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February 4, 2019

MEMORANDUM

TO: Arthur D. Challacombe, Chair
and Planning Commission Members

FROM: Kathy K. Sokugawa, Acting Director
Department of Planning and Permitting

SUBJECT: Resolution 18-78, CD1, Proposing Amendments to Chapter 21, Revised Ordinances of Honolulu 1990, as Amended (The Land Use Ordinance), Relating to Affordable Rental Housing

We are hereby submitting the Department of Planning and Permitting's (DPP) report and recommendation for increasing the supply of affordable rental housing in the apartment, apartment mixed use, and business mixed use districts through the provision of several incentives and exemptions. This approach could reduce the use of residentially-zoned properties for the development of "large detached dwellings".

Although the DPP agrees with the overall intent of the Council-initiated Resolution No. 18-78, CD1, we offer an alternate bill that adds amendments to the building code, as requested under "sister" Resolution 18-77 (attached), as well as incentives which are not included under Resolution 18-78, CD1. As this becomes a new program addressing several different sections of the Revised Ordinances of Honolulu (ROH), and it is the desire of certain stakeholders to place the program under its own section, our proposal is to create a new chapter in the ROH.

This "omnibus" approach was reflected in our short-term rental bill. Similarly, the Planning Commission is expected to take action only on Sections 1 and 2 and Section 3, Articles 1 and 2 of our proposed bill. Certainly, the Commission may choose to offer comments on the rest of the bill.

We would be happy to answer any questions that you may have concerning this matter during the Public Hearing.

Attachments

Bill Outline
February 4, 2019

SECTION 1 Purpose

SECTION 2 Findings – Essentially Mel's language with conforming edits.

SECTION 3 "Guts" - what will be included in **New Chapter Affordable Rental Housing**

Article 1 General Provisions
- 1.10. Definitions
- 1.20 Prohibition Against Condominium Property Regime
- 1.30 Violation-Penalty

Article 2 Permitted Uses, Development and Other Standards
- 2.10 General Provisions
- 2.20 Permitted Uses
- 2.30 Development Standards
- 2.40 Parking
- 2.50 Bicycle Parking
- 2.60 Examples of Maximum Building Area and Yards
- 2.70 Example of Building Height
- 2.80 Abandonment of Use.

Article 3 Building Construction Standards
- 3.10 General Provisions
- 3.20 Standards
  - Building Height and Building Areas
  - Fire-Resistance Construction
  - Fire Protection System
  - Exterior Glass
  - Accessibility

SECTION 4 Waiver of Wastewater System Facility Charge

SECTION 5 Waiver of Plan Review and Building Permit Fees

SECTION 6 Waiver of park Dedication Requirement

SECTION 7 Expedited Processing

SECTION 8 Ten-Year Property Tax Exemption

SECTION 9 Property Tax Exemption During Construction and Marketing

SECTIO 10 Ramseyering, renumbering

SECTION 10 Effective Date, nonconforming status after sunset of ordinance

RESOLUTION 18-78, CD1
COUNCIL-INITIATED LUO AMENDMENT
RELATING TO RENTAL HOUSING IN LOW-RISE MULTI-FAMILY DWELLINGS

Staff Report

February 4, 2019

I. Background

On April 25, 2018, the City Council adopted two related resolutions intended to incentivize affordable rental housing in apartment-zoned areas:

- Resolution No. 18-78, CD1, initiated specific amendments to the Land Use Ordinance (LUO) "relating to development in the apartment, apartment mixed use, and business mixed use districts to increase the supply of affordable rental housing in low-rise multi-family dwellings, and reduce the proliferation of monster homes."

- Resolution No. 18-77 requested changes to the Building code "to help incentivize the construction of affordable housing in apartment zones, increase affordable housing, and reduce the proliferation of monster homes, by creating new standards for special mid-rise residential construction that would allow for development of smaller parcels in high density districts."

Prior to the adoption of the Resolutions, the department and other city officials met with proponents of the initiatives. These were people who had experience in developing multi-family buildings. Following adoption of the Resolutions, discussions continued, and produced ideas for new incentives that will be discussed below. Proponents also recommended that for ease of use, a new chapter in the Revised Ordinances of Honolulu (ROH) be created to capture all features of this new program in one place.

Zoning Proposal. Resolution No. 18-78, CD1, proposes that for lots of 20,000 square feet or less in qualifying zoning districts, relaxed development standards would apply in return for all units to be affordable rentals at the 100% of AMI (area median income) as set by the U.S. Department of Housing and Urban Development (HUD), and below. It proposes five amendments to the LUO:

1. Adds a new use: "Dwellings, affordable rental low-rise multi-family" to the apartment, apartment mixed use and business mixed use (BMX) districts.

2. Adds a new section to Article 5 Specific Use Development Standards. This new section defines the purpose of "affordable rental low-rise multi-family dwellings," and establishes development standards.

a. Some existing standards are proposed to be reduced:
   i. Lot width (70 feet to 50 feet in apartment districts)
   ii. Side and rear yards (10 feet to 5 feet), and parking is permitted in these yards if the front yard is landscaped

b. Some existing standards are proposed to be dropped:
   i. Height setback
   ii. Required parking and bicycle spaces
   iii. Required loading spaces

c. Some existing standards are proposed to be increased:
   i. Maximum building area (from 40 to 60 percent of lot area to 80 percent in the apartment districts)
   ii. Floor area ratio (FAR) to 4.0 (from range of 0.9 to 2.8 in apartment districts, 3.5 in BMX districts)

d. New standards are proposed:
   i. A limit on the number of dwelling units allowed on any zoning lot, as determined by a formula: Maximum FAR square footage/800.
   ii. A limit on floor area of each dwelling unit based on the number of bedrooms and bathrooms

3. Includes site plan and elevation sketches to show examples of what might be permitted for various lot sizes.

4. It adds definitions of "affordable rental dwelling unit," "Affordable rental low-rise multifamily dwelling," and "bathroom."

The program would sunset five years after its effective date. Two years prior to the sunset date, the department is to report to the city council on progress and achievements and recommend whether the program should be repealed, modified or extended.

While the above are stated in Resolution No. 18-78, CD1, discussion on standards and applicability expanded once it was adopted, as noted below.

II. Analysis

Eligibility. Resolution No. 18-78, CD1, notes that approximately 95 percent of Oahu's low-rise apartment buildings were built more than 40 years ago, and need to be renovated or reconstructed. As of 2018, there were 6,175 lots of less than 20,000 square feet zoned for apartment use. If small lots (less than 5,000 square feet) are dropped, about 3,204 lots would be eligible for this program.

To determine how many properties might be used for this program, the Building/Land Value Ratio was used. This ratio assumes that the lower the value of improvements on

a property, the higher the chances that it will be redeveloped. There are about 1,382 lots with a ratio of 30 percent or less; i.e., the value of the improvements on the lot is 30 percent or less of the land value. There are about 536 lots with a ratio of 10 percent or less. Assuming four floors on each lot, with average of 800 gross square feet per unit, the number of possible units ranges from 9,800 (at 10% ratio) to 21,000 units (at 30%).

Given that sewer capacity is often a factor in determining whether development is possible, the department did a rough survey of sewer capacity in apartment areas. While quantitative data is not available, it appears that shortages seem to be localized, and there are no significant broad areas where sewer capacity is limited.

Considerations. Although not stated in either Resolution, the underlying strategy has been described by their proponents as follows: To make these projects financially viable, construction costs must be limited to $250 per square foot, with minimal delays in permit issuance. By limiting costs to this maximum, 10 to 20 projects could be developed annually, or about 500 units per year. This would be a significant contribution to addressing the affordable housing crisis. Moreover, it is not being requested as a permanent program, but would be limited to a five-year period.

Proponents of the bill requested additional incentives after the adoption of the Resolutions:

- While deliberations on this initiative were underway, Ordinance No. 18-1, providing fee exemptions for affordable housing projects, was adopted. It was requested that this affordable rental program receive the same incentives: real property tax reduction, and exemption from park dedication requirements, building permit fees and wastewater fees. In addition, it was requested that a provision be made for GET exemption.

- A percentage of the apartment units in a project should be explicitly allowed as Condominium Property Regime (CPR) units.

- The building permit process should take no longer than 90 days; if not met by the department, the project would be automatically deemed approved.

- Emergency stairwells and loading space should be allowed to encroach into the front yard.

- There should be no extensive annual reporting requirement on the landowner or property manager.

- Building Code exemptions include no requirement for elevators, deferring to the requirements of the Fair Housing Act for elevator requirements, and only one emergency stairwell should be required, not two, for buildings with less than 35 units and less than three stories high. In addition, the fire sprinkler system should not be required to be connected to the building's alarm system.

- Concessions on building standards addressing building area and fire protection were also requested, as well as an exemption from the energy standards for exterior glass.

The department has these concerns:

- Whether to allow the program in Transit-Oriented Development (TOD) Zones. While the department advocates for as much affordable housing in the rail corridor as the market can produce, mid-rise projects do not take advantage of the maximum densities and height limits allowed, especially for the Downtown-Ala Moana area. We may be foregoing more intense development in the foreseeable future; there are opportunity costs from the affordable housing and rail ridership perspectives.

- We are not convinced that the LUO should regulate "plumbing." While this conversation was underway, the department had already testified on the Large Detached Dwelling proposals that regulating bathrooms, as well as bedrooms, was over-regulating and would lengthen the building permit review process. It is inconsistent to add these new standards and still want expedited permit processing, as reflected in recent resolutions and ordinances adopted by city council.

- As this is a temporary program, what would be the status of the buildings once the program is over? What hardships would be created as they become nonconforming?

- As a new program, units may not actually be delivered for about two years, given the need to plan, design, finance and construct the buildings. Industry representatives believe construction can start earlier.

- Name. The proposed name of the program posed potential confusion, as "affordable rental low-rise multi-family dwellings" was not only needlessly long, but used "multi-family dwellings," which already had its own definition.

- Unanticipated Impacts. While proposed revisions will allow a particular building and occupancy type to occur, it does not ensure that the end result will always be the same. For example, there is no provision that prohibits recreational amenities. Thus, a project with a swimming pool and gym could be provided, reflected in the rent, but the project is not obligated to disclose rents, so a tenant may end up paying more than 30 percent of their income to housing.

  We could not evaluate the narrower side and rear yards with respect to impacts to adequate access to natural light and air, as well as privacy and noise levels between buildings. Currently minimum spacing between apartment buildings is 20 feet (10 feet on each property). The proposal is half this amount.

- Spillover Impacts. The lack of sufficient parking may exacerbate competition for on-street parking. The department would have liked to include the restriction that if no parking is provided, the tenants may not own cars. This restriction has worked well on "201H" affordable housing projects.

  Similarly, the lack of bicycle parking, coupled with no elevator to conveniently transport them to apartments, may encourage residents to depend on cars, adding to on-street parking competition.

  On another level, this is the first time across-the-board changes to building code provisions are being recommended. These provisions have never been given for "201H" affordable projects. This may be viewed as "breaking the floor," and lead to more negotiated standards on future projects. It raises the question as to what are minimum life safety requirements.

- Lack of evidence of compliance. With all other affordable housing projects, either the city or the state annually reviews documents to assure that the units are going to tenants in the identified need group, and that rents are commensurate with that need group's income range. Generally, this is documented in an affordable housing agreement. Other than the restrictive covenant at the outset of the project, there will be no regular monitoring of affordability under this program.

- In working with the Honolulu Fire Department (HFD), the notion of what is the minimum required for the health and safety of the residents, as well as that of fire fighters called to the property in the event of a fire, was discussed. "Automatic" exemptions are of concern to both Department of Planning and Permitting (DPP) and HFD.

- The Department of Community Services (DCS) raised concerns whether 6-story apartment buildings without elevators are "age-friendly."

- Streetscape impacts. With depth of front yards halved from the current 10 feet to 5 feet, plus the intrusion of emergency stairwells and loading spaces as close as 5 feet from the front property line, with perhaps no provisions for solid waste bins, on a relatively small lot, front yard landscaping is diminished and makes no major "green" contribution to stormwater management or microclimate conditions.

- Loss of new community benefits. Assuming 500 units are built over 3 years, the city may not realize:

  - More than 5 acres of recreation space (at 150 square feet per unit)
  - $236,000 per year in real property tax collections
  - $1,150,00 in building permit fees (at $2,300 per 800-square-foot unit)

Compliance with the General Plan. This initiative is consistent with the following General Plan Objectives and Policies:

Housing, Objective A:

Policy1: Develop programs and controls which will provide decent homes at the least possible cost.

Policy 7: Provide financial and other incentives to encourage the private sector to build homes for low- and moderate-income residents.

Compliance or Consistency with other Government Policies. This program would support the "Housing Oahu: Affordable Housing Strategy" (2015 Draft) that included an implementing action to develop about 800 affordable housing units annually. The developers' assertion that this program would produce 500 units annually would contribute significantly to this goal.

The several TOD Plans, adopted, and those pending adoption, disclose the need for diversity of housing, including retaining and producing new affordable units.

III. Recommendation

The DPP supports the intent of the Council-initiated Bills, which is to "kick start" affordable housing production in apartment and business districts and to do it sooner, rather than later. We have worked hard with proponents to find common ground, as reflected in the attached bill. We still have reservations, as do the proponents. We do agree on developing a package of incentives for a limited time, to accelerate much needed affordable housing, with the possibility to extend the Program if successful.

This initiative complements the recently adopted islandwide inclusionary housing program, Ordinance No. 18-10. It encourages rental market attention to the apartment and business mixed use districts, with "give backs" on development standards and similar incentives provided to for-sale units provided under Ordinance No. 18-10. It can also divert attention away from constructing "large detached dwellings" in residential districts. With the requirement that all leases must be for at least six months, the buildings should not be adding to short term rental use.

The attached bill offers the following:

- A new chapter in the ROH to place the entire program in one place, as desired by program proponents. This new chapter broadly has four parts:
  - General Provisions
  - Zoning Provisions
  - Adjustments to the Building Code
  - Incentives, similar to those adopted under Ordinance No. 18-1, and including property tax exemptions and expedited processing

Generally, these provisions represent an "overlay' on existing regulations.

The program would be renamed "affordable rental housing." Highlights of the proposed department bill, contrasted with early proposals, are provided below. The first table relates to amendments to the LUO. The second table summarizes incentives outside of zoning. The "Expanded Proposal" column refers to ideas presented by industry representatives after the two Resolutions were adopted. The last table relates to proposed Building Code changes.

LUO changes:

Provision	Resolution No. 18-78	Expanded Proposal	DPP Recommendation
Name or program	"Affordable rental dwelling unit" "Affordable rental low-rise multi-family dwelling"	No change	"Affordable Rental Housing" "Affordable Rental Housing Unit"
Format	----	All provisions must be in one ordinance, one place in the ROH	Bill developed as one set of regulations, although it is an overlay on several existing ROH provisions
Add as a new use to LUO Article 3 Master Use Table	Included	Included	Not needed
Include sample sketches of maximum building area, building heights	Included	Included	Included with cautionary footnote regarding limitations of sketches
Development standards:			
Maximum Lot Size	20,000 square feet or less	No change	Ok
Minimum Lot Width	50 feet	No change	Ok
Minimum Side/Year Yards	5 feet	No change	Ok
Front yard	10 feet	10 feet with 5-foot encroachments by stairwells and loading space	Ok
Maximum Building Area	80% of lot	No change	Ok
Maximum Building Height	60 feet	No change	Ok; some lots have higher limit, others have lower limit
Maximum FAR	4.0	No change	Ok
Height setbacks	None	No change	Ok
Required parking spaces	None, but if provided, may encroach into side and rear yards if front yard is 100% landscaped	No change	Ok, but must include 4- to 6-foot buffer wall along common property line. Front yard landscaping caveat dropped as 100% is de facto unattainable
Required bicycle parking	Not addressed	Should not be required	Ok, with reservations as bicycle parking encourages less dependence on cars
Required loading	None	No change	One for garbage bin storage and pick-up

Provision	Resolution No. 18-78	Expanded Proposal	DPP Recommendation
Unit Density	Formula to determine maximum number of units, using 800 square feet as size/unit	No change	Dropped. Not necessary with existing limitations; and will extend permit reviews
Size of Units	Table to link number of bedrooms/bathrooms with Floor Area	No change	Dropped. Over regulating; will extend permit reviews
Relationship to existing regulations	If there is conflict, these provisions will override existing regulations	No change	Ok
Special District regulations	Not addressed	Exempt	Not exempted
Condominium Property Regime	Not addressed	Allow up to 20% of units to be CPR'd, and not required to meet affordability requirement	Prohibits CPR. Too difficult to enforce, inconsistent with intent of bill.
TOD Special Districts	Not addressed	Support allowing in TOD districts	Prohibited, as constitutes less development than may ultimately want as TOD
Mixed Use in BMX districts	Not addressed	Oppose mixing	Ok, with reservations
Restrictive Covenant	Not addressed	Somewhat support	Included definition, and major elements; e.g., affordability runs with the buildings
Enforcement	Not addressed		Each section of bill addresses enforcement; e.g., if restrictive covenant provisions are violated, will be considered a zoning violation

Other Incentives:

Provision	Resolution No. 18-78	Expanded Proposal	DPP Recommendation
Identical to Ordinance No. 18-1:			
Waiver of Wastewater System Facility	Not addressed	Support	Ok, consistent with intent of Ord 18-1 and this Bill
Waiver of Plan Review and Building Permit Fees	Not addressed	Support	Ok, consisten t with intent of Ord 18-1 and this Bill
Waiver of Park Dedication	Not addressed	Support	Ok, consistent with intent of Ord 18-1 and this Bill
Additional Incentives			
Real Property Tax	Not addressed	Provide tax relief during construction & marketing phases Provide 10-year tax exemption	Ok
Expedited Processing	Not addressed	90-day turnaround; otherwise approved	Ok with reservations

Changes to Building Code: Proponents of affordable rental housing only requested modifications related to sprinklers and fire escape stairs.

Provision	Proposal	DPP Recommendation
Fire-resistance standards	New provisions on fire-rated materials	Ok
Sprinklers	Do not require sprinklers to be connected to fire alarm system	Ok, if automatic fire sprinklers are located in all unit and common areas and manual pull stations are used to provide general alarm to building
Fire escape stairs	Require only one; allow drop ladder system instead of second stairs. Allow access to rooftop to substitute for ground level access. If two must be provided, then reduce the width of the second one.	Two stairwells must be provided with the first one 48 inches in width. The second one shall be at least 36 inches in width. Use of narrower second exit stairs or drop ladder system may be allowed by Fire Chief's determination. Concern is not just the exit of residents, but access and rescue needs of fire fighters and paramedics; fighting a fire or carrying out occupants.
Elevators	Not required	Not required unless required by Fair Housing Act, or Sec. 1007.2.1 of the International Building Code. Concern of First Responders that this will hinder access to, and safe removal of occupants
Expiration		Included under 5-year expiration

Summary. The recommended Bill, proposing a new Chapter to the ROH, will specify land use, elevator and fire protection standards pertaining to a particular type of mid-rise housing product. The new Chapter will also offer financial and timing incentives to reduce the cost of construction and is expected to significantly catalyze rental housing production. It will be in effect for only five years so developers are motivated to construct affordable rental housing quickly. The two-year interim report and five-year sunset clause will also give the city an opportunity to evaluate the potential impacts of such projects on neighborhoods, and decide whether to continue the program.

As noted above, the department has several reservations about some of the provisions. We have concerns about adequate safeguards to assure that affordable housing is made available to households in the low- and moderate-income range. We have concerns about effects on on-street parking and neighborhood character.

But if there is an affordable housing crisis, new tools must be available to make any progress on addressing the crisis. This new tool, used as envisioned, would play a very significant role in providing new, decent shelter for lower income families, and without any government financial subsidy. It is worth a trial period.

CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

RELATING TO AFFORDABLE RENTAL HOUSING.

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

SECTION 1. Purpose. The purpose of this ordinance is to create a temporary program to accelerate the construction of affordable rental housing on apartment- and business mixed use-zoned properties by relaxing [~~reducing~~] zoning and building code standards, and offering financial incentives.

SECTION 2. Findings. For decades, the City and County of Honolulu has grappled with a critical shortage of affordable rental housing. This problem grows worse by the year and threatens to undermine our quality of life and permanently erode the City's social and economic foundations so as to jeopardize its order and security. The *Mayor's Affordable Housing Strategy* (September 2015) summarized these affordable housing needs and proposed strategic actions relating to policies, incentives, regulations, programs, financial tools, and investments.

The *Affordable Rental Housing Report and Ten-Year Plan* (July 2018), published by the Special Action Team on Affordable Rental Housing Report pursuant to Act 127 (Session Laws of Hawai'i 2016), stated that, ". . .unless the planning, funding, and delivery of affordable rental housing becomes an overarching priority for the legislature, governor, mayors, housing agencies, developers, and public and private funding sources, 70% of Hawai'i's families will soon be excluded from affordable, safe, and sanitary housing – a key component of quality of life that is taken for granted by the top 25% of households in the state."

The *Affordable Rental Housing Report and Ten-Year Plan* further states, "The Special Action Team understands that the scarcity of safe, sanitary, and affordable rental housing constitutes a crisis for nearly two-thirds of the state's residents. This report urges state and county officials to act on issues that affect the affordability of housing.... Act 127 is unequivocal that the lack of supply leads to higher rents for households of all income levels, leaving all tenants with less disposable income, increasing the personal stress of tenants, reducing tenant quality of life, and exacerbating the overcrowded living conditions. Without sufficient affordable rental housing, the future social, community, and economic consequences for Hawai'i may be dire."

Act 127 states, in part, "Although many reasons contribute to the lack of affordable rental housing units for low- and moderate-income households, the primary reason is a poor rate of return for investments in affordable rental housing projects. As

the Affordable Rental Housing Study Update, 2014, succinctly states, "'Simply put, affordable rental housing is unprofitable, so the market won't address the need by itself.' Government regulations that restrict affordable housing development and lengthen the time tenants qualify for affordable rental housing also contribute to the lack of affordable rental housing."

This ordinance recognizes that the cost of land and construction in Honolulu is one of the highest in the country and there are many small parcels that are in apartment and business mixed use[-] zones that have limited development potential due to the high cost of development of affordable rental housing. The current affordable housing crisis could be addressed, in part, by encouraging the development of at least 500 new affordable rental housing units per year on these small parcels.

SECTION 3. The Revised Ordinances of Honolulu 1990 (ROH) is amended by adding a new chapter to be appropriately designated by the Revisor of Ordinances as Chapter __ to read as follows:

"Chapter ____. Affordable Rental Housing [~~Housing Rental~~]

[~~"~~]Article 1. General Provisions[~~"~~]

Section:
-1.10 Definitions.
-1.20 Prohibition Against Condominium Property Regime
-1.30 Violation – Penalty.

Section -1.10. Definitions.

Unless otherwise expressly stated, whenever used in this chapter, terms shall have the following meanings:

"Affordable rental housing" means a building or buildings containing multi-family dwelling units that meet the following criteria:

(a) At least 80 percent of the total units are rented to households earning 100 percent and below of the area median income (AMI), as determined by the United States Department of Housing and Urban Development annually for the Honolulu Metropolitan Statistical Area, adjusted for household size;

(b) No more than 20 percent of the total units are occupied by the property owner or owners or persons who are related by blood, marriage, or adoption to the property owner or owners, or designated authorized representative(s);

(c) Households in affordable rental housing units must have a lease with a term of no less than six months with a prohibition against subleasing;

(d) The Declaration of Restrictive Covenants is recorded in the Bureau of Conveyances of the State of Hawai'i, if regular system property, or the Office of the Assistant Registrar of the Land Court of the State of Hawai'i, if registered property, and a copy thereof with recorded information is filed with the DPP prior to issuance of the building permit for the affordable rental housing;

(e) A certification is annually filed with the director of budget and fiscal services using a form provided by the department of budget and fiscal services, affirming that at least 80 percent of the total number of units are affordable rental housing units and no more than 20 percent are occupied by the property owner(s) or persons who are related by blood, marriage, or adoption to the property owner(s), or designated authorized representative(s).

"Affordable Rental Housing Unit" shall mean <u>any</u> [~~each~~] unit in an Affordable Rental Housing building that meets the criteria that qualifies the building as "affordable rental housing."

"Area median income" or "AMI" refers to the current AMI determined by the United States Department of Housing and Urban Development annually for the Honolulu Metropolitan Statistical area as adjusted for household size.

"Declaration of Restrictive Covenants" means the declaration of covenants, conditions and restrictions in a form approved by the director of budget and fiscal services and signed by the fee owner or owners of the land (including its improvements) on which affordable rental housing is built, and that is recorded in the Bureau of Conveyances of the State of Hawai'i, if regular system property, or the Office of the Assistant Registrar of the Land Court of the State of Hawai'i, if the land is registered under Hawaii Revised Statutes (HRS) Chapter 501. The Declaration of Restrictive Covenants shall run with the land for as long as the affordable rental housing improvements are standing, and shall give notice to all

subsequent owners, grantees, successors, assignees, mortgagees, lienors, and any other person who claims an interest in the real property, that:

(a) the land and the improvements on the land are subject to the affordable rental housing requirements of this Chapter;

(b) the land may qualify for real property tax exemption for affordable rental housing under Section 8-10.20, ROH, if rented to households earning at or below 80% AMI during the real property tax exemption period;

(c) mixed use projects are not permitted;

(d) the land or any portion thereof shall not be submitted to a condominium property regime pursuant to HRS Chapter 514B, as amended or replaced; and

(e) violations of the restrictive covenants are subject to the enforcement provisions of Chapters 8 and 21, ROH, and, applicable statutory penalties and rollback taxes.

Section -1.20. Prohibition Against Condominium Property Regime. The lot on which affordable rental housing is built shall not be submitted to a condominium property regime pursuant to HRS Chapter 514B, as amended or replaced.

Section -1.30 Violation – Penalty.

(a) The owner or owners of the lot on which affordable rental housing is built shall record the Declaration of Restrictive Covenants to encumber the land (and its improvements) on which the affordable rental housing is built.

(b) The failure of an owner or of an owner's heir, successor or assign to abide by such Declaration of Restrictive Covenants or the terms of this ordinance shall be deemed a violation of Chapter 21, ROH, and shall be grounds for enforcement by the director pursuant to Section 21-1.50, et seq. The director shall have the right to require the owner or owners, or the heirs, successors or assigns of the owner or owners, to comply with the terms of this ordinance and the Declaration of Restrictive Covenants.

(c) From time to time, or upon receipt of a complaint, the department of budget and fiscal services may conduct an audit of affordable rental

housing projects to determine compliance with the definition of affordable rental housing.

(d) Penalty. If the use is abandoned or does not comply with these regulations at any time during the life of the building, the penalty [~~real property tax~~] shall be ten (10) times the amount of the real property tax assessed [~~of the otherwise assessed tax~~] for the years of noncompliance.

[~~"~~]Article 2. Permitted Uses, Development and Other Standards

Section: -2.10. General Provisions.
Section: -2.20. Permitted Uses.
Section: -2.30. Development Standards.
Section: -2.40. Parking.
Section: -2:50. Bicycle Parking.
Section: -2.60. Examples of Maximum Building Area and Yards. [Figure -2.60]
Section: -2.70. Examples of Building Height. [Figure -2.70]
Section: -2.80. Abandonment of Use.

Section -2.10. General Provisions.

(a) The director of the department of planning and permitting shall administer this Article. The director may designate duties established under this Article.

(b) Unless specifically noted herein, all provisions of Chapters 21, 21A, and 22, 23 and 25, Revised Ordinances of Honolulu, shall apply. Where there is a conflict between applicable provisions, the provisions of this article shall prevail.

Section __-2.20. Permitted Uses.

"Affordable rental housing" shall be a permitted use in the following zoning districts: apartment, apartment mixed[-]use, and business mixed[-]use zoning districts, except that it is [~~they are~~] not permitted in transit-oriented development special districts, as defined and adopted under Chapter 21-100, ROH.

Section __-2.30. Development Standards.

Affordable rental housing is subject to the following development standards and off-street parking and loading requirements:

Development Standard	Requirement
Maximum lot area	20,000 square feet
Minimum front yard	10 feet
Minimum side and rear yards	5 feet
Maximum building area	80% of the zoning lot
Maximum building height	60 feet
Maximum density	4.0 FAR
Height setbacks	None
Off-street parking	None
Bicycle parking	None
Off-street loading	A minimum of one space, to accommodate garbage pickup and garbage bin storage
Yard encroachments	Parking, including bicycle parking, is allowed in side and rear yards. One loading space may encroach no more than 5 feet into the front yard. Required fire exit [~~exist~~] stairwells and fire corridors may encroach into the front yard by no more than 5 feet.

(See Figures _-2.60 and _-2.70 for examples.)

Section _-2.40 Parking.

Parking, including bicycle parking, may extend into side and rear yards, provided a solid wall at least 4 feet but no more than 6 feet in height[~~, but no more than 6 feet,~~] is built along the property boundary.

Section _-2.50. Bicycle Parking.

Section 21-6.150, ROH, regarding bicycle parking, shall not apply, but if provided, bicycle parking may encroach into required yards.

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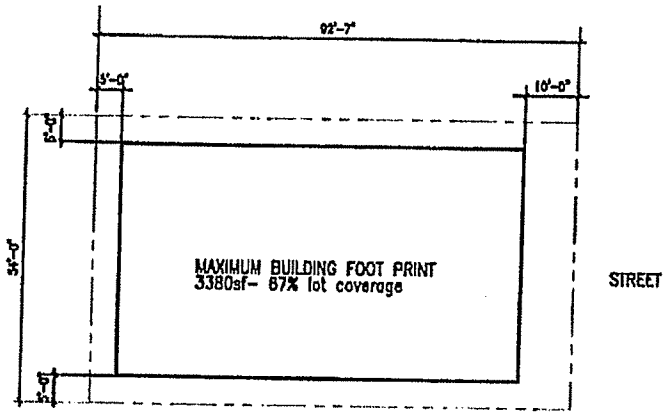
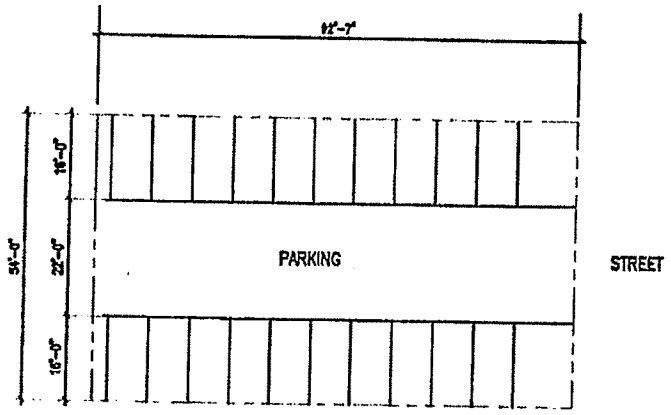
Section _-2.60 Examples of Maximum Building Area and Yards.

The following illustrate possible configurations of maximum building area and required yards. They do not necessarily reflect acceptable parking configurations or compliance with all other development standards.

Figure -2.60
5,000 SQUARE FOOT LOT

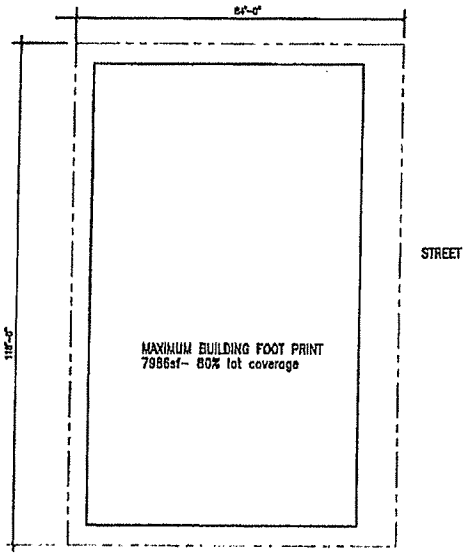


PLOT PLAN

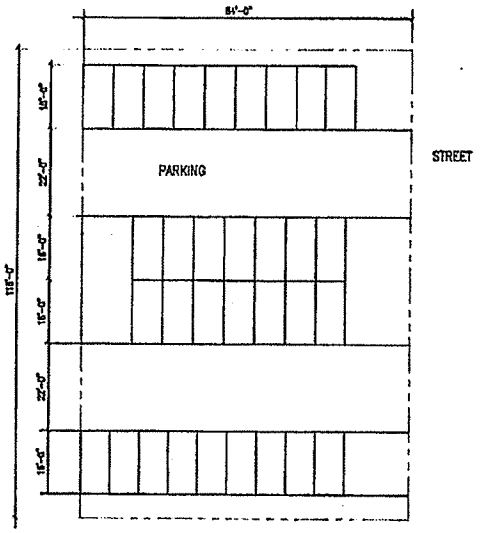


PLOT PLAN
5000 SF LOT

Figure -2.60
10,000 SQUARE FOOT LOT

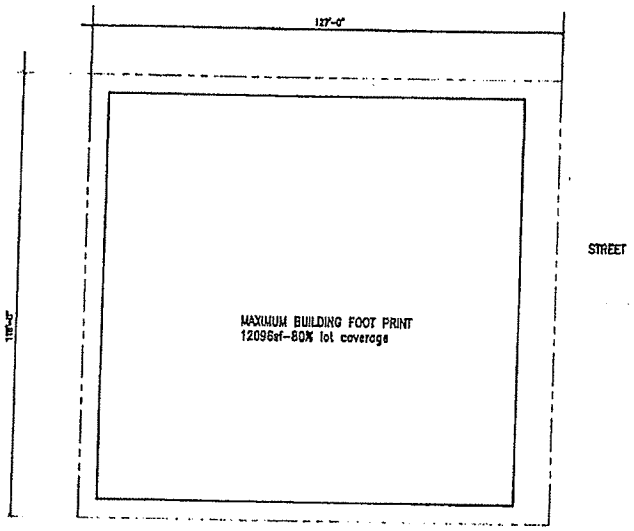


PLOT PLAN
10,000 SF LOT

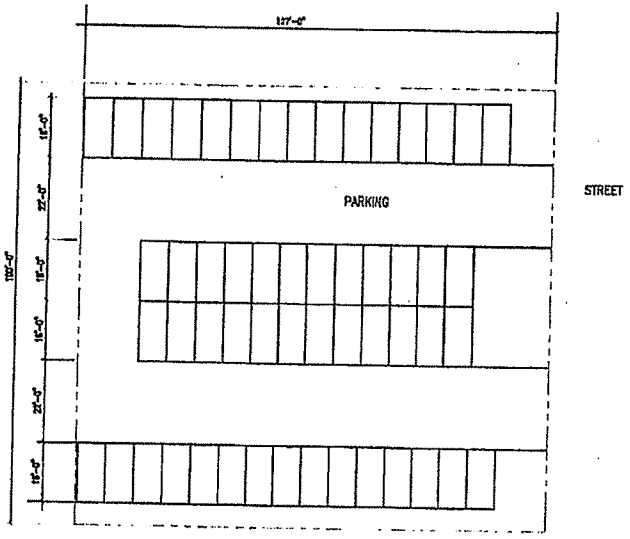


PLOT PLAN
10,000 SF LOT

Figure –2.60
15,000 SQUARE FOOT LOT

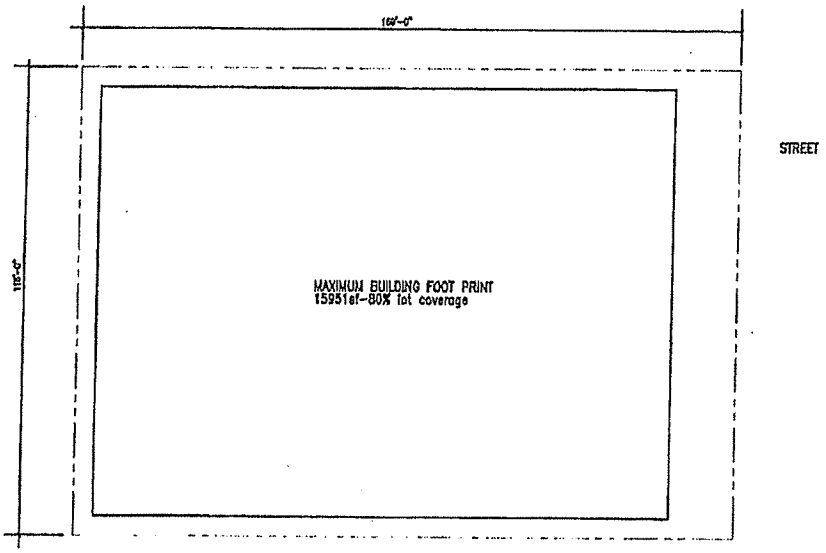


PLOT PLAN
15,000 SF LOT

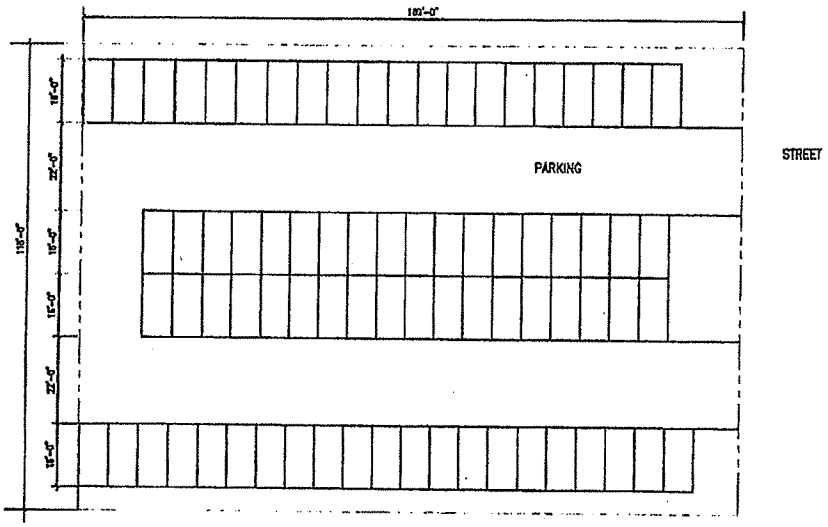


PLOT PLAN
15,000 SF LOT

Figure 2.60
20,000 SQUARE FOOT LOT



PLOT PLAN
20,000 SF LOT



PLOT PLAN
20,000 SF LOT

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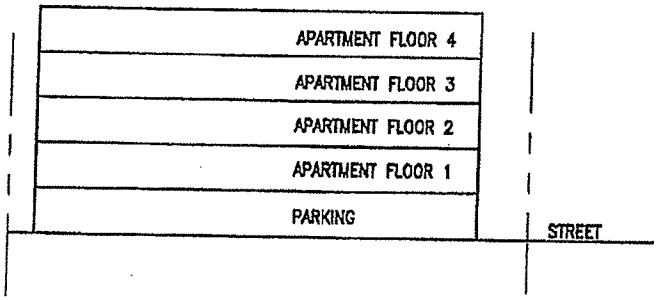
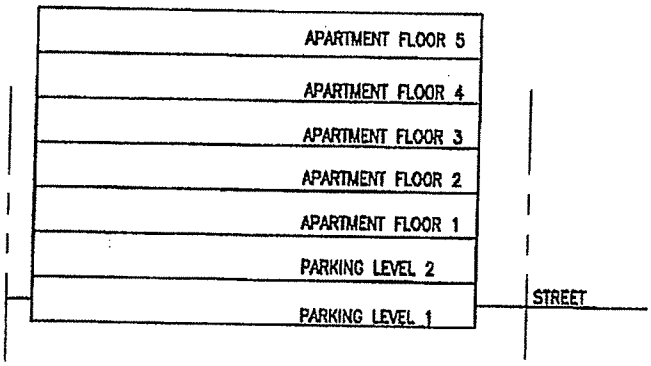
Section _2.70. Examples of Maximum Building Height.

The following illustrate possible configurations of building height. They do not necessarily reflect acceptable parking configurations or compliance with all other development standards.

Figure _-2.70



SECTION OF 45 FEET MAXIMUM HIGH BUILDING



SECTION OF 60 FEET MAXIMUM HIGH BUILDING

Section _-2.80. Abandonment of Use.

If at any time the project ceases to fall within the definition of affordable rental housing, the use shall be deemed a multi-family dwelling use and shall comply with nonconformity provisions of Chapter 21, ROH, as applicable.

Article 3. Building Construction Standards

Sections:
-3.10 General Provisions
-3.20 Standards

Section _-3.10 General Provisions.

(a) The director of the department of planning and permitting shall administer this Article. The director may designate duties established under this Article.

(b) Where there is a conflict between the provisions of this article and the provisions of Chapters 16 and 27, ROH, the building and housing codes, the provisions of this article shall prevail. The requirements set forth herein are minimum requirements. All other provisions of Chapters 16 and 27 shall apply.

Section _-3.20 Standards.

(a) Building Heights and Areas. The height permitted by Table_-A shall be increased in accordance with Section 504 of the building code. The area of a one-story building shall not exceed the limits set forth in Table _-A, except as provided in Section 506 of the building code.

TABLE _-A

TYPE OF CONSTRUCTION	ALLOWABLE HEIGHT AND BUILDING AREAS FOR MID-RISE MULTI-FAMILY RESIDENTIAL BUILDINGS. Height Limitations shown as stories and feet above grade plane. Area limitations as determined by the definition of "Area, building," per story				
	IB	IIA	IIIA	HT	VA
-	MAXIMUM HEIGHT (feet)				
-	60	60	60	60	50
Height/Area	Maximum Height (stories) and Maximum Area (sq. ft.)				
H A	7 80% of land area	7 80% of land area	7 80% of land area	7 80% of land area	5 80% of land area

(b) Type of Construction. The minimum type of construction shall be in accordance to Chapter 6 of the building code and Table _-A.

(c) Fire-Resistance Rated Construction and Requirements.

(1) Where exterior wall is less than 10 feet from the property line, one-hour fire rated exterior walls with no greater than 25% openings per wall surface; provided further that the windows in the openings may be unrated.
(2) One-hour fire rated corridor walls for double loaded corridors and demising walls between units.
(3) One-hour fire rated entry doors to units with automatic closure mechanisms.
(4) Unrated interior walls within each unit.
(5) One-hour fire rated floors and roof or Heavy Timber.
(6) Two-hour fire rated walls between units and building stairs or passenger elevators.
(7) Two-hour fire rated walls and door in the booster pump room described in Section __-3.30(d)(5).
(8) All domestic water and fire sprinkler piping shall be made of non-combustible material.

(d) Fire Protection System. The installation of automatic sprinkler systems for protection against fire hazards shall be designed and installed in accordance with Section 903 of the building code or for residential occupancies up to and including seven stories in height in buildings not exceeding 60 feet in height above grade an automatic sprinkler system shall be provided as follows:

(1) A common sprinkler/domestic main shall be installed throughout the building.
(2) Vertical risers shall be provided with a secured shutoff valve locked in the open position. All required outages shall be provided with a fire watch.
(3) All sprinkler heads shall be installed prior to the last plumbing fixture served within the unit. All sprinkler piping serving a sprinkler head shall be kept to a minimum and no greater than 16 inches in length.
(4) The discharge density shall be 0.05 gpm/sf with a maximum of four sprinkler heads within a compartment.
(5) A booster pump shall be provided to accommodate the domestic water and greatest hydraulic demanding sprinklers within a unit. The booster pump shall provide a minimum of 40 psi at the top of the riser.
(6) A manual wet stand pipe shall be pre-charged from a domestic water supply tap. The stand pipe shall be located in an exterior open stairwell with two-hour rated walls.
(7) For exterior walls that are between five and ten feet from the property line with greater than a 10% wall opening, there must be a sprinkler head at all wall openings to provide a water curtain when the sprinkler head is activated.
(8) For buildings over 40 feet in height with Type VA construction, an NFPA 13 sprinkler system shall be required.
(9) A mechanical engineer licensed in the State of Hawai'i shall prepare the plans for the automatic sprinkler system required by this section.

(e) Means of Egress. Exterior corridors and balconies that are open with guards of a minimum one-hour fire rated construction or other noncombustible fascia surfaces may be constructed up to five feet from the property line.

(f) Fire Escape Stairs.

(1) All fire stair exits may be open; provided that the walls adjoining any unit are two-hour fire rated walls.

(2) The minimum width for at least one fire exit stair shall be 48 inches and the other fire exit stairs shall be no less than 36 inches in width, if no elevator is provided.

(3) Buildings with 35 units or less and less than three stories in height may have one fire exit stair exiting to the ground floor provided that the one exit stair shall be at least 48 inches wide, shall be made of non-combustible or Heavy Timber construction; provided further that the total length of the building shall not be greater than 100 feet.

(4) Alternative fire exits in lieu of a second fire exit stair, including a drop ladder system and smaller sized stairs, subject to approval of [by] the Fire Chief.

(g) Exterior Glass. Exterior glass in the affordable rental housing shall be exempt from the requirements of the Building Energy Conservation Code, Chapter 32, ROH.

(h) Accessibility. Design of building and facilities shall be in compliance with the Fair Housing Act. Elevators shall not be required unless mandated by Section 1007.2.1 of the International Building Code."

SECTION 4. Waiver of Wastewater System Facility Charges. Section 14-10.(a), Revised Ordinances of Honolulu 1990, ("Waiver of wastewater system facility charges for affordable dwelling units) is amended to read as follows:

"(a) Wastewater system facility charges, as set forth in Appendix 14-D of this chapter will be waived for the following:

(1) Affordable dwelling units as defined in and as provided on-site or off-site pursuant to Chapter ___;

(2) Affordable dwelling units provided pursuant to a planned development-transit permit pursuant to Section 21-9.100-10. or an interim planned[-]development-transit permit pursuant to Section 21-9.100-5; [or]

(3) Affordable rental dwelling units developed in compliance with HRS Section 201H-36(a)(5); and

(4) Affordable rental housing as defined under Chapter _____."

SECTION 5. Waiver of Plan Review and Building Permit Fees. Section 18-6.5, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Section18-6.5. Exemptions.

(a) The city, all agencies thereof and contractors therewith will be exempt from the requirement of paying plan review and permit fees.

(b) The building official may grant an exemption from the requirement of paying plan review and permit fees for any person seeking to restore or reconstruct a structure damaged or destroyed as a result of a major disaster. For the purposes of this section:

(1) "Major Disaster" means any hurricane, tornado, storm, flood, high water, tsunami, earthquake, volcanic eruption, landslide, mud slide, fire, explosion or other catastrophe occurring in any part of the city that causes damage, suffering, and loss to such a degree that:

(A) The President of the United States has declared, pursuant to the Disaster Relief Act of 1974, P.L. 93- 288, that a major disaster exists such that the city or any part thereof is eligible for federal disaster assistance programs;

(B) The governor of the State of Hawai'i has declared pursuant to HRS Chapter 209 that a major disaster has occurred;

(C) The mayor has issued a proclamation declaring the existence of a major disaster; or

(D) The council has adopted a resolution declaring the existence of a major disaster.

(2) "Restore and reconstruct" means any repair or other work performed to return a structure to its former condition that does not increase the floor area of the structure beyond that of the structure prior to the major disaster, is in conformance with the building code, flood hazard regulations, land use ordinance, and other applicable laws, and is started within two years of the major disaster.

(3) The burden of proof that work to be performed qualifies for an exemption from the payment of building permit fees due to a major disaster will be on the owner of the structure. An applicant filing for such exemption must certify in writing that the work to be performed will be in conformance with the requirements of this section.

(c) All owners and their contractors will be exempt from paying that portion of any building permit fee for permits issued after September 15, 1994 attributable to the installation of ultra-low flush toilets that they install on their properties to replace existing non-ultra-low flush toilets.

(d) The building official shall waive the collection of any building permit fee for a period of three years where the business has been certified to be a qualified business pursuant to Section 35-1.3.

(e) The building official shall waive the collection of any building permit fee for any person seeking to replace a dilapidated dwelling unit located on homestead land leased under the Hawaiian Homes Commission Act of 1920. For the purposes of this section:

(1) "Dilapidated dwelling unit" means any residential home that has significantly deteriorated because of age, termites, or other causes, which make the home unsafe, uninhabitable, or unhealthy.

(2) The burden of proof that a dwelling unit is dilapidated and qualifies for an exemption from the payment of building permit fees will be on the owner of the unit. An applicant filing for such exemption shall attach acceptable proof that the dwelling unit is dilapidated to the building permit application.

(3) The replacement home may increase the floor area of the originally demolished or removed structure.

(f) The building official shall waive the collection of any plan review and building permit fees exclusively for the creation of an "accessory

dwelling unit," as defined in ROH Section 21-10.1. The plan review and building permit fees that were collected for the creation of "accessory dwelling units" after September 14, 2015 will be reimbursed if requested by the permittee. Building permit fees and plan review fees will not be waived where a permit was required and work started or proceeded without obtaining a permit. In these cases, fees will be required pursuant to ROH Section 18-6.2(d).

(g) The building official shall waive the collection of the plan review and building permit fees for the residential portion of a project equal to:

(1) The percentage of affordable dwelling units as defined in and as provided within the project pursuant to Chapter __: or
(2) The percentage of affordable dwelling units provided pursuant to a planned development-transit permit pursuant to ROH Section 21-9.100-10. or an interim planned development-transit permit pursuant to ROH Section 21-9.100-5.

(h) The building official shall waive the collection of the plan review and building permit fees for the residential portion of a project that is in compliance with HRS Section 201H-36(a)(5).

(i) The building official shall waive the collection of the plan review and building permit fees for affordable rental housing as defined in Article 1 of Chapter __."

SECTION 6. Waiver of Park Dedication Requirement. Section 22-7.3(j), Revised Ordinances of Honolulu 1990 ("Subdivision of Land - Scope"), is amended to read as follows:

"(j) This article also does not apply to the following dwelling units:

(1) Affordable dwelling units as defined in and as provided on-site or off-site pursuant to Chapter __;
(2) Affordable dwelling units provided pursuant to a planned development transit permit pursuant to ROH Section 21-9.100-10, or an interim planned development-transit permit pursuant to ROH Section 21-9.100-5; or
(3) Affordable rental dwelling units provided in compliance with

HRS Section 201H-36(a)(5).";or

(4) Affordable rental housing as defined in Chapter __."

SECTION 7. Expedited Processing.

Upon acceptance of a complete application for a building permit application to construct affordable rental housing, the department of planning and permitting must either approve or disapprove the application within 90 calendar days. Failure on the part of the department to approve or disapprove within 90 days shall constitute approval of the application.

SECTION 8. Ten-Year Property Tax Exemption. Chapter 8, Article 10, Revised Ordinances of Honolulu 1990 ("Real Property Tax Exemptions"), is amended by adding a new section to be designated by the Revisor of Ordinances and to read as follows:

"Section 8-10.__ Exemption – Qualifying affordable rental housing.

(a) For the purposes of this section:

"Affordable rental housing" shall have the same meaning as defined and permitted under Chapter __, ROH.

"Affordable rental housing unit" shall have the same meaning as defined and permitted under Chapter __, ROH.

"Area median income" or "AMI" refers to the current area median income determined by the United States Department of Housing and Urban Development annually for the Honolulu Metropolitan Statistical area as adjusted for household size.

"Director" means the director of budget and fiscal services [sevices].

"Regulated period" means the ten-year period commencing upon the effective date of the claim for exemption approved by the director and ending on June 30th of the last year of the ten-year period.

"Declaration of Restrictive Covenants" shall have the same meaning as defined under Chapter __, ROH.

(b) Real property improved with affordable rental housing and subject to

the Declaration of Restrictive Covenants may qualify for an exemption under this section. The director's approval of a claim for exemption will exempt real property from real property taxes during the regulated period. The exemption amount is the total assessed value of the real property multiplied by the ratio of the living area rented to households with earnings at or below 80% AMI, as specified in the Declaration of Restrictive Covenants, to the total building living area.

(c) Real property determined by the director to be exempt as described in subsection (b) will be exempt from property taxes effective as of the filing date of the claim for exemption but only if the claim is filed with the director within 60 days after any certificate of occupancy is issued by the department of planning and permitting. In the event property taxes have been paid in advance to the city for real property that subsequently qualifies for the exemption, the director shall refund to the owner that portion of the taxes attributable to, and paid for the period after the effective date of the exemption. Where a claim for exemption is filed more than 60 days after any certificate of occupancy has issued but on or before September 30, the effective date of an exemption approved by the director will be July 1 of the succeeding tax year.

(d) After the initial year for which the real property has qualified for an exemption, a report shall be filed annually on or before September 30th during the regulated period. The report shall certify that the affordable rental apartment continues to be in compliance with the restrictive covenant and Chapter __, ROH, and that the affordable rental housing units are rented to households earning 80% AMI, and rented at or below the rental rate limits established by the United States Department of Housing and Urban Development for households earning 100% AMI for the applicable household size or less. The director may provide forms as may be necessary to administer this subsection.

(e) The director may, after 30[-]days' written notice, audit the records of the real property exempt from taxes under this section. An owner's refusal or failure to cooperate and produce all records requested by the director may result in the cancellation of the exemption and subject the real property to the taxes and penalties determined in subdivision (f)(3).

(f) Cancellation of Exemption-Penalties.

(1) Notice by Director.
Following the initial year for which real property has qualified for an exemption under this section, if an owner fails to file the annual certification by the September 30th deadline, the director shall promptly mail a notice to the owner at the owner's address of record stating that unless annual certification is received by the director by November 15th of the same year, the exemption will be canceled.

(2) Cancellation of Exemption.

(A) An owner who has been sent a notice under subdivision (1) by the director and who fails to file the annual certification by the November 15th deadline will have the exemption canceled and subject the real property to the taxes and penalties determined in subdivision (3).

(B) In the event the director finds that the initial or a subsequent claim for exemption contains false or fraudulent information, the director shall cancel the exemption retroactive to the effective date of the application which contains false or fraudulent information.

(C) In the event the director finds that the affordable rental apartment fails to meet the requirements of this section or Chapter ___, ROH, during the regulated period, the director shall cancel the exemption retroactive to the date the building fails to meet the requirements during the exemption period, subject to the real property to the taxes and penalties determined in subdivision (3).

(3) Back Taxes and Penalties.
In the event the director cancels the exemption pursuant to subdivision (2)(B) or (2)(C), real property shall be subject to the difference in the amount of taxes that were paid and those that would have been due but for the exemption allowed, together with a penalty in the form of interest at 10 percent per annum, from the respective dates that these payments would have been due. The taxes and penalties due will be a paramount lien upon the real property.

In the event a claim for an exemption is submitted after the September 30th deadline but on or before the November 15th

deadline, a late filing penalty of $500 will be imposed.

(g) If an exemption is claimed under this section, an exemption for the same property may not be claimed under any other section.

SECTION 9. Property Tax Exemption During Construction and Marketing. Chapter 8. Article 10, Revised Ordinances of Honolulu 1990 ("Real Property Tax Exemptions"), is amended by adding a new section to be designated by the Revisor of Ordinances and to read as follows:

"Sec. 8-10.__ Exemption – During construction work for and marketing of affordable rental apartments

(a) As used in this section:

"Affordable rental apartment" shall have the same meaning as defined and permitted under Chapter __, ROH.

"Qualifying construction work" means work to construct affordable rental apartments.

(b) Any incremental increase in the valuation of the real property primarily attributable to qualifying construction work will be exempt from property taxes.

(c) A claim for exemption must be filed with the director on or before September 30th preceding the first tax year for which the exemption is claimed on a form as may be prescribed by the department. The claim for exemption must be supported by documentation establishing the date of the issuance of the building permit for demolition, if applicable, or the building permit for new buildings, and accompanied by a duly filed Declaration of Restrictive Covenant [restrictive covenant] as defined in Section 8-10.__, ROH.["]

(d) The claim for exemption, once allowed, will expire:

(1) Two calendar years after issuance of a building permit for a new building;
(2) Upon issuance of a certificate of completion; or
(3) Upon issuance of any certificate of occupancy;

whichever occurs first. The director may extend this exemption for good cause.["]

(e) If, within five years of the expiration of the claim for exemption, the affordable rental apartment is not in compliance with the recorded restrictive covenant, the exemption shall be retroactively revoked and the owner shall reimburse the director the exemption amount.

SECTION 10. Ordinance material to be repealed is bracketed and stricken. New material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the brackets, the material that has been bracketed and stricken, or the underscoring. The Revisor of Ordinances shall, pursuant to the Revisor's authority under ROH Section 1-16.3(b)(6), replace reference numbers to agree with newly numbered chapters or sections.

SECTION 11. Effective Date.

(a) This ordinance takes effect upon its approval and will be repealed five years after its effective date.

(b) No later than two years prior to the repeal date of this ordinance, the Director of the Department of Planning and Permitting shall submit to the City Council a report on the number of affordable rental dwelling units developed under this ordinance. The report shall also make recommendations regarding the repeal, modification or extension of this ordinance.

(c) Upon the repeal of this ordinance, affordable rental housing and the structures developed pursuant to this ordinance shall be considered a nonconforming use and structures, respectively, as provided under Chapter 21-4.110.

CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

INTRODUCED BY:

_____

_____

_____

_____

_____

_____

DATE OF INTRODUCTION: _____

_____

_____ _____

Honolulu, Hawaii Councilmembers

APPROVED AS TO FORM AND LEGALITY:

_____

Deputy Corporation Counsel

APPROVED this _____day of _____, 20 _____.

_____

KIRK CALDWELL, Mayor
City and County of Honolulu

\\Dppfp1\general\InterDeptMedia\M Hung Apt proposal\2019 Feb 1 Bill bc.docx