DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU
STATE OF HAWAII

RULES TO IMPLEMENT CITY'S AFFORDABLE HOUSING REQUIREMENTS

DEPARTMENT OF PLANNING AND PERMITTING

AFFORDABLE HOUSING RULES

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CHAPTER 1

GENERAL PROVISIONS

§1-1 Purpose. These rules are adopted under Chapter 91, Hawaii Revised Statutes, for the purpose of implementing the affordable housing requirements as set forth in Ordinance 18-10 and other approvals issued by the City and County of Honolulu.
[Eff MAR 3 1 2019] (Auth: HRS §46-15.1; RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§1-2 Applicability. (a) These rules shall apply to the following:
(1) Projects subject to the requirements of Ordinance 18-10; or
(2) Projects that contain as a condition the provision of affordable housing by law or approval issued by the City;
(b) These rules shall not apply to:
(1) Affordable housing conditions imposed as a condition of a zone change under ROH § 21-2.80, which shall be administered under and subject to the Affordable Housing Rules for Unilateral Agreements as amended; or
(2) Any development with an affordable housing requirement imposed by a state or federal agency, except where DPP is required to confirm compliance with the affordable housing commitment.
[Eff: MAR 3 1 2019] (Auth: HRS §46-15.1; RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§1-3 Definitions.
"Affordable housing" ("AH") means dwelling units constructed for sale or rent to eligible households in the target income group.
"Affordable housing agreement" means a legal obligation which is approved by the Director and executed between the City and declarant.
"Affordable housing program" means the provisions pertaining to the affordable housing component stated in Ordinance 18-10 or other approvals issued by the City, and executed in an affordable housing agreement between a declarant and DPP.

"Affordable housing requirement" means the number of affordable housing units a project is required to provide subject to Ordinance 18-10 or other approvals issued by the City. Unless specified within a City Council approval, the following type of units shall be excluded and not be counted towards the requirement or satisfaction of affordable housing units:

(1) Micro-units;
(2) Accessory dwelling units;
(3) Ohana dwelling units;
(4) Group Living facilities;
(5) Special Needs housing; and
(6) Time share units.

"Affordable for-sale housing units" means dwelling units constructed on- or off-site of the approved principal project site and must be sold at or below prices determined by the method stated in §2-11. The units must be owner-occupied for the duration of the restriction period and shall be subject to the restrictions as stated in Chapter 5 of these rules.

"Affordable rental housing unit" means dwelling units constructed on- or off-site of the approved principal project site, and must be rented at or below a rate as determined by §2-12. The unit must be rented for the duration of the restriction period and subject to the restrictions as specified in Chapter 5 of these rules. At the end of the restriction period, the City or qualified nonprofit housing trust shall be given the first option to purchase the units, the details of which are as described in §5-6.

"Applicant" means the household applying for an affordable housing unit.

"Area median income (AMI)" means the Area Median Income determined by HUD annually for the Honolulu Metropolitan Statistical Area as adjusted for household size and published by DPP.

"BFS" means the Department of Budget and Fiscal Services, City and County of Honolulu.

"Chapter 201H" means Chapter 201H, Hawaii Revised Statutes, stating certain authority pertaining to housing which is granted to the State of Hawaii and which powers are granted to the counties by the provisions of §46-15.1, Hawaii Revised Statutes.

"City" means the City and County of Honolulu.

"Continued occupancy" means the point in time that a tenant ceases to be an eligible household but is allowed to continue residing in the affordable housing unit. Ceasing to be an eligible household occurs when household income exceeds income limit of the targeted income group for the unit.

"Declarant" means the person executing the affordable housing agreement and the declaration of restrictive covenants required by Ordinance 18-10 or other approvals issued by the City.

"Declaration of restrictive covenants" means a restricted covenant that is recorded in the Bureau of Conveyances or the Office of the Assistant Registrar of the Land Court of the State of Hawaii, for a period of affordability that runs 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.

"Development agreement" means an agreement entered into between the City and a developer pursuant to HRS Ch. 46 Part VII and Chapter 33, Revised Ordinances of Honolulu ("ROH").

"Development plan area" means the area specified within the City's approved development/sustainable communities plan for that specific region of Oahu.

"Director" means the Director of DPP or the Director's authorized representative.

"DPP" means the Department of Planning and Permitting, City and County of Honolulu or its authorized representative.

"Dwelling unit" means the same as defined as in §21-10.1, ROH.

"Extreme hardship" means an extenuating circumstance outside of the control of a person or household as may be determined by the Director on a case-by-case basis.

"Fair market rent" means the maximum periodic rent, including utilities, established by HUD under Federal housing programs which can be paid for low-income dwelling units containing a varying number of bedrooms for the City and County of Honolulu.

"Fair market value" means the fair market value of the affordable dwelling unit as determined by an independent professional appraiser authorized to practice in the State of Hawaii.

"FHA" means the Federal Housing Administration.

"Gross household income" means the total annual income from all sources received by the Household head, spouse, and each additional member of the Household. Gross household income shall include, but shall not be limited to, the following:

(1) Wages, salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
(2) Pensions and Social Security;
(3) Income derived from assets;
(4) Dividends and interest;

(5) Net income from business or profession;
(6) Cost of Living Adjustment;
(7) Variable Housing Allowance;
(8) Basic Allowance for Quarters;
(9) Child support;
(10) Unemployment compensation; and
(11) Governmental Assistance including, but not limited to, Veterans Affairs Disability compensation, Social Security Disability Insurance, and Section 8.

Gross household income shall exclude the following:

(1) Income of a co-mortgagor as described in §201H-46, HRS, and who is not a household member;
(2) Income from employment of minor children (including foster children);
(3) Income from the employment of full-time students up to twenty-three (23) years old; and
(4) Income of a live-in aide.

"Household" means:

(1) A single person; or
(2) Two or more persons regularly living together related by blood, marriage, or by operation of law; or
(3) For affordable for-sale units, no more than five unrelated persons who have lived together for at least one year, who have executed an affidavit, and who have provided proof acceptable to DPP in its sole discretion. Affidavits from family members or neighbors are not acceptable; or
(4) For affordable rental units, no more than five unrelated persons; or
(5) Eight or fewer persons who reside in a special treatment facility or other similar facility monitored and/or licensed by the State of Hawaii or the City and County of Honolulu, subject to the occupancy requirement as set forth under §3-5; or
(6) A live-in aide may be excluded from the household size.

"HRS" means the Hawaii Revised Statutes, as amended.

"HUD" means the United States Department of Housing and Urban Development.

"Income level" means the income levels the City Council determines are applicable to a project or Affordable Housing Program.

"Income limit" means the maximum gross household income for purposes of determining a household's eligibility for an affordable housing unit.

"Implementation plan" means a document that specifies the details on how the project will meet the affordable housing requirements, and may be amended from time to time with the Director's approval.

"Land" means the lot on the surface of the earth on which it is suitable to construct one or more dwelling units.

"Legal obligation" means an obligation or duty that is enforceable by a court of law, including but not limited to requirements or conditions imposed by unilateral agreements, development agreements, Chapter 201H HRS, or the State of Hawaii's low-income housing tax credit program.

"Live-in aide" means a person who is essential to the care and well-being of a household member. The Director has the authority to qualify a person as a caregiver, provided proper documentation and credentials are provided.

"Maintenance fees" means fees used to pay for expenses such as maintenance and repair of the common areas, property and liability insurance for the building's exterior and common areas, amenities such as a gym or a pool, and certain utilities, such as the water, wastewater, or electricity used in common areas.

"Marketing period" means the period of time during which an affordable housing unit is marketed, and may be occupied for rent or sale to households within the target income group.

"Micro-unit" means a dwelling unit totaling three hundred (300) square feet or less of floor area.

"Off-site" means construction or other activities that occur on a zoning lot other than the project site.

"Owner" means the owner of the affordable housing unit.

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

"Project" means a single or unified project concept located on one or more zoning lots, containing a potential building or group of buildings with dwelling units.

"Project site" means one or more zoning lots that are developed under a single or unified project concept.

"Qualified nonprofit housing trust" means a corporation, association, or other duly chartered organization that is registered and in good standing with the State; that is recognized by the Internal Revenue Service as a charitable or otherwise tax-exempt organization under

section 501(c) of the Internal Revenue Code of 1986, as amended; and that has the capacity, resources, and mission to carry out the purposes of this section as determined by the City.

"Rail transit station area" means the transit-oriented development special district as defined in §21-9.100, ROH.

"Real property" means the lot on the earth's surface, the air above, and the ground below, as well as all appurtenances to the land, including buildings, structures, fixtures, fences and improvements erected upon or affixed to the same.

"RCH" means the Revised Charter of the City and County of Honolulu 1973, as amended.

"Restriction period" means the period of time during which a project is subject to an affordable housing agreement and designated affordable housing units are restricted to be rented or sold to target income groups and maintained as owner occupants subject to the buyback restrictions as stated in Chapter 5 of these rules.

"ROH" means the Revised Ordinances of Honolulu 1990, as amended.

"Rule" means each statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of the agency, adopted and promulgated in accordance with Chapter 91, HRS.

"State" means the State of Hawaii.

"Target income group" means the category of people whose household income is below the maximum Income Limit (adjusted for household size) for a given dwelling unit.

"Total household assets" means items of value that may be turned into cash, including but not limited to savings accounts, checking accounts, trusts, investments assets, (stocks, bonds, etc.), cash savings, and miscellaneous investment holdings. Assets specifically designated for retirement funds and college saving accounts are not counted in the total household assets, but are counted when calculating income from assets.

"Unilateral agreement" ("UA") means a covenant running with the land prepared, executed, and recorded in the Bureau of Conveyances or Land Court of the State of Hawaii, by the owner of the real property for which a zone change is requested and incorporated into and made a part of the ordinance effecting the zone change which states the conditions under which a developer has agreed to use that real property.

[Eff: MAR 3 1 2019] (Auth: HRS §46-15.1; RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§1-4 Severability; Conflict. If any rule stated in these rules is determined to be invalid, illegal, or unenforceable, that determination shall not affect the validity, legality, or enforceability of the remaining rules unless that effect is made impossible by the absence of the omitted rule or portion of a rule. If there is a conflict between these rules and Ordinance 18-10 or other approvals issued by City Council or the City, Ordinance 18-10 or approvals issued by the City shall take precedence.
[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§1-5 Authority of DPP. DPP may employ attorneys, accountants, appraisers, surveyors, hearing officers, investigators, and other persons as required, and may do all things necessary and convenient to administer, implement, and enforce these rules. The Director may delegate any of his or her authorities set forth herein.
[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§1-6 Investigations. The Director may investigate any reported or suspected violation of an affordable housing agreement or of these rules. The Director is authorized to examine the books, accounts, records and files of any person connected with the matter under investigation, and may conduct hearings regarding any matter under investigation.
[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§1-7 Violation. If the Director finds any violation, the Director may order the responsible parties to cease and desist from continuing the violation or to take affirmative action to conform to the obligations stated in any agreement. If necessary, the Director may withhold the processing of permits, and/or initiate appropriate criminal, civil or administrative action. A breach of the restrictive covenants recorded under §2-8 with respect to a project may result in civil enforcement and the City may seek to enforce

the terms of the restrictive covenants 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.
[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§1-8 Collection of Information. From time to time, the Director may require any party to an affordable housing agreement to provide such information as may be reasonably required for the administration and enforcement of these rules.
[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§1-9 Contracts. The Director shall determine the form and content of all documents necessary for the purposes of implementing an affordable housing agreement made in conjunction with Ordinance 18-10 or other approvals issued by the City, and these rules.
[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§1-10 Burden of Proof; Oaths; Affidavits. The party having the burden of proof of any fact or event shall make such proof by competent and credible evidence and testimony acceptable and satisfactory to the Director or his designated agent. Evidence at any hearing may be required to be given under oath or by sworn written material. False oaths and affidavits shall constitute perjury and a violation of §710-1060, HRS.
[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§1-11 Special Fund. All monies received or collected by the City

or DPP under the affordable housing program shall be deposited in the Housing Development Special Fund.
[Eff:MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§1-12 Fees. Affordable housing projects subject to Ordinance 18-10 shall be subject to the fees set forth therein. Fees for all other affordable housing requirements subject to these rules shall be set forth as provided by law.
[Eff:MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

CHAPTER 2

AFFORDABLE HOUSING PROGRAM

§2-1 Determination. The DPP will determine whether projects are required to provide affordable housing units pursuant to Ordinance 18-10 or other affordable housing requirements as set forth by the City.
[Eff: [illegible] 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§2-2 Affordable Housing Program: Effect. It is the intent of the City's affordable housing program to provide a variety of unit types that are dispersed throughout a project to minimize the clustering of identical affordable housing unit types within the same area. Projects subject to the affordable housing program shall comply with the following:

(1) The number of affordable housing units sold or rented to households within the target income group shall meet the affordable housing requirements pursuant to Ordinance 18-10 or as specified in the approvals issued by the City.

(2) The use of off-site affordable housing units to fulfill a project's affordable housing requirement must be identified within the affordable housing agreement executed with the City.

(3) Unless specified otherwise by City Council, the affordable housing units shall be constructed and delivered before or simultaneously with the market units throughout the various phases of the project.

(4) The affordable housing units should be dispersed throughout the project.

(5) The number of bedrooms in affordable housing units should be the same or more than the number of bedrooms in market housing units.

(6) The affordable housing units shall meet all building codes and standards of the City.

(7) All qualified members of the public shall have an equal opportunity to apply for the affordable housing units.

(8) Applicants for the affordable housing units must be certified as eligible by the Director.

(9) Only those affordable housing units sold or rented to eligible households within the target income groups and kept as affordable for the restriction period shall be counted toward fulfillment of the affordable housing requirements.

[Eff:MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§2-3 Delivery Options. The developer may satisfy the affordable housing requirement through one or more of the following options determined to be acceptable to DPP:

(1) On-site production. Affordable housing units, for-sale or rental, constructed on the same project site as the approved principal project.

(2) Off-site production. Unless stated otherwise in Ordinance 18-10 or approvals issued by the City, off-site production of affordable, rental or for-sale, housing units to satisfy the affordable housing requirement shall be subject to the Director's approval and shall meet the following requirements:

(A) The off-site affordable housing units shall be limited to the following locations:

(i) If the principal project is located within a rail transit station area, the affordable housing units must be provided within the same rail transit area as the principal project.

(ii) If the principal project is located outside of a rail transit area, the affordable housing units must be provided within the same development plan area as the principal project.

(iii) The Director shall have the discretion to allow the satisfaction of off-site production in other areas of the city.

(B) The certificate of occupancy for off-site production of affordable housing units must be issued prior to the certificate of occupancy for the dwelling units in the

principal project, unless approved otherwise by the Director. The Director shall have the discretion to approve the timing of off-site production and have the right to pursue suitable action to assure the completion of the affordable housing units.

(3) The Director may approve the conveyance of land to the City or third party of improved fee simple real property that must be zoned and suitable for the construction of affordable housing units, with all necessary off-site infrastructure completed up to the property line.

(A) The appraised value of the real property conveyed to the City or third party must be equal to or greater than the value as described in §2-3(5). The real estate may be placed in a community land trust to ensure affordability in perpetuity. A restrictive covenant shall be imposed reflecting this use, until the requirement is satisfied.

(B) The City may refuse to accept any real property if it requires the payment by the City for any market value in excess of the foregoing specified amount. The Director, with the advice and consent of the Director of Land Management, shall determine whether to accept and approve such land to satisfy the affordable housing requirement.

(4) When authorized by City Council, a cash contribution ("in-lieu fee") may be available to satisfy the affordable housing requirement, subject to Director's approval and as specified by City Council.

(5) If an amount or method is not specified by City Council for the calculation towards the appraised value of land conveyance or in-lieu fees, then the value will be determined by the Director.

[Eff MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§2-4 Total Affordable Housing Requirement: Calculation.

(a) The total affordable housing requirement shall be calculated based on the project's total number of dwelling units multiplied by the percent of required affordable housing units as specified in Ordinance 18-

10 or as stated in the approvals issued by the City.

(b) If a combination of available options from Ordinance 18-10 is proposed to satisfy the affordable housing requirement, it is subject to the Director's approval.

(c) The total affordable housing requirement shall always be rounded up to the nearest whole number, when calculating the total required number of affordable housing units.

(d) Except for 201H projects, the number of bedrooms and bathrooms of the affordable housing units will be taken into account in determining the corresponding factors for unit types, as provided in the following table:

ROOM FACTOR TABLE

UNIT TYPE	0-BR/ 1-BA	1-BR/ 1-BA	2-BR 1-BA	2-BR/ 1.5-BA	2-BR/ 2-BA	3-BR/ 1.5-BA	3-BR/ 2-BA	3+BR/ 2+BA
ROOM FACTOR	0.68	0.81	0.92	1.00	1.08	1.16	1.28	1.44

(e) Unless specified otherwise by approvals issued by the City, the developer may satisfy the total affordable housing requirement by producing any acceptable combination of unit types of affordable housing units which, when multiplied by the relevant room factor, must equal or exceed the total affordable housing requirement.

(For example, if the developer produces a thousand (1,000) dwelling units at fifteen percent (15%) affordable housing requirement, then the developer would be required to provide one hundred and fifty (150) affordable housing units.

1,000 dwelling units x 15% AH Requirement = 150 AH Units

The developer may produce, for example, the following acceptable combination of unit types to meet the AH unit requirement:

# of AH units Delivered	Unit Types	Room Factor	AH Unit Equivalent
55	2-BR/1.5-BA:	X 1.00	= 55.00
37	2-BR/2-BA:	X 1.08	= 39.96
43	3-BR/2-BA:	X 1.28	= 55.04
135 units			150.00

(f) The room factor for affordable housing units constructed within a rail transit station area or within the Primary Urban Center Development Plan area, excluding projects under an existing Unilateral Agreement or 201H projects, shall be as follows:

ROOM FACTOR TABLE FOR
RAIL TRANSIT AREAS AND PRIMARY URBAN CENTER

UNIT TYPE	0-BR/ 1-BA	1-BR/ 1-BA	2-BR 1-BA	2-BR/ 1.5-BA	2-BR/ 2-BA	2+BR/ 2+BA
ROOM FACTOR	0.92	1.00	1.08	1.16	1.28	1.44

[Eff MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§2-5 Affordable Housing Program: Procedure.

(a) The developer shall prepare and submit an affordable housing agreement and implementation plan in a manner acceptable to DPP for the delivery of the affordable housing units.

(b) The developer shall execute an affordable housing agreement with the City, and execute and record a restrictive covenant encumbered on the project site and any other project site used for the purposes of fulfilling the affordable housing requirement, with the City as a party.

(c) On an annual basis, the declarant or affordable housing provider shall submit a written status report to the Director documenting the declarant's compliance with the affordable housing requirement, as described in Chapter 6.
[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§2-6 Implementation Plan. (a) The implementation plan shall provide specific details on the project for determining the affordable housing requirement, and how the project will satisfy the requirement. The information shall include the following project information:

(1) The name and address of the developer or owner;
(2) The planned location of the affordable housing units;
(3) The project's total number of the dwelling units;
(4) The total number of required affordable housing units;
(5) The projected delivery schedule of all market and affordable housing units for each phase of the project;
(6) The total number of affordable housing units provided for satisfying the affordable housing requirement, including:
    (A) Type of units;
    (B) Number of each unit type;
    (C) Number of bedrooms and bathrooms per unit type;
    (D) Approximate square feet of each unit type;
    (E) Total number of square feet for all affordable units;
    (F) Applicable room factors as described in §2-4;
    (G) Whether affordable units are for sale or rental;
    (H) Designated target income group for each unit;
    (I) Restriction period of the affordable housing units;
    (J) Single or multi-family unit; and
    (K) Other supporting information that justifies the types of bedroom mix of affordable housing units.
(7) Any conveyance of land to satisfy the affordable housing requirement, if applicable.

(b) Projects with multiple phases may submit an implementation plan for each phase of the project.

(c) The approved implementation plan may be amended from time to time, subject to the Director's approval.
[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§2-7 Affordable Housing Agreement. (a) The affordable housing agreement is a legal obligation between the City and Declarant which shall include, but not necessarily be limited to, the following information and provisions relating to:

(1) General Purpose of the project;
(2) The affordable housing requirement as described by Ordinance 18-10 or approvals issued by the City;
(3) The maximum base sales prices and/or rents of the affordable housing units as determined by the method stated in §2-11 and §2-12;
(4) An acceptable method to reduce the association and maintenance fees for affordable housing units as stated in §2-11(3);
(5) A marketing strategy that includes details on the estimated dates and advertising methods for the affordable housing units, as described in §4-1 and §4-2;
(6) The estimated start date of marketing periods, only applicable if specified in Ordinance 18-10 or approvals issued by the City;
(7) Details of the eligibility and income verification, submittal of forms and supporting documentation for affordable housing applicants as set forth in Chapter 3 of these rules;
(8) Annual reporting of project compliance;
(9) Inspection requirements and procedures of the City or authorized third party; and
(10) Standard clauses that the City determines to be required. Including, but not limited to, the following:
    (A) Indemnity;
    (B) Severability;
    (C) Termination; and
    (D) Assignability.

(b) The affordable housing agreement shall include as attached exhibits the following:

(1) Legal description of the property;

(2) Approved implementation plan;
(3) Marketing and phasing schedule;
(4) Approved marketing plan; and
(5) Copies of application, eligibility, and income verification forms

[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§2-8 Restrictive Covenant. (a) The developer shall execute an affordable housing agreement acceptable to the Director and execute 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.

(b) If the developer is not the fee owner(s) of the project site and any applicable off-site zoning lot used to satisfy the affordable housing requirement, the affordable housing agreement and the declaration of restrictive covenants must also be executed by all of the fee owners of those parcels. 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.

(c) The form and content of the declaration will be subject to the Director's approval and the City must be a party. The declaration must 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 must 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.

[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§2-9 Documentation. All documents related to the sale or rental of affordable housing units, including, but not limited to, deeds, condominium property regimes, presale notices, and purchaser applications, must be submitted to DPP for its written approval prior to conveyance of the affordable housing unit.
[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§2-10 Construction Quality Standards. Prior to the commencement of construction, the developer shall submit to DPP conceptual and schematic plans and outline specifications for the increment being developed.
[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§2-11 Affordable For-Sale Unit Pricing. Affordable for-sale housing units must be priced such that an eligible purchaser who makes a down payment of ten percent (10%) shall not be required to make monthly payments (which consist of principal, interest, prorated real property taxes, prorated insurance premiums, plus, if applicable, fees and costs required by the Bylaws of a condominium property regime) exceeding thirty-three percent (33%) of the gross monthly income within the target income group (adjusted for household size).

(1) The sales price of the affordable housing units shall be calculated assuming an interest rate which is derived by taking the average of the Average Conventional 30-year Interest Rate on fixed rate mortgages for the U.S. from the Freddie Mac Primary Mortgage Market Survey for the week of the date of the submittal of the marketing plan and the interest rate one year preceding that date.

(2) If the developer secures a lower 30-year fixed mortgage interest rate, the developer may adjust the prices accordingly. The confirmable rate shall be submitted to DPP with the proposed prices.

(3) If applicable, the owner's association, maintenance, and reserve fees and other building operating costs for households residing in an affordable housing unit, should be

limited to the associated fees towards common elements that may be shared with unrestricted access, including common areas and amenities. These fees should not be charged costs and expenses relating to limited common elements that may restrict access and are not appurtenant to the affordable housing units, which include non-essential facilities and amenities, (such as pools, workout rooms, recreational rooms, etc). In the affordable housing agreement, the developer shall provide an acceptable method or practice to maintain low association and maintenance fees for the affordable housing units for the duration of the restriction period.

[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§2-12 Affordable Rental Unit Rates. (a) The monthly rents shall be determined based on the unit type and occupancy criteria stated in §3-7.

(b) The monthly rents shall include utility allowances (water, sewer, electricity, and gas) as approved for the City and County of Honolulu, and other building operating costs, excluding telephone, cable television, internet services, and parking, subject to DPP's approval. Renters shall not be assessed any additional charges, outside of DPP's approved rent rate, to cover owner's association, maintenance, reserve, special fees used for non-routine expenses, and annual monitoring fees.

(c) The monthly rent for affordable housing units rented to households earning eighty percent (80%) of the AMI or lower, not participating in a government affordable housing tax credit or government rental assistance program(s) shall not exceed the Section 8 Fair Market Rents, as determined by HUD and approved by DPP.

(d) The monthly rent for affordable housing units provided under a government affordable housing tax credit or government rental assistance program, may not exceed the allowed rent under the applicable program(s).

(e) The monthly rent for affordable housing units rented to households earning above eighty percent (80%) of the AMI shall not exceed thirty percent (30%) of the maximum income of the target income group, adjusted according to the number of bedrooms.

[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10;

ROH §21-9.100-5)

CHAPTER 3

APPLICANT QUALIFICATION

§3-1 Eligibility Requirements: Application. (a) A prospective purchaser or renter of an affordable housing unit in a project shall submit a completed application to the developer on a form and in the manner approved by DPP.

(b) The developer shall review the applications for initial eligibility, maintain a copy of the eligible applications for the duration of the restriction period, and submit the completed eligible applications to DPP for review and approval.

[Eff: MAR 31 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§3-2 Eligibility Requirements: Affordable For-Sale Housing Units. (a) An applicant must meet the following eligibility requirements on the date the application is submitted in order to qualify to purchase an affordable housing unit:

(1) Be a citizen of the United States or a resident alien;

(2) Be at least eighteen (18) years of age;

(3) Be domiciled in the State of Hawaii and have a bona-fide intent to physically reside in the affordable housing unit as an owner-occupant for the duration of the restriction period;

(4) The total gross household income shall not exceed the unit's designated income limit;

(5) Have sufficient gross household income to qualify for the loan to finance the purchase and spend no more than thirty-three percent (33%) of their gross household income towards monthly housing payments;

(6) The total net available household asset shall not exceed the purchase price of the unit. The Director may determine on a case-by-case basis to waive this requirement if there has been an extreme hardship;

(7) Be a person or household member who, either oneself or together with a household member, does not own or has not owned for a period of three years prior to application, a

majority interest in fee simple or leasehold lands suitable for dwelling purposes. The Director may determine on a case-by-case basis that previous or current ownership of a majority interest in fee simple or leasehold land be allowed under extreme hardship; and

(8) Not be a person who previously has received assistance under a program designed and implemented by any State or county agency to assist persons to purchase affordable housing units. The Director may determine on a case-by-case basis to waive this provision in the event of:

(A) Extreme hardship; or

(B) A significant change in household size, as originally certified or exceeds occupancy requirement as stated in §3-7.

Provided, that the applicant sells the dwelling unit before escrow closing for the new affordable housing unit.

[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§3-3 Exception for Current Owners in Affordable Housing.

(a) A current owner of an affordable housing unit under a State or City affordable housing program may apply for the purchase of a larger affordable housing unit if:

(1) The applicant's current household size, as originally certified, has increased and exceeds the occupancy requirements as stated in §3-7; and

(2) The applicant has resided in the current affordable housing unit for at least one year.

(b) Household size shall be determined by the number of individuals on title and their dependents.

(c) The applicant shall sell the applicant's current affordable housing unit to the City or qualified nonprofit land trust in accordance with §5-4, prior to or upon the closing of the sale of the City authorized larger affordable housing unit.

(d) Except for the applicant's current residence, the applicant shall be a qualified resident as set forth under these rules.

[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§3-4 Eligibility Requirements: Affordable Rental Housing Units. An applicant must meet the following eligibility requirements on the date the application is submitted in order to qualify to rent an affordable housing unit:

(1) Be a citizen of the United States or a resident alien;

(2) Be at least eighteen (18) years of age;

(3) Be domiciled in the State of Hawaii and have a bona-fide intent to physically reside in the affordable housing unit for the duration of the lease agreement;

(4) The total gross household income shall not exceed the unit's designated income limit;

(5) Have sufficient gross household income, as determined by DPP or DPP's approved agent, to demonstrate an ability to pay rent and meet any additional criteria established by the City for the respective rental housing development for which the applicant is applying;

(6) Be a person or household member who does not own, for the duration of the rental period, a majority interest in fee simple or leasehold lands suitable for dwelling purposes. The Director may determine on a case-by-case basis that ownership of a majority interest in fee simple or leasehold land be allowed under extreme hardship;

(7) The total net available household asset shall not exceed the units designated income limit as adjusted by the household size. The Director may determine on a case-by-case basis to waive this requirement if there has been an extreme hardship or rental units are provided to City-supported special needs recipients; and

(8) On a case-by-case basis, the eligibility requirements for affordable rental units may be waived by the Director for rental units provided to City-supported special needs recipients, such as the elderly, disabled persons, or victims of domestic violence. Eligible recipients or units must be under government organization or monitoring and comply with the intent of these rules.

[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§3-5 Continued Occupancy for Renters. (a) A renter of an affordable housing unit may continue to rent the unit under continued occupancy when the household's income exceeds the designated income limit for the unit, provided that the continued occupancy of the unit may not exceed 24 months after the household income exceeds the income limit, unless approved by the Director.

(b) With any DPP approved rent increase, a household may continue to occupy an affordable rental unit, provided the rent does not exceed the greater of the affordable rent, as described in §2-12 or thirty percent (30%) of the gross household income. If the rental unit is vacated during the affordable housing restriction period, it must be subsequently rented to an eligible household to continue to be counted as an affordable housing unit.

[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§3-6 Eligibility Requirements: Sole Application. The name of any applicant, co-applicant/spouse, or any member of the household may only appear on one application for the project. The appearance of any one name on more than one application for the project will be sufficient reason for DPP to disqualify all applications containing that name. However, if a large project is offered in several smaller phases, an applicant may apply for each phase of the project.

[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§3-7 Occupancy Requirements. (a) For the purpose of maximizing the number of persons to benefit from the Affordable Housing Program by matching household size with the affordable housing unit type, based on the number of bedrooms in the affordable housing unit, the occupancy requirement for each type of affordable housing unit is as follows:

Affordable Housing Unit Type	Occupancy Requirements
Studio	1-2 Persons
1 Bedroom	1-3 Persons
2 Bedroom	2-5 Persons
3 Bedroom	3-7 Persons
4 Bedroom	4-8 Persons

(b) DPP may modify the occupancy requirements stated in this section if affordable housing units are unsold, unrented, or for the allowance of a live-in aide approved by the Director.
[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§3-8 Income Verification. (a) The Gross Household Income of an applicant for benefits under the Affordable Housing Program shall be certified by DPP prior to the transfer of title or lease agreement.

(b) DPP will determine the Gross Household Income and compliance with certain other eligibility requirements based on the household's most recent two months' payroll information, last two years' income tax return(s), or other DPP approved income verification form(s) as required by DPP.

(c) Live-in aide income may be excluded in qualifying eligible affordable housing recipients, based on HUD guidelines, subject to the Director's approval.
[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§3-9 Eligibility Determination by DPP. (a) The developer shall submit to DPP the following documentation, in a form satisfactory to DPP, for the certification of the applicant's eligibility:

(1) Application for the affordable housing unit;
(2) Income limit summary sheet;
(3) Owner-occupant affidavit (if applicable);
(4) Minimum of most recent two months' worth of pay

information;

(5) The last two years' tax returns;

(6) Identification;

(7) Mortgage prequalification letter or lease agreement;

(8) Net assets summary and disclosure form as may be applicable; and

(9) Additional documentation as may be required by DPP.

(b) The application and documentation shall be as complete as possible in order to expedite DPP determination of an applicant's eligibility.

(c) An applicant found to have willfully submitted false information, made misstatements, or withheld necessary information, shall be deemed ineligible, and the City reserves the right to recover any money wrongfully gained and to any other recourse provided by law.

(d) DPP may establish an expiration date for applications received to purchase an affordable housing unit on a project-by-project basis.

[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§3-10 Prequalification. DPP may determine applicant's eligibility and develop a pool of prequalified applicants for affordable housing units. Prequalified eligible applicants shall annually update their information to DPP of their status while waiting in the prequalified applicant pool.

[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§3-11 Non-Discrimination. There shall be no discrimination against any applicant with regard to race, sex, color, religion, marital status, sexual orientation, familial status, national origin, person with disability status, political affiliation, or human immunodeficiency virus infection or any other category protected under state or federal law.

[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

CHAPTER 4

MARKETING & SELECTION

§4-1 Marketing Periods. (a) Marketing periods are only applicable to projects as specified by Ordinance 18-10 or if contained within the approvals issued by the City.

(b) The recognized start date of the marketing period shall be stated in the approved affordable housing agreement.

(c) After each designated marketing period, developers may market the affordable housing units to the next designated income group (step-up) as specified in Ordinance 18-10 or approvals issued by the City, subject to a written notice and marketing report submitted to the Director.

(d) The approved price of the affordable housing units shall remain the same throughout the applicable marketing periods, unless otherwise amended with the Director's approval.

(e) Affordable rental units, subject to applicable step-ups, shall restart to the first marketing period when the affordable rental unit is marketed for a new eligible renter.

[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§4-2 Marketing Plan. (a) Prior to the announcement and publication for initial sale or rental of the affordable housing units, the developer shall submit a marketing plan for review and approval by DPP which shall include the following information:

(1) The general description and location of the project containing the affordable housing units;

(2) A fair and reasonable estimate of:

A. The total number of affordable housing units to be included in the project;

B. The sales price or rental rates of the affordable housing units;

C. The approximate size of the affordable housing units including but not limited to;

i. Estimated square feet

ii. Number of bedrooms and bathrooms

D. A designation on whether the affordable housing units are being sold in fee simple or leasehold;

(3) Marketing strategy for the sale or rental of the affordable housing units including:
   A. Types of advertising methods;
   B. Frequency of advertisements; and
   C. Sample of advertisements

(4) Application review process for prescreening of applicant qualification requirements including:
   A. Maximum income limits;
   B. Eligibility Criteria as described in §3-2 for affordable housing units for sale or §3-4 for affordable rental units;
   C. Occupancy requirements as described in §3-7;
   D. Restrictions on use as described in §5-2; and
   E. The City's first option to purchase the affordable housing unit.

(5) A statement that buyers or renters shall be selected on a lottery or first-come, first-served basis;

(6) Where and when applications may be obtained and the first date, including time and place, where applications will be accepted;

(7) The name, address, and contact information of the real estate broker or property manager designated by the developer, whom interested individuals may contact to obtain further information on the project;

(8) Deadline for submission of applications;

(9) In the case of affordable housing units for sale, the deposit amount and mode of acceptable payment;

(10) A statement that the affordable housing units will be available to any qualified resident; and

(11) Other information as may be required by DPP.

(b) After the marketing plan has been approved by the Director, the developer shall publish for a period of thirty (30) calendar days or the duration of marketing period(s) if applicable as set forth by Ordinance 18-10 or approval issued by the City, whichever is longer, the approved marketing contents in the following manner:

(1) Affordable for-sale housing units, the developer shall publish an announcement with the approved information at least twice a week in the classified section of at least one newspaper published daily in the City and County of Honolulu; and

(2) The developer shall post and maintain the approved contents online for the duration of the marketing period.

(c) The time period between publication of the first announcement and the first acceptance of applications shall be no less than fourteen (14) business days.

(d) Affordable for-sale housing units with applicable marketing periods, if at least fifty percent (50%) of the affordable housing units have not been sold to an eligible applicant after the first marketing period, then the developer shall increase the number of ads in the newspaper from twice a week to three times a week or other documentable good faith efforts via electronic or other acceptable media, until at least fifty percent (50%) of the affordable housing units have been sold.

[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§4-3 Marketing Reports. (a) Prior to any notification to step up the marketing period, the developer shall submit to DPP a marketing report at the end of each applicable marketing period that shall include the following information:

(1) Number of applications received;

(2) Number of applications processed, broken down by:

(A) Income groups; and

(B) Household Size.

(3) Number of affordable housing units reserved, sold, or rented; and

(4) Number of ads posted and dates of posting.

(b) Attached to the notification to step up the marketing period, the developer shall include an affidavit and documentation that the affordable housing units have been in good faith marketed in compliance with the approved marketing plan.

[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§4-4 Fair and Equal Access. All eligible residents of the City and County of Honolulu shall have fair and equal access to apply for an affordable housing unit.

[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10;

ROH §21-9.100-5)

§4-5 Excess Applicants. If there are more applicants than there are affordable housing units available in a project, in conformance with Hawaii law, the Developer shall determine, subject to Director's approval, the selection of applicants be by one of the following means for each designated income group(s):

(1) By lottery; or

(2) First-come, first-served, on the advertised date that applications are taken.

A waiting list for eligible applicants not selected shall be maintained and updated from time to time.

[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§4-6 Notification to Prequalified Applicants. (a) After the approval of the marketing plan, DPP may notify a pool of eligible prequalified applicants with the following information:

(1) Copy of the Developer's approved advertisement; and

(2) Affordable Housing units designated income limits;

[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

CHAPTER 5

RESTRICTIONS ON TRANSFER, SALE/BUYBACK, AND USE

§5-1 Terms of Restrictions. (a) Each affordable housing unit shall be subject to and encumbered by the restrictions on transfer, use and sale of affordable housing units stated in §§201H-47, 201H-49, and 201H-50, HRS, except as those restrictions are modified in this chapter.

(b) The length of the restriction period on the affordable housing units shall be set forth in the affordable housing agreement and reflected in the deed restriction that encumbers the affordable housing unit.

(c) The restrictions on transfer, sale/buyback, additional financing, and use shall be fully stated in their entirety in all conveyance documents and restrictive covenants on the affordable housing units.

(d) No owner shall be entitled to modify the restrictions on use, transfer, or sale of the real property, without the written permission of the City, holder of a duly recorded first mortgage on the affordable housing unit, and the owner of the fee simple or leasehold interest in the land underlying the unit, unless the holder of the first mortgage or the owner is an agency of the City.

(e) The City, developer, or City's authorized agent shall reserve the right to seek financial recourse from the owner if the provisions of this Chapter are violated. Terms of the financial recourse shall be fully stated in their entirety in all instruments, conveyance documents, and restricted covenants. Financial recourse may include the appreciated value of the affordable housing unit. Funds collected from any financial recourse action shall be credited to the entity that provided the affordable housing subsidy or to the City to fulfill an outstanding affordable housing unit obligation. The City reserves the right to disqualify units which are non-compliant with the restriction period requirement.

(f) The restrictions of this chapter shall terminate as to a particular real property and shall not attach in subsequent transfers of title of that real property if the Director releases the restrictions.

[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§5-2 Restrictions on Use. (a) Affordable for-sale housing units purchased under the affordable housing program shall be occupied as the purchaser's principal residence for the duration of the restriction period. The owner of an affordable for-sale housing unit shall not rent the affordable housing unit, except in extreme hardship circumstances which prevents the continued occupancy of the affordable housing unit, as determined and approved by the Director pursuant to §5-5.

(b) Affordable rental units shall be occupied as the renter's principal residence and shall not be subleased during their lease agreement period.

(c) The City, developer, or City's authorized agent shall have the right during the restriction period to verify owner occupancy of the principal residence.

(d) The provisions of this section shall be incorporated in any deed, lease, agreement of sale, or any other instrument of conveyance.

[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§5-3 Restriction on Additional Financing. (a) During the restriction period, only mortgages and liens consented to in advance by the City and created for the purpose of financing essential improvements or maintenance and repair of the affordable housing unit, or other expenditures relating to the property of an emergency or life-threatening nature, may be placed on the property, provided that the owner shall not refinance the real property for an amount in excess of the purchase price as determined by §5-4(a).

(b) The provisions of this section shall be incorporated in any deed, lease, agreement of sale, or any other instrument of conveyance.

[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§5-4 Affordable For-Sale Buyback Restriction. (a) During the affordable housing restriction period, if the purchaser wishes to sell or transfer title of the real property, BFS or a qualified nonprofit housing trust shall have the first option to purchase the real property at a price that shall not exceed the sum of:

(1) The original cost of the affordable housing unit to the owner;
(2) The cost of any property improvements added by the owner; and
(3) Simple interest on the original cost of the unit plus property improvements by the owner at the rate of one percent (1%) per year the affordable housing unit has been occupied.

(b) The City or qualified nonprofit housing trust may purchase the real property either:

(1) By conveyance free and clear of all mortgages and liens; or
(2) By conveyance subject to existing mortgages and liens, where the City or affordable housing trust shall assume the seller's obligation on any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller; and any mortgage or lien created for any other purpose, provided that the Director has previously consented to it in writing. The City or authorized affordable housing trust interest, created by this section shall constitute as a statutory lien on the real property and shall be superior to any other mortgage or lien except for:
    (A) Any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller;
    (B) Any mortgage insured or held by a federal housing agency; and
    (C) Any mortgage or lien created for any other purpose, provided that the Director has previously consented to it in writing.

(c) If BFS or qualified nonprofit housing trust does not exercise the option to purchase the real property, then the owner shall:

(1) Sell or transfer the real property at a price no more than described in §5-4(a) and upon terms that preserve the intent of this chapter;
(2) Sell or assign to a qualified resident as described in Chapter 3, and who is in the same income group as the original purchaser at the time of the original sale, approved by DPP; and
(3) Submit a copy of the deed and final transfer of sale to the DPP within ninety days (90) after the date of sale.

(d) An owner found to have not met or been approved for any of these conditions may be deemed to be in violation of the buyback

restriction, and the City reserves the right to recover any money wrongfully gained and to any other recourse provided by law.

(e) The provisions of this section shall be incorporated in any deed, lease, agreement of sale, or any other instrument of conveyance.

[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§5-5 Waiver of Owner-Occupancy. (a) The Director may temporarily waive the owner-occupancy requirement for a total of not more than ten (10) years of the restriction period, during which time the affordable housing unit may be rented to a person who is a qualified resident as described in Chapter 3, and who is in the same income category as the original purchaser at the time of the original sale, approved by DPP. The rent must be at a price as described in §2-12.

(b) The restriction period shall be extended by one month for every month or fraction thereof that the owner-occupancy requirement is waived. The Director may grant a one-time extension of the waiver period on a case-by-case basis due to extreme hardship circumstances.

(c) Waivers may be granted only to qualified residents who have paid property and resident state income taxes during all years in which they occupied the affordable housing unit, who continue to pay property and resident state income taxes during the waiver period, and whose inability to reside on the property does not stem from a natural disaster.

(d) If the owner fails to reoccupy the affordable housing unit after any waiver period and attempts to sell the affordable housing unit, then the owner shall receive no more than the maximum amount as stated in §5-4(a), subject to the Director's approval. Any person who disagrees with the Director's determination under this section shall be entitled to a contested case proceeding under Chapter 10 of these rules.

(e) Owners shall submit annual reports to the DPP for the duration of the waiver period, as described in §6-2.

[Eff:MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§5-6 Affordable Rental Units Restriction. (a) Affordable rental units must be rented for a minimum restriction period as set forth in affordable housing agreement.

(b) The City or qualified nonprofit housing trust shall be given the first option to purchase the project or units, subject to the following;

(1) After the fulfillment of the restriction period;

(2) When the affordable rental units are converted to for-sale units;

(3) At a price which an independent appraiser, mutually agreed upon by BFS or City authorized representative and the developer or subsequent owner, determines to be the fair market value of the units; and

(4) The City or qualified nonprofit housing trust shall provide a response within 90 days of the notice of offering.

(c) The provisions of this section shall be incorporated in any deed, lease, agreement of sale, or any other instrument of conveyance for the affordable rental unit portion of the project.

[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§5-7 New Restriction Period. (a) If an affordable housing unit is repurchased by the City and resold to a new owner during the restriction period, a new restriction period equal to the original restriction period or remainder of the period may be imposed upon the new owner.

(b) If a qualified nonprofit housing trust purchases an affordable housing unit in place of the City, as described in §5-4(a), then in accordance with §201H-47, HRS, the restrictions prescribed in this chapter shall be automatically extinguished and the housing trust shall establish new buyback restrictions for the purpose of maintaining the unit as affordable for as long as practicable, or as otherwise required by the City.

[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§5-8 Waiver. If an owner wishes to sell an affordable for-sale housing unit during the buyback restriction period, BFS may waive the

transfer restriction for that specific transaction. A waiver by BFS will be determined on each separate request based on the following criteria:

(1) The owner wishes to transfer title to the real property by devise or through the laws of descent to a household member who would otherwise qualify under these rules.

(2) The sale or transfer of the real property would be at a price, as described in §5-4(a), and upon terms that preserve the intent of this section without the necessity of BFS repurchasing the real property; provided that, in this case, the owner shall be required to sell the affordable housing unit or lot and sell or assign the property to a person who is a qualified resident as described in Chapter 3, who is in the same income category as the original owner at the time of the original sale, approved by BFS.

[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§5-9 Release and Cancellation of Restrictions. (a) The City may release the restrictions prescribed in this chapter if the real property is financed under a federally subsidized mortgage program and the restrictions would jeopardize the federal government's ability to recapture any interest credit subsidies provided to the homeowner.

(b) The Director may waive any of the restrictions set forth in this chapter in order to comply with requirements set forth in federal laws or regulations governing mortgage insurance or guarantee programs or requirements set forth by federally chartered secondary mortgage market participants.

(c) The restrictions prescribed in this chapter shall be automatically extinguished and shall not attach in subsequent transfers of title when a qualified nonprofit housing trust becomes the owner of the real property or when a mortgage holder or other party becomes the owner of the real property pursuant to a mortgage foreclosure under power of sale, or a conveyance in-lieu of foreclosure after a foreclosure action is commenced; provided that the mortgage is the initial purchase money mortgage, or that the Director consented to and agreed to subordinate the restrictions to the mortgage when originated, if the mortgage is not the initial purchase money mortgage; or when a mortgage is assigned to a federal housing agency. Any law to the contrary notwithstanding, a mortgagee under a mortgage

covering real property or leasehold interest encumbered by the first option to purchase in favor of the City, prior to commencing mortgage foreclosure proceedings, shall notify the Director in writing of:

(1) Any default of the mortgagor under the mortgage within ninety (90) days after the occurrence of the default, and

(2) Any intention of the mortgagee to foreclose the mortgage under Chapter 667, HRS forty-five (45) days prior to commencing mortgage foreclosure proceedings; provided that the mortgagee's failure to provide written notice to the City shall not affect the holder's rights under the mortgage.

[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

CHAPTER 6

AFFORDABLE HOUSING COMPLIANCE MONITORING PROGRAM

§6-1 Developer Status Report. (a) The developer shall provide a status report on the project's compliance with the affordable housing agreement to the Director by December 31 of each year, until the project is completed and all designated affordable housing units are sold or leased to the target income group. The report shall be submitted in both a hard copy and electronic format, separated by project level and unit level information for the target income groups and shall contain the following:

(1) Project level Information:
- (A) Project Name;
- (B) Tax Map Key;
- (C) Applicable Ordinance or City discretionary permit that requires affordable housing requirement;
- (D) The required amount of affordable housing units for the project;
- (E) The project's total number of dwelling units;
- (F) Total number of affordable housing units delivered;
- (G) Total number of affordable housing units with Room Factor;
- (H) Number of affordable housing units sold during each applicable marketing period; and
- (I) Total number of fees waived in relation to affordable housing provision.

(2) Affordable housing unit information:
- (A) Tax Map Key and CPR number, as applicable, of each affordable housing unit;
- (B) Unit number of each affordable housing unit;
- (C) Street address of each affordable housing unit;
- (D) Name of purchaser or renter of each affordable housing unit;
- (E) Date of purchase or lease agreement for each affordable housing unit;
- (F) Sale price or monthly rent for each affordable housing unit;
- (G) The annual gross income of each household;

(H) Original income level designation for the affordable housing unit;
(I) Actual income level of the purchaser;
(J) Unit size by square feet, number of bedrooms and bathrooms in each affordable housing unit;
(K) Household size of purchaser or lessee of each affordable housing unit;
(L) Restriction period of each affordable housing unit; and
(M) Date DPP approved eligibility of household.

(3) The developer shall attach the following documentation to the annual status report, for all new owners or renters of the project.
(A) A copy of the deed or lease document used to convey property to households in the project;
(B) Owner's Closing Statement for the sale of each affordable housing unit; and
(C) Copy of the rental lease agreement for each new qualified renter of an affordable housing unit.

(b) The developer shall retain the approved documents for a period of no less than the designated restriction period as set forth in the DPP approved affordable housing agreement.
[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§6-2 Affordable Housing Owner Monitoring. Owners of affordable for-sale housing units shall submit an annual monitoring fee and notification of any change in household information to the DPP in accordance with Ordinance 18-10 or as otherwise set forth by law, due on December 31 of each calendar year.
[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§6-3 Affordable Housing Rental Monitoring. (a) Owners or property managers of affordable rental units shall submit an annual report to DPP by November 30 of each year, with the following information:
(1) Project name;
(2) Tax Map Key and address;

(3) Project's total number of dwelling units;
(4) Required number of affordable housing units;
(5) Total number of affordable housing units delivered;
(6) Restriction period of the affordable housing unit;
(7) Unit number of each affordable rental unit;
(8) Name of renter of each affordable housing unit;
(9) Date of lease agreement for each affordable housing unit;
(10) Monthly rent for each affordable housing unit;
(11) Annual gross income of each household or renter;
(12) Income level designation for the affordable housing unit;
(13) Unit size by square feet, number of bedrooms and bathrooms in each affordable housing unit;
(14) Household size of each lessee of the affordable housing unit; and
(15) Date DPP approved eligibility of household;

(b) In addition to the information listed above, the status report should include a rent roll indicating the current tenants of the affordable housing units, and any change of tenants' status, household size, or household income.

[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§6-4 Nonprofit Housing Trust Status Report. (a) A qualified nonprofit housing trust shall report the status and use of its housing units to the City or the City's approved agent, by November 30 of each calendar year in compliance with §6-1 for the duration of the restriction period as set forth in the affordable housing agreement.

[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§6-5 DPP Approved Agent. (a) The Director may designate or authorize a company or agent as a representative for the purposes of determining eligibility of the affordable housing applicants and monitoring the affordable housing units.

(b) The City's authorized agent may charge a monitoring fee to the affordable housing units, subject to the Director's approval.

[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10;

ROH §21-9.100-5)

§6-6 Affordable Housing Database. The City or City's approved agent will maintain an affordable housing database to monitor the affordable housing units developed under Ordinance 18-10 and other approvals issued by the City.
[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

CHAPTER 7

PUBLIC INFORMATION

§7-1 Public Information. All rules, orders, or opinions of DPP shall be on file and available for public inspection at the offices set forth below. Hard copies of compilations of rules are available to the public at a price to be fixed by DPP to cover mailing and publication costs. The public may obtain information on matters within the jurisdiction of DPP by inquiring at:

(1) The Office of the City Clerk, Honolulu Hale, 530 South King Street, 1st Floor, Honolulu, HI 96813; or

(2) The Department of Planning and Permitting, 650 South King Street, 7th Floor, Honolulu, Hawaii 96813.

[Eff:MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§7-2 Submittal or Requests for Information. Inquiries may be made in person at the offices set forth above during business hours, or by submitting a request for information in writing to the Director.

[EffMAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

CHAPTER 8

ADOPTION, AMENDMENT, AND REPEAL OF RULES

§8-1 Petition. Any interested person may petition DPP for the adoption, amendment, or repeal of any rule, at any time.
[Eff MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§8-2 Submission. The petitioner shall submit five copies of the petition to DPP, which shall include:

(1) A statement of the nature of the petitioner's interest;
(2) A draft of the substance of the proposed rule, the amendment to a rule, or a designation of the rule sought to be repealed; and
(3) An explicit statement of the reasons in support of the action proposed.

[Eff MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§8-3 Disposition of Petition. Within one hundred and twenty (120) days after the filing of the petition, DPP shall either deny the petition in writing and shall state its reasons for such denial, or initiate proceedings in accordance with §91-3, HRS, for the adoption, amendment, or repeal of the rule.
[Eff MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§8-4 Action by DPP. DPP may initiate proceedings in accordance with §91-3, HRS, for the adoption, amendment, or repeal of any rule, at any time.
[Eff MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

CHAPTER 9

HEARING ON DISPUTES

§9-1 Informal Hearing. No later than thirty (30) calendar days after the action giving rise to a dispute, a person who disputes action taken by DPP and alleges that the action adversely affects that person's rights, duties, welfare, or status, may submit a written notice of the complaint to DPP which initially will be discussed informally and an attempt will be made to settle the dispute without a hearing. A written summary of the informal discussion shall be prepared by DPP within thirty (30) calendar days after the date of the informal discussion and delivered to the complaining person. The summary shall specify the names of the participants, the dates of meetings, the proposed disposition of the dispute, and the specific reasons for the disposition. It shall specify the procedures to obtain a hearing if the complaining person is not satisfied. [Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§9-2 Formal Hearing on Dispute; Request for a Hearing. If a complaining person is not satisfied with the disposition of a dispute by the informal discussion stated in §10-1, that person may submit a written request to DPP for a formal hearing within thirty (30) calendar days after receipt of the written summary of the informal discussion. [Eff MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§9-3 Form and Content of Written Request for Hearing. The written request shall contain the following:

(1) The name, address, and telephone number of the petitioner;

(2) A designation of the pertinent Ordinance, rule, or order which is the subject of the request or the action taken by DPP on which this request is based;

(3) A complete statement of facts on which the request is based; and

(4) A complete statement of the position of the petitioner, a complete statement of the reasons in support of petitioner's position, and a memorandum of points and authority, including any legal authorities.

[Eff MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§9-4 Hearing Officer. The Director or Director's authorized representative shall conduct the hearing.

[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

§9-5 Notice; Conduct of Hearing; Judicial Review. The notice, conduct of hearing, and the procedure for judicial review shall be made pursuant to the pursuant to the provisions of Chapter 91, HRS.

[Eff: MAR 3 1 2019] (Auth: RCH §6-1504; Ord 18-10) (Imp: Ord 18-10; ROH §21-9.100-5)

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

The Rules to Implement the City's Affordable Housing Requirements were adopted on March 19, 2019, following a public hearing held on November 20, 2018, after public notice was given in the Honolulu Star Advertiser on October 19, 2018.

The adoption of these rules shall take effect ten days after filing with the Office of the City Clerk of the City and County of Honolulu.

Kathy K. Sokugawa, Acting Director
Department of Planning and Permitting, City and County of Honolulu

Nelson H. Koyanagi, Jr., Director
Department of Budget and Fiscal Services, City and County of Honolulu

APPROVED AS TO FORM:

Deputy Corporation Counsel
City and County of Honolulu
MOLLY A. STEBBINS

APPROVED:

Dated: March 19, 2019

Kirk Caldwell,
Mayor
City and County of Honolulu

FILED:

Dated: March 21, 2019

Glen I. Takahashi,
City Clerk
City and County of Honolulu