

ORDINANCE NO. 790

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRENTWOOD AMENDING CHAPTER 17.725 OF THE BRENTWOOD MUNICIPAL CODE (AFFORDABLE HOUSING PROGRAM)

WHEREAS, the State of California has declared that the availability of housing is of vital statewide importance, and the early attainment of decent housing and a suitable living environment for every Californian is a priority of the highest order; and

WHEREAS, the City currently has an unmet need for lower income housing and has had residents come forward seeking additional affordable housing opportunities within the City; and

WHEREAS, the Housing Element of City of Brentwood General Plan includes the goal of providing housing that is affordable to all segments of Brentwood's population and calls for the City to cooperate with non-profit, private, and public entities to maximize opportunities to develop affordable housing; and

WHEREAS, the City has monitored the effectiveness of voluntary incentives for producing affordable housing and concluded that a mandatory affordable housing program is needed to produce Brentwood's fair share of affordable housing; and

WHEREAS, the provision of housing affordable to lower income households requires the cooperative participation of government and the private sector; and

WHEREAS, the City's existing affordable housing ordinance was adopted in October, 2003, and will remain in effect until the effective date of this Ordinance;

WHEREAS, the City has met with housing developers to discuss the need and best methods to produce affordable housing and has researched affordable housing programs throughout the State and has included multiple options to create new affordable housing opportunities within the community; and

WHEREAS, this Ordinance is to be interpreted consistently with the City's Residential Growth Management Program as it currently exists and may be amended in the future;

WHEREAS, a duly noticed City Council public hearing was advertised in the Brentwood Press as required by City and State law; and

WHEREAS, the City Council of the City of Brentwood held a public hearing on December 14, 2004, and considered this revised affordable housing ordinance, all information provided in the staff report and consultant's technical report, and public comments received; and

WHEREAS, the City Council of the City of Brentwood makes the following finding per the Brentwood Municipal Code associated with this amendment:

This amendment is consistent with the General Plan and other applicable City plans, policies and regulations, and is appropriate to the public interest, in that it will help implement several General Plan Policies by providing a means to effect the provision of affordable housing opportunities within Brentwood.

NOW, THEREFORE, the City Council of the City of Brentwood ordains as follows:

SECTION 1. Pursuant to CEQA Guidelines section 15162, the negative declaration prepared in connection with the City Council's initial approval of this affordable housing ordinance is hereby adopted and no subsequent negative declaration shall be prepared.

SECTION 2. The foregoing recitals and staff report are found and determined to be true and correct.

SECTION 3. The City Council finds as follows:

- A. New emergency service, school, office, retail, industrial, hotel, warehouse, agricultural and other non-residential uses (hereinafter referred to as "non-residential uses" or "non-residential development projects") in or near the City of Brentwood ("City") have been, and continue to be, a factor in attracting new employees to the region. A number of these employees and their families reside, or will reside, in the City. These new employees and their families create a need for additional affordable housing in the City.
- B. Traditionally these non-residential uses have benefited from an affordable supply of housing for their employees at locations close to the place of employment. However, in recent years, the supply of affordable housing has not kept pace with the demand created by these new employees and their families. If this shortage were to grow or continue, employers would have increasing difficulty in locating in or near the City due to problems associated with attracting a labor force. Employees would be unable to find affordable housing in the area, and accordingly 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.
- C. New residential development in the City has resulted in a population increase and created a demand for additional housing for service workers to serve new City residents.
- D. The competition for housing is especially acute with respect to households of very low and low income (those households with incomes of 50% - 80% or less, below median income for Contra Costa County). An identifiable portion of the new employees attracted to the City by new non-residential 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 and low-income housing, including rental housing, is especially problematic. Prices and rents for housing affordable to households of very low and low income remain below the level needed to attract new construction. This is even truer for households of very low income (those with incomes 50% or below median income for Contra Costa County). Federal and State housing finance and subsidy programs are not sufficient by themselves to satisfy the very low and low-income housing requirements associated with this employment.
- E. On November 10, 1998, the City Council adopted the Housing Element of the City of Brentwood General Plan. On November 9, 2004, the City Council adopted a Housing Element Update. The Housing Element, as updated, calls for the provision of additional housing for all sectors of the population, to accommodate the demands of both existing and new residents attracted to the region by increased employment. The Housing Element also provides that the City should make special efforts to encourage an increased supply of affordable housing. More specifically, the City's Housing Element commits the City to the establishment of an Affordable Housing Program as a key element of its plan to help ensure that housing will be available for all economic segments, as required by State law.
- F. One of the purposes of this ordinance is to establish a feasible means by which developers of residential development projects assist in increasing the supply of affordable housing. The affordable housing requirements contained in this ordinance are designed to create a rational relationship between the amount of housing need created by development and the affordable housing requirement, taking into account the impact of such requirement on housing construction costs and economic feasibility.
- G. The need to provide safe and sanitary affordable dwelling accommodations is a matter of citywide concern and represents a responsibility that should be borne by all sectors of the community. The enactment of an affordable housing requirement for residential development only partially addresses the total impacts caused by residential 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 affordable housing will also be considered to address the existing and future need caused by non-residential uses. The City's General Plan is attempting to attract non-residential development in an effort to meet its goal of jobs housing balance, and at this time an affordable housing requirement for non-residential development would be a disincentive to attainment of such jobs housing balance goals.
- H. Rental and owner-occupied housing in the City has become more and more expensive over time. Housing costs have gone up faster than incomes for many groups in the community and market analysis indicates that rising home prices will render new homes unaffordable to very low, low, and moderate-income homebuyers.
- I. Many persons who cannot afford housing in the City work in the City, have grown up or have family ties in the City, and/or already live and work in the City, but must move because housing is no longer affordable.

- J. Federal and State government programs do not provide nearly enough affordable housing or subsidies to satisfy the housing needs of very low and low-income households who want or need housing in the City. Newly constructed housing is available in the City, with rare exceptions, only at prices that very low, low-income, and moderate-income households cannot afford to pay.
- K. Rising land prices have been a key factor in preventing development of new affordable housing. New market rate housing construction in the City aggravates the existing shortage of affordable housing by absorbing the supply of available residential land. This not only reduces the supply of land for affordable housing but also further increases the price of remaining 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 that often do not permit employees to afford housing in the City.
- L. Rising land prices and the resultant lack of affordability of housing for local residents and people working in the City are further exacerbated by the high demand for housing for new residents who commute to the greater Bay Area to work. The use of limited residential land for these purposes further increases the price of remaining residential land.
- M. The desirability of the City as a bedroom community for workers in the greater Bay Area labor market results from good schools, low crime, good parks, good quality of life, strong agricultural protection and open space policies resulting in a desirable living environment which in turn makes housing affordability for local residents who work in local industries even more difficult to achieve. The City's General Plan and Municipal Code contain policy statements and regulations favoring the protection of agriculture and open space in the County and directing housing and other urban uses to the urban areas. Newly constructed homes in the upper end of the housing market further exacerbate the affordable housing problem by creating greater needs for many services typically provided by very low, low, and moderate-income employees.
- N. Because neither the private market nor the public sector has as yet provided the levels of housing affordability necessary for the maintenance of a balanced community through voluntary measures, local government must take an active lead to insure an adequate supply of housing for residents and working people of all income levels.
- O. The citizens of the City wish to retain a balanced community, with housing available to very low, low, and moderate-income households. 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 City of Brentwood General Plan which calls for the establishment of an Affordable Housing Program.
- P. The City recognizes the need to provide developers with alternative methods of compliance with the City's affordable housing requirement. Should a developer choose an alternative method of compliance, a balance of options will best serve the City, including on-site construction, payment of in lieu fees, dedication of units to the City's rental housing program, and contribute to the City's First Time Homebuyer Program.
- Q. Because current market rate rents for rental housing are affordable to moderate-income residents, the City wishes to encourage the development of low and very-low income rental housing by providing that low and very low-income housing may be dedicated to the City's Rental Housing Program.
- R. A balanced community is only possible if part of the new housing built in the City is affordable to very low, low, and moderate-income households. Amending the Municipal Code of the City to require builders of new housing to include some housing affordable to very low, low, and 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 in the City should be consistent with the community's goal of providing an adequate supply of housing for residents and working people of all income levels. Further, in order to mitigate the impacts caused by new residential development in the City, it is appropriate to impose some of the cost of the increased burden of providing housing for very low, low, and moderate-income households directly upon the sponsors of the development contributing to the shortage of affordable housing.
- S. The Council shall encourage the building and availability of affordable housing in the City by providing incentives and reducing the constraints on such development in the community. In this regard, the Council intends to consider such things as the establishment of public/private partnerships and the provision of incentives to the building community as provided by law in the Housing Element of the City of Brentwood General Plan, and in Chapter 17.725 of the Municipal Code.
- T. Maintaining the affordability of units constructed under Chapter 17.725 best serves the goal of assuring a continuing supply of affordable housing for local residents and people who work in the City but cannot afford to live here. If affordable units are not restricted so as to continue to be affordable at the time of resale, then such units will become market rate units within a relatively short period of time and, with the limited supply

- of residential land combined with increasing local land and building costs, the units will not be replaceable.
- U. 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 authority to do so without respect to this Chapter. As mentioned above, the efforts contained in this Chapter are simply one aspect of the City's developing strategy to address affordable housing needs on a variety of fronts.
 - V. 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. Chapter 17.725 of the Brentwood Municipal Code, "Affordable Housing," is hereby amended to read as follows:

CHAPTER 17.725 AFFORDABLE HOUSING

- 17.725.001 TITLE AND PURPOSE OF PROVISIONS
- 17.725.002 DEFINITIONS
- 17.725.003 GENERAL REQUIREMENTS
- 17.725.004 ALTERNATIVE EQUIVALENT PROPOSAL
- 17.725.005 IMPLEMENTATION PROCEDURES
- 17.725.006 AFFORDABLE UNIT CONCESSIONS AND CONSTRUCTION INCENTIVES
- 17.725.007 AFFORDABLE HOUSING TRUST FUND
- 17.725.008 BRENTWOOD RENTAL HOUSING TRUST FUND
- 17.725.009 ENFORCEMENT
- 17.725.010 APPEAL

17.725.001 TITLE AND PURPOSE OF PROVISIONS.

- A. Title: The provisions of Chapter 17.725 shall be known as the "Affordable Housing Program" of this title.
- B. Purpose: The purpose of this Affordable Housing Program is to:
 - 1. Enhance the public welfare and assure that further housing development contributes to the attainment of the City's housing goals as described in the Housing Element of the General Plan, by creating, preserving, maintaining, and protecting housing affordable for households of very low, low, and moderate income.
 - 2. Assure that the remaining developable land in the City's Planning Area is utilized in a manner consistent with the City's housing policies and needs.

17.725.002 DEFINITIONS.

As used in this Chapter, each of the following terms shall be defined as follows:

- A. Affordable Housing Agreement is a recorded agreement between the City and a residential developer setting forth the residential developer's compliance with the requirements of this Chapter.
- B. Affordable Housing Cost is the cost defined in the California Health and Safety Code for owner-occupied and tenant-occupied units. The Housing Manager, on or about July 1 of each calendar year shall publish the maximum Affordable Housing Costs for sales prices and rents as calculated in accordance with the applicable provisions of the California Health and Safety Code.
- C. Affordable Unit means an ownership or rental-housing unit, including senior housing, occupied by and available to households of very low, low and moderate incomes at an Affordable Housing Cost, adjusted for household size as defined in this Chapter, with deed restrictions as defined in this Chapter in favor of the City.
- D. Dwelling Unit means a dwelling designed and intended for occupancy by one household.
- E. First Time Homebuyer means a household which has not owned its principal place of residence within the last three years.
- F. Household Size means the number of persons residing at least during 50% of a calendar year within a Dwelling Unit. For the purposes of this Chapter, appropriately sized Affordable Units for a given household

size are as follows, or as may be amended by the California Health and Safety Code:

Persons 1 2 3 4 5 6 or more

Unit Size Studio 1 Bedroom 2 Bedroom 3 Bedroom 4 Bedroom 5 Bedroom

- G. In-Lieu Fee means a fee paid to the City by an applicant in-lieu of providing the required Affordable Units.
- H. Low-Income Household means a household whose annual income does not exceed the qualifying limits set for "lower income households" in Section 50079.5 of the California Health & Safety Code.
- I. Moderate-Income Household means a household whose annual income does not exceed the qualifying limits set for "moderate income households" in Section 50093 of the California Health & Safety Code and does not include a very low or low-income household.
- J. Over-Concentration of Very Low and Low-Income Households means a U.S. Census block group where 50% or more of the households are of very low or low income, as described in the City's Low Income Concentration Study, any updates thereof, and the Housing Element of the General Plan.
- K. Refinance and Resale Limitation Agreement means a recorded agreement between the City and an individual homebuyer of an ownership Affordable Unit documenting Resale Controls and/or Rent Restrictions.
- L. Resale Controls and/or Rent Restrictions means legal restrictions by which Affordable Units shall be restricted to ensure that the unit remains affordable to very low, low, or moderate-income households, as applicable, for a period of not less than 45 years for ownership units and not less than 55 years for rental units, or longer periods if required by State housing or redevelopment law. Resale controls for owner-occupied units shall be in the form of resale restrictions, deeds of trust, and/or other similar documents recorded against the subject property. Rent restrictions for rental units shall be in the form of a regulatory agreement recorded against the subject property. Rent restrictions for rental units owned by the City through the rental housing program shall be permanent.
- M. Residential Development includes, without limitation, single-family dwellings, multiple-family dwellings, groups of dwellings, condominium or townhouse developments, condominium conversions, cooperative developments, mixed use developments that include housing units, manufactured housing, mobile homes, and residential land subdivisions intended to be sold, leased, or rented to the general public.
- N. Very Low-Income Household means a household whose annual income does not exceed the qualifying limits set for "very low income households" in Sections 50093 and 50105 of the California Health & Safety Code and "extremely low income households" in Sections 50093 and 50106 of the California Health & Safety Code.

17.725.003 GENERAL REQUIREMENTS.

- A. Applicability. This Chapter shall apply to all new Residential Developments of 4 or more lots or Dwelling Units designed and intended for residential occupancy in the City's Planning Area. No Residential Development, other than that exempted below, shall be undertaken, and no building permits shall be accepted for processing or issued, unless the development has been approved in accordance with this Chapter.
- B. Ten Percent Affordability Requirement. Residential Development of 4 or more lots or Dwelling Units designed and intended for residential occupancy shall construct or make possible the construction of a minimum of 10 percent of the total number of Dwelling Units within the Residential Development as Affordable Units, allocated to income levels as set forth in this Chapter, or as provided in an Affordable Housing Agreement which specifies the means of satisfying this Chapter, or as specified by State Redevelopment Law (Health and Safety Code § 33413). The foregoing requirement shall be applied prior to the application of a density bonus and no more than once to an approved Residential Development, regardless of changes in its character or ownership, provided that the total number of Dwelling Units does not change.
 - 1. Residential Development of 4-9 Dwelling Units. Residential Development consisting of 4-9 Dwelling Units may either construct one low-income Affordable Unit or pay a low-income fee in lieu of construction.
 - 2. Application to Residential Development of 5 or more Dwelling Units. In applying this requirement to Residential Development consisting of 5 or more Dwelling Units, any decimal fraction less than 0.50 Dwelling Units shall be disregarded and any decimal fraction equal to or greater than 0.50 Dwelling Units shall be construed as one Dwelling Unit.
- C. Exemptions. The following are exempt from the provisions of this Chapter:
 - 1. Residential Development a development agreement expressly precluding compliance with this Chapter or an Ordinance of this nature. In cases in which the development agreement does not expressly preclude compliance with this Chapter, the project shall comply with this Chapter.

2. Replacement housing due to natural disaster on a one for one basis (i.e., one Dwelling Unit replaced for each legally existing Dwelling Unit).
3. Modifications to existing properties or structures that do not increase the number of Dwelling Units.
4. Residential care facilities with Dwelling Units that are non-self-sufficient units; that is, they do not include kitchen facilities (if a project includes both self-sufficient and non-self-sufficient units, only the latter are exempt).
5. Subdivisions consisting of between 1 and 3 units.
6. Development of up to three new Dwelling Units on an existing residential lot of record.
7. Up to two additional units on a lot zoned to accommodate up to a maximum of three units, and which already contains one existing unit.
8. A residential Second Unit (as defined by State law) on an existing residential lot, subject to compliance with the Zoning Ordinance.
9. Developments and/or subdivisions with between 4 and 9 parcels or Dwelling Units may either construct one Affordable Unit or pay the Housing In-Lieu Fee at the low-income level as established by Resolution of the City Council, or other alternative equivalents shall be provided, as established in this Chapter. However, if a Residential Development is later resubdivided into 10 or more parcels or Dwelling Units, the City's affordable housing requirement may not be satisfied by payment of an In Lieu Fee.

D. Allocation of Affordable Units to Income Levels. Dwelling Units for Very Low, Low, and Moderate-Income Households as required by this Chapter shall be allocated as follows:

Ownership Development

Moderate-income households 3%

Low-income households 4%

Very Low-income households 3%

Rental Development

Low-income households 5%

Very Low-income households 5%

E. Conditions of Approval. Conditions of Approval calling for compliance with prior rules, regulations, laws, ordinances, and policies of the City shall be interpreted to require compliance with this Chapter.

F. Concurrent Construction. All Affordable Units in a Residential Development or phase of a Residential Development shall be constructed prior to or concurrently with market-rate units

G. Design and Distribution of Affordable Units. All Affordable Units within a Residential Development shall be similar to the market rate units in exterior design, quality, materials, and architectural elements. Affordable Units may be smaller in size and have different interior amenities than the market rate units in a Residential Development. In all cases, Affordable Units shall be comparable to market rate units in exterior appearance, style, and overall construction quality, as well as number and proportion of bedroom types, and shall be dispersed throughout the development project so as to prevent the concentration of Affordable Units, unless the Planning Commission has approved an alternative distribution pattern, or approval of an off-site location has been granted.

1. Very Low to Medium-Density Zoning. For Residential Developments with very low- to medium-density zoning designations as defined by the General Plan, the Affordable Unit may be smaller in size than other models in the Residential Development. The minimum permissible Affordable Unit size is 1,600 square feet on a 3,000 square foot parcel. As a means to provide massing and lot proportions consistent with the Residential Development, a duet unit will satisfy the City's affordable housing requirement. For example, a duet unit can be located on a corner with each duet unit being 1,600 square feet on two separate 3,000 square foot parcels.
2. High to Very High-Density Zoning. For Residential Developments with high to very high-density

zoning designations as defined by the General Plan, the Affordable Units shall be comparable to market-rate units in overall size.

3. Length of Affordability. All affordable ownership units shall remain affordable for a period of at least 45 years from date of original occupancy and each subsequent ownership, and all affordable rental units shall remain affordable for a period of at least 55 years from the date of the initial rental or leasing period, or longer periods as may be required by State housing or redevelopment law.

17.725.004 ALTERNATIVE EQUIVALENT PROPOSAL.

As an alternative to constructing affordable units on-site, a residential developer may propose one of the alternative equivalents set forth below to meet the requirements of section 17.725.003. An alternative equivalent proposal may include, but is not limited to, payment of an In Lieu Fee (available to ownership Residential Developments but not rental Residential Developments), dedication of vacant developable land, dedication of constructed units to the City's Rental Housing Program, construction of Affordable Units on another site, and conversion of existing market rate Dwelling Units within the City to Affordable Units through acquisition and enforcement of required affordability restrictions consistent with this Chapter. All alternative equivalent proposals must be submitted in writing, demonstrate that the alternative equivalent will further affordable housing in the City to an equal or greater extent than the construction of required on-site Affordable Units required under Section 17.725.003(D) and (E), and satisfy the following minimum conditions: 1) Be consistent with the City's Housing Element, 2) provide the same amount of affordable housing, and 3) have equivalent or lesser impact on the City's administrative obligations, including maintenance and management duties, than the on-site requirement.

Additionally, for ownership projects, an alternative equivalent proposal must result in a citywide balance of the following components: Construction of Affordable Units, Payment of in lieu fees and contribution to the City's first-time homebuyer program, and dedication of a portion of the units to the City's affordable housing rental program.

- A. Approval of Payment of In Lieu Fees. In Lieu Fees may be paid for 1) Residential Developments consisting of between 4 and 9 Dwelling Units or 2) the very low-income portion of Residential Development consisting of 10 or more Dwelling Units. The amount of the In-Lieu Fee shall be as set forth by resolution of the City Council, which may be amended from time to time to reflect inflation, and changed conditions in the City and the region. In-Lieu Fees shall be paid at building permit issuance. The amount of the fee shall be as set forth in the In-Lieu Fee resolution in effect at the time of issuance of the building permit. In-Lieu Fees paid to the City shall be deposited into the Affordable Housing In-Lieu Fee Fund in accordance with Section 17.725.007.

No In-Lieu Fee shall be allowed for rental developments. Rental developments must construct Affordable Units on-site or satisfy the affordable requirements through an alternative equivalent proposal other than payment of In-Lieu Fees.

- B. Dedication of Vacant Developable Land. An applicant may dedicate vacant developable land to the City or City-approved non-profit housing developer in lieu of constructing a portion of the required Affordable Units, if the City Manager finds all of the following:
 1. The dedication of vacant land in-lieu of constructing Affordable Units is consistent with this Chapter's goal of creating, preserving, maintaining, and protecting housing for very low, low, and moderate-income households.
 2. The dedicated vacant land is large enough and appropriately zoned to accommodate the number of units that the applicant would otherwise be required to construct by Section 17.725.003 (D) and (E).
 3. The dedicated vacant land is improved with infrastructure and utilities required to serve the property, including, but not limited to, power, telephone, cable, gas, water, sewer and fiber optics, grading, and all applicable fees, taxes, and assessments, including, but not limited to, school and flood control fees, and excluding any affordable housing in lieu fees, have been or will be paid by the applicant.
 4. The dedicated vacant land (if zoned multi-family) is not located within an area of the City currently experiencing an over-concentration of very low, low, or moderate-income households as defined in this Chapter.
 5. The dedicated vacant land is located inside the City, or the vacant land will be annexed to the City prior to issuance of any building permits to the applicant for his/her related market rate Dwelling Unit(s).

C. Off-Site Construction or Conversion of Market Rate Units To Affordable Units.

An applicant may construct the required Affordable Units off-site from the proposed market-rate development site or convert existing market-rate units to Affordable Units with the approval of the City Council and subject to the City Council's approval of each of the following findings and imposition of the following conditions of approval on each tentative map:

1. Required Findings:

- a. The construction of the Affordable Units off-site or conversion of the existing market-rate units, excluding mobile home units and units within cooperative developments, in lieu of constructing Affordable Units on-site is consistent with this Chapter.
- b. The developer has submitted documentation to the satisfaction of the City Manager or designee that demonstrates that it would be financially or otherwise infeasible or impractical to construct Affordable Units on-site, or that off-site construction or conversion of market-rate units to Affordable Units will significantly benefit the City.
- c. The conditions of approval and subdivision guarantee for a residential project, or other security such as a cash deposit are adequate to provide for the construction of the off-site Affordable Units prior to or concurrently with the completion of the on-site construction of the market-rate units.
- d. Pursuant to Policy 3.3 of the Housing Element of the General Plan, any Affordable Units to be constructed off-site will not be located within any area of the City currently experiencing an over-concentration of very low, low, or moderate-income- households as defined in this Chapter.
- e. The quality and quantity of Affordable Units constructed off-site and market-rate units converted to Affordable Units shall be equivalent to Affordable Units that would have been constructed on-site to satisfy the City's affordable housing requirement.
- f. The Residential Development will be subject to the Conditions of Approval set forth in section 17.725.004(C)(2) below. The conditions of approval for the market rate development shall require that any off-site Affordable Units be governed by Resale Controls and/or Rent Restrictions similar to those required for on-site Affordable Units.

2. Required Conditions:

- a. Affordable Units constructed off-site shall be constructed at the time specified in the Affordable Housing Agreement.
- b. Affordable Units converted from market-rate units shall be both converted and inspected at the time specified in the Affordable Housing Agreement. Market rate units converted to Affordable Units shall require inspection by the Community Development Department to ensure that the Affordable Units are in good condition and repair, and conform to all applicable City building and zoning codes.
- c. Existing very low, low, or moderate-income households that occupy market rate units being converted to Affordable Units shall not be displaced from those units. If temporary or permanent displacement occurs while the converted units are being repaired or rehabilitated, the developer shall be responsible to pay relocation and moving benefits to the displaced households in accordance with the California Code of Regulations, Title 25, Chapter 6, (California Relocation Assistance Guidelines). The calculation of relocation and moving benefits to be provided by developers to temporarily or permanently displaced households shall be submitted to and approved by the City for verification of compliance with the California Relocation Assistance Guidelines.

D. Dedication of Affordable Units to the City of Brentwood. An applicant may dedicate constructed or converted on-site or off-site affordable Dwelling Units to the City's rental housing program to satisfy the requirements of this Chapter. Mobile homes and units within cooperative developments are excluded from dedication. Each unit dedicated to the City shall equate to the construction of 2 Affordable Units that would otherwise be required pursuant to Section 17.725.003 (D) and (E). Any units dedicated to the City's rental housing program shall be intended as rental units with permanent affordable rental restrictions. Net proceeds from the rental stream from these affordable rental units shall be deposited into a Brentwood Rental Housing Trust Fund administered by the City's Finance Director in accordance with Section 17.725.008.

All units dedicated to the City pursuant to this Chapter shall meet the following requirements prior to acceptance by the City:

1. All applicable fees (including development impact fees), Capital Improvement Financing Program assessments, and bond interest payments shall have been prepaid by the developer.
 2. The units shall be less than 20 years old and in good condition and repair, as verified by an inspection conducted by the Community Development Department. A second such inspection may need to be performed to confirm that any repair punchlist generated by the initial inspection is completed prior to the City's acceptance of the unit into the Rental Housing Program.
 3. The developer shall have installed any front yard, sideyard, any backyard landscaping and the unit's interior shall meet the City's minimum interior finish and appliance requirements.
 4. The sprinkler system, window coverings, and all appliances shall have been installed in the unit in accordance with the list of required items maintained by the City Manager or designee.
 5. Each unit must be on a subdivided parcel in accordance with Government Code sections 66426, 66427, or 66428.
- E. Contribution to City's First Time Homebuyer Program. An applicant may request to contribute to the City's First Time Homebuyer Program to satisfy the moderate unit requirements of this Chapter.
- F. Other Means of Fulfilling Affordable Housing Requirements. Subject to City Manager or designee approval, any developer may fulfill its affordable housing requirement through additional alternative equivalent methods not specifically mentioned in this Chapter, provided that the City Council determines such alternative results in the same number of Affordable Units that would have been provided with on-site construction of Affordable Units.

17.725.005 IMPLEMENTATION PROCEDURES.

- A. Satisfaction of Affordable Housing Requirement. Each proposal for satisfying the City's affordable housing requirement, together with a proposed Affordable Housing Agreement per Section 17.725.005(B), shall be reviewed by the City Manager or designee, considered for recommendation by the City Council Housing SubCommittee, and forwarded to the City Council for approval on its consent calendar agenda. The required Affordable Units shall be constructed or converted unless the applicant provides documentation to the satisfaction of the City Manager, detailing why it is not financially or otherwise feasible to construct or convert the Affordable Units.
- B. Agreements. Prior to the issuance of a building permit for any unit within a Residential Development to which this Chapter applies, the City and the residential developer shall have entered into an Affordable Housing Agreement in a form approved by the City Attorney. For those Residential Developments for which Affordable Units will be constructed or converted on- or off-site, the Affordable Housing Agreement shall include appropriate Resale Controls and/or Rent Restrictions. For ownership Affordable Units, the City and the individual homebuyer shall be required to enter into a recorded Refinance and Resale Limitation Agreement in a form approved by the City Attorney.
- C. Annual Monitoring and Transfer Fees. Agreements involving rental units shall require the owner of the affordable rental units to submit an annual monitoring report to the Housing Manager, in a format approved by the City Manager. For each affordable rental unit provided hereunder, the current owner may be required to pay an annual monitoring fee for the term of required affordability in the amount set forth in the Affordable Housing Agreement. For each owner-occupied Affordable Unit provided under this Chapter, the current owner may be required to pay a transfer fee for any change of ownership during the term of required affordability in the amount set forth in the Refinance and Resale Limitation Agreement.
- D. Resale Prices For Affordable Ownership Units. The maximum resale price for an affordable ownership unit and terms of resale to an eligible household shall be set by the Housing Manager pursuant to the Affordable Housing Cost as defined in Section 17.725.002 (A) and as set forth in a Refinance and Resale Limitation Agreement.
- E. City's Right of Option to Purchase Affordable Ownership Units. The resale restrictions as set forth in the Refinance and Resale Limitation Agreement shall provide that in the event the owner cannot in good faith and despite his or her best reasonable efforts, locate an eligible household to purchase an affordable ownership unit at an affordable housing cost, the owner shall give written notice of such circumstances, and an option to purchase, to the City.
- F. Selection Criteria for Rental or Ownership Units. No household at the time of move-in shall be permitted to

rent, purchase or occupy an Affordable Unit that is required under this Chapter unless its qualifications are consistent with this Chapter and the Housing Manager has approved the household's eligibility. Eligible potential occupants of ownership Affordable Units must be First-Time Homebuyers and will be qualified on the basis of household income as defined in this Chapter, including all sources of income and assets, the relationship between household size and the size of the available units, and any further criteria required by law and/or established by the City Council. The affordable housing developer shall use an equitable selection method established in conformance with the terms of this Chapter and in compliance with State and Federal law. Selection of qualified households shall be based on the affordable housing priorities established below:

Priority 1. Emergency and school district personnel, current Brentwood residents, and agricultural and other workers employed within the Brentwood Planning Area as defined in the Land Use Element of the General Plan. Forty percent of the available Affordable Units shall be first made available to any qualified emergency and school district personnel. If emergency and school district personnel do not utilize 40% of the Affordable Units, then they shall be made available to other qualified Priority 1 applicants, prior to being made available to Priority 2 applicants.

Priority 2. Other qualified non-residents.

To qualify as "emergency and school district personnel," the household must include a person employed by the East Diablo Fire District, Brentwood Police Department, Brentwood Union School District, Liberty Union High School District, or the Brentwood Campus of the Los Medanos College prior to the eligibility determination.

To qualify as a "Brentwood resident," the household occupants shall have resided within the City of Brentwood for one year prior to the eligibility determination. To qualify as a non-resident "employed within the City of Brentwood," the household must include a person employed full-time (40 hours per week) at an address inside Brentwood's city limits at the time of eligibility determination.

The Housing Manager shall establish and maintain eligibility selection contact lists for qualified households based on the two housing priority groups mentioned above. Proof of qualification for a priority group shall be provided by a household before placement on one of the selection contact lists. The lists shall be updated as needed.

By virtue of their position or relationship, City senior management employees and officials and their children, or members of the City's agencies, authorities, or commissions who have, by the authority of their position, policy making authority or influence affecting City housing programs, are ineligible to occupy an Affordable Unit:

- G. Requirements for Occupancy/Final inspection. No occupancy shall be permitted, no final inspection approved, or release of utilities authorized for any new Dwelling Unit in the applicable phase of a Residential Development until the developer has satisfactorily completed the requirements within this Chapter, i.e., on-site construction of Affordable Units, alternative equivalent proposal action(s), payment of the Affordable Housing In-Lieu Fee, or dedication of Affordable Units to the City, for that phase.

17.725.006 AFFORDABLE UNIT CONCESSIONS AND CONSTRUCTION INCENTIVES.

For Residential Development meeting the requirements specified in Section 17.725.003 of this Chapter, the City may offer incentives or financial assistance to encourage compliance with this Chapter to the extent resources for this purpose are available and approved for such use by the City. In order to provide flexibility in the application of these concessions and incentives, and to ensure that they fit the variety of circumstances and different development projects regularly processed by the City, such incentives may include, but shall not be limited to any of the following items, applied alone or in any combination upon the City Council's finding that a developer has proven that the incentive is necessary to the financial feasibility of the Residential Development:

- A. Development Processing Fee Deferral. The City Manager or designee may approve deferring payment of City processing and plan check fees applicable to the review and processing of the project. The terms and payment schedule of the deferred processing fees shall be subject to the approval of the City Manager or designee. In no case shall deferred development processing fees be paid later than occupancy of any of the

- units in the Residential Development. In no case shall fees be waived.
- B. Development Impact Fee Deferral. The City Manager or designee may authorize the deferred payment of development impact fees applicable to the Affordable Units. Approval of this incentive requires demonstration by the applicant that the deferral increases the project's feasibility. The applicant must provide appropriate security to ensure future payment of applicable development impact fees. In no case shall deferred development impact fees be paid later than occupancy of any of the units in the Residential Development. In no case shall fees be waived.
 - C. Density Bonus. Concurrently with consideration of an application for a Residential Growth Management Program allocation, the City may award a density bonus for developments that comply with the very low, low, or moderate-income affordability provisions of this Chapter by constructing units on-site, dedicating units, paying the appropriate In-Lieu Fee, providing an acceptable Alternative Equivalent Proposal, or a combination of the above, in accordance with this Chapter. In the event that a development is also eligible for a density bonus pursuant to Government Code section 65915, the density bonus authorized pursuant to this Chapter shall be included in any density bonus obtained pursuant to state law and shall not increase the amount of the density bonus above that afforded by state law. An application for a density bonus must be received concurrently with an application for Residential Growth Management Program allotments. The density bonus provided shall initially be set at 9% above the midpoint of the density range established in the General Plan and Zoning Code. However, the cumulative density including the density bonus shall not exceed the maximum density set forth in the City's General Plan or Zoning Code. Fractional density bonus units shall be rounded in the manner set forth in section 17.725.003(B)(2) above. The density bonus amount shall be periodically reviewed by the City Engineer, the Community Development Director, and the Housing Manager, who will recommend that adjustments, as appropriate, be adopted by resolution of the City Council. Density bonus units authorized under this Chapter shall be excluded from the affordability requirements specified in Section 17.725.003.
 - D. Flexible Design Standards. The Planning Commission may modify City standards and/or approve design modifications for Affordable Units that increase the feasibility of the construction of Affordable Units, including but not limited to, the following:
 - 1. Reduced lot sizes.
 - 2. Reduced setback requirements.
 - 3. Reduced open space requirements.
 - 4. Construction of duplexes or triplexes on corner lots within single-family areas.
 - 5. Reduced landscaping requirements.
 - 6. Reduced interior amenities.
 - 7. Reduced parking requirements.
 - 8. Height restriction waivers.

The applicant shall be responsible for documenting to the satisfaction of City Manager or designee, that the modification is necessary for the financial or other feasibility of the Residential Development. Except for any standards modified by the Planning Commission, the project must otherwise be consistent with all required General Plan, Zoning Code, Uniform Building Code, and other applicable City regulations and policies.

- E. Fast Track Processing. The City Manager or designee may authorize prioritized application review and project processing including environmental review, report preparation, entitlement meetings, plan checks, and project inspections
- F. Direct Financial Assistance. The City Council may authorize provision of direct financial assistance in the form of a loan or grant from collected affordable housing trust funds as described in Section 17.725.007 for developments which include ownership and/or rental dwellings affordable to very low, low, or moderate-income households that exceed minimum Affordable Unit counts required under Section 17.725.003.
- G. Additional Concessions and Incentives. The City Council may consider, on a case-by-case basis, at its sole discretion, the provision of additional concessions or incentives consistent with state law and the Housing Element of the City of Brentwood General Plan for Residential Development projects that exceed the requirements of this Chapter.

17.725.007 AFFORDABLE HOUSING IN-LIEU FEE FUND.

- A. Creation. In-lieu fees shall be deposited into the Affordable Housing In-Lieu Fee Fund.
- B. Use. The Finance Director shall administer all monies in this Fund including any interest earnings. Funds shall

be disbursed at the discretion of the City Council for the purpose of assisting in the construction of very low, low, and moderate-income Dwelling Units, or helping with other affordable housing opportunities. The Finance Director is authorized to utilize up to 20% of these funds annually for City housing personnel and administrative costs.

17.725.008 BRENTWOOD RENTAL HOUSING TRUST FUND.

- A. Creation. Net rental income from all rental units dedicated to the City's rental housing program as described in Section 17.725.004 (D) shall be deposited into a Brentwood Rental Housing Trust Fund.
- B. Use. The Finance Director shall administer all monies in this Fund including any interest earnings. All Funds other than those specified in Section 17.725.008 (C) shall be utilized to purchase, construct or repair single or multi family rental unit inside the City limits. One half of the rental income may be utilized from time to time at the City Council's discretion to further the provision of affordable housing in the City of Brentwood so long as sufficient funds remain to pay for the maintenance and operation of existing affordable housing in the City's rental housing program.
- C. Withholding. The Finance Director is authorized to withhold 20% of the net proceeds from the rental stream of these affordable rental units to fund City housing personnel and administrative costs directly related to management and administration of the Brentwood Rental Housing Trust Fund and program. The Finance Director is further authorized to withhold up to an additional 15% of net proceeds from the rental stream to reimburse City development fees and agricultural mitigation fees for these units until the City development fee accounts are whole.

17.725.009 ENFORCEMENT.

- A. General. The City shall enforce this Chapter, and its provisions shall be binding on all agents, successors, and assigns of an applicant. The City may suspend or revoke any building permit or approval upon finding a violation of any provision of this Chapter. No land use approval, building permit, or occupancy approval shall be granted for any Residential Development unless it is in compliance herewith, including but not limited to, actions to revoke, deny, or suspend any permit or development approval.
- B. Excessive Rents/Legal Action. It shall be unlawful, a public nuisance and a misdemeanor for any person to sell or rent an Affordable Unit at a price or rent exceeding the maximum allowed under this Chapter or to a household not qualified under this Chapter, and such person shall be subject to a \$500.00 fine per month from the date of original non-compliance until the Affordable Unit is in compliance with this Chapter. If the City determines that rents in excess of those allowed by operation of this Chapter have been charged to a tenant residing in an affordable rental unit, the City may take appropriate legal action.
- C. Violation Abatement. The City of Brentwood City Attorney or the Contra Costa County District Attorney, as appropriate, shall be authorized to abate violations of this Chapter and to enforce the provisions of this Chapter and all implementing regulatory agreements and affordability controls placed on Affordable Units by civil action, injunctive relief, and any other proceeding or method permitted by law. Remedies provided for herein shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

17.725.010 APPEAL.

- A. A developer of any project subject to the requirements of this Chapter may appeal to the City Council for a reduction, adjustment, or waiver of its requirements based upon the absence of any reasonable relationship or nexus between the impact of the Residential Development and the amount of the affordable housing requirement.
- B. Any such appeal shall be made in writing and filed with the housing manager along with the applicable administrative fee for processing costs as set forth by city council resolution no later than 10 days before the first public hearing on any discretionary approval or permit for the development, or if no such discretionary approval or permit is required, or if the action complained of occurs after the first public hearing on such permit or approval, then the appeal shall be filed within 10 days after payment of the fees objected to. The appeal shall set forth in detail the factual and legal basis for the claim of waiver, reduction, or adjustment. The City Council shall consider the appeal at the public hearing on the permit application or at a separate hearing within 60 days after the filing of the appeal, whichever is later. The appellant shall bear the burden

of presenting substantial evidence to support the appeal including comparable technical information to support appellant's position. A waiver of an affordable housing requirement may only be approved by the City Council if the developer demonstrates that there is no nexus between the proposed project and its impact upon the City's provision of affordable housing. The decision of the Council shall be final. If a reduction, adjustment, or waiver is granted, any change in use within the project shall invalidate the waiver, adjustment, or reduction of the affordable housing requirement."

SECTION 5. Phase-In Partial Exemption. The following Residential Developments shall continue to be subject to the City's phase-in partial exemption in either of the following two cases:

1. Any Residential Development of 4 or more units satisfying each of the following conditions:
 - a. A vesting tentative map has been approved for the Residential Development prior to October 9, 2003.
 - b. The Residential Development's conditions of approval include a condition requiring compliance with the City's Affordable Housing Program.
 - c. Affordable Housing Agreement has been negotiated with the Council's Housing SubCommittee and received a positive recommendation from the Council's Housing SubCommittee prior to December 15, 2004.
2. Any Residential Development of 4 or more units with either:
 - a. An application for a Residential Growth Management Program allocation that has been deemed complete by the City between October 9, 2003, and the effective date of this Ordinance; or
 - b. A vesting tentative map or development agreement approved between October 9, 2003, and the effective date of this Ordinance.

In accordance with the City's practice in effect prior to the effective date of this Ordinance, the Residential Developments specified above shall either:

1. Construction of 5 percent of the total number of Dwelling Units within the Residential Development as Affordable Units, 70 percent of which shall be affordable to low income households and 30 percent of which shall be affordable to very low income households; or
2. If the Residential Development's average lot size exceeds 8500 square feet, pay the in-lieu fee in effect at the time of building permit issuance for 5% of the total number of Dwelling Units within the Residential Development, 70 percent of which shall be the amount in effect for low income households and 30 percent of which shall be the amount in effect for very low income households.

This phase-in exemption shall sunset, and all Residential Developments shall be subject to the full requirements of this Ordinance upon its effective date.

SECTION 6. This Ordinance shall take effect and be in force thirty days following its adoption and, prior to the expiration of fifteen days after its adoption, it shall be published once with the names of the council members voting for and against it in a newspaper of general circulation, available in the City of Brentwood.

SECTION 7. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, the holding shall not affect the validity or enforceability of the remaining provisions, and the council declares that it would have adopted each provision of this ordinance irrespective of the validity of any other provision.

SECTION 8. Any judicial review of this Ordinance shall be by writ of mandate under Code of Civil Procedure 1085. Any action or proceeding seeking to attack, review, set aside, void or annul this ordinance shall be commenced within 90 days after the adoption of this Ordinance.

SECTION 9. This Ordinance shall be published in accordance with Government Code Section 36933 by either posting or publishing the ordinance in accordance with that law. Further, the City Clerk is directed to cause Section 3 of this Ordinance to be entered in the Brentwood Municipal Code.

SECTION 10. In accordance with Government Code Section 65863.5, upon the effective date of this Ordinance, a copy shall be delivered to the County Assessor.

THE FOREGOING ORDINANCE was introduced with the first reading waived at a regular meeting of the Brentwood City Council on the 14th day of December 2004, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN :




And was adopted at a regular meeting of the Brentwood City Council on the day of , 2005, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Brian Swisher
Mayor

ATTEST:

Karen Diaz, CMC
City Clerk/Director of Administrative Services

| | | |
|---------------------|---|--|
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