cost).

For units sold to teachers under this section, the owner shall execute a promissory note and the City shall record a deed of trust or other instrument upon the owner's purchase to evidence and secure payment to the City of an amount equal to the difference between the inclusionary unit's fair market value and the affordable sales price for the unit, subject to the shared appreciation provisions below. If the owner of the inclusionary unit remains a teacher employed by the Oakland Unified School District or a public charter school in Oakland for at least five years and continues to occupy the unit as his or her principal residence throughout that period, the City may then remove the 45-year resale restrictions required under Section 17.109.120 (Affordability Restrictions), and the owner shall then be subject only to the repayment and shared appreciation provisions below. If the owner does not remain a teacher as defined above for the five-year period, or the owner sells the

inclusionary unit within this five-year period, the 45-year resale restrictions shall remain on the inclusionary unit.

Repayment and Shared Appreciation

After the five-year period referenced above, and after the City has removed the resale restrictions from the inclusionary unit, the owner may sell the inclusionary unit at market rate. However, upon sale of the inclusionary unit or default under any of the conditions imposed in accordance with this chapter, (1) the owner shall repay to the City the full amount of the promissory note at the time of sale, and (2) the City and the owner shall share any increase in the fair market value of the inclusionary unit above its fair market value at the time the owner purchased the unit. Beginning in the 6th year of occupancy, the owner shall be entitled to receive 20 percent of the increase in fair market value of the inclusionary unit after deducting an allowance for reasonable and customary selling costs paid by the owner, and the City shall receive the balance. The owner shall be entitled to receive an additional 20 percent of the increase in fair market value for each additional year that the owner occupies the inclusionary unit, up to a maximum of 100 percent of the increase in fair market value.

Any payments received by the City hereunder shall be deposited into the Affordable Housing Trust Fund established pursuant to Section 15.68.100 of the Oakland Municipal Code.

17.109.150 In-Lieu Fee

The requirements of this chapter may be satisfied by paying an in-lieu fee for each unit that would be required if the applicant were to provide off-site inclusionary units pursuant to Section 17.109.060. The in-lieu fee for each inclusionary unit shall be established by the City based on an estimate of the total subsidy required to make units comparable to inclusionary units affordable at the rents or sales prices required by Section 17.109.110 (Affordability Level and Housing Cost). The total subsidy required shall be estimated based on the difference between the estimated cost of developing an inclusionary unit and

- (1) for an ownership inclusionary unit, an affordable sales price; or
- (2) for a rental inclusionary unit, the amount of debt that can be supported by a unit with an affordable rent after payment of operating expenses and a reasonable deposit to reserves.

The initial in-lieu fee shall be established in the City's Master Fee Schedule by the unit size by bedroom, and may be periodically adjusted.

No building permit shall be issued for any residential development that elects to pay an in-lieu fee pursuant to this section until the fee is paid to the City.

17.109.160 Deposit and Use of Fees

All in lieu fees collected by the City pursuant to this chapter shall be deposited to the Affordable Housing Trust Fund established pursuant to Section 15.68.100 of the Oakland Municipal Code.

Twenty percent of the in-lieu fee monies shall be designated for an Oakland Teacher Mortgage Assistance Program to be established by the City. The program shall provide teachers employed by the Oakland Unified School District or a public charter school in Oakland with loans to assist in the purchase of ownership units, with shared appreciation provisions comparable to those provided in Section 15.109.140 above.

A portion of the in-lieu fees generated pursuant to this chapter may be used to pay for the City's costs of monitoring and enforcing this chapter.

17.109.170 Inclusionary Housing Plan

A project applicant must include as part of its first application to the City for a development-related permit or approval an inclusionary housing plan that includes outlining the methods by which the project applicant proposes to meet the requirements of this chapter.

The City shall approve, conditionally approve or reject the proposed inclusionary housing plan as part of its decision on the development-related permit or approval. No application for a development-related permit or approval, including without limitation, a tentative map, parcel map, conditional use permit, Planned Unit Development (Preliminary and Final), Master Plan, variance, design review, or building-related (grading, demolition, building) permit to which this chapter applies may be deemed complete until an inclusionary housing plan is submitted to the City. The inclusionary housing plan must include, at a minimum, the following:

- (1) the location, type of structure (attached, semi-attached, or detached), proposed tenure (ownership or rental), and size of the proposed market-rate units, commercial space and/or inclusionary units and the basis for calculating the number of inclusionary units;
- (2) a floor and site plan depicting the location of the inclusionary units;
- (3) the income levels to which each inclusionary unit will be made affordable;
- (4) for phased covered development projects, a phasing plan that provides for the timely development of the number of inclusionary units proportionate to each proposed phase of development as required by Section 17.109.100 (Unit Comparability) of this chapter;
- (5) any alternative means proposed to meet the inclusionary housing requirement; and
- (6) any other information reasonably requested by the City to assist with evaluation of the plan under the standards of this chapter.

17.109.180 Enforcement and Remedies

This chapter may be enforced pursuant to the provisions of Oakland Planning Code Chapter 17.152 (Enforcement).

A project applicant's failure to comply with the requirements of this chapter shall constitute cause for the City to assess a penalty against the applicant or owner in an amount equal to, at a minimum, the current in-lieu fee provided for under this chapter, as adjusted under this section.

17.109.190 Third Party Rights of Action

If any project applicant violates any provision of this chapter, any person, individually or by class action, may seek relief in a court of appropriate jurisdiction, including injunctive relief, declaratory relief and damages. In any such court proceeding, the prevailing party shall be awarded his or her reasonable attorneys' fees.

17.109.200 Reductions, Adjustment, Waivers and Appeals

A project applicant may request a reduction, adjustment, or waiver of the requirements imposed by this chapter at the time of application. To receive a reduction, adjustment or waiver, the project applicant must demonstrate that it meets one of the following criteria:

- (1) That there is an absence of any reasonable relationship or nexus between the impact of the development and either the inclusionary requirement or the amount of the in-lieu fee charged;
- (2) That the inclusionary requirement would deprive the project applicant of all economically viable use of the property or constitute a taking of the project applicant's property; or
- (3) That application of this chapter to the principal project would otherwise violate either the California or the United States Constitutions.

Any such request, and all supporting materials, shall be made in writing and filed with the City as part of the application for the first development-related permit or approval for the principal project. The request shall set forth in detail all the factual and legal basis for the claim of reduction, adjustment, or waiver. The City shall consider the request along with consideration of the underlying permit or approval application. The project applicant shall bear the burden of presenting appropriate evidence to support the request, including comparable technical information to support applicant's position. If a reduction, adjustment, or waiver is granted, any subsequent change in the approved use within the project shall invalidate the adjustment, reduction or waiver of the fee or inclusionary requirement.

If a request for a reduction, adjustment, or waiver is denied, the project applicant may appeal that decision by following the appeals procedure established for denial of the underlying permit or approval.

If no appeal procedure is provided for the underlying permit or approval, then the applicant may appeal the request for a reduction, adjustment, or waiver to the City Planning Commission within ten calendar days after the date of a decision. In the event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal. Such appeal shall be made on a form prescribed by the City Planning Department and shall be filed with such Department. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the City or wherein its decision is not supported by the evidence in the record. Upon receipt of the appeal, the Secretary of the City Planning Commission shall set the date for consideration thereof. Not less than ten days prior to the date of the Commission's consideration of the appeal, the Secretary shall give written notice to the project applicant/appellant, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as the Secretary deems appropriate, of the date and place of the hearing on the appeal. In considering the appeal, the Commission shall determine whether the project applicant/appellant has met its burden and may grant or deny the requested reduction, adjustment, or waiver or require such changes in the Inclusionary Housing Plan or impose such reasonable conditions of approval as are in its judgment necessary to ensure conformity to said criteria. The decision of the City Planning Commission is final and not subject to administrative appeal.

17.109.210 Incentives

A project applicant may be entitled to a density bonus and incentives or concessions under the California Density Bonus Law (Government Code Section 6519, et seq.) in return for producing inclusionary units, if and to the extent provided for under the Density Bonus Law. For purposes of calculating the number of inclusionary units required under this chapter, any additional housing units authorized as a density bonus under the Density Bonus Law will not be counted as part of the covered development project.

17.109.220 Administrative Regulations

Notwithstanding any other provision in the Planning Code, the City Administrator is hereby authorized to adopt administrative rules and regulations consistent with this chapter as needed to implement this chapter, and to make such interpretations of this chapter as he or she may consider necessary to achieve the purposes of this chapter. Such rules and regulations may include, without limitation, methods and criteria for certifying incomes of prospective tenants or purchasers of inclusionary units, a method for calculating affordable sales prices, selection, occupancy and rent-setting standards, methods of imposing and monitoring affordability restrictions on inclusionary units, procedures and criteria for reviewing inclusionary housing plans, and guidelines for implementation of the teacher housing programs described in Sections 17.109.140 (Teacher Housing) and 17.109.150 (In-Lieu Fee).

SECTION 3. The record before this Council relating to this Ordinance and supporting the findings made herein includes, without limitation, the following:

1. Association of Bay Area Governments, Regional Housing Needs Determinations: 1999-2006 Housing Element Period, third official release dated June 1, 2000.
2. The report to City Council titled "Informational Report on the Final Recommendations of the Housing Development Task Force" and dated July 18, 2000.
3. The report to City Council titled "An informational staff report on inclusionary zoning programs for affordable housing" and dated May 15, 2001
4. California Coalition for Rural Housing and Non-Profit Housing Association of Northern California, "Inclusionary Housing in California: 30 Years of Innovation," 2003.
5. The report to City Council titled "A staff report describing inclusionary zoning programs in other California jurisdictions and a recommendation that the City Council not take any further action on inclusionary zoning" and dated December 9, 2003.
6. "City of Oakland Housing Element", dated June 14, 2004.
7. "Consolidated Plan for Housing and Community Development" dated May 13, 2005.

SECTION 4. The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision, and are hereby adopted as findings.

SECTION 5. The custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) the Community and Economic Development Agency, Housing and Community Development Division, 250 Frank H. Ogawa Plaza, 5th floor, Oakland, California; and (b) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, California.

SECTION 6. The provisions of this Ordinance are severable, and if any clause, sentence, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is held to be invalid or preempted by state or federal law, such holding shall not impair or invalidate the remainder of this Ordinance. If any provision of this Ordinance is held to be inapplicable to any specific development project or applicant, the provisions of this Ordinance shall nonetheless continue to apply with respect to all other covered development projects and applicants. It is hereby declared to be the legislative intent of the City Council that this Ordinance would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from its coverage.

SECTION 7. The City Council finds and determines that this Ordinance complies with the California Environmental Quality Act (CEQA) based upon the following, each of which provides a separate and independent basis, (1) reliance upon the Environmental Impact Report prepared for the Land Use and Transportation Element of the General Plan that was certified by the City Council on March 24, 1998; (2) reliance upon the Environmental Impact Report prepared for the Estuary Policy Plan that was certified by the City Council on June 8, 1999; (3) reliance upon the Mitigated Negative Declaration prepared and approved for the Housing Element of the General Plan on

June 14, 2004; (4) CEQA Guidelines section 15061(b) (3); and (5) CEQA Guidelines section 15183.

SECTION 8. The Oakland Master Fee Schedule is hereby amended to provide for the following initial inclusionary housing in-lieu fee:

Unit Size By Bedroom	In-Lieu Fee
0 Bedroom	\$ 195,000
1 Bedroom	\$ 240,000
2 Bedroom	\$ 265,000
3 Bedroom	\$ 305,000
4 Bedroom	\$ 315,000

No later than December 31, 2006, the City shall retain a consultant and complete a study to determine an appropriate in-lieu fee in accordance with the provisions of Section 17.109.150 (In-Lieu Fee) of the Inclusionary Housing Requirements and the above fee shall then be adjusted by ordinance if warranted. The City may update this study periodically as necessary.

In lieu of such periodic updates of the in-lieu fee study, the fee shall be adjusted annually according to the provisions for annual increases in the Jobs/Housing Impact Fee contained in Section 15.68.050 of the Municipal Code.

SECTION 9. Section 15.68.100 of the Municipal Code (Affordable Housing Trust Fund) is hereby amended to add the following:

Twenty percent of funds deposited to the Affordable Housing Trust Fund as a result of in-lieu fees collected pursuant to Section 17.109.150 of the Oakland Planning Code shall be reserved for the Teacher Mortgage Assistance Program authorized by Section 17.109.160 of the Oakland Planning Code. Any funds received by the City in connection with the Teacher Mortgage Assistance Program shall also be deposited to the Affordable Housing Trust Fund for this same purpose. Notwithstanding any other provision contained in this chapter, funds reserved for the Teacher Mortgage Assistance Program may be used to assist persons and families of moderate income as defined in California Health and Safety Code Section 50093 and its implementing regulations.

SECTION 10. The first sentence of the third paragraph of Section 15.68.100 of the Municipal Code (Affordable Housing Trust Fund) is hereby amended to read as follows (additions are indicated by underlined text):

Funds may also be used to cover reasonable administrative or related expenses of the city not reimbursed through processing fees, including costs of administering or enforcing the Inclusionary Housing Requirements contained in Chapter 17.109 of the Oakland Planning Code.

SECTION 11. Section 17.152.070.A of the Oakland Planning Code is amended to add the Inclusionary Housing Ordinance as follows:

1. 17.109.010 through 17.109.220;
42. 17.112.010 through 17.112.060;
23. 17.134.010 through 17.134.120;
34. 17.136.010 through 17.136.130;
45. 17.140.010 through 17.140.120;
56. 17.142.010 through 17.142.090;
67. 17.146.010 through 17.146.060; and,
78. 17.148.010 through 17.148.110

SECTION 12. This Ordinance shall be effective upon its adoption if it receives at least six affirmative votes; otherwise, it shall be effective upon the seventh day after final adoption; but as set forth above shall not be applied to covered development projects that have acquired or will acquire vested rights to develop under California law on or before May 1, 2007.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2006

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL,
 QUAN, REID, AND PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
 LATONDA SIMMONS
 City Clerk and Clerk of the
 Council
 of the City of Oakland, California

AN ORDINANCE ADDING CHAPTER 17.109 TO THE OAKLAND PLANNING CODE TO ESTABLISH AN INCLUSIONARY HOUSING REQUIREMENT AND ESTABLISH TWO NEW HOMEOWNERSHIP PROGRAMS FOR OAKLAND TEACHERS, MAKING RELATED AMENDMENTS TO THE OAKLAND PLANNING CODE, AMENDING SECTION 15.68.100 OF THE OAKLAND MUNICIPAL CODE, AND AMENDING THE MASTER FEE SCHEDULE TO ESTABLISH AN INCLUSIONARY HOUSING IN-LIEU FEE

NOTICE AND DIGEST

This Ordinance adds Chapter 17.109 to the Oakland Planning Code to establish an inclusionary housing requirement and establish two new homeownership programs for Oakland teachers, makes certain related amendments to Section 17.052.170.A of the Oakland Planning Code and Section 15.68.100 of the Oakland Municipal Code, makes certain findings in support of its enactment, and amends the City's Master Fee Schedule to establish an inclusionary housing in-lieu fee.

OFFICE OF THE CITY CLERK

CITY OF OAKLAND



2006 JUN 21 PM 12:37

CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

LAURENCE E. REID
President Pro Tempore of the City Council
Councilmember District #7

(510) 238-7007
FAX (510) 238-6910

June 21, 2006
To: Office of the City Clerk
From: Council Member Larry Reid

Please substitute this language for the submission of language that was previously submitted

Add new section 12; renumber existing Section 12 to section 13

Section 12. This ordinance shall not apply in any redevelopment project area where more than 75% of the land within that redevelopment project area, as that area is designated as of the date of the adoption of this ordinance, is developed pursuant to a master plan of development that satisfies the affordable housing production requirements of Health and Safety Code section 33413.

Respectfully submitted,

A handwritten signature in cursive script that reads "Larry E. Reid".

Larry E. Reid
Council Member
District 7

ATTACHMENT C

To: Oakland City Council
From: Councilmembers Jane Brunner, Ignacio De La Fuente and Jean Quan
Re: Proposed Modifications to the Inclusionary Housing Ordinance
Date: June 27, 2006

City staff has submitted a draft Inclusionary Housing Ordinance for consideration by the City Council at its meeting on June 27, 2006.

We are proposing that a number of modifications be made to the ordinance.

The Inclusionary Housing Requirements should be adopted as an amendment to the Oakland Municipal Code, immediately following the Jobs/Housing Impact Fee and Affordable Housing Trust Fund provisions, and all sections should be renumbered appropriately.

The following changes are shown in standard redline format (~~strike-out of deleted language~~ and underscore of new language) over the original document text.

1. Title of Ordinance

AN ORDINANCE ADDING CHAPTER 15.70 TO THE OAKLAND MUNICIPAL CODE TO ESTABLISH AN INCLUSIONARY HOUSING REQUIREMENT AND ESTABLISH TWO NEW HOMEOWNERSHIP PROGRAMS FOR OAKLAND TEACHERS, ~~AMENDING SECTION 15.68.100 OF THE OAKLAND MUNICIPAL CODE TO PERMIT AFFORDABLE HOUSING TRUST FUNDS TO BE USED TO ADMINISTER AND ENFORCE THE INCLUSIONARY HOUSING REQUIREMENT,~~ AND AMENDING THE MASTER FEE SCHEDULE TO ESTABLISH AN INCLUSIONARY HOUSING IN-LIEU FEE

Deleted: 17.109

Deleted: PLANNING

Deleted: MAKING RELATED AMENDMENTS TO THE OAKLAND PLANNING CODE.

2. First "Whereas" clause on page 3:

WHEREAS, the Inclusionary Housing Ordinance will provide rental units affordable to households earning no more than 80 percent of area median income and to households earning no more than 50 percent of area median income, and ownership units affordable to moderate income households with an income of no more than 110 percent of area median income, thus allowing the City to target its limited affordable housing dollars to extremely low, very low and low income households who have the greatest housing needs and require the greatest subsidies; and

Deleted: average

Deleted: 100

ORA/COUNCIL

14.4

June 26, 2006

27

ATTACHMENT D

3. Definitions (Section 17.109.020)

"Affordable housing" means a housing unit that is provided at an affordable rent to low income households or to very low income households, or sold at an affordable sales price to moderate income households with an income of not more than 110% of area median income as further described in Section 15.70.100 (Affordability Level and Housing Cost).

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Deleted: 17.109

Deleted:

Deleted: the maximum allowable income specified in Section 17.109.100 (Affordability Level and Housing Cost)

"Affordable housing cost" means an annual housing cost that does not exceed 35 percent of 110 percent of AMI, adjusted for family size appropriate to the unit pursuant to California Health and Safety Code Section 50052.5, and is not less than 28 percent of the actual gross income of the household. "Housing cost" shall include those items set forth in 25 California Code of Regulations Section 6920.

"Affordable rent for low income households" shall mean a gross rent, including an allowance for tenant-paid utilities, that does not exceed 30 percent of 80 percent of AMI adjusted for family size appropriate to the unit.

"Affordable rent for very low income households" shall be as defined in California Health and Safety Code Section 50053(b)(2), and its implementing regulations.

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Deleted: 3

"Very low income household" shall be as "very low income household" is defined in California Health and Safety Code Section 50105 and its implementing regulations.

4. Applicability of the Ordinance (Section 17.109.030)

This chapter shall apply to all housing units in covered development projects with 20 or more new housing units, unless the covered development project has acquired or will acquire vested rights to develop under California law on or before September 30, 2006, or unless the covered development project receives a discretionary land use approval by the City not later than 12 months from the date of final adoption of the Inclusionary Housing Ordinance provided that a building permit is issued for such housing units not later than 18 months from the date the first such discretionary land use approval is received for the project, or unless the covered development project qualifies for an exemption listed in Section 15.70.040 (Exemptions).

Deleted: May 1, 2007

Deleted: 17.108

5. Requirements for Off-Site Inclusionary Units (Section 17.109.060)

A project applicant may elect to build affordable housing units on a site other than the site of the principal project to satisfy the requirements of this chapter. If the project applicant selects this alternative, the number of affordable units developed off-site must be no fewer than 20 percent of all housing units constructed on the principal project site. Off-site units shall be subject to all applicable provisions of this chapter.

Deleted: , and shall have the same tenure (rental or ownership) as the housing units in the principal project

6. Comparability of Inclusionary Units (Section 17.109.100)

The number of inclusionary units of each size, as measured by number of bedrooms per unit, shall be at least proportional to the number of market rate units of each size in the principal project, as measured by number of bedrooms per unit. ~~The construction type, tenure (rental or ownership), square footage and interior features of inclusionary units do not need to be the same as or equivalent to those in market rate units in the principal project, provided they are of standard construction grade quality, approved by the City, and consistent with then-current standards for new affordable housing.~~ Project applicants shall endeavor to distribute the inclusionary units proportionately among the market rate units, avoid concentration of inclusionary units; and avoid taking actions that would stigmatize or set apart the inclusionary units.

Deleted: Inclusionary housing units shall be comparable to market rate units in the principal project.

Deleted: Exterior appearance and overall quality of construction of the inclusionary units shall be comparable to the market rate units in the principal project.

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7. Affordability Levels and Housing Cost (Section 17.109.110)

Rental units

For each covered development project, at least 40 percent of the inclusionary units required by this chapter that are rental housing units must:

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- (1) be rented to and occupied only by very low income households;
- (2) have rents that do not exceed an affordable rent for very low income households (30% of 50% AMI); and,
- (3) be subject to these restrictions on tenant incomes and affordable rents for a period of at least 55 years from the date of initial occupancy.

Deleted: have rents that do not exceed an affordable rent for a low income household adjusted for family size appropriate for the unit pursuant to California Health and Safety Code 50053(b)(3); and

For each covered development project, the remaining inclusionary units required by this chapter that are rental housing units must:

- (1) be rented to and occupied only by low income households;
- (2) have rents that do not exceed an affordable rent for low income households (30% of 80% AMI); and
- (3) be subject to these restrictions on tenant incomes and affordable rents for a period of at least 55 years from the date of initial occupancy.

Ownership units:

Inclusionary units required by this chapter that are ownership units must:

- (1) be sold only to households that have incomes that do not exceed 110 percent of AMI;

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Deleted: in accordance with the schedule below, be subject to limitations on the maximum allowable income of households buying the inclusionary units such that the mean limit on incomes of households buying ownership inclusionary units produced for a covered development project does not exceed 100 percent of AMI

- (2) be sold at an affordable sales price; and
- (3) be subject to these restrictions on affordable sales prices and buyer incomes for a period of at least 45 years from the date of initial sale.

Deleted: In accordance with the schedule below

Low income purchasers of inclusionary units that are ownership units shall be permitted by the seller of the unit to utilize homebuyer assistance provided by the City or Agency.

Deleted: Affordability schedule for ownership units:
Maximum Household Income ... [1]

8. Effective Date of Ordinance (Section 12 of Ordinance)

This Ordinance shall be effective upon its adoption if it receives at least six affirmative votes; otherwise, it shall be effective upon the seventh day after final adoption; but as set forth above shall not be applied to (a) covered development projects that have acquired or will acquire vested rights to develop under California law on or before September 30, 2006, or (b) housing units in covered development projects that obtain a discretionary land use approval by the City not later than 12 months from the date of final adoption provided that a building permit is issued for such units not later than 18 months from the date the first such discretionary land use approval is received for the project.

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