

ORDINANCE NO. 560

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
NEWARK AMENDING SECTION 17.18.030 OF THE NEWARK
MUNICIPAL CODE AND ADDING CHAPTER 17.27 TO THE
NEWARK MUNICIPAL CODE TO UPDATE THE NEWARK
AFFORDABLE HOUSING PROGRAM AND AFFORDABLE
HOUSING REQUIREMENTS

WHEREAS, the City of Newark (the “City”) occasionally initiates amendments to the Newark Municipal Code to clarify, add, or amend certain provisions to ensure that it remains current with federal and state law, internally consistent, simple to understand and implement, and relevant to changes occurring in the community; and

WHEREAS, on October 26, 2023, the City Council adopted Resolution No. 11,575, adopting a general plan amendment to repeal the Fifth Cycle Housing element for the period of 2015-2023 and adopt the Housing Element of the General Plan for the Period of 2023-2021 (Sixth Cycle) and adopt the Safety Element of the General Plan, in compliance with State Housing Element Law; and

WHEREAS, the Sixth Cycle Housing Element includes Policy H5.4 to amend the Newark Municipal Code to include a build-first inclusionary housing requirement; and

WHEREAS, the Sixth Cycle Housing Element includes Program H4.1 to adopt a policy giving individuals who live or work in Newark a preference in the lease or purchase of new affordable homes; and

WHEREAS, inclusionary housing policies are a tool that jurisdictions can use to increase the supply and funding of affordable housing within their communities; and

WHEREAS, the availability of affordable housing is a concern for individuals of all demographics, ages, and economic backgrounds in communities throughout the State of California, including within the City of Newark; and

WHEREAS, Chapter 17.18 of the Newark Municipal Code (“NMC”) requires payment of an affordable housing impact fee and the City seeks to add Chapter 17.27 to the NMC to establish inclusionary housing requirements for new residential development projects that require new housing development projects to either provide on-site affordable units or pay a fee in lieu of providing on-site affordable housing units; and

WHEREAS, the City desires to amend NMC Section 17.18.030 and add Chapter 27 to Title 17 of the NMC, to implement the policies and programs of the Housing Element and more

specifically the general requirements for mitigating affordable housing impact from residential projects and to adopt a local preference policy; and

WHEREAS, the amendment of NMC Section 17.18.030 and addition of NMC Chapter 17.27 are collectively referred to as the “Project”; and

WHEREAS, the affordable housing impact fee permitted by NMC Chapter 17.18 was previously established by Resolution No. 10,184 which is hereby incorporated into this ordinance by reference; and

WHEREAS, the City seeks to establish a policy of requiring specified types of new residential development to include affordable units with market rate units as part of the project, as set forth in proposed NMC Chapter 17.27 (the “Inclusionary Ordinance”). The Inclusionary Ordinance offers residential developers an option to pay a fee in lieu of providing affordable units as part of the project. As stated in the Inclusionary Ordinance, revenue from fees paid in lieu of providing on-site affordable housing units is used to defray the cost of producing affordable housing units in the City, thereby addressing the supply of affordable housing in the City. The affordable housing impact fee established by Resolution No. 10,184 establishes the amount of affordable housing impact fee that must be provided in lieu of a residential developer providing affordable units as part of the project; and

WHEREAS, a staff report dated December 9, 2025, and incorporated herein by reference, described and analyzed the Project for the Planning Commission; and

WHEREAS, on December 9, 2025, the Planning Commission reviewed the staff report at a noticed public hearing on the Project, at which time all interested parties had the opportunity to be heard; and

WHEREAS, following the public hearing, the Planning Commission considered the staff recommendation as provided in the staff report, adopted Resolution 2,030 incorporated herein by reference, and transmitted the resolution to the City Council; and

WHEREAS, a staff report dated January 8, 2026, and incorporated herein by reference described and analyzed the Project for the City Council; and

WHEREAS, on January 8, 2026, the City Council reviewed the staff report at a duly noticed public hearing on the Project, at which time all interested parties had the opportunity to be heard; and

WHEREAS, the City Council did hear and consider all said reports, recommendations and testimony herein above set forth and used its independent judgement to evaluate the Project at the public hearing; and

WHEREAS, the City Council finds that the Project meets the requisite findings of fact necessary for approval as further explained in the staff report and the recommended findings of fact and determinations associated with this Ordinance, as identified in “Exhibit A” attached to this Ordinance; and

WHEREAS, the location and custodian of the Project application and other documents that constitute a record of proceedings for the Project is the City of Newark, 37101 Newark Blvd., Newark, CA 94560; and

WHEREAS, the City’s General Plan, Zoning Code, and Municipal Code are incorporated herein by reference, and are available for review at City Hall during normal business hours and on the City’s website.

NOW, THEREFORE, the City Council of the City of Newark does ordain as follows:

Section 1. That the foregoing recitals are true and correct and made part of this Ordinance.

Section 2. The Project is exempt from further environmental review under the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Section 15061(b)(3) since the proposed amendments would not result in any physical changes and it can be seen with certainty that the amendments would not have a significant effect on the environment. The proposed changes to the NMC do not provide entitlements for any land use development projects, nor do they change the allowed uses of land or the intensity of any previously authorized use of land. Therefore, it can be seen with certainty that adoption of the proposed amendments and additions would not have a significant effect on the environment.

Section 3: Pursuant to NMC Sections 17.39.070 and 17.39.080, the City Council of the City of Newark does hereby make the findings of fact and determinations required by the NMC as further explained in the staff report and set forth in “Exhibit A” attached hereto and incorporated herein by this reference.

Section 4: NMC Section 17.18.030 is hereby amended, with revisions reflected in redline, and NMC Chapter 17.27 is hereby added to the Newark Municipal Code as identified in “Exhibit B”, attached hereto and incorporated herein by reference.

Section 5: If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Newark hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof is declared invalid or unenforceable.

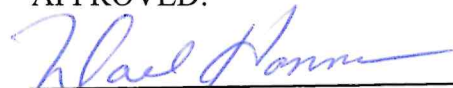
Section 6: Effective Date. This ordinance shall take effect thirty (30) days from the date of its passage. Before expiration of fifteen (15) days after its passage, this ordinance shall be published in The Tri-City Voice, a newspaper of general circulation published and printed in the County of Alameda 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 Grindall at the regular meeting of the City Council of the City of Newark held on January 8, 2026.

This ordinance was read at the regular meeting of the City Council held January 22, 2026. Council Member Catancio moved that it be adopted and passed, which motion was duly seconded, and said ordinance was passed and adopted.

AYES: Council Members Catancio, Grindall, Little, Vice Mayor Jorgens, and Mayor Hannon
NOES: None
ABSENT: None
SECONDED: Mayor Hannon

APPROVED:



MICHAEL K. HANNON
Mayor

ATTEST:



NEETU SALWAN
City Clerk

APPROVED AS TO FORM:



KRISTOPHER J. KOKOTAYLO
City Attorney

Exhibit A
Findings of Fact

Pursuant to Newark Municipal Code Sections 17.39.070 and 17.39.080, the City Council of the City of Newark does hereby make the findings of fact and determinations required by the City of Newark Municipal Code.

The City Council shall not approve a zoning amendment unless the proposed amendment meets the following criteria:

A. The amendment is consistent with the general plan

On October 26, 2023, the City Council of the City of Newark adopted Resolution No. 11,575, adopting a general plan amendment to repeal the Fifth Cycle Housing Element for the period of 2015-2023 and adopt the Housing Element of the General Plan for the Period of 2023-2031 and adopt the Safety Element of the General Plan, in compliance with State Housing Element Law. The 2023-2031 Housing Element contains the following policy and program related to the recommended action:

POLICY H5.4: Amend the existing Inclusionary Housing Ordinance to require on-site production of units rather than allowing the payment of an in-lieu or impact fee to support increased access to affordable housing opportunities across the city and in high opportunity areas.

PROGRAM H4.1: Apply local preference ordinance to new residential development in the Old Town area. Convene an Old Town community working group composed of residents, youth and business owners in the neighborhood. This group will work with staff to develop neighborhood priorities for an anti displacement program for the Old Town Newark Specific Plan area that supports community residents and small businesses to stay in place.

B. Any change in district boundaries is necessary to achieve the balance of land uses desired by the city, consistent with the general plan, and to increase the inventory of land within a given zoning district.

There are no changes to district boundaries proposed as part of the action.

C. The amendment will promote the growth of the city in an orderly manner and to promote and protect the public health, safety, peace, comfort and general welfare.

The proposed action is necessary to comply with the requirements of the City's Housing Element of the General Plan for the Period of 2023-2031, which was adopted pursuant to State law. The requirement for affordable units and establishment of an inclusionary housing program will allow for the production of additional housing that is affordable to lower-income households throughout the community.

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Title 17. Zoning

Amendment to Newark Municipal Code Section 17.18.030

Section 17.18.030 Exemptions from payment of housing impact fee.

This fee shall not apply to developers of residential or non-residential development projects which fall within one or more of the following categories:

- A. Emergency Food and Shelter Services. Development projects to be operated by non-profit organizations and which will provide food storage, meal service, and/or temporary shelter to the homeless.
- B. Specific Uses. Projects for any of the following uses:
 - 1. Colleges and trade schools.
 - 2. Community assembly.
 - 3. Community garden.
 - 4. Cultural institutions.
 - 5. Day care centers providing care for eight or fewer persons.
 - 6. Emergency shelter.
 - 7. Park and recreation facilities.
 - 8. Public works and utilities.
 - 9. Schools.
 - 10. Social service facilities.
 - 11. Temporary uses.
- C. Government Property. Residential or non-residential development 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.
- D. Damaged Property. Any structure proposed to repair or replace a building that was damaged or destroyed by fire or other calamity, and construction of the replacement building begins within one year.
- E. Vested Rights. Residential or non-residential development projects to the extent they have received a vested right to proceed without payment of housing impact fees pursuant to state law including those that are the subject of development agreements currently in effect with the city, if such development agreements were approved prior to the effective date of this chapter and where such agreements expressly preclude the city from requiring payment of the housing impact fee.
- F. Prior Application. Residential or non-residential uses as set forth in an application for a building permit, use permit, rezoning or similar discretionary approval accepted as complete by the city prior to the effective date of this title; however, any extension or modification of such approval or permit after such date shall not be exempt.

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- G. Affordable Housing. Housing for very low, low, or moderate income households that fully mitigates the development's impacts on the need for affordable housing.
- H. Chapter 17.27. Residential development projects that fulfill the requirements of Chapter 17.27.

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Amendment to Newark Municipal Code to Add Chapter 17.27

Chapter 17.27. AFFORDABLE HOUSING

§ 17.27.010. Purpose.

The purpose of this chapter is to:

- A. Enhance the public welfare by ensuring that future residential projects contribute to the attainment of the affordable housing goals set forth in the Housing Element of the General Plan of the City of Newark.
- B. Increase the production of residential units in Newark that are affordable to households of very low, low, and moderate income.
- C. Facilitate a cooperative effort between the City of Newark and the housing development community for the provision of affordable housing to all economic segments of the community.
- D. Ensure that units affordable to households of very low, low and moderate income are distributed throughout the City's various neighborhoods.

§ 17.27.020. Definitions.

For purposes of this chapter, each of the following terms is defined as follows:

"Additions" are increases in habitable space to an existing building or structure.

"Affordable Housing Agreement" means a contractually binding timebound agreement between the City of Newark and a developer of a residential project documenting all of the developer's obligations pursuant to this chapter to implement an approved affordable housing program.

"Affordable Housing Cost" means the housing cost for dwelling units as defined by California Health & Safety Code section 50052.5 for owner-occupied housing and the affordable rent for rental units as defined by California Health & Safety Code section 50053, as applicable.

"Affordable Housing Developer" means a developer with experience constructing, owning and operating no fewer than four affordable residential projects in the State of California in the last 10 years or a developer that is otherwise approved by the City Manager.

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"Affordable housing program" means a method for providing the affordable units in the proposed residential project, a method for a payment in-lieu of providing affordable units, or a combination thereof, pursuant to Section 17.27.060.

"Affordable unit" means a for-sale or rental dwelling unit, restricted to an affordable housing cost for households with very low, lower or moderate incomes as defined in this chapter.

"Area Median Income" or *"AMI"* means the annual median income for Alameda County, adjusted for household size, as published periodically in the California Code of Regulations, Title 25, Section 6932, or its successor provision, or as established by the County of Alameda in the event that such median income figures are no longer published periodically in the California Code of Regulations.

"Average AMI" means the mean of the household income level to which affordable units shall be made available.

"Building permit" means full structural building permits as well as partial permits for other vertical construction of the residential project.

"Construction phase" means either:

- A. The area included within one City approved tentative subdivision map for a residential project where a single final map implements the entire approved tentative map;
- B. The area included within each separate final map for a residential project where multiple final maps implement the entire approved tentative map; or
- C. An area designated as a construction phase in an approved affordable housing agreement.

"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.

"Dwelling Unit" shall have the definition given for dwellings in Newark Municipal Code Section 17.46.040.

"For-Sale" means and refers to any separately conveyable dwelling unit, including a condominium, stock cooperative, community apartment, or attached or detached single-family home, for which a parcel or tentative and final map is required for the lawful subdivision of the parcel upon which the dwelling unit is located or for the creation of the unit in accordance with the Subdivision Map Act (California Government Code section 66410 et seq.) after compliance with the applicable requirements of the Subdivided Lands Act (California Business and Professions Code section 11000 et seq.).

"Habitable space" means floor area within a dwelling unit designed, used, or intended to be used exclusively for living and sleeping purposes.

"Large project" means a residential project with ten or more dwelling units.

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"Lower income" shall have the definition given in California Health & Safety Code section 50079.5.

"Market rate unit" means a dwelling unit in a residential project that is not restricted to an affordable housing cost.

"Moderate income" shall have the definition given in California Health & Safety Code section 50093(b) except that the household shall earn no more than 120 percent of the area median income.

"Resale controls and/or rent restrictions" means legal restrictions, as set forth by the City of Newark, State and Federal law, by which the affordable units shall be restricted to ensure that the unit remains affordable to very low, lower or moderate income households, as applicable, permanently or for the longest period allowed by law. Such resale controls and/or rental restrictions shall generally be consistent with the requirements of Health and Safety Code Section 33334.3(f), as amended from time to time, and as may be more particularly set forth in this chapter. With respect to rental units, such rent restrictions shall generally be memorialized in the form of a regulatory agreement recorded against the applicable property. With respect to for-sale units, such resale controls shall generally be in the form of resale restrictions, deeds of trust and/or other similar documents recorded against the applicable property.

"Rental" means and refers to a dwelling unit that is not a for-sale dwelling unit, and does not include any dwelling unit, whether offered for rental or sale, that may be sold separately from any other dwelling unit as a result of the lawful subdivision of the parcel upon which the dwelling unit is located or creation of the unit in accordance with the Subdivision Map Act (California Government Code section 66410 et seq.), or any residential project including such rental dwelling units.

"Residential project" includes, without limitation, contiguous or non-contiguous parcels under the same ownership or control that have one or more applications filed within a 24-month period for detached single-family dwellings, attached single-family dwellings, multiple dwelling structures, groups of dwellings, condominium or townhouse developments, condominium conversions, cooperative developments, mixed use developments that include dwelling units, and residential land subdivisions intended to be sold to the general public. All non-exempt residential projects are required to comply with the provisions of this Chapter.

"Site control" means possession of a parcel in fee title or leasehold of at least 55 years, or an irrevocable right to acquire a parcel as demonstrated by a purchase and sale agreement, exclusive negotiating agreement, option agreement to purchase or lease the parcel, or similar, and valid for at least two years from date of submittal of initial application to the City of Newark.

"Small project" means a residential project with nine or fewer dwelling units.

"Very low income" means a household earning no more than the amount defined by California Health & Safety Code section 50105.

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§ 17.27.030. General requirements.

- A. Ten Percent Requirement. All large projects designed and intended for permanent occupancy located in any zoning district, for which an application for any use permit, design review approval or subdivision map is filed, shall maintain 10 percent of the total number of dwelling units within the development as affordable units, according to the terms of this chapter. All other large projects shall comply with Chapter 17.18. The foregoing requirement shall be applied no more than once to an approved residential project, regardless of changes in the character or ownership of the development, provided the total number of dwelling units does not change.
- B. Affordability Levels. Affordable units provided pursuant to subsection A of this section shall be made affordable to very low, lower and moderate income households with an Average AMI at or below 50 percent of the area median income for rental residential projects and at or below 110 percent of the area median income for for-sale residential projects. For rental residential projects, the affordable housing cost for affordable units shall not exceed what is affordable to a household at 80 percent of the area median income. For for-sale residential projects, the affordable housing cost shall not exceed what is affordable to a household at 120 percent of the area median income. Affordability restrictions for each affordable unit shall generally be memorialized in the form of a regulatory agreement or covenant recorded against the applicable property.
- C. Conditions of Approval. Any tentative map, use permit or design review approval approving a large project meeting the foregoing criteria shall contain conditions sufficient to ensure compliance with the provisions of this chapter. Such conditions shall specify the schedule of construction of affordable units, the number of affordable units, and appropriate resale controls and rental restrictions.
- D. Concurrent Construction. All affordable units in a large project or construction phase of a large project shall be made available for occupancy concurrently with or in advance of the market rate units.
- E. Design and Distribution of Affordable Units. Unless the City, at its sole discretion, and in cooperation with the developer, approves an alternative means of compliance pursuant to Section 17.27.060, all affordable units shall reflect the range of unit sizes as categorized by number of bedrooms provided in the residential project as a whole, have access to the amenities provided to market rate units in the project, and shall not be distinguished by exterior design, construction, or materials, and shall be reasonably dispersed throughout the project as determined by the Community Development Director.

§ 17.27.040. General procedures.

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- A. Agreements. Prior to the issuance of a certificate of occupancy, resale restrictions and/or rental controls, as applicable, all of which must be acceptable to the Community Development Director and be consistent with the requirements of this chapter, shall be recorded against parcels having affordable units. For for-sale projects, the resale restrictions shall be effective for 99 years, and the 99 year period shall restart with each resale of the affordable unit. For rental projects the rental controls shall be effective for 99 years, or the longest term allowable by law. A developer may request a term of affordability of less than ninety-nine (99) years, but not less than fifty-five (55) years, by demonstrating that the term of affordability would otherwise make the affordable units financially infeasible.
- B. Right of First Refusal. The resale restrictions shall provide that in the event of the sale of an affordable unit, the City shall have the right to purchase any affordable for-sale unit at the maximum prices which could be charged to an eligible household.
- C. Selection Criteria. No household shall be permitted to occupy an affordable unit unless the City or its designee has approved the household's eligibility. For for-sale units, eligibility shall be determined prior to sale of the dwelling unit. For rental units, eligibility shall be determined prior to initial occupancy of the dwelling unit, and on an annual basis thereafter. Eligible potential occupants of affordable units will be qualified on the basis of household income, the area median income, all sources of household income and assets, a relationship between household size and the size of available units, and any further criteria required by law. The developer or designee shall use an equitable selection method established in conformance with the terms of this chapter. No distinction will be made between adults and children. 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. First priority: persons who have been displaced by the proposed residential project;
 - 2. Second priority: persons who live or work within the City of Newark;
 - 3. Third priority: all other eligible persons.

§ 17.27.050. Public subsidy assistance.

- A. It is the intent of this chapter that its requirements of construction and maintenance of affordable units shall not depend upon the availability of any government subsidies. This is not to preclude the use of such programs or subsidies where available, however, and it is anticipated that subsidies of rental units may be available from Federal, State, or regional agencies on an ongoing basis.
- B. Technical and Financial Assistance. Upon request, the City or its designee may provide assistance to developers concerning information regarding financial subsidy programs and economic analysis designed to indicate the most suitable methods by which the terms of this chapter may be implemented.

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§ 17.27.060. Alternative Means of Compliance.

This chapter is not intended to inhibit residential projects where providing affordable units is otherwise infeasible or impractical. Under certain circumstances, a developer may satisfy the requirements to provide affordable units pursuant to Section 17.27.030 (General requirements) through the following means, as documented by an affordable housing agreement:

- A. Large Project In-Lieu Fee. Subject to City Council approval, the developer may satisfy requirements through payment of the large project in-lieu fee for any or all required affordable units. The large project in-lieu fee shall be paid prior to the issuance of a building permit for each dwelling unit in the project. The large project in-lieu fee shall be set forth in the City's Master Fee Schedule or by other action of the City Council. The large project in-lieu fee amount may be amended from time to time by the City Council by resolution, to meet inflationary increases, and the amount shall be set forth in the City's Master Fee Schedule.
- B. Clustered Affordable Units. Subject to City Council approval, with any conditions as may be required by the City, the developer may satisfy requirements to provide affordable units by clustering affordable units within the same site as the residential project or a site contiguous thereto. The clustered affordable units shall comply with all standards of subsection 17.27.030(E), except the standard requiring reasonable dispersal throughout the project. An application for clustered affordable units shall demonstrate the following:
 1. The general requirements of section 17.27.030 establish a financial burden that would otherwise make the residential project infeasible.
 2. Property management and resident services for the affordable units will be comparable to the unrestricted units and better meet the needs of moderate or lower income households.
- C. Off-Site Affordable Unit Development. Subject to City Council approval, the developer may satisfy requirements to provide affordable units by causing the affordable units to be constructed on a non-contiguous site. An application for off-site affordable unit development shall demonstrate the following, unless otherwise authorized by the City Council:
 1. The general requirements of section 17.27.030 establish a financial burden that would otherwise make the residential project infeasible.
 2. Development of affordable units under the proposed alternative means of compliance is financially feasible.
 3. The affordable units will be made available for occupancy concurrently with or in advance of the market rate units.
 4. The developer's site control of the non-contiguous site.

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5. The non-contiguous site's capacity to accommodate the required affordable units as determined at the City's sole discretion.
 6. The developer's written partnership with a qualified affordable housing developer if the developer does not propose to construct the affordable units themselves.
 7. Property management and resident services for the affordable units will be comparable to the market rate units and better meet the needs of moderate or lower income households.
- D. Site Dedication. Subject to City Council approval, the developer may satisfy requirements to provide affordable units by transferring fee title of a site to the City or, an affordable housing developer approved by the City, for development of the affordable units. The City shall not be required to construct affordable units itself, but may sell, lease, or otherwise transfer the dedicated site to an affordable housing developer for development of the affordable units. Any funds collected by the City as a result of the transfer to an affordable housing developer shall be deposited into the City of Newark Affordable Housing Impact Fee Fund and used in accordance with Section 17.27.130. An application for site dedication shall demonstrate the following standards:
1. The general requirements of Section 17.27.030 establish a financial burden that would otherwise make the residential project infeasible.
 2. The site proposed for dedication is competitive for public subsidy programs and the required affordable units are financially feasible on the site.
 3. The site proposed for dedication is appraised at a value equal to or greater than the value of the housing impact fee.
 4. The developer has site control of the site proposed for dedication.
 5. The site proposed for dedication has sufficient capacity to accommodate the required affordable units.
 6. Development of the site proposed for dedication will provide an equal to or greater number of affordable units as would be provided through adherence to the requirements of this chapter.
- E. Other Contractually Binding Alternative Means of Compliance. The City Council, in its discretion, may permit a developer to comply with the purpose of this chapter for a particular residential project through implementation of an alternative affordable housing program instead of by compliance with the provisions of this chapter if:
1. Such alternative affordable housing program is set forth in a binding agreement, including, but not limited to, a government code development agreement, disposition and development agreement, disposition and development loan agreement, owner participation agreement, or affordable housing agreement with the City;

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2. The City Council finds that such alternative affordable housing program will provide an equal to or greater than level of affordable units as would be provided through adherence to the requirements of this chapter.

§ 17.27.070. Additional Provisions.

This chapter is not intended to place any unreasonable burden upon developers of residential projects, and for that reason confers significant economic and land use benefits thereon, as set forth below:

A. Density Bonus.

1. The limitations upon residential density contained in Title 17 shall be deemed modified to the extent required by the terms of this chapter. The city, upon request, may approve an increase in the number of dwelling units permitted in a proposed residential project governed by this chapter, when such an increase in density is consistent with State density bonus law per Section 65915 of the State Government Code and Newark Municipal Code Chapter 17.19. The dwelling units or parcels designated to meet the requirements of the City's affordable housing program shall count toward qualifying the proposed residential development for a density bonus.
2. A developer proposing affordable units may request to have the provisions required under this Chapter incorporated into any density bonus agreement required pursuant to California Government Code Section 65915 et seq. and Chapter 17.19 of this code or for affordable housing streamlining pursuant to state law.

B. Small Project In-Lieu Fees. A developer may satisfy the requirements to provide affordable units pursuant to Section 17.27.030 (General requirements) through the payment of the small project in-lieu fee; provided, that the proposed residential project has no more than 9 dwelling units. The small project in-lieu fees shall be paid prior to the issuance of a certificate of occupancy. The small project in-lieu fee shall be set forth in the City's Master Fee Schedule or by other action of the City Council. The small project in-lieu fee amount may be amended from time to time by the City Council by resolution, to meet inflationary increases, and the amount shall be set forth in the City's Master Fee Schedule. Any small project in-lieu fees collected from a small project will be committed to an affordable housing project pursuant to Section 17.27.130.

C. Fractional Units. In large projects where the calculation of the units required by Section 17.27.030(A) results in a fraction of a unit, such a fraction shall be paid in the form of the large project in-lieu fee, or the developer may elect to build an additional affordable unit. The fractional in-lieu fee payment shall be calculated as follows: Fractional unit divided by the total affordable units required, multiplied by the per square foot large project in-lieu fee rate, multiplied by the total habitable space in the residential project.

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- D. Negotiated compliance. The City may, subject to City Council approval, adjust the required affordability levels of a particular residential project on a case-by-case basis if it is deemed necessary and appropriate by the City to maximize the best suited development for a site.
- E. Waiver of Requirements. The City may, subject to City Council approval, waive the requirements of this chapter if there are unusual development costs associated with the property that would otherwise prevent the residential project from proceeding. Typically, such a condition would involve excessive costs inherent on the property, such as environmental contamination.

§ 17.27.080. Appeals.

- A. Any person aggrieved by any action involving denial, suspension or revocation of an occupancy or other permit, or denial, suspension or revocation of any development approval, may appeal such action or determination in the manner provided for by Section 17.31.110.
- B. Any developer or other person who contends that his or her rights conferred by this chapter have been adversely affected by any determination or requirement of any agency designated by the City as its administrative agent may notify the chief executive officer of said agency to that effect in writing, stating relevant facts. All such contentions shall be considered exclusively by said agency in accordance with such procedures as they may be established. In instances in which violations of this chapter or any agreement with the City on the part of said agency is alleged, City shall take appropriate investigative and corrective actions.

§ 17.27.090. Exemption to general requirements.

Residential projects which fall within one or more of the following categories shall not be subject to the requirements of this Chapter:

- A. The construction of an accessory dwelling unit or junior accessory dwelling unit.
- B. Government Property. Residential 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.
- C. Damaged Property. Any structure proposed to repair or replace a building that was damaged or destroyed by fire or other calamity, and construction of the replacement building begins within one year.
- D. Vested Rights. Residential projects to the extent they have received a vested right to proceed without payment of housing impact fees pursuant to state law including those that are the subject of development agreements currently in effect with the city, if such

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development agreements were approved prior to the effective date of this chapter and where such agreements expressly preclude the city from requiring payment of the housing impact fee.

- E. Prior Application. Residential projects as set forth in an application for a building permit, use permit, rezoning or similar discretionary approval accepted as complete by the city prior to the effective date of this title; however, any extension or modification of such approval or permit after such date shall not be exempt. Residential projects that are exempt pursuant to this section shall still be required to comply with Chapter 17.18.
- F. Affordable Housing. Housing for extremely low, very low, low, or moderate income households that fully mitigates the residential development's impacts on the need for affordable housing.

§ 17.27.100. Monitoring and Enforcement.

- A. The provisions of this chapter shall apply to all agents, successors and assignees of a developer proposing a residential project governed by this chapter. No rezoning tentative map, parcel map, use permit, design review approval, building permit, or other entitlement shall be approved for any residential project unless exempt from or in compliance with the terms of this chapter.
- B. 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.
- C. To the extent permissible by law, the City may require developers of affordable units and their successors and assignees to submit an annual report documenting compliance with the approved affordable housing program and/or conditions of approval, including selection criteria and resale controls and/or rent restrictions. Requirements may be published in the City's administrative guidance.
- D. To the extent permissible by law, the City may charge a fee to recoup the costs of confirming household eligibility for an affordable unit and compliance with resale controls and/or rent restrictions. Such costs shall be enumerated in an affordable housing agreement for the residential project, or the City's published administrative guidance.
- E. To ensure continued relevancy of this chapter and so as not to preclude future development or diminish the production of affordable units in the City of Newark, City Council shall review this ordinance no later than January 1, 2029, and every three years thereafter.

EXHIBIT B

§ 17.27.110. Housing in-lieu fund.

All fees collected pursuant to Section 17.27.060 shall be deposited into a separate account to be designated the City of Newark housing in-lieu fund. The fees collected pursuant to Section 17.27.060, Section 17.27.070(B), Section 17.27.070(C), and all earnings from investment of the fees shall be maintained and expended in accordance with applicable law, and exclusively provide or assure continued provision of affordable housing in the City through acquisition, construction, development assistance, rehabilitation, financing, or other methods, and for costs of administering these programs. Funds may be used for the reasonable and actual administrative costs directly related to the provision of affordable housing financed by the fund. The housing shall be of a type, or made affordable at a cost or rent, for which there is a need in the City and, to the extent feasible, shall be utilized to provide for moderate, low, very low, and extremely low income housing. The fees collected shall be administered by the City Manager or designee, who may develop procedures to implement the purposes of the housing fund consistent with the requirements of this chapter and any adopted budget of the City.