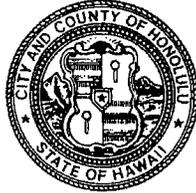


DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honolulu.dpp.org • CITY WEB SITE: www.honolulu.gov

KIRK CALDWELL
MAYOR



KATHY K. SOKUGAWA
ACTING DIRECTOR

TIMOTHY F. T. HIU
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

January 17, 2018

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

RECEIVED
2018 JAN 18 A 9:30
CITY COUNCIL
HONOLULU HAWAII

Dear Chair Pine and Councilmembers:

SUBJECT: Comments on Proposed CD2 Versions of Bill 58 (2017)
and Bill 59 (2017)

The Department of Planning and Permitting (DPP) has reviewed the proposed CD2 versions of Bill 58 (2017), relating to an affordable housing requirement (AHR), and Bill 59 (2017), relating to affordable housing incentives, and offers the comments below for your consideration. We appreciate the committee's extensive efforts to meet with stakeholders to refine and improve the bills. All comments are in comparison to the bills as originally introduced.

Given the urgency of our housing affordability crisis, it is time to finalize and adopt these bills, which are based on over three years of stakeholder meetings, research, and technical analysis. The combination of reasonable requirements and financial incentives will help build and maintain a long-term supply of affordable housing – but only if the original income targets and longer affordability period are maintained. We have organized our comments on Bill 58 into critical policy issues and minor technical and administrative issues. The most important requested revisions include:

- **Maintain the original area median income (AMI) limits** for for-sale units at or below 100 percent and 120 percent AMI; eliminate the proposed option to allow affordable units to be targeted to 140 percent AMI, which is close to or below the market.
- **Maintain the original required 30 year affordability period**, without the proposed decrease to a 10 year period after 120 days of marketing (if the unit is not sold).
- **Encourage, but not require, use of a third party** for administration, monitoring, and compliance. This will take time to establish, and should be an administrative decision by the Director of the DPP.

Bill 59 (2017), Councilmember Pine's Proposed CD2

- The DPP appreciates that the original language has been restored, applying the incentives to all affordable residential units, not just affordable rental units. We also appreciate maintaining the original three expiration dates for real property tax waivers during construction, which would be enforceable since they are tied to the permitting process.
- We understand that the development industry is asking for adoption of Bill 59 only, while deferring (or eliminating) passage of Bill 58. Bill 59 was crafted to provide incentives to help offset the requirements in Bill 58. Any delay in adopting these bills will also delay implementation of the Transit-Oriented Development (TOD) Special District and TOD zoning, in Ordinances 17-54 and 17-56, which were adopted contingent on adoption of Bills 58 and 59. *Recommendation: Bill 59 should be adopted only in conjunction with Bill 58.*

Bill 58 (2017), Councilmember Pine's Proposed CD2

Policy Issues

- The original proposal included a phase-in of the AHR outside of the Ala Moana and Downtown areas to allow time for the market to respond to the requirement (see attached memo from Rick Jacobus dated 12/23/16). *Recommendation: Maintain the proposed phase-in of the AHR.*
- Table -1.4. We have concerns with the proposed higher 140 percent qualifying AMI tier; with how the higher TOD percentage is applied; and with how affordable units in a substantial rehabilitation project are counted. *Recommendation: Revert back to the original language (or similar).*
 - The CD2 modifies the AHR by adding a new qualifying AMI tier that increases the ceiling from 120 to 140 percent on for-sale dwelling units. This would allow 1/3 of the units to be sold to households earning 140 percent and below of the AMI, in return for providing an additional 5 percent of units as affordable.
 - In many areas on Oahu, the median price of homes on the market are close to or below the 140 percent AMI (or even 120 percent) range (see attached map). If the affordable units are offered too close to market price, they will not meet the social purpose of the AHR. They will be a drag on marketing, will be expensive to monitor, and may never result in noticeable benefits to anyone. This may set up the AHR for failure. If Council's purpose is to reduce the burden on developers, it would be better to reduce the required AHR percentage, but leave the lower AMI ranges. *Recommendation: Remove the 140 percent option.*

- The CD2 modifies the AHR by creating a new category for TOD that applies a higher percentage only to TOD projects seeking additional height and/or density (rather than applying to all projects in the geographic TOD zones as originally proposed). This modification may also be a disincentive to using height and density bonuses (which are explicitly provided to get more people living near rail stations and using transit). All projects in TOD zones benefit from rail construction, the new mixed use TOD zoning, reduced parking requirements, and significant infrastructure and access investments. *Recommendation: All projects in TOD zones should provide the higher percentage.*
- Footnotes (2) and (3) state that on- and off-site affordable units will count as one-half of a unit. This is appropriate when the principal project is (more expensive) new construction and the affordable units are (much less expensive) substantial rehabilitation. But when the principal project is (less expensive) substantial rehabilitation, the equivalent on-site affordable dwelling units should count as whole units. *Recommendation: Restore original footnote language.*
- Sec. -1.5.(b)(2). Affordability Period. This reduces the required period of affordability from 30 to 10 years after 120 days, if the Declarant is unable to obtain a contract for sale. Since the purpose of the AHR is to build and maintain a long-term supply of affordable housing, reducing the affordability period by 2/3 will not meet that critical purpose.
 - More importantly, there is no evidence that such a reduction would help market units. Only 7 percent of inclusionary housing programs nationwide sell units with restrictions under 30 years. We have not found other national examples of this “reduced period of affordability” approach. The ability to increase the qualifying AMI range if a unit remains unsold or unrented (as provided in Sec. -1.6.) is a more typical fail-safe provision.
 - In a current large project providing affordable units under a unilateral agreement, we have seen many potential buyers simply “wait out” the initial marketing period to take advantage of the reduced requirements.
 - It is not clear whether the intention is that the reduced affordability period in Sec. -1.5.(b)(2) can be combined with the increased qualifying AMI range in Sec. -1.6 after the first 120 days of marketing; it appears that the Declarant might have to choose one or the other option. This should be clarified if both options are included. If this reduction of the affordability period is retained, a definition of “contract” is needed.
Recommendation: Eliminate the reduced affordability period option. As a potential compromise, if both options are retained, then allow the reduced affordability period only after the end of the second period (240 days).

- Sec. -1.6. Marketing Period. This allows for increasing the qualifying AMI household income level of the purchaser or renter by 20 percent after each 120-day marketing period. This step-up has been shown to be a workable fail-safe in other programs and is preferable to the reduced affordability period described above.
 - We assume that the intent is only to allow this step-up in qualifying AMI range for the initial leasing of each rental unit, but this is not clear. If it is intended to be an ongoing option, this may be a time-consuming administrative task. All affordable rental units should revert back to the original AMI range when they are re-rented.
 - Similar to the affordability period, a definition of “contract” is needed.
Recommendation: Add language to require proof of good faith marketing efforts to be submitted to the DPP, with approval by the Director of any increase in qualifying AMI range. Require rental units to revert back to original AMI range when re-rented. Clarify whether the step-up is allowed in ongoing rental of affordable units.

Technical and Administrative Issues

- Sec. -1.2. Definitions. In order to qualify for the substantial financial incentives in Bill 59, rehabilitation should be more extensive than “cosmetic and deferred maintenance” improvements to ensure that affordable units will be livable for the 30-year period of affordability. The CD2 definition of “substantial rehabilitation” language is vague and may be difficult to enforce. *Recommendation: Restore the original “50 percent of then-current replacement cost,” which is an objective and measurable standard in use by the DPP. Add definition of “contract.”*
- Sec. -1.3. Applicability. Sec -1.3.(b)(5) originally proposed not applying the AHR to micro-units. The assumption was that this exemption would apply to projects consisting entirely of micro-units, and that they would be relatively affordable due to size. However, a recent project application for an interim planned development-transit permit proposed claiming this exemption for the micro-unit portion of the project. Another recent Kakaako project is marketing what appear to be luxury micro-units. *Recommendation: Either eliminate the exemption for micro-units, or adjust the definition to language such as “projects consisting entirely of micro-units.”*
- Sec. -1.7. Affordable Housing Development Account. The administration is preparing several City-owned properties to be released to private developers via request for proposal for affordable housing development. These projects could provide more affordable units if they can take advantage of these funds for gap financing.

Recommendation: In (b), allow in-lieu fees to be used to support privately developed affordable housing and mixed-income projects on public lands.

Allow in-lieu fees to be used for administrative costs by either the City or a third party administrator.

- **Sec. -1.9. Procedures.** Language should be added to ensure long-term affordability if ownership of the rental or for-sale project is transferred, since “Declarant” appears to apply only to the person who originally executes the affordable housing agreement. *Recommendation: In (b), the phrase “or its successors” (or similar language) should be added after “the Declarant”.*
- **Sec. -1.11. Administration and Fees.** There appears to be a conflict between (b), which specifies that administrative fees will be paid by occupants of rental units, and (c)(3), which specifies that fees will be paid by the owner of rental units. In (c)(3), monitoring by a private compliance monitoring service is required. *Recommendation: A private or third party compliance monitoring program should be encouraged but not required (as described below in Sec. -1.12). Clarify conflicting language about whether owners or renters pay fees.*
- **Sec. -1.12. Rules.** In (b)(3), an Affordable Housing Compliance Monitoring Program, administered by a third party, is required to be established. Since the Bill’s effective date is upon approval, it is not realistic to get a third party program set up in time for required administrative tasks. DPP has been pursuing the third party monitoring approach (and has a consultant contracted to help develop it). We have had several meetings with industry groups and state agencies, exploring potential third party administrative and compliance options, and web-based monitoring and reporting systems, potentially shared with state agencies. For more information on the administrative and compliance options we are exploring, please see related memos from the City’s consultant, Rick Jacobus (attached).
 - This should be an administrative decision, since 1) it could take a year or more to set up a third party administrator, and 2) some administrative and compliance functions are appropriate for a third party, while others should be retained by the City.
Recommendation: Add that the use of a third party administrator is encouraged but shall be at the DPP Director’s option.

Thank you for your efforts to address critical affordable housing needs and to improve these bills. We look forward to continuing to work with Council to refine them, and encourage you to adopt them (with our requested changes) as soon as possible.

The Honorable Kymberly Marcos Pine, Chair
and Members
January 17, 2018
Page 6

Should you have any questions, please contact Harrison Rue of our staff, at
768-8294.

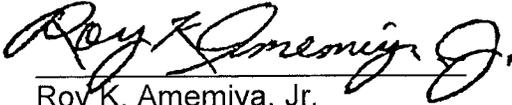
Very truly yours,



Kathy K. Sokugawa
Acting Director

Attachments: Rick Jacobus Memo Bill 58 CD2 1/16/18
Rick Jacobus Policy Memo 12/23/16
Map of Median Home List Prices by Zip Code

APPROVED:



Roy K. Amemiya, Jr.
Managing Director