

ORDINANCE NO. 404

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWARK ESTABLISHING AN INCLUSIONARY HOUSING REQUIREMENT FOR RESIDENTIAL DEVELOPMENT PROJECTS, INSTITUTING A HOUSING IMPACT FEE ON NONRESIDENTIAL DEVELOPMENT, AND CREATING A HOUSING FUND

The City Council of the City of Newark does ordain as follows:

Section 1: Pursuant to Section 17.80.070 of Title 17 (Zoning) of the City of Newark Municipal Code, the City Council of the City of Newark does hereby find that the zoning text amendment embodied in this ordinance is necessary and desirable to achieve the purposes of Title 17 (Zoning) of the Newark Municipal Code; is consistent with the policies, goals and objectives of the General Plan; and promotes the public health, safety, morals, comfort, convenience, and general welfare of the residents of the City of Newark.

Section 2: The City Council of the City of Newark hereby makes the following declaration of facts:

1. Housing costs in the City of Newark have increased significantly over time. According to the Association of Bay Area Governments (ABAG), housing costs have increased faster than incomes. One of the key reasons for the increase in housing costs is the shortage of land available for residential use.
2. Cities that lack affordable housing may have difficulty attracting people to work in jobs that pay at the median income level or less. Some of these jobs are necessary for the continued well-being of the community, including teachers, public safety officers, and health industry workers.
3. On December 12, 2002, the City Council adopted an updated Housing Element of the General Plan. The Housing Element calls for the provision of additional housing for all sectors of the population, and includes Goal 2, that the City should “provide housing opportunities for households with a wide range of incomes.”
4. The Housing Element also identifies a need for affordable housing within the City of Newark. Existing and anticipated local, state, and federal programs provide some affordable housing and subsidies, but not at sufficient levels to provide for the need. Within the Housing Element, the City of Newark committed to the establishment of an Inclusionary Housing Program as a key element of its plan to help meet the housing need and provide housing for all economic segments, as required by state law.
5. The City hired Economic and Planning Systems to prepare a report dated April 2004 (the “Affordable Housing Fee Study”). This report examined the amount of subsidy needed to produce housing units affordable to moderate, low, and very low income households and the estimated demand for units available to people with these income levels.

6. The Affordable Housing Fee Study also analyzed the connection between nonresidential development projects and the housing needs of moderate, low, and very low income households. This report found a clear nexus between the employees of commercial and industrial land uses and the number of moderate, low, and very low income employee households that are directly associated with such uses and that will accordingly affect the housing market in and around the City of Newark. The report further quantified the share of this need represented by moderate, low, and very low income households.
7. The Inclusionary Housing Program requires a certain percentage of housing units within a residential development project to be provided at specified below market rates. The nonresidential development housing impact fee levies a fee against new commercial and industrial development to offset some of the impact that these new developments are expected to have on the City's affordable housing supply. Neither of these programs could have reasonably foreseeable direct or indirect impacts on the environment. Therefore, the adoption of this ordinance regarding affordable housing is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3), which provides that where it can be seen with certainty that there is no possibility that the activity in question may have a significant impact on the environment, the activity is not subject to CEQA.

Section 3: With respect to residential development, the City Council of the City of Newark hereby finds and declares that:

1. The City Council agrees with the California Legislature's finding in Government Code Section 65580 that "the availability of housing is of vital . . . importance, and the early attainment of decent housing and a suitable living environment . . . is a priority of the highest order." The provision of stable and safe housing for households at all income levels is essential for the public welfare of the City of Newark. Because of market conditions in Newark and the Bay Area, below market rate housing is necessary to provide stable and safe housing for very low, low, and moderate income households.
2. New market rate housing construction in the City aggravates the existing shortage of housing that is affordable to very low, low, and moderate income households by absorbing the supply of available residential land. At the same time, new housing contributes to the demand for goods and services in the City, increasing local employment at wage levels, which often do not permit employees to afford housing in the City.
3. Because neither the private market nor existing public sector programs are providing the level of affordable housing necessary to maintain a balanced community, local government must play an active role to ensure an adequate supply of housing for residents and working people of all income levels.
4. The City of Newark wishes to provide housing opportunities for households with a wide range of incomes. The City agrees with the established policy of the State of California that each community should make available an adequate supply of housing to persons at all economic levels. The City's use of its police power to regulate housing production in ways designed to achieve such a mix of units in the community is appropriate. As stated above, the Council has adopted the Housing Element of the Newark General Plan, which

supports the provision of additional housing for all sectors of the population and calls for the establishment of an Inclusionary Housing Program.

5. Amending the land use regulations of the City to require builders of new housing to include some housing affordable to low or moderate income households, or to otherwise contribute to the effort to increase the supply of affordable housing in the City, is fair, not only because new development contributes to the shortage of affordable housing, but also because the land use regulations of the City in regard to new housing should be consistent with the community's goal of providing housing opportunities for households with a wide range of incomes. Further, in order to mitigate the impacts caused by new residential development in the City of Newark, it is appropriate to impose some of the cost of the increased burden of providing housing for very low, low and moderate income housing holds directly upon the sponsors of the development contributing to the shortage of affordable housing.
6. Maintaining the affordability of units constructed under this ordinance best serves the goal of assuring a continuing supply of affordable housing for local residents and people who work in the City of Newark but cannot afford to live here. If affordable units are not restricted so as to continue to be affordable when re-rented or resold, then such units will become market rate units within a relatively short period of time. With the limited supply of residential land combined with increasing local land and building costs, the units will not be replaceable.
7. The requirements of this ordinance are minimum requirements. The City reserves the right to require additional measures to further affordable housing to the extent it has the authority to do so without respect to this ordinance. As mentioned above, the efforts contained in this ordinance are only one aspect of the City's developing strategy to address affordable housing needs on a variety of fronts.
8. Pursuant to Government Code Section 65913.2, the City Council has considered the effects of these actions on the City's housing needs as established in the Housing Element of the General Plan.

Section 4: With respect to nonresidential development, the City Council of the City of Newark hereby finds and declares that:

1. New office, retail, industrial, hotel, warehouse, and other nonresidential uses (hereinafter referred to as "nonresidential uses" or "nonresidential projects") in the City of Newark ("City") have been, and continue to be, a major factor in attracting new employees to the region. A number of these employees and their families reside, or will reside, in the City of Newark. These new employees and their families create a need for additional housing in the City of Newark.
2. Traditionally, nonresidential uses have benefited from a supply of housing for their employees available at competitive prices and located close to the place of employment. In recent years, the supply of housing has not kept pace with the demand for housing created in part by these new employees and their families. If this shortage were to continue or grow, employers would have increasing difficulty in locating in or near the City of Newark due to problems associated with attracting a labor force. Also, many

employees would be unable to find appropriate housing in the area and would be forced to commute long distances. This situation would adversely affect their quality of life, consume limited energy resources, increase congestion on already overcrowded highways, and have a negative impact on air quality.

3. The competition for housing is especially acute with respect to households of very low, low, and moderate income. An identifiable portion of the new employees attracted to the City of Newark by new nonresidential development will live in very low, low, and moderate income households and will, therefore, compete with present residents for scarce affordable housing units in the City. Increasing the production and availability of very low, low and moderate income housing is problematic because prices and rents for housing affordable to households of very low, low, and moderate income remain below the level needed to attract new construction. Federal, state, and local housing finance and subsidy programs are not sufficient by themselves to satisfy the housing requirements associated with this employment.
4. Nonresidential development brings in new employees, a significant percentage of whom will live in the City. This number yields a certain number of households from which a definable number will be of very low, low, or moderate income. Adjustments may be made to this number of households to take into account household size, multiple earner households, etc., to yield the approximate per square foot contribution each employment activity contributes to the net new need for a housing subsidy. Based on the Affordable Housing Fee Study, each additional square foot of commercial development creates a need for below market rate housing assistance in an amount of \$9.47, while industrial development creates a need of \$1.46 per square foot.
5. The nonresidential development housing impact fee is established to implement the goals and objectives of the City of Newark General Plan, including the Housing Element and related environmental documents, the City of Newark General Plan Environmental Impact Report, and the Affordable Housing Fee report, together with the reports appended thereto or referenced therein quantifying the nexus between development and very low, low and moderate income housing need. Further, to mitigate the impacts caused by new nonresidential development in the City Newark, it is appropriate to impose some of the cost of the increased burden of providing housing for moderate, low, and very low income households necessitated by such nonresidential development directly upon the sponsors of the development. The imposition of a housing impact fee is an appropriate means to accomplish this purpose.
6. However, the Council recognizes that establishing a fee at the upper range of the identified burden could have a negative effect on the City's ability to compete in the regional market for nonresidential development projects. Thus in calculating the amount of the housing impact fee, the Council has carefully weighed other factors in addition to the simple calculation of contribution. These include the fact that commercial and industrial development contributes substantial amounts of revenue, which the City can use for numerous purposes, including the provision of housing. In addition a variety of public agencies provide subsidies and housing programs that may meet some of the need generated by new commercial and industrial development. In view of the numerous assumptions which must attend any such studies and conclusions, the Council has determined that the fee requirements will be set well below the calculated cost of

providing market rate low-income housing to persons attracted to the City by corresponding employment opportunities.

7. Most nonresidential land uses in the City clearly fall within one of the two basic use types studied in the EPS report and are charged a fee accordingly in this ordinance. In a limited number of situations, the fee must be based on a project-by-project determination due to insufficient information as to the general characteristics as to that type of use or special attributes, which make building size an inappropriate indicator of employee density.
8. It is recognized that it is inappropriate to impose this housing fee requirement on certain types of nonresidential uses because the fee would violate previous development agreements or other quasi-contractual agreements, or is pre-empted by state law; or because special characteristics of the use otherwise mitigate the impacts or are in themselves mitigation measures to assist the same low income population to which this ordinance is addressed or because it can be determined that the use categorically will have few or no employees, thus negating the required nexus.
9. One of the purposes of this ordinance is to establish a feasible means by which developers of nonresidential development projects assist in increasing the supply of low and very low income housing. The housing fee requirements contained in this ordinance are designed to create a rational relationship between the amount of housing need created by the employment use and the size of the fee, taking into account the impact of such fee on housing construction costs and economic feasibility.
10. The need to provide safe and sanitary dwelling accommodations to persons of low and moderate income is a matter of Citywide concern and represents a responsibility that should be borne by all sectors of the community. The enactment of a housing fee for nonresidential development only partially addresses the total impacts caused by nonresidential developments and is intended as one part of the City's multi-faceted approach to affordable housing problems. Further regulatory changes to encourage the production of low-income housing will also be considered to address the existing and future need.

Section 5: Title 17 (Zoning) of the Newark Municipal Code is hereby amended by the addition of Chapter 17.18 "Affordable Housing Program" to read as follows:

Chapter 17.18
Affordable Housing Program

Sections:

- 17.18.010 Purposes.
- 17.18.020 Definitions.
- 17.18.030 Residential Development Inclusionary Program.
- 17.18.040 Incentives.
- 17.18.050 Alternatives to On-Site Construction.
- 17.18.060 Continued Affordability.
- 17.18.070 Administrative Relief.
- 17.18.080 Nonresidential Development Housing Impact Fee.

- 17.18.090 Housing Fund.
- 17.18.100 Severance.
- 17.18.110 Enforcement.

17.18.010 Purposes.

The provision of safe and stable housing for households at all income levels is essential for the public welfare of the City of Newark. Housing in the City has become steadily more expensive and housing costs have gone up faster than incomes. Federal and State government programs do not provide enough affordable housing to satisfy the needs of very low, low, or moderate income households. The City wishes to retain an economically balanced community with housing available to households of all income levels, which is only possible if some of the housing built within the City is affordable to households with limited incomes. To this end, this chapter requires that all new residential developments of greater than five units allocate a certain amount of the units to households of different incomes.

In addition because nonresidential development attracts employees, of whom a quantifiable number will have very low, low, or moderate incomes, new nonresidential development projects increase the demand for and exacerbate the shortage of housing available for people at these income levels. This chapter therefore imposes a nonresidential development housing impact fee in order to provide a means whereby developers of nonresidential projects contribute to the supply of housing for households with very low, low, and moderate incomes.

17.18.020 Definitions.

As used in this chapter, each of the following terms are defined as follows:

- A. "Applicant" means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities that seeks residential real property development permits or approvals from the City of Newark.
- B. "Developer" means the person(s) or legal entity(ies), who also may be the property owner, who is developing a particular project in the City.
- C. "For-sale unit" means a residential dwelling unit that is intended to be sold to owner-occupants upon completion.
- D. "Gross square floor area" means the sum of the gross horizontal floor areas of a building measured from the exterior face of exterior walls, or from the center line of a wall separating two buildings. In cases where no walls exist, the gross horizontal floor area shall be that area covered by the roof excluding two feet on each side of the structure for a standard roof projection. Outside areas used for sales and/or display may also be considered (e.g., plant nurseries, building materials, auto sales, etc.) when the Community Development Director determines that the use of the outside area significantly contributes to the employee density of the building.
- E. "Inclusionary unit" means a dwelling unit which is required under this chapter to be rented to or sold to households with very low, low, or moderate incomes as defined in this chapter. The monthly rent for inclusionary rental units, including utilities and all fees for housing services, shall be equal to or less than one-twelfth of thirty percent of the maximum annual household income allowed for that category of unit. The sales price for inclusionary for-sale units shall result in a monthly mortgage payment, including principal and interest, which does not exceed one-twelfth of thirty-five percent of the maximum annual income for a household of the applicable income level. Maximum annual household income shall be set based on presumed occupancy levels of one person in a studio apartment, two persons in a one

bedroom unit, three persons in a two bedroom unit and one additional person for each additional bedroom thereafter.

F. “Low income households” means households with incomes above the maximum income for very low income households and below the maximum income for low income households, as annually defined by the California Department of Housing and Community Development for each household size.

G. “Market rate unit” means a new dwelling unit in a residential project that is not an inclusionary unit under the provisions of this chapter.

H. “Median income” means the median income, adjusted for family size, applicable to Alameda County, as published annually by the California Department of Housing and Community Development.

I. “Moderate income households” means households with incomes above the maximum income for low income households and below the maximum income for moderate income households, as annually defined by the California Department of Housing and Community Development for each household size.

J. “Ownership unit” means a dwelling unit that is intended to be offered for sale.

K. “Rental unit” means a dwelling unit that is intended to be offered for rent or lease.

L. “Residential development” means a detached single-family dwelling, multiple dwelling structures, group of dwellings, condominium or townhouse developments, condominium conversions, cooperative developments, or mixed use developments that include dwelling units.

M. “Residential development project” means a project for the construction or placement of any dwelling unit in a permanent location, or the subdivision of land which is planned, designed, or used for single-family residential and/or multi-family residential land uses, and includes contiguous or noncontiguous parcels that have one or more applications filed within a twenty-four month period and which are owned by the same party or parties.

N. “Very low income households” means households with incomes below the maximum income for very low income households, as annually defined by the California Department of Housing and Community Development for each household size.

17.18.030 Inclusionary Housing Program General Requirements.

A. All new residential development projects consisting of five or more dwelling units, for which an application for any use permit, planned unit development permit or building permit is filed after the effective date of the ordinance, shall develop and maintain 15 percent of the total number of the dwelling units within the residential development as inclusionary units according to the terms of this chapter.

The foregoing requirement shall be applied no more than once to an approved residential development project, regardless of changes in the character or ownership of the residential development, provided the total number of dwelling units does not change.

B. Where the calculation of the 15 percent requirement for inclusionary units results in a fraction of a unit, any decimal fraction less than or equal to 0.50 may be disregarded and any decimal fraction greater than 0.50 shall be constructed as one unit.

C. The inclusionary units required as a result of Section 17.18.030.A shall be made affordable to households with very low, low, and moderate incomes based on the following requirements for rental units and for-sale units:

1. Rental Units. Rental units in residential developments subject to inclusionary requirements shall be offered at the income levels specified below. When the calculation for inclusionary units results in a fraction of a unit, the procedure established in

Section 17.18.030.B applies; however, the total number of inclusionary units shall be 15 percent of the total number of units.

a. 40 percent of inclusionary units (6 percent of total units) shall be reserved for very low income households;

b. 40 percent of inclusionary units (6 percent of total units) shall be reserved for low income households; and

c. 20 percent of inclusionary units (3 percent of total units) shall be reserved for moderate income households.

2. For-Sale Units. For-sale units in residential developments subject to inclusionary requirements shall be sold at the income levels specified below. When the calculation for inclusionary units results in a fraction of a unit, the procedure established in Section 17.18.030.B applies; however, the total number of inclusionary units shall be 15 percent of the total number of units.

a. 15 percent of inclusionary units (2.25 percent of total units) shall be reserved for low income households; and,

b. 85 percent of inclusionary units (12.75 percent of total units) for moderate income households.

D. Inclusionary units built on-site shall be comparable to the market rate units in terms of the following:

1. The inclusionary units shall have the same range of numbers of bedrooms and bathrooms provided in the residential development project as a whole;

2. The exterior appearance of the inclusionary units shall be indistinguishable from that of market rate units;

3. The inclusionary units shall be dispersed throughout the residential development project;

4. The inclusionary units shall be provided or have access to the same amenities as the market rate units, such as air conditioning, covered garages, recreation facilities and laundry facilities; and

5. All inclusionary units in a residential development project or phase of a project shall be constructed concurrently with the market rate units.

E. When selecting tenants or purchasers for inclusionary units, all persons in each of the following categories of otherwise qualified persons shall be selected before persons from the next succeeding category are selected:

1. Residents displaced by the proposed project

2. Current residents of the City of Newark

3. People who work in the City of Newark

4. People who have immediate family living in the City of Newark

5. All other eligible persons

17.18.040 Incentives.

Residential development projects that comply with this chapter may elect the following:

A. Density Bonus. The City Council, upon request, may approve an increase in the number of units permitted in a proposed residential development project provided that the increase in density is consistent with the state density bonus law as set forth in Section 65915 of the California Government Code.

B. Alternative Designs. Inclusionary units may be smaller in aggregate size and have different interior finishes and features than market-rate units in the same residential project as long as the finishes and features are durable, of good quality, and consistent with contemporary standards for new housing.

17.18.050 Alternatives to On-Site Construction.

The City of Newark intends that inclusionary units shall be constructed on the same site as the market rate units in the development, except in cases of unique hardship, or cases in which the required subsidy for the inclusionary units would be unreasonably large given the nature of the development.

A. Off-Site Construction. Inclusionary units may be constructed on a separate site within the City of Newark only if:

1. The size, number of bedrooms, and amenities for the inclusionary units will be equal to or greater than would have been provided if the units were constructed on-site; and

2. The off-site units will be greater in number, larger or affordable to households with lower incomes than would otherwise be required by Section 17.18.030; and

3. Approval for off-site units is secured concurrently with or prior to approval of the market rate portion of the development, and completion of the off-site units is secured by a requirement that final inspections for occupancy for the related market-rate units be completed after those for the inclusionary units; and

4. The Planning Commission and City Council shall also find that:

a. The off-site location is appropriate for residential development; and

b. Placing the inclusionary units off-site would result in a better development than if the inclusionary units were built on-site; and

c. Placing the inclusionary units off-site would further affordable housing opportunities in the City to an equal or greater extent than compliance with the requirements of Section 17.18.030.

B. Land Dedication. An applicant may dedicate land without cost to the City in lieu of constructing the inclusionary units required by this Chapter with the approval of the Planning Commission and City Council. Land dedication may be approved only if:

1. Dedication of the land is secured by a requirement that none of the related market-rate units may receive final inspections for occupancy until after the land has been dedicated to the City, or secured through some other fashion to the satisfaction of the City Attorney; and

2. The land to be provided is fully improved, with infrastructure, adjacent utilities, grading and fees paid, and with no hazardous material or other constraints on residential development; and

3. The land is large enough to construct at least 120 percent of the number of inclusionary units required, at a density equivalent to that of the associated market rate project; and

4. The Planning Commission and City Council find that providing land for dedication is a desirable way of meeting the inclusionary housing requirement for the project.

C. Rental Units in For-Sale Projects. A project otherwise consisting only of for-sale units may request permission from the Planning Commission and City Council to construct required inclusionary units as rental units, under the following circumstances:

1. The residential development project consists of for-sale units on lots whose average size is 10,000 square feet or more; and
2. The average number of bedrooms per rental unit shall be the same as the average number of bedrooms per market rate unit in the development; and
3. Affordability of the units shall be the same as for rental projects, as set forth in Section 17.80.030.C.1; and
4. Approval for rental units is secured concurrently with or prior to approval of the market rate portion of the development, and completion of the rental units is secured by a requirement that final inspections for occupancy for the related market-rate units be completed after those for the inclusionary units; and
5. The Planning Commission and City Council find that inclusion of rental units in the project is a desirable way of meeting the inclusionary housing requirement for the project.

D. In-Lieu Fee. An applicant may pay an in-lieu fee, the timing and amount of which shall be set by resolution of the City Council, rather than constructing inclusionary units only under the following circumstances:

1. The applicant demonstrates, to the satisfaction of the Planning Commission and City Council, that because of the unique circumstances of the proposed development, building the inclusionary units would not be practically feasible. The applicant shall furnish a report identifying the unique conditions affecting the development of inclusionary units and provide sufficient independent data, including appropriate financial information, to support the applicant's claim that it is not feasible to construct the inclusionary units. Reduced financial profit shall not be considered grounds for declaring construction of the units to be infeasible; or
2. Upon request from the developer, the Community Development Director may allow payment of an in-lieu fee for any proposed residential development project with five or six units; or
3. When the residential development project consists of for-sale units on lots whose average size is 10,000 square feet or more, and the Planning Commission and City Council find that payment of an in-lieu fee is a desirable way of meeting the inclusionary housing requirement for the project.

17.18.060 Continued Affordability

A. The City Council shall adopt a resolution setting forth provisions for continued affordability of below market rate units provided through the inclusionary housing program. These provisions will ensure that inclusionary housing provided by this chapter remains affordable to very low, low, and moderate income households over time, and may include:

1. Requiring resale restrictions, deeds of trust, or affordability agreements to be recorded against the property for a specified length of time that would limit the sales price or rent;
2. Requiring review of income information for prospective owners or tenants of inclusionary units by current owners and/or property managers, with certification by the Community Development Director;
3. Establishing provisions addressing City policy for tenants whose household income increases after occupying an inclusionary unit;
4. Other provisions as necessary to ensure the continued affordability of the inclusionary units.

B. The City Council may update the resolution from time to time as necessary.

17.18.070 Administrative Relief.

Any developer subject to the requirements of this chapter may request a reduction, adjustment, or waiver based upon the absence of any reasonable relationship or nexus between the impact of the development and the amount of the inclusionary housing requirement as set forth in this chapter. This request, together with appropriate supporting information, must be made when applying for first approval for the residential project, and/or as part of any appeal which the City provides as part of the process for the first approval. Failure to do so shall constitute a failure to exhaust administrative remedies.

17.18.080 Nonresidential Development Housing Impact Fee.

A. Application. A Housing Impact Fee is hereby imposed on all developers of nonresidential development projects.

B. Calculation of Housing Impact Fee.

1. The Housing Impact Fee for nonresidential development projects shall be charged on a per square foot basis for all new gross floor area, including all additions where floor area is increased. The amount and calculation for each such fee shall be established by resolution of the City Council. Gross floor area is determined by calculating the combined area for all floors in accordance with the definition of “Gross square floor area” contained in Section 17.18.020. If the nonresidential development project is in whole or in part a replacement for space previously on the site, but demolished within one year prior to the filing of the application for the new construction or remodel, credit shall be given for the space demolished or to be demolished at the rate applicable to the prior use of that space.

2. In calculating the fees, City staff shall use those fees in effect by resolution of the City Council at the time of the issuance of the building permit, or if no building permit is required, at the time of issuance of a use or other discretionary permit.

C. Time of Payment. The time for payment of the Nonresidential Development Housing Impact Fee shall be established by the City Council resolution which sets the amount of the fee, and shall conform to the requirements of Government Code Section 66007.

D. Alternative to Payment of Housing Impact Fee. As an alternative to payment of the Housing Impact Fee, a developer of nonresidential development project may submit a request to mitigate the impacts of such development through the construction of residential units, the dedication of land, or the provision of other resources. Such requests may be granted at the sole discretion of the City Council, if the City Council determines that such alternative will further affordable housing opportunities in the City to an equal or greater extent than payment of the Housing Impact Fee.

E. Fee Adjustment, Reduction or Waiver. An adjustment, reduction, or waiver of the nonresidential housing impact fee may be granted upon request by the City Council for any project which falls into one or more of the following categories:

1. Projects for specific uses involving no employees or less than one employee per 2,000 square feet of gross floor area;

a. In order to qualify for this exemption, the building must be designed and built such that it cannot be converted to a use capable of housing a larger number of employees except by major reconstruction. The burden of proof shall be on the applicant.

b. If a waiver is granted, a “Notice of Conditional Waiver of Housing Impact Fee” shall be recorded in the Alameda County Office of the Recorder. If a subsequent change in the use or structure of the building occurs which involves additional employees, the waiver granted herein shall be deemed revoked, subject to a hearing before the Zoning

Administrator who shall make a recommendation on the revocation to the City Council. The decision of the City Council shall be final.

2. Projects operated by nonprofit organizations which provide food storage, meal service, and/or temporary shelter to the homeless;

3. Projects for any of the following uses:
a. Public and private elementary or secondary schools, or universities
b. Public libraries, art galleries, museums, and other nonrecreational public facilities

- c. Public recreational facilities
- d. Churches and other religious institutions
- e. Private clubs and lodges
- f. Nonprofit youth clubs
- g. Philanthropic and charitable institutions
- h. Community service organizations
- i. Child care centers with eight or fewer children
- j. Temporary seasonal sales lots
- k. Public utility yards

4. A project to the extent it has received a vested right to proceed without payment of housing impact fees pursuant to state law; or

5. Projects for which, upon the basis of facts presented by the applicant, there is an absence of any reasonable relationship or nexus between the impact of the development and the need for housing.

F. Exemptions. This fee shall not apply to developers of nonresidential projects which fall within one or more of the following categories:

1. Projects located on property owned by the State of California, the United States of America, or any of its agencies and used exclusively for governmental or educational purposes; or

2. Any structure proposed to repair or replace a building that was damaged or destroyed by fire or other calamity, so long as the square footage of the building remains the same and construction of the replacement building begins within one year; or

3. Projects that are the subject of development agreements currently in effect with the City, approved prior to the effective date of this chapter where such agreements expressly preclude the City from requiring compliance with this type of housing fee program; or

4. The nonresidential uses are set forth either in a building permit application accepted as complete by the City prior to 5:00 p.m. on August 10, 2004, or in a use permit or similar discretionary approval approved prior to 5:00 p.m. on August 10, 2004; however, any extension or modification of such approval or permit after such date shall not be exempt.

G. Processing Requirements.

1. Each discretionary permit for a project subject to this section shall contain an express condition requiring compliance with this section.

2. No application for building permits or discretionary permits for any project subject to this section shall be deemed complete unless the application contains the items listed below. The Community Development Director may require similar information for completeness of other City permits or licenses as necessary or convenient to implement this section.

a. A statement of the number of gross square feet in a nonresidential development project to be constructed, added, or placed that are subject to the requirements of this section, together with documentation sufficient to support the application;

- b. The intended use or uses for the nonresidential development project by gross square feet; and
- c. A statement of any exemptions applicable to the project.

17.18.090 Housing Fund.

There is hereby established the City of Newark Affordable Housing Fund (the “Housing Fund”). Separate accounts within such Housing Fund may be created from time to time to avoid co-mingling as required by law or as deemed appropriate to further the purposes of the fund.

A. Administration. The Housing Fund shall be administered by the Community Development Director, who shall have the authority to govern the Housing Fund consistent with this chapter, and to prescribe procedures for said purpose, subject to approval by the Council.

B. Advisory Committee. The Community Development Advisory Committee shall review the status of the fund annually. As appropriate, the Committee may define and prioritize recommended uses of the monies in the Housing Fund, subject to approval by the City Council.

C. Purpose and Use of Funds.

1. Monies deposited in the Housing Fund, along with any interest earnings on such monies, shall be used solely to increase and improve the supply of housing affordable to households of very low, low, and moderate incomes; including, but not limited to, acquisition of property and property rights, cost of construction, including costs associated with planning, administration, and design, as well as actual building or installation, as well as any other costs associated with the construction or financing of affordable housing; and reimbursement to the City for such costs if funds were advanced by the City from other sources. To the maximum extent possible, all monies should be used to provide for additional affordable housing and services. Monies may also be used to cover reasonable administrative expenses not reimbursed through processing fees, including reasonable consultant and legal expenses related to the establishment and/or administration of the Housing Fund and reasonable expenses for administering the process of calculating, collecting, and accounting for housing fees authorized by this section.

2. Monies in the Housing Fund may be disbursed, hypothecated, collateralized or otherwise employed for these purposes from time to time as the Community Development Director and City Council determine is appropriate to accomplish the purposes of the Housing Fund. The Housing Fund monies may be extended for the benefit of rental or owner occupied housing or housing services.

3. Expenditures by the Community Development Director from the Housing Fund shall be controlled, authorized, and paid in accordance with general City budgetary policies. Execution of contracts related to the use or administration of Housing Fund monies shall be in accordance with standard City policy.

17.18.100 Severance.

Should any part of this ordinance be declared by a final decision of a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance. The remainder of the ordinance shall continue in full force and effect, provided that the remainder of the ordinance, absent of the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

17.18.110 Enforcement.

A. Residential Development Inclusionary Housing Program. No person shall sell or rent an inclusionary unit at a price or rent exceeding the maximum allowed under this chapter, or to a household not qualified under this chapter. Said sale or rental shall constitute a public nuisance and shall be punishable as a misdemeanor. Each month that such unit is occupied in violation of this Chapter shall constitute a separate violation.

The City Attorney shall be authorized to enforce the provision of this chapter and all regulatory agreements and resale controls placed on affordable units, by administrative or civil action or any other proceeding or method permitted by law. Failure of any official or agency to fulfill the requirements of this chapter shall not excuse any applicant, developer, or owner from the requirements of this chapter.

B. Non-Residential Development Project Housing Impact Fee. Payment of the housing impact fee is the joint and several obligation of the applicant and/or the property owner for the subject nonresidential development project. In the event of administrative error, the City shall provide the applicant with a written notice and the applicant shall be required to pay the fees within 30 days. The City may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including, but not limited to, actions to revoke, deny, or suspend any permit or development approval.

Section 6: Effective date. This ordinance shall take effect thirty (30) days from the date of its passage. Before expiration of fifteen (15) days after its passage, this ordinance shall be published in The Argus, a newspaper of general circulation published and printed in the County of Alameda and circulated in the City of Newark.

The foregoing ordinance was introduced and read before the City Council of the City of Newark by Council Member Torrico at the regular meeting of the City Council of the City of Newark held on May 27, 2004.

This ordinance was read at the regular meeting of the City Council held June 10, 2004. Council Member Nagy moved that it be adopted and passed, which motion was duly seconded, and said ordinance was passed and adopted and ordered published within fifteen (15) days of the date of adoption in The Argus, a newspaper of general circulation published and printed in the County of Alameda and circulated in the City of Newark.

AYES: Council Members Freitas, Johnson, Nagy, Torrico, and Mayor Smith

NOES: None

ABSENT: None

SECONDED: Vice Mayor Torrico

APPROVED:

ATTEST:

s/DAVID W. SMITH
Mayor

s/FRANCES MILLER-ROGERS
City Clerk

APPROVED AS TO FORM:

s/GARY T. GALLIANO
City Attorney