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August 3, 2017

The Honorable Kymberly Marcos Pine, Chair
and Members
Committee on Zoning and Housing
Honolulu City Council
530 South King Street, Room 202
Honolulu, Hawaii 96813

Dear Chair Pine and Councilmembers:

SUBJECT: Comments on Bill 58 (2017), CD1 and Bill 59 (2017), CD1

The Department of Planning and Permitting (DPP) has reviewed the CD1 versions of Bill 58 (2017), relating to an affordable housing requirement, and Bill 59 (2017), relating to affordable housing incentives, and offers the comments below for your consideration.

Bill 59 (2017), CD1

- **The CD1 removes the waiver of park dedication requirements for the affordable for-sale units. DPP requests that the waiver of park dedication requirements be reapplied to all affordable units.** Waiving the park dedication requirements for the affordable for-sale, not just the affordable rental units, will help ensure that more of both of these needed unit types will be constructed—the waiver will remove between $24,000 and $57,000 in additional cost per affordable unit. Our financial analysis has shown that the full range of incentives is needed to help offset the costs of providing affordable units. The requirements will still be applied to the market-rate units in development projects.

Bill 58 (2017), CD1

- **The CD1 removes the proposed three-year phase-in of the affordable housing requirement (AHR), and applies the AHR islandwide on adoption. DPP requests that the proposed phase-in of the AHR be reinstated in the bill.** Phasing in the requirement will be important to housing developers in weaker market areas. Our financial analysis has shown that areas outside of the Ala Moana and Downtown/Chinatown neighborhoods cannot currently support incorporating the full AHR into market rate projects. Phasing increases the feasibility of complying with the new AHR in weaker market areas, as this additional time allows the value of land to be adjusted to reflect the cost of providing the required affordable housing.

- **The CD1 removes the proposed in-lieu fee and land dedication options (to satisfy the AHR). DPP requests that the proposed in-lieu fee and land dedication options be reinstated in the bill.** These options provide housing developers with additional flexibility to comply with the new AHR. While the preferred option is for developers to build the required units in the same project or provide a larger number of units off site in the same neighborhood, certain circumstances may necessitate use of these options. For example, luxury projects with high condominium association dues (regulated by the building's board) might conflict with long-term affordability goals, while project timelines, financial partners, or the logistics of coordinating with multiple off-site property owners may limit the feasibility of providing off-site units. The proposed fee is designed to be less desirable to developers than actually building affordable units on or off site. The strategic use of in-lieu fees can actually provide more affordable units than on- or off-site construction, and/or support lower area median income range rental housing, especially when leveraged with federal and state funding sources for affordable housing (see pp.18-20 of the DPP AHR Director's Report, and the attached Rick Jacobus memo, dated July 19, 2017).

- **The CD1 modifies the language in Section (__)-1.5 to require resetting the period of affordability only when an affordable unit is resold. DPP requests that the modified language in Section (__)-1.5 be reconsidered to account for resetting the period of affordability not only when an affordable unit is resold, but also gifted.** The modified language (from "when the real property title…changes" to "is resold") might impact a homeowner's ability to gift or transfer the affordable unit to a family member, and provide a potential loophole for homebuyers to get around the AHR's period of affordability. The period of affordability should be reset for any change in real property title, such as when an affordable unit is resold or gifted to someone. Furthermore, resetting the period of affordability should apply to any period of affordability, not just the initial period. The goal is to keep the units affordable for as long as possible.

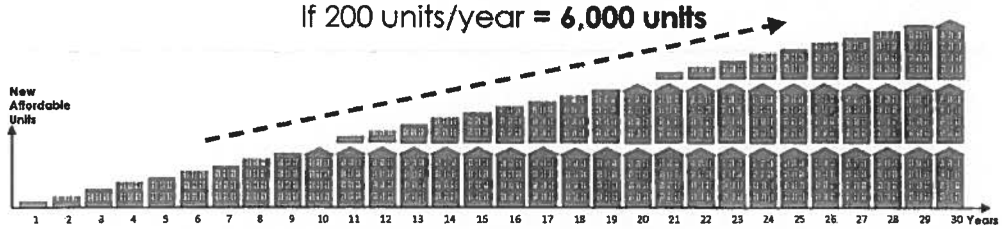
- **The CD1 uses the word "parcel" rather than "property" in an added sentence in Sec. (__)-1.7(a) ("Procedures"). DPP recommends changing this only instance of "parcel" to "property" in Sec. (__)-1.7(a) ("Procedures").** The use of "property" will provide greater clarity, as parcels do not necessarily match the same zoning lots or ownership.

In addition to the specific edits to Bill 58 (2017), CD1 requested above, the DPP offers comments on the importance of requiring the proposed 30-year period of affordability, as opposed to the current 10-year period required under Unilateral Agreements (UA) for re-zoning. The public purpose of the AHR is to help grow and maintain a stable supply of affordable and workforce housing over time; the diagram below shows how the AHR will create a much larger, stable supply of affordable units over the next three decades. Over 80 percent of 330 inclusionary housing programs across the country (for which data is available) require 30 years or more; over half of them require 50 years or more (see attached Rick Jacobus memo dated

July 19, 2017). There has been some testimony on Bill 58 (2017) that the longer period of affordability will impact developers' ability to sell the units, as compared to market-rate units. If the cost of a market-rate unit and an affordable unit was the same, that would be a concern, but most programs require an affordable unit to be discounted below the market-rate price. The AHR program is intended to allow first-time buyers, who are unable to qualify for a market-rate unit, to buy a more affordable unit.

30-Year Affordability

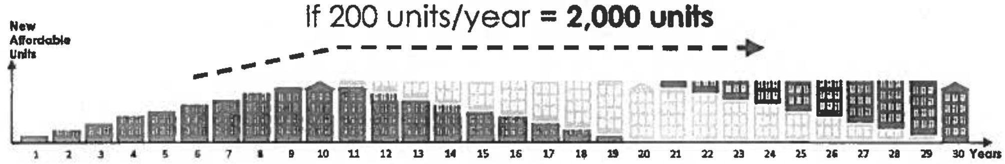
If 200 units/year = **6,000 units**



Reset (on resale) to a new 30-year period continues to increase supply

10-Year Affordability

If 200 units/year = **2,000 units**



Several developers have also expressed concern that the restricted re-sale requirements and extended affordability period will limit the homebuyers' ability to build equity and move up the housing ladder to a market-rate unit. The AHR is carefully calibrated to build up and maintain a long-term stable supply of affordable housing, while allowing first-time homebuyers to build equity and savings for a future market-rate purchase (see pp. 20-21 of the DPP AHR Director's Report). The real comparison is between renting (with no equity building) and the first-time buyer's potential for significant equity and savings.

Some developers have requested a "fail-safe" option in case they are unable to find a qualified buyer in a reasonable time period; either allowing the sale to a higher-income buyer or changing the required 30-year period of affordability to 10 years. The DPP strongly recommends preserving the longer affordability period, but agrees that allowing a bump-up to a higher-income purchaser is a reasonable fail-safe. This option, generally handled through administrative rules, should include a minimum three-month marketing period to income qualified buyers. If no income-qualified buyer is found, the sale can be made to the next higher-income AMI range, but be sold at the same/original affordable price, and include the long-term resale-restrictions or other standard requirements. This will address developers' concerns about finding qualified buyers, but still encourage sales to buyers at the lower AMI ranges, since there will be no incentives for developers to wait to sell at a higher price.

The DPP's housing consultant, Rick Jacobus, recently testified at the June 29, 2017 Zoning and Housing Committee meeting and provided a short memo (dated July 19, 2017, attached) addressing some of the concerns or questions he heard, which include:

1. Should requirements be phased in?
2. Should in-lieu fees be allowed?
3. How long should affordability restrictions last?
4. How should the prices for affordable units be established?
5. Will long-term price restrictions make it difficult to secure mortgage financing?
6. What happens when no income eligible buyers can be found?

I have also included Mr. Jacobus' letter (May 5, 2017) which addresses finance and development industry concerns about whether the 30-year period of affordability and resale price restrictions would hinder developers' ability to finance projects due to issues with re-selling the mortgages on the secondary market (he assures us that this will not be a major concern if we are careful in drafting the resale restriction documents). Mr. Jacobus met with industry representatives in June and will continue working with them to ensure the details are correct.

Should you have any questions, please contact me at 768-8000.

Very truly yours,

Kathy K. Sokugawa
Acting Director

Attachments: Rick Jacobus Memo, July 19, 2017
Rick Jacobus Letter, May 5, 2017
DPP AHR Director's Report, May 19, 2017

APPROVED:

Roy K. Amemiya, Jr.
Managing Director