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## A BILL FOR AN ORDINANCE

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ESTABLISHING AN AFFORDABLE HOUSING REQUIREMENT.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose, findings, and intent.

The purpose of this ordinance is to increase the production of affordable housing, to encourage dispersal of affordable housing throughout the City and County of Honolulu, and to maintain the units as affordable for a long period of time.

For decades, the City and County of Honolulu has grappled with a critical shortage of affordable housing. This problem grows worse by the year and threatens to undermine our quality of life and permanently erode the city's social and economic foundations so as to jeopardize its order and security. The Mayor's Affordable Housing Strategy (September 2015) summarized these affordable housing needs and proposed strategic actions relating to policies, incentives, regulations, programs, financial tools, and investments.

This ordinance regulates the development and use of real property within the city to promote the public welfare by implementing one of the key strategies set forth in the Mayor's Affordable Housing Strategy by assuring that housing production, rehabilitation, and preservation address the needs of all income groups. The ultimate goal of this ordinance is to help Oahu address its housing crisis and to build and maintain a more diverse and affordable housing stock over time.

This ordinance builds on the city's current policy of requiring a certain percentage of dwelling units to be affordable in new housing projects for which a zone change is requested. That policy has allowed many families to become first-time homeowners, but it has not provided a significant number, or supply, of long-term affordable dwelling units for sale or for rental. In as little as four years, the affordable for-sale homes can be resold by the buyer at market prices, which can eliminate them from the affordable housing inventory.

The affordable housing requirement under this ordinance prioritizes the production of affordable rental housing for lower-income households and generally requires the housing produced to remain affordable for at least 30 years. The requirement offers flexibility to reflect varying construction and economic challenges in different types of housing projects. Options include the ability to locate different types of affordable housing on-site or off-site, to provide for-sale or for-rental units, to provide improved land, or to pay an in-lieu fee.



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Stronger markets can more readily and feasibly support the production of affordable housing and the requirements of this ordinance. In recognition of the different housing market areas on Oahu, which are defined by location, phasing in the requirement across geographic areas is intended to accommodate the weaker markets, where more financially viable housing development can initially occur without the constraints of the requirement, while market strength grows in those markets.

SECTION 2. The Revised Ordinances of Honolulu 1990 (“ROH”) are amended by adding a new chapter to be appropriately designated by the revisor of ordinances and to read as follows:

“Chapter \_\_

**AFFORDABLE HOUSING REQUIREMENT**

**Articles:**

**1. General Provisions**

**Article 1. General Provisions**

**Sections:**

- \_\_-1.1 **Purpose.**
- \_\_-1.2 **Definitions.**
- \_\_-1.3 **Applicability.**
- \_\_-1.4 **Affordable housing requirement.**
- \_\_-1.5 **Period of affordability.**
- \_\_-1.6 **Affordable housing development account.**
- \_\_-1.7 **Appeals.**
- \_\_-1.8 **Procedures.**
- \_\_-1.9 **Violation.**
- \_\_-1.10 **Administrative Fees.**
- \_\_-1.11 **Rules.**

**Sec. \_\_-1.1 Purpose.**

This chapter establishes a regulatory scheme for the development and use of real property within the city to promote the public welfare. It requires certain projects intended for residential use to contribute to the affordable housing supply by either constructing new dwelling units, substantially rehabilitating existing dwelling units, paying a fee in lieu of such construction or rehabilitation, or providing improved land for



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affordable housing. These new or rehabilitated dwelling units are to remain affordable for a minimum of 30 years.

**Sec. \_\_-1.2 Definitions.**

“Area median income” or “AMI” is determined by the United States Department of Housing and Urban Development (“HUD”) annually for the Honolulu Metropolitan Statistical Area as adjusted for household size.

“City” means the City and County of Honolulu.

“Council” means the city council of the City and County of Honolulu.

“Department” means the department of planning and permitting, City and County of Honolulu.

“Development agreement” means the same as that described and authorized under Chapter 33, Revised Ordinances of the City and County of Honolulu 1990.

“Development plan area” means the area specified within the city’s approved development/sustainable community plan for that specific region of Oahu.

“Director” means the director of the department of planning and permitting, City and County of Honolulu, or the director’s authorized representative.

“HRS” means Hawaii Revised Statutes, as amended from time to time.

“Micro-unit” means a dwelling unit totaling 300 square feet or less of floor area.

"Person" means an individual, partnership, association, corporation, limited liability company, or any other form of legal entity.

“Principal project” means a project containing a building or group of buildings with dwelling units and as to which the requirement to provide affordable dwelling units is imposed pursuant to this chapter.

“Project site” means one or more zoning lots that are developed under a single or unified project concept. “On-site” means construction or other activities that occur on the project site. “Off-site” means construction or other activities that occur on a zoning lot other than the project site.

“Rail transit station area” means the Transit-Oriented Development (“TOD”) special district, as defined in Section 21-9.100. Where there is no adopted boundary under Chapter 21, then the boundaries reflected in the adopted neighborhood TOD plan



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shall apply. Where there is no adopted neighborhood TOD plan, then the most recent version under consideration by the department or the council at the time the application for the principal project is submitted to the department and accepted as complete shall apply. Where there is no neighborhood TOD plan, then the area within, including properties intersecting, a one-half mile radius of a future rail transit station identified in the Honolulu Rail Transit Project Environmental Impact Statement, accepted by the Governor of the State of Hawaii on December 16, 2010, and any future supplements, shall apply.

“Rental” or “for-rental” means a dwelling unit that is leased or rented for a term of 30 days to 30 years.

“Sale” or “for-sale” means a dwelling unit that is for sale in fee simple or in leasehold with a term of 30 years or more.

“Special needs housing” means housing that is used to provide living accommodations and, in some cases, care services for certain segments of the population with special living requirements, which include the elderly; persons with physical, mental, or behavioral disabilities; persons with HIV/AIDs; or persons with alcohol or drug addiction. Often such housing includes special features, such as congregate dining and social rooms; laundry, housekeeping, and personal assistance services; shuttle bus services for project residents; and skilled nursing beds or physical therapy clinics.

“Substantial rehabilitation” means rehabilitation costs totaling more than 50 percent of the then-current replacement cost of the structure.

“TOD” means transit-oriented development.

“Unilateral agreement” means the same as that described and authorized under Section 21-2.80.

For purposes of this chapter, the following terms shall have the meanings given to each such term as set forth in Chapter 21 (Land Use Ordinance), Article 10 (Definitions):

“Accessory dwelling unit”

“Development”

“Dwelling unit”

“Dwelling, multifamily”



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“Floor area”

“Group living facilities”

“Hotel”

“Ohana dwelling unit”

“Zoning lot”

**Sec. \_\_\_-1.3 Applicability.**

- (a) The provisions of this chapter shall apply to any one of the listed items.
- (1) New construction or substantial rehabilitation of ten or more dwelling units developed under a single or unified project concept, on one or more zoning lots.
  - (2) Any subdivision of land creating ten or more zoning lots for residential use in residential, apartment, apartment mixed use, business mixed use, country, or agricultural zoning districts.
  - (3) Conversion of hotels, offices, or other uses into multifamily dwellings, or conversion of rental dwelling units into for-sale dwelling units, containing ten or more total dwelling units.
  - (4) Any of the following that include ten or more dwelling units: cluster housing permits, planned development housing permits, or multi-family dwelling units.
- (b) Exceptions. The provisions of this chapter shall not apply to any one of the listed items.
- (1) Any development subject to a unilateral agreement or development agreement approved by the city and recorded prior to the effective date of this ordinance.
  - (2) Any subdivision granted tentative approval of the preliminary subdivision map prior to the effective date of this ordinance.
  - (3) Any building permit, cluster housing permit, or planned development housing permit application submitted and accepted as complete prior to the effective date of this ordinance.



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- (4) Any development that meets or exceeds all aspects of the applicable affordable housing requirements of this chapter pursuant to affordable housing requirements imposed by a legal obligation. For purposes of this chapter, a legal obligation includes but is not limited to unilateral agreements, development agreements, requirements imposed by HRS Chapter 201H, or requirements imposed by the State of Hawaii's low-income housing tax credit program.
- (5) Micro-units.
- (6) Accessory dwelling units.
- (7) Ohana dwelling units.
- (8) Group living facilities.
- (9) Special needs housing.

**Sec. \_\_-1.4 Affordable housing requirement.**

The affordable housing requirement is being phased in on a geographical basis as set forth in Table \_\_-1.4 and shall be met by satisfying one or a combination of the options in this section subject to the director's approval. Any combination of options used shall be the sum of each option's proportionate share of the requirement as applied to the principal project. Fulfillment of the requirement may account for varying unit sizes, lower income ranges, rounding, or other factors subject to the director's approval. Affordable for-sale dwelling units must be owner occupied.



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Table \_\_-1.4 Affordable Housing Requirement Provisions, as a percentage of the total number of dwelling units in the principal project.

| Principal Project Location   | For Sale <sup>1</sup> or For Rental <sup>2</sup> | On-Site Production <sup>3</sup> | Off-Site Production <sup>4</sup> | In-Lieu Fee <sup>5</sup> |
|--|--|---------------------------------|----------------------------------|--------------------------|
| <b>The following requirements will be effective for the period from the effective date of this ordinance through the first anniversary of the effective date of this ordinance.</b>  |  |                                 |                                  |                          |
| Ala Moana, Downtown, or Chinatown rail transit station area  | For Sale   | 20 percent                      | 25 percent                       | \$45 per square foot     |
|  | For Rental                                       | 15 percent                      |                                  |                          |
| <b>The following requirements will be effective for the period after the first anniversary of the effective date of this ordinance through the third anniversary of the effective date of this ordinance.</b>  |  |                                 |                                  |                          |
| Ala Moana, Downtown, or Chinatown rail transit station area  | For Sale   | 20 percent                      | 25 percent                       | \$45 per square foot     |
|  | For Rental                                       | 15 percent                      |                                  |                          |
| All areas outside of Ala Moana, Downtown, or Chinatown rail transit station areas  | For Sale   | 10 percent                      | 15 percent                       | \$27 per square foot     |
|  | For Rental                                       | 5 percent                       |                                  |                          |
| <b>The following requirements will take effect after the third anniversary of the effective date of this ordinance.</b>  |  |                                 |                                  |                          |
| Within a rail transit station area   | For Sale   | 20 percent                      | 25 percent                       | \$45 per square foot     |
|  | For Rental                                       | 15 percent                      |                                  |                          |
| All areas outside of a rail transit station area   | For Sale   | 10 percent                      | 15 percent                       | \$27 per square foot     |
|  | For Rental                                       | 5 percent                       |                                  |                          |
| (1) For-sale affordable dwelling units shall be sold to households earning 120 percent and below of the AMI. At least one-half of those units shall be sold to households earning 100 percent and below of the AMI.<br>(2) For-rental affordable dwelling units shall be rented to households earning 80 percent and below of the AMI.<br>(3) When the principal project is a substantial rehabilitation, the on-site affordable dwelling units will count as whole units. When the principal project is a new construction, any on-site affordable dwelling unit provided through substantial rehabilitation will count as one half of a unit.<br>(4) When the principal project is a new construction, any off-site affordable dwelling unit provided through substantial rehabilitation will count as one half of a unit.<br>(5) Effective January 1 of each year, the in-lieu fee shall increase by a factor equal to the most recently published Consumer Price Index for All Urban Consumers (CPI-U), with the base year established as of the effective date of this ordinance. |  |                                 |                                  |                          |

- (a) On-site production. Affordable dwelling units, rental or for sale, are constructed on the same project site as the principal project. The required number of affordable dwelling units constructed on-site is specified in Table \_\_-1.4.



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- (b) Off-site production. Affordable dwelling units, rental or for sale, are constructed off-site from the project site on which the principal project is located. The required number of affordable dwelling units constructed off-site is specified in Table \_\_\_-1.4.
- (1) Off-site production of dwelling units to satisfy the affordable housing requirement for principal projects located within a rail transit station area must be satisfied within the same rail transit station area in which the principal project is located.
  - (2) Off-site production of dwelling units to satisfy the affordable housing requirement for principal projects located outside of any rail transit station area must be satisfied within the same development plan area in which the principal project is located.
  - (3) Upon a showing of good cause, as described in the administrative rules and subject to terms and conditions approved by the director, the director shall have the discretion to allow the satisfaction of off-site production in other areas within the city.
- (c) In-lieu Fee. A cash contribution ("in-lieu fee") paid to the city. In-lieu of providing the on-site production or off-site production required by this chapter, the director may, upon a showing of good cause, as defined in the administrative rules, permit the developer of projects with 25 dwelling units or less to pay to the city an in-lieu fee. Payment of an in-lieu fee for projects with more than 25 dwelling units or for other reasons must be approved by the council. The in-lieu fee shall be the amount specified in Table \_\_\_-1.4 and based on the square footage of the residential floor area of the principal project.
- (d) Land. Conveyance of improved land in fee simple to the city or a third party. Such land may be located on-site or off-site of the project site at a location approved by the director, must be zoned and suitable for the construction of affordable dwelling units, and must be improved with all necessary off-site infrastructure completed to city standards to the property boundary line. The appraised value of the real property conveyed must, at the minimum, be equal to the in-lieu fee and there shall be no payment by the city for the market value in excess of the in-lieu fee. The director, with the advice and consent of the director of the department of land management, shall determine whether to accept and approve such land to satisfy the affordable housing requirement.

**Sec. \_\_\_-1.5 Period of affordability.**

Affordable dwelling units created in compliance with this chapter must remain affordable for not less than 30 years from the date when the unit is sold or initially



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rented to a qualified buyer or renter. When the real property title of a for-sale affordable dwelling unit changes within the period of affordability, the unit shall be affordable for not less than 30 years from the recordation date. The department may establish administrative rules to regulate the resale of affordable dwelling units to ensure the units remain within the same AMI range, as adjusted from time to time.

**Sec. \_\_-1.6 Affordable housing development account.**

In-lieu fees paid pursuant to this chapter shall be collected by the director and deposited into the affordable housing development account of the housing development special fund.

**Sec. \_\_-1.7 Appeals.**

Appeals from the decision of the director in the administration of this chapter shall be as provided in the administrative rules. Appeals shall be filed within 30 days of the mailing or service of the director's decision.

**Sec. \_\_-1.8 Procedures.**

- (a) The director shall administer the provisions of this ordinance.
- (b) As a condition of and prior to final approval of any permit or approval for a project that contains ten or more dwelling units or lots, including without limitation subdivision applications, cluster housing permits, planned development housing permits, or building permits, the applicant and all persons with a real estate interest in the project site (the "declarants") shall execute an affordable housing agreement acceptable to the director and record a declaration of restrictive covenants that encumbers the project site and any off-site zoning lot that is used to satisfy the affordable housing requirement imposed in connection with the principal project and that describes the affordable housing requirements acceptable to the director, including without limitation, the enforcement of such requirements. The director may defer the requirement to record the declaration of restrictive covenants until a time not later than issuance of the first building permit for a dwelling unit or as otherwise acceptable to the director. The form and content of the declaration shall be subject to the director's approval and the city shall be a party. The declaration shall be recorded in the bureau of conveyances (regular system) or the office of the assistant registrar of the land court of the State of Hawaii, or both, as appropriate. The term of the declaration of restrictive covenants shall be for the period of affordability and shall run with the land and bind and give notice to all subsequent grantees, assignees, mortgagees, lienors, and any other person who claims an interest in the project site or any zoning lot on which the affordable housing requirement is being satisfied.



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- (c) The declarants are required to submit for director approval periodic reporting regarding compliance with the affordable housing requirement.

**Sec. \_\_-1.9 Violation.**

A breach of the restrictive covenants may result in civil enforcement and the city may seek to enforce the terms by appropriate action at law or suit in equity against the parties and their successors and assigns. The director may take appropriate action to terminate or stop the project until applicable conditions are met, including but not limited to revoking any permits issued for the project and withholding issuance of other permits related to the project.

**Sec. \_\_-1.10 Administrative Fees.**

- (a) Fees for the administration and implementation of this chapter shall be assessed on the owners of for-sale affordable dwelling units and the occupants of for-rental affordable dwelling units subject to this chapter.
- (b) Applicable fees.
- (1) For-sale affordable dwelling units shall be subject to an annual monitoring fee of \$50.00 per unit.
- (2) For-sale affordable dwelling units shall be subject to a fee of \$600.00 per unit each and every time the real property title of the unit changes pursuant to Sec. \_\_-1.5.
- (3) For-rental affordable dwelling units shall be subject to an annual monitoring fee of \$300.00 per unit, which may be paid in \$25.00 monthly installments.
- (c) The director may take action to refer delinquent payments of fees pursuant to this section to a debt collector on behalf of the city.
- (d) All monies collected from fees pursuant to this section shall be deposited in the general fund and shall be used for the administration and implementation of this chapter.

**Sec. \_\_-1.11 Rules.**

The director shall promulgate rules and regulations pursuant to the procedures set forth in HRS Chapter 91 as are necessary to implement, administer, and enforce the provisions of this chapter.



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ORDINANCE \_\_\_\_\_

BILL \_\_\_\_\_

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SECTION 3. In Sections \_\_\_-1.3 and \_\_\_-1.4 of this ordinance, the revisor of ordinances shall, pursuant to the revisor's authority under ROH Section 1-16.3(b)(1), replace the phrase "effective date of this ordinance," "first anniversary of the effective date of this ordinance," or similar phrases with the actual date.



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SECTION 4. This ordinance takes effect upon its approval.

INTRODUCED BY:

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE OF INTRODUCTION:

\_\_\_\_\_  
Honolulu, Hawaii

\_\_\_\_\_  
Councilmembers

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Deputy Corporation Counsel

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
KIRK CALDWELL, Mayor  
City and County of Honolulu