

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.