

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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May 19, 2017

The Honorable Ron Menor
Chair and Presiding Officer
and Members
Honolulu City Council
530 South King Street, Room 202
Honolulu, Hawaii 96813

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Dear Chair Menor and Councilmembers:

SUBJECT: Bill for an Ordinance to Establish an Affordable Housing Requirement (AHR) and Department of Planning and Permitting (DPP) Director's Report

The DPP is pleased to submit to you for the City Council's review and adoption, a Bill for an Ordinance to establish an AHR and the accompanying Director's Report. The Bill was requested by Mayor Caldwell, and developed in collaboration with the Department of Community Services, the Mayor's Office of Housing, the Office of Strategic Development, and the Department of Budget and Fiscal Services. The Bill was summarized at the Special Meeting of the Committee on Zoning and Housing, held on April 13, 2017.

The Bill establishes an islandwide AHR on most new private development and substantial rehabilitation of dwelling units to address the critical shortage of affordable housing on Oahu. The public purpose of the AHR is to develop and maintain a significant inventory of affordable housing.

The DPP conducted extensive research and technical analysis in developing the AHR, including numerous discussions and input from the development industry and affordable housing advocates. The AHR gives developers several options to address different development types and circumstances. The required percentage of affordable units varies according to whether the units provided are for sale or rental; on-site or off-site; islandwide or within transit-oriented development districts—where developers are eligible for increased height and density. It will be phased in over three years, effective on adoption in the strong market areas, which provides time for the market to adjust in other areas.

The Honorable Ron Menor
Chair and Presiding Officer
and Members
May 19, 2017
Page 2

A companion Bill for an Ordinance regarding affordable housing incentives is being introduced to the City Council at the same time. The purpose of the incentives is to help stimulate affordable housing production, especially rental housing, and to offset impacts of the AHR. The incentives bill includes the following provisions: waive wastewater facilities charges, park dedication requirements, and plan review and building permit fees for qualified affordable housing units; exempt any increase in property tax during construction of projects that include affordable dwelling units; and exempt real property taxes for rental projects for as long as the rental units remain affordable.

The incentives are intended for affordable units provided through the AHR and both the Planned Development-Transit and Interim Planned Development-Transit permits, as well as projects developed per new State legislation that establishes qualifying affordable rental projects under Hawaii Revised Statutes 201H-36(a)(5). In those projects, all units are restricted to households earning at or below 140 percent of the area median income (AMI), with at least 20 percent of units at or below 80 percent of the AMI. Water fees are set under a separate rate-making process by the Board of Water Supply, and the Mayor has requested consideration for similar waivers for water hook-up fees.

Should you have any questions, please contact me at 768-8000 or Harrison Rue, at 768-8294.

Very truly yours,



Kathy K. Sokugawa
Acting Director

Attachments: Director's Report on AHR
AHR Bill for an Ordinance

APPROVED:



Roy K. Amemiya, Jr.
Managing Director

Director's Report
Establishing an Islandwide Affordable Housing Requirement
May 19, 2017

I. PROPOSAL SUMMARY

This proposal establishes an islandwide affordable housing requirement (to provide housing at below market rates) on most new private development and substantial rehabilitation of dwelling units to address the critical shortage of affordable housing on Oahu. The objective is to develop and maintain a significant inventory of affordable housing. This affordable housing requirement (AHR) is an exercise of the police power of the City to protect the health, safety, and welfare of the people of Oahu.

The AHR applies to projects of 10 or more dwelling units, including subdivisions of land and conversions of non-residential uses into dwelling units. The AHR is applied at the time of a building permit or subdivision submission. Units are required to stay affordable for at least 30 years to build up and maintain the affordable housing supply over time. This period of affordability would reset when a for-sale unit transfers ownership before the initial 30-year period ends. The required affordability levels are tailored towards home buyers earning at or below 120 percent of the area median income (AMI), and household renters earning at or below 80 percent of the AMI.¹

The AHR is flexible so developers have several options to address different development types and circumstances: for-sale or for-rental dwelling units, production on site or off site, payment of a fee in lieu of construction (set at an amount to encourage developers to actually build the affordable units), and/or conveyance of improved land. The required percentage of affordable units varies: lower for rental projects and higher for for-sale units. The for-sale unit requirement is also higher if they are provided off site. Both for-sale and rental unit requirements are higher in transit-oriented development (TOD) districts—where developers are eligible for increased height and density—and lower throughout the rest of the island.

Several types of projects are exempted: projects already required to provide affordable housing (such as unilateral agreements [UA] or 201-H projects); projects or applications in process before the AHR is adopted; projects that are affordable by design, such as micro-units and accessory dwelling units (ADU); and projects for groups with limited incomes or special needs.

Based on housing market variations, the AHR is designed to be implemented over three years by geographic areas, with the strongest market areas first:

1. **Effective immediately, year 1.** Only the Ala Moana, Downtown, and Chinatown rail transit station areas are subject to the AHR.
2. **Years 2 and 3.** The rest of the island, including the remaining rail transit station areas, will be subject to the AHR, although at lower percentages.
3. **Year 4 and permanent.** All rail transit station areas will become one category, while the rest of the island will be subject to the lower required percentages.

¹ Housing at or below 60 percent of the AMI will be primarily provided through use of public lands and public funding.

II. NEED AND POLICY BACKGROUND

Data from the Mayor’s Affordable Housing Strategy (see table below) showed that only 16 percent of the documented housing need on Oahu is for households earning more than 120 percent of the AMI, which includes market rate housing. These numbers indicate an extreme affordable housing need for the remaining 84 percent of the population. Of the affordable housing needs, over 75 percent of total projected demand is for households earning less than 80 percent of the AMI, and largely for rental units, while most homes are being built for sale and for higher income households. As the population continues to grow, the already constrained supply of affordable housing units will be exacerbated by the growing need for additional units. The free market, on its own, has clearly not been able to produce the necessary quantity of affordable housing on Oahu, or to target housing at the income levels needed to serve the vast majority of Oahu’s population.

Figure 1: Projected Demand for Housing Units (2012-2016), City and County of Honolulu
(Based on the U. S. Department of Housing and Urban Development’s AMI, prepared by the Department of Community Services)

	<30% AMI plus HPIT ³	<50% AMI	<80% AMI	<120% AMI	<140% AMI	140% + AMI	Total Units
Maximum AMI¹	\$28,750	\$47,900	\$76,650	\$114,980	\$134,140	>\$134,140	
Ownership Units²							
Single-family	887	277	1,499	643	752	1,143	5,201
Multi-family	963	392	539	286	294	565	3,039
Rental Units²							
Single-family	134	69	183	0	0	287	673
Multi-family	4,022	2,811	2,047	1,047	515	502	10,944
Homeless: Family & individuals ³	4,712	---	---	---	---	---	4,712
TOTAL	10,718	3,549	4,268	1,976	1,561	2,497	24,569
Percent of Total Units	44%	15%	17%	8%	6%	10%	100%

¹ Honolulu County Affordable Rent Guidelines 2014 for 4-person family size.

² Hawaii Housing Planning Study, 2011, prepared by SMS Research and Marketing Services, Inc., November 2011.

³ City and County of Honolulu, Homeless Point-in-Time Count (HPIT) 2014, assumes all earn less than 30% AMI.

The Affordable Housing Strategy is consistent with policy statements in the Hawaii State Plan and the Oahu General Plan. These earlier plans do not fully consider the enormous potential for housing in transit-oriented neighborhoods along the rail line. However, many of the goals in the housing strategy were voiced in these prior policy documents and helped guide development of the AHR Bill.

The Hawaii State Plan has two chapters that guide housing policy from the State’s perspective. Chapter 226-19 outlines three priority objectives for housing:

- Provide greater opportunities for Hawaii’s people to secure reasonably priced, safe, sanitary, and livable homes, located in suitable environments that satisfactorily accommodate the needs and desires of families and individuals,

through collaboration and cooperation between government, nonprofit, and for-profit developers to ensure that more affordable housing is made available to very low-, low-, and moderate-income segments of Hawaii's population;

- Promote the orderly development of residential areas sensitive to community needs and other land uses; and
- Develop and provide affordable rental housing by the State to meet the housing needs of Hawaii's people.

The Oahu General Plan includes three housing-related objectives consistent with the new affordable housing vision:

- Objective A: To provide decent housing for all the people of Oahu at prices they can afford.
- Objective B: To reduce speculation in land and housing.
- Objective C: To provide the people of Oahu with a choice of living environments which are reasonably close to employment, recreation, and commercial centers and which are adequately served by public utilities.

The Oahu General Plan includes policies, such as streamlining approval and permit procedures, providing financial and other incentives to encourage the private sector to build homes for low- and moderate-income residents, and expanding local funding mechanisms. Residential development is encouraged in areas where existing roads, utilities, and community facilities are not being used to capacity, and discouraged where infrastructure cannot be provided at a reasonable cost. Preservation of existing affordable housing is recommended through self-help, housing rehabilitation, improvement districts, and other programs. The Oahu General Plan was last amended in 2002 and is currently being updated to better highlight TOD, sustainable communities, and neighborhood revitalization.

The documented housing needs continue to grow and are being felt by households at all income levels. The effects are both hidden (e.g., overcrowding and family stress or money drained from other family needs) and very visible (even working households forced into living on the streets, in parks, or in cars). The City has responded to some of those more visible needs with investments of \$30 to \$40 million annually in recent years for permanent "Housing First" projects, temporary shelters, and homeless services. However, it has become clear that more is needed to address the long-term supply of affordable and workforce housing, in addition to more investments, use of City lands, financial incentives, and new zoning. These growing needs require the City to exercise its police power to protect the health, safety, and welfare of the people of Oahu by adopting the AHR.

III. EXISTING POLICIES, STRATEGIES, AND REGULATIONS

Before adopting a new policy or regulation it is important to understand the existing policy and regulatory framework. This section helps identify what works and what needs improvement to address the housing needs and broad policy goals described in the previous section.

Housing Oahu: Affordable Housing Strategy. The Mayor's Affordable Housing Strategy (September 2015) outlines a vision that "all people will have access to shelter on Oahu." The strategy was developed from 2013 to 2014 by a staff working group from the Department of Planning and Permitting (DPP), Department of Community Services, Department of Budget and Fiscal Services, Office of Housing, and Office of Strategic Development, with expertise in housing, planning, development, and finance. The working group researched prior affordable housing efforts in Hawaii, as well as national best practices, spoke with local housing industry experts and advocates, identified the housing needs, and then developed a focused action plan to address those needs.

The strategy responds to multiple City Council (Council) resolutions: to develop an affordable housing policy for TOD districts (13-274); to amend the UA policy (13-168, CD1); to establish an affordable housing strategy (14-28); and to regulate ADUs (14-200). The strategy addresses affordable housing needs through new policies, incentives, regulations, and investments in partnership with developers and other stakeholders. Implementing these strategic actions will facilitate the production, preservation, and maintenance of well-located affordable and workforce housing, such as in TOD areas, to reduce household transportation costs and improve access to jobs and services.

Adopting an islandwide affordable housing requirement is just one of the strategy's key initiatives to increase the housing inventory for residents of low to moderate incomes. This requirement will complement other strategic initiatives that are being implemented to increase the affordable housing supply, as outlined in the Mayor's 2017 State of the City address:

- **Financial Incentives.** A companion affordable housing incentives bill being introduced to the Council proposes the following: waive wastewater facilities charges, park dedication fees, and DPP building permit and plan review fees for qualified affordable housing; exempt real property taxes for rental projects for as long as the units remain affordable; exempt any increase in property tax attributed to the construction work of projects that include affordable dwelling units until built; and waive fees and property taxes for rental projects developed per new State legislation that establishes qualifying affordable rental projects under Hawaii Revised Statutes (HRS) 201H-36(a)(5). In those projects, all units are restricted to households earning at or below 140 percent of the area median income (AMI), with at least 20 percent of units at or below 80 percent of the AMI.

Water fees are set under a separate rate-making process by the Board of Water Supply (BWS), and the Mayor has requested consideration for similar waivers for water hook-up fees.

- **TOD Zoning.** The Council is in the process of reviewing for adoption a TOD special district, as well as mixed-use zoning, for each rail transit station area. These items are intended to incentivize improvements and infill development, including new opportunities for housing, in existing neighborhoods around the rail stations. The AHR will essentially take the place of the requirement for affordable housing through UAs, which would normally be tied to these zone changes if they were developer initiated. Developers may also have to provide more affordable housing than the AHR, plus other community benefits, in return for significant additional/bonus height and density.
- **Use of City Lands.** The City will expedite use of its lands and assets for affordable housing projects in partnership with private developers. Examples are Halewaiolu, an elderly housing project on River Street with over 150 affordable units; and, development offers are being reviewed for Varona Village as a mixed-income and affordable housing project. Nine additional City-owned properties are being evaluated for release to developers of affordable housing development through a request for proposals (RFP), and several other properties are being reviewed for similar potential.
- **Accessory Dwelling Units.** The ADU Ordinance allows most homeowners to build a small cottage or addition, or renovate part of their house to rent, which supplies affordable housing and brings in income to pay their mortgages or other household expenses. The Council waived all fees for two years as an added incentive. Bill 47 (2017) could extend the waiver to 2020. Over 1,400 people have checked to see if their lot qualifies, and over 136 permits have been granted. The City is working with contractors to provide an expedited permitting process through preapproved master permits, with six unit designs already approved.
- **Rental Housing Finance.** The City is developing a program to provide over \$100 million per year of Private Activity Bonds, which rental housing developers can use to match the available 4 percent low-income housing tax credits. This financing could produce hundreds of affordable rental units each year.
- **TOD Infrastructure.** The City is working with state agencies and landowners to create an Iwilei-Kapalama infrastructure master plan and finance district. The first phase will enable projects to hookup when housing starts to come online in the next few years. The overall planned infrastructure improvements throughout the TOD corridor total \$1.2 billion.

Existing Affordable Housing Delivery Mechanisms. In addition to the new policies, incentives, use of City lands, and financial support already outlined in this section of the report, the City currently has some tools in place to deliver affordable housing. The primary regulatory and permitting mechanisms are listed below.

- **Unilateral Agreements.** This is one of the primary mechanisms to provide affordable housing, but it is only applied to zone changes that allow residential uses. Council Resolution 09-241, CD1, established that UA conditions requiring the provision of affordable housing require at least 30 percent of the total dwelling units to be affordable. The housing is required to remain affordable for 10 years. This requirement is broken into the following categories:
 - At least 10 percent are affordable to households earning no more than 80 percent of the AMI;
 - At least 20 percent are affordable to households earning no more than 120 percent of the AMI (equals 10 percent if 10 percent is already provided at no more than 80 percent of AMI); and
 - At least 30 percent are affordable to households earning no more than 140 percent of the AMI (equals 10 percent if 20 percent is already provided at no more than 80 percent and 120 percent of AMI).
- **Development Agreements.** These agreements can be applied to any project and allow for negotiation of affordable housing, but this option has only been used once since its inception in 1996. The Live, Work, Play Aiea rezoning and development agreement was approved in 2014 and included an affordable housing requirement pursuant to the provisions specified for UAs.
- **Interim Planned Development-Transit (IPD-T) Permits.** This type of permit is an option for certain TOD projects near a planned rail transit station. To catalyze initial TOD projects, the permit allows for significant flexibility and increased development potential in exchange for community benefits, including an option for affordable housing to households earning no more than 120 percent of the AMI. Bill 15 (2017), currently under review by the Council, includes amendments to the IPD-T that require the provision of a minimum level of affordable housing just to qualify for any height or density bonuses. These proposed affordable requirements align with the AHR.
- **Transit-Oriented Development Special District Permits.** This type of permit being considered under Bill 74 (2015), CD1, would apply to many types of development within TOD areas. The permit allows additional height and/or density bonuses commensurate with community benefits, including affordable housing. Affordable housing provisions are to be in compliance

with (and exceed for the maximum bonus) any affordable housing strategy or policy adopted by the Council.

- **Accessory Dwelling Units.** Ordinance 15-41 established ADUs as a permitted use in all residential zoning districts. ADUs are limited to rental units only, and are relatively affordable by design due to their small square footage. (Note that Ohana dwelling units are similar to ADUs, but occupants are limited to family members.) ADUs will add to the rental housing supply since they cannot be sold separately from the principal dwelling unit on the same lot. Ordinance 16-19 provided financial incentives to construct ADUs through a park dedication exemption and temporary fee waivers. The DPP is working with manufacturers and contractors to pre-approve ADU designs through master permits to simplify and expedite approvals.
- **Chapter 201H, Hawaii Revised Statutes.** A process whereby the Council, per State legislation, may grant exemptions to statutes, ordinances, charter provisions, and rules of any government agency relating to planning, zoning, and construction standards in return for affordable housing. Under the City's requirements, the provision of affordable dwelling units (projects must normally contain at least 50 units) is broken into the following categories:
 - At least 10 percent are affordable to households earning no more than 80 percent of the AMI;
 - At least 20 percent are affordable to households earning between 81 and 120 percent of the AMI; and
 - At least 20 percent may be affordable to households earning between 121 and 140 percent of the AMI.

The proposed TOD zoning (and current IPD-T permit process) eliminates the need for project-specific rezoning in the TOD areas in order to build a mixed-use project or get additional height and density. This zoning is intended to incentivize developers to build "infill" projects in the harder-to-develop existing neighborhoods and commercial areas around the rail transit stations. With the City offering new TOD zoning to save developers significant time and money, it also eliminates the need for a UA and its affordable housing requirements. Consequently, this undertaking highlighted the need to develop a new policy that would require affordable housing in the rezoned TOD areas, and possibly islandwide. A staff working group set out to research how other communities have addressed this issue with a goal of making any requirement fair, predictable, and easier to use than existing rezoning or 201-H processes.

IV. RESEARCH AND ANALYSIS

An assortment of in-depth research was undertaken as part of the due diligence to create the proposed AHR. This section provides the findings and rationale for the framework used to establish the AHR.

Preliminary Research. A staff working group conducted initial research into similar inclusionary programs across the country, as well as applicable examples in Hawaii (see Attachment 2 to the Affordable Housing Strategy, which compares 18 programs). For instance, requiring too high of a percentage can slow or stop development, as Maui learned when they set a 50 percent inclusionary requirement for affordable housing several years ago. However, a carefully planned and calibrated requirement can produce and maintain a growing, stable supply of affordable housing without unduly burdening development. Almost 500 municipalities have similar requirements, including those in “hot” markets with high development costs like Honolulu. Staff research found that, compared with Honolulu’s current UA requirements, most programs had the following characteristics:

- Much longer affordability periods. Longer periods build and maintain the affordable housing inventory. Denver, San Francisco, Sacramento, and San Diego require that units remain affordable for up to 55 years or more. Some programs require perpetuity (compared to 10 years imposed with UA requirements).
- Lower AMI ranges. Even in hot housing markets such as San Francisco, Boston, Sacramento, and San Diego, the affordable rental units are dedicated to households with AMIs in the 65 to 80 percent range, while affordable home ownership opportunities target households with AMIs at or below 100 percent (compared to a range of 80 to 140 percent AMI imposed through UA requirements).
- Lower percentage of units required. Most programs required from 10 to 20 percent affordable housing (compared to 30 percent imposed through UA requirements).
- Applied to all building permits (above a certain size), not just rezoning (like UAs).

The working group spoke with staff and experts from some of these other cities and found that, in effect, their regulations may actually create fewer units per project but apply to more projects, help more households with greater needs, and maintain affordable units for a much longer term. The working group also followed best practices identified by recent national studies on inclusionary housing, which recommended the DPP’s approach to conduct the nexus analysis and financial analysis (see “Research Reports” in Section VI of this report).

Residential Nexus Analysis. The City’s consultant, Keyser Marston Associates, Inc., conducted an impact analysis in September 2015 on the need for an affordable housing requirement. The analysis quantified the affordable housing needs as a result of new market rate housing development on Oahu (i.e., the nexus to establish an affordable/inclusionary housing program).

The analysis examined the underlying nexus concept that newly constructed market rate units and the new households that occupy them represent new income for consuming local goods and services. This new consumption translates to jobs, and a portion of the jobs will be at lower compensation levels, which consequently results in lower income households that cannot afford market rate units and, therefore, need affordable housing. Factors considered in the analysis included the average unit size and sales price/rent of five residential prototypes, disposable household income, new employment tied to the new households, employment compensation, and number of employees per household.

The findings of the analysis represent the affordable amounts—the percentage of units or square footage costs—that would fully offset the increased affordable housing need from the services and service workers that support new residential development. By illustrating the scale of this relationship, the findings provide a rough framework to establish an affordable housing requirement, although many other policy considerations need to be considered to select appropriate levels (see the AHR Financial Analysis).

The analysis determined that new for-sale market rate residential construction creates a need for approximately 17 to 21 percent of units to be affordable to households earning up to 120 percent of the AMI (the range reflects the four for-sale prototypes tested). New rental market rate residential construction creates a need for approximately 14 percent of units to be affordable to households earning up to 80 percent of the AMI. Note that for-sale units can be rented, and rentals can be converted to for-sale, so the percentages listed by AMI are more important to consider than occupancy.

Affordable housing units typically require subsidies to make them financially feasible due to the income-restricted unit prices/rents being set at lower-than-market rates. This “affordability gap”—the difference between the cost to construct the unit minus the affordable sale or rental price—comprises the amount required for the city or its partner to deliver the units not provided by the developer. The nexus cost to fully mitigate the affordable housing impact associated with new development ranges from \$32 to \$58 per square foot for the for-sale units (the range reflects the four for-sale prototypes tested) and \$48 per square foot for rental units.

In order to incentivize developers to build units rather than pay an in-lieu fee, the fee should be set somewhat higher than the “compliance cost”—the difference between market rate and affordable housing unit prices—of the AHR. The compliance cost increases with a deeper level of affordability (e.g., units restricted up to 80 percent versus up to 120 percent of the AMI) and depends on the unit type. Since households

that are buying or renting affordable units can pay a large part of the purchase or rent (depending on their AMI level), the in-lieu fee just has to cover the affordability gap to produce a unit. The analysis estimated the affordability gap to range from around \$69,850 (for units designated up to 120 percent of the AMI) to \$169,300 (for units designated up to 80 percent of the AMI). Depending on the target AMI level for the unit, in-lieu fees can be used to produce a substantial number of affordable units.

Affordable Housing Requirement Financial Analysis. The City's consultant, Strategic Economics, evaluated the ability of Honolulu's residential real estate development to support the AHR under normal conditions (i.e., no free/discounted land or other subsidies). In the June 2016 report, the analysis considered a range of building prototypes in different locations across Oahu. The analysis also considered the potential value that developers could achieve through certain financial incentives (e.g., development fee reductions and waivers) and increased density, which could accompany the AHR through other City actions.

Cost and revenue assumptions used in the pro forma, as well as the feasibility threshold, were developed with market data, a local construction cost consultant, and ongoing input from members of the local real estate and development community. Developers were encouraged to talk directly with the consultant to share any proprietary financial information or opinions. Some development organizations criticized hiring a 'mainland' consultant; however, the City's selection process required prior experience doing similar analysis. The local development groups provided ongoing input into the analysis over several meetings, phone calls, and review of the draft analysis.

The feasibility analysis is intended to be generally representative of multifamily development on Oahu. However, a range of factors influence individual development projects, including market conditions that change over time and vary by geographies (such as more localized neighborhoods than the analyzed regions). The analysis points out that the AHR's effect will likely be reflected, at least in part, in lower land values over time since buyers will need to factor in the cost to construct the affordable units—this effect has been demonstrated elsewhere in some of the national research cited above. That reduction (or lower rate of increase), paired with enhanced sales prices and rents in TOD areas (improving the feasibility to subsidize a project's affordable units), could improve the financial prospects of many development projects over time.

The results indicated that high-rise condominium projects (40-story buildings) in Ala Moana—whether providing on- or off-site affordable units—can currently support the AHR as proposed. These projects exceed the feasibility threshold with the density and height bonuses allowed under the IPD-T permit, as well as the TOD Special District regulations under consideration in Bill 74 (2015). The analysis also acknowledges that market conditions in Downtown, Chinatown, and Kakaako (under Hawaii Community Development Authority [HCDA] jurisdiction) are so similar that, while not specifically tested, it can be assumed they can also support the AHR.

The analysis determined that most remaining prototypes and areas on Oahu are currently infeasible, even without the proposed AHR, although many are close to meeting the feasibility threshold. This determination considered the currently higher land and construction costs without subsidy or free land. Developers have noted that there are no “typical” projects in Honolulu, and that many projects require special circumstances, such as reduced land or construction costs, or economies of scale from development of large, master-planned communities in order to achieve feasibility. For instance, developments are actually proceeding in some of these “infeasible” areas, but in most cases the developers are already in possession of the land, thereby eliminating or reducing a major project cost.

The proposed in-lieu fee of \$45 (\$27 outside of TOD areas) per square foot was set high enough that paying it would be less desirable than directly providing affordable units on or off site. The working group reviewed the “nexus cost” estimates for five development types studied in the Residential Nexus Analysis. This cost ranged from \$32 for single family homes to \$58 for high-rise condos, with low-rise, mid-rise, and rental projects in the \$41 to \$48 range. Since most jurisdictions that allow in-lieu fees use just one rate across all projects, the \$45 per square foot fee was selected as the “middle of the middle” number. This amount was then tested for feasibility in the pro forma analysis. As the fee would be assessed on all residential floor area in the project—not just the equivalent percent required for on- or off-site construction of units—it can produce a substantial amount of funds to be used to fill the affordability gap in other affordable projects.

Rental projects may be more likely to choose the in-lieu fee option because their cost of providing affordable units is closer to the in-lieu fee amount due to their deeper level of required affordability (rentals must be priced for households earning up to 80 percent of the AMI, versus 100 to 120 percent of the AMI for for-sale housing), particularly if the developers do not have the capacity, interest, or experience to manage income-restricted apartments over the long term. An in-lieu fee option may also be important for developers of luxury condominium projects if no suitable off-site location is available. The high cost of association dues for maintenance and operations in projects with expensive amenities could also place a large and uncontrolled burden on owners of affordable units in luxury buildings. This situation is especially a concern over the long term after a developer has completed the project and decisions on fee increases are made by the association’s board.

The analysis concluded that the AHR represents a modest cost burden on development compared to total development costs—the required affordable units would comprise 1 to 5 percent of a condominium project’s total development costs and 3 to 6 percent for an apartment project. The analysis further explains that as more affordable housing projects come online, underwriters will become more familiar with the affordable product types and might require lower returns, helping boost project financial feasibility.

The findings indicated that allowing more density and height creates added value for mid- and high-rise building types. Financial incentives through fee waivers add further value because the discounts reduce costs by 1 to 3 percent, helping to offset the costs associated with providing the affordable units. These incentives, to waive wastewater facility charges, park dedication, building and inspection permits, and real property taxes, are being proposed to the Council in a separate bill and report.

The overall feasibility of residential development on Oahu was shown to vary widely by location and prototype. The analysis suggested strategies to reduce the impact of the AHR by phasing it in over time, or waiving it in the less feasible areas.

Policy Memo: Affordable Housing Requirement (Part 1 of 2). Inclusionary housing expert Rick Jacobus of Street Level Advisors was engaged in December 2016 to help refine the proposed AHR and to plan for implementation and administration of the program. He conducted a series of meetings with City and State staff, developers, and housing advocates, and then provided a memo with recommendations.

Balancing the AHR across Oahu's different housing market areas/neighborhoods is critical so that it does not prevent new development in weak market areas or, conversely, produce too little affordable housing in strong market areas. The memo points out that some areas where development is infeasible today are likely to reach a point where it becomes feasible in the near future, especially in the TOD areas where transit and other infrastructure investments will jump-start new real estate development. The risk, however, is that the AHR could delay the point when that transition occurs if it is not correctly calibrated.

Various options that have been tested in other cities implementing affordable housing programs were discussed in the meetings and summarized in the memo. Phasing in the requirement geographically over time was determined to best meet the City's current needs and administrative capacity. Nevertheless, all options, including a geographical phase-in, will require additional staff resources to administer.

The AHR was recommended to take effect immediately in the strongest market locations, comprised of the Ala Moana and Downtown/Chinatown TOD areas, at 20 percent of for-sale and 15 percent of rental housing. These requirements are in line with the affordable housing provisions required through IPD-T permits, which multiple projects are using already in Ala Moana. Developers submitting IPD-T applications have been advised to follow the Affordable Housing Strategy's recommendations, which have been formalized in proposed revisions to the IPD-T ordinance, currently under review by the Council.

Everywhere else on Oahu can be broken down by general market area into (1) the remaining TOD areas (i.e., not including Ala Moana and Downtown/Chinatown TOD areas) and (2) all land outside of TOD areas. Neither of these two areas outside of Ala Moana and Downtown/Chinatown can support multi-family development at current land and development costs, unless land is contributed or discounted, or other

subsidies are provided for the project. Consequently, a schedule with specific phase-in dates and corresponding percentages by market area was also recommended as part of the AHR. The memo recognized that the dates used will not likely result in exact market timing for each location, but having them in place—at lower percentages than the strong market locations—will give developers additional certainty and clarity as they consider doing projects in those areas. Although the memo recommended a five-year phase-in schedule, it was simplified to three years in the AHR bill.

Policy Memo: Administration and Compliance Issues (Part 2 of 2). The administrative side of the AHR was also discussed in Jacobus' meetings with City staff and State agency partners, and is summarized in the memo. Currently, four staff from the DPP administer the affordable housing required from UAs. The staff have other significant responsibilities in addition to that program, which relies heavily on project developers to perform most functions, including all marketing and resident selection, and most monitoring and enforcement. The examination determined that the current program is understaffed in comparison with similar programs in other cities. Key administrative functions of the AHR are outlined in the memo and include supporting the development process, monitoring rental units, stewarding homeownership units, and tracking results. A division of this labor could be accomplished through partnerships with industry, nonprofits, and State agencies (see more detailed recommendations in Section V of this report).

Affordable Housing Stakeholder Discussions. Over two dozen significant meetings were held from 2014 through 2016 to discuss the Affordable Housing Strategy and proposed AHR components. Outreach included town hall meetings, small group meetings with developers and advocates, industry conference sessions, one-on-one discussions with housing experts and advocates, and meetings with development industry organizations, banking and real estate groups, housing advocacy organizations, and the City's consultants. Several industry groups provided written comments, which were discussed in the meetings and incorporated into the DPP's analysis.

In fall 2015, development industry organizations asked the Mayor to organize a working group of developers and housing advocates to refine the Affordable Housing Strategy. The Mayor convened an affordable housing working group that included developers, finance experts, industry representatives, affordable housing advocates, and key City staff. The working group met several times in 2016 that included discussions with the City's consultant, Strategic Economics, to help review and refine the financial analysis. The discussions included details of the AHR, such as the required affordable percentages and in-lieu fee, the extended period of affordability, administration and compliance issues, as well as needed infrastructure investments and finance tools.

The development industry's main concerns were to reduce or eliminate the AHR and to increase infrastructure investment and incentives for housing production. These concerns were addressed in the AHR by reducing the required percentages and

phasing them in over time. Concerns were also addressed through the following related measures: a proposed affordable housing incentives bill, which provides a significant package of incentives for affordable housing production; planned TOD infrastructure investments and an infrastructure finance district; a \$100 million Private Activity Bonds program; and releasing City lands for affordable housing production.

One key remaining difference of opinion is that most developers are primarily focused on producing housing in general, typically at higher income ranges. Realistically, this unregulated approach would only continue to produce market rate housing, which they believe will then open up affordably priced units after households move up the housing ladder, allowing new households to fill the lower rungs. However, there is a low probability this effect will actually occur, considering the current situation and Oahu's limited supply of available land. Another developer concern is that the cost of providing the affordable units might add too much to the cost of the market rate units. National research has shown that these costs tend to be partially accommodated through lower land costs (or lower rate of land value escalation), while the AHR Financial Analysis shows they will be further offset by the financial incentives and fee waivers proposed under a separate bill.

Housing advocates, on the other hand, want to see stronger requirements at lower AMI levels, and incentives to build affordable housing that will stay affordable over the long term to ensure it adequately addresses Oahu's critical housing needs. The AHR attempts to balance both developer and housing advocate concerns by lowering the percentage of affordable housing required from the existing 30 percent through UAs to 20 percent or less, which should offset any added costs to developers. The AHR also triples the minimum period of affordability and resets it at each sale or transfer of ownership during the period of affordability, lowers the AMI ranges, and prioritizes rental production. The phase-in period would also allow time for the market to adapt to the new requirement, while encouraging production in the initially exempted areas.

The working group continues to work with Rick Jacobus to discuss refining administration and monitoring issues.

V. RECOMMENDATION

The Director of the DPP recommends establishing an islandwide affordable housing requirement (i.e., housing to be offered at below market rates) on most new private development and substantial rehabilitation of dwelling units in order to address the critical shortage of affordable housing on Oahu. The public purpose of the AHR is to develop and maintain a significant inventory of affordable housing on Oahu.

The affordability levels of the AHR are tailored towards homeowners earning at or below 120 percent of the AMI, with half of those units at or below 100 percent of the

AMI, and household renters earning at or below 80 percent of the AMI.² The AHR applies to projects of 10 or more dwelling units, including subdivisions of land and conversions of non-residential uses into dwelling units. Certain exemptions to the AHR will apply to projects already legally required to provide affordable housing through other mechanisms (such as UAs or 201-H); projects or applications in process before this requirement is effective; hotels, timeshares, and transient vacation units; projects that are considered affordable by design, such as micro-units and ADUs, which are relatively affordable due to their small square footage; and dwelling units already tailored to groups with limited incomes or special needs, such as the elderly.

Due to different development types and circumstances, the AHR has built-in flexibility so it can be satisfied through a variety of means: for-sale or for-rental dwelling units, production of on-site or off-site units, payment of a fee in lieu of construction (set at an amount to encourage developers to actually build the affordable units), and/or conveyance of improved land. Units are required to stay affordable for at least 30 years to build up and maintain the quantity of the affordable supply over time. The period of affordability resets to another 30-year period if a for-sale unit transfers ownership before the initial 30-year period ends, which results in an effective perpetuity of affordability for most units (without imposing a perpetuity requirement that could affect homeowner mortgages and project financial viability).

Based on housing market variations, the AHR will be implemented over three successive years by geographic areas:

1. **Effective immediately, year 1.** Only the Ala Moana, Downtown, and Chinatown rail transit station areas are subject to the AHR.
2. **Years 2 and 3.** The rest of the island, including the remaining rail transit station areas, will be subject to the AHR, although at lower percentages.
3. **Year 4 and permanent.** In the final and permanent stage of the AHR, all rail transit station areas will become one category, while the rest of the island outside of the rail transit station areas will be another category subject to the lower required percentages.

The required number of affordable dwelling units—expressed by percentage of total dwelling units in the project—is provided in the master table below, according to the project’s location, type of units, and start year. The table also includes the existing affordable housing required through UAs for comparison with the AHR.

² Housing for lower income levels at or below 60 percent of the AMI will be primarily provided through use of City lands and public funding.

Proposed Affordable Housing Requirement				
Principal Project Location	For Sale¹ or For Rental²	On-Site Production³	Off-Site Production⁴	In-Lieu Fee⁵
Effective Immediately (Year 1)				
Ala Moana, Downtown, or Chinatown rail transit station area	For Sale	20 percent	25 percent	\$45 per square foot
	For Rental	15 percent		
Effective Years Two and Three				
Ala Moana, Downtown, or Chinatown rail transit station area	For Sale	20 percent	25 percent	\$45 per square foot
	For Rental	15 percent		
All areas outside of Ala Moana, Downtown, or Chinatown rail transit station areas	For Sale	10 percent	15 percent	\$27 per square foot
	For Rental	5 percent		
Effective Year Four and Permanent				
Within a rail transit station area	For Sale	20 percent	25 percent	\$45 per square foot
	For Rental	15 percent		
All areas outside of a rail transit station area	For Sale	10 percent	15 percent	\$27 per square foot
	For Rental	5 percent		
Period of Affordability				
<ul style="list-style-type: none"> The minimum required period of affordability is 30 years for all areas and project types. The affordability period resets to 30 years on transfer of for-sale units. 				
<ol style="list-style-type: none"> For-sale affordable dwelling units shall be sold to households earning 120 percent and below of the AMI. At least one-half of those units shall be sold to households earning 100 percent and below of the AMI. For-rental affordable dwelling units shall be rented to households earning 80 percent and below of the AMI. When the principal project is substantial rehabilitation, the on-site affordable dwelling units will count as whole units. When the principal project is new construction, any on-site affordable dwelling unit provided through substantial rehabilitation will count as one half of a unit. When the principal project is new construction, any off-site affordable dwelling unit provided through substantial rehabilitation will count as one half of a unit. A cash contribution may be provided in lieu of building affordable units, or dedication of improved land (at equal value). Effective January 1 of each year, the in-lieu fee shall increase by a factor equal to the most recently published Consumer Price Index for All Urban Consumers (CPI-U), with the base year established as of the effective date of the ordinance. <ul style="list-style-type: none"> Percentages may be adjusted for varying unit sizes and lower income ranges. 				
Comparison With Existing Unilateral Agreements (Required for Rezoning)				
Principal Project Location	For Sale or For Rental	On-Site Production	Off-Site Production	In-Lieu Fee
No difference by location	30 percent required at up to 140 percent of AMI			None
<ul style="list-style-type: none"> Required period of affordability is 10 years or less. No differentiation between for-sale and for-rental. At least 10 percent are affordable to households earning no more than 80 percent of the AMI. At least 20 percent are affordable to households earning no more than 120 percent of the AMI (equals 10 percent if 10 percent is already provided at no more than 80 percent of the AMI). At least 30 percent are affordable to households earning no more than 140 percent of the AMI (equals 10 percent if 20 percent is already provided at no more than 80 percent and 120 percent of the AMI). 				

Much of the AHR's implementation structure will be further detailed in the DPP administrative rules, similar to its existing affordable housing rules for UAs, which are used to administer rezoned lands and subsequent projects. The AHR will not replace existing mechanisms that deliver affordable housing, such as UAs (these mechanisms will offer additional flexibility to obtain affordable housing under special circumstances). The AHR is also expected to be continually refined over time, and coordinated with other agencies' affordable housing requirements, such as the HCDA and Hawaii Housing Finance and Development Corporation (HHFDC), so that the rules and administration requirements are similar.

The key elements of the AHR are discussed in more detail below.

Applicability. The AHR applies only to new private residential development (new construction, substantial rehabilitation, or subdivision of lots), which was shown to create a need for affordable housing in the Residential Nexus Analysis. Most programs focus on residential development, although some communities apply affordability requirements to commercial projects. For example, Maui County decided to apply their requirement to lodging units in addition to dwelling units. The City's proposed AHR applies only to dwelling units (units that include a kitchen), whether they are for sale or rental.

The AHR applies to residential projects of 10 units or more, including subdivisions of land and conversions of non-residential uses into dwelling units. This number is the current threshold for UA housing requirements. The number is commonly used in affordable housing programs because it starts allowing for economies of scale, whereas smaller projects have less ability to absorb the affordable housing costs.

Affordability levels and percentages. The required percentage of units varies: lower for rental projects and higher for for-sale units. The for-sale unit requirement is also higher if they are provided off-site. Both for-sale and rental unit requirements are higher in TOD districts (where developers are eligible for increased height and density) and lower throughout the rest of the island.

The majority of affordable housing is needed for households earning 80 percent or less of the AMI, as detailed in the Affordable Housing Strategy. Rental housing production to accommodate households in this income group is minimal, except for subsidized projects. The AHR includes a reduced requirement for rental projects (5 to 10 percent less), whether on or off site, to incentivize production. Developers of for-sale housing projects can also choose to provide the rental option to satisfy the AHR. Requiring for-sale affordable units to be produced for households earning no more than 120 percent of the AMI, with half of those units at or below 100 percent of the AMI, mostly addresses the gap group. This group is comprised of households close to being able to purchase a market rate home. As a result, they are able to purchase a home they can afford, while receiving a boost towards greater economic prosperity through their investment in real estate.

Differentiating between TOD areas and the rest of the island helps to accommodate the different housing markets and equitably distribute the affordable housing burden, based on situational factors and policies such as rail construction and associated rezoning of properties in TOD areas. Requiring a higher AHR percentage in the rezoned TOD areas recognizes the increased value of these properties due to transit and infrastructure investments and the potential for increased height and density. The higher requirement also addresses City policies that focus growth near rail, based on the General Plan, development plans, and TOD plans.

Distribution/Delivery. The AHR applies islandwide and flexibly accommodates each community's needs by allowing affordable housing to either be mixed in with the new market rate housing or be built in the same general area. The AHR allows developers the flexibility to make complex deals work by either building the affordable housing on site or off site (but requiring less units if for rent), paying a substantial in-lieu fee (set at an amount intended to incentivize developers to actually construct the affordable units), and/or conveyance of land at least equal to the in-lieu fee. The AHR allows smaller projects (25 units or less) to use the in-lieu fee with approval of the Director of the DPP; however, larger projects would require approval by the Council. As proposed, any off-site projects in the TOD areas would have to be located in the same rail transit station area as the principal project. For the rest of the island, projects would have to be located in the same development plan area. These restrictions prevent concentrations of all the affordable housing in certain areas.

In-Lieu Fee. An in-lieu fee option provides additional flexibility to comply with the AHR, particularly for developers of luxury condominium projects if no suitable off-site location is available or if their financial partners limit their participation in off-site projects. The high costs of association dues for maintenance and operations in projects with expensive amenities can also place a large and uncontrolled burden on owners of affordable units in luxury buildings. This situation is especially a concern over the long term after a developer has completed the project and decisions on fee increases are made by the association's board.

Recent analyses of condominium and townhouse projects in Maryland counties near Washington, DC, have shown a spiraling cycle where owners of affordable units defaulted on their mortgages after the 2008 housing crisis. These defaults resulted in the homeowners stopping payment on their association dues, causing the association boards to raise fees significantly, which many affordable unit owners could not pay, leading to additional defaults and deferred maintenance.

Building units on site or off site are the preferred options, but in-lieu fees can be used to create even more units, although the RFP process to award City funding to projects can take longer and require staff resources. Some housing advocates have said that the proposed \$45 per square foot fee is insufficient; however, this thought appears to assume, incorrectly, that the fees produced have to pay for the entire cost of the affordable units. In fact, households that are buying or renting affordable units can pay a large part of the purchase price or rent, depending on their AMI level, so the in-

lieu fee just has to cover the affordability gap (the difference between what a unit costs to produce and how much a buyer or renter can pay) to produce a unit. That gap will vary widely depending on project type, location, AMI range, and other variables.

- The Residential Nexus Analysis estimated the affordability gap could range from approximately \$70,000 (for units designated up to 120 percent of the AMI) to \$170,000 (for units up to 80 percent of the AMI).
- The more refined AHR Financial Analysis estimated the net cost to the developer to provide affordable units on site, assuming fee waivers and other incentives.
 - For condos, the net cost ranged from \$23,000 to \$110,000 per affordable unit (equaling 1 to 5 percent of development costs).
 - For apartments, the net costs ranged from \$91,000 to \$216,000 (or 3 to 6 percent of development costs). Rental apartments have a higher cost burden due to their deeper level of subsidy needed.

As an example, assuming a developer chooses the in-lieu fee option rather than building on site (requiring Council approval for projects over 25 units), a simplified calculation and process is outlined below for a hypothetical 100-unit building with 800-square-foot units.

- The \$45 square foot in-lieu fee is applied to all residential floor area (not commercial) and paid before the building permit is issued. Early collection allows the fees to be used to help build another affordable project during construction of the principal project.
- 100 units X 800 square feet X \$45 per square foot = \$3,600,000 in in-lieu fees (actual floor area might yield higher fees).
- Using the rounded affordability gap estimates from the Residential Nexus Analysis:
 - \$70,000 for units at 80 to 120 percent of the AMI.
 - \$170,000 for units at 50 to 80 percent of the AMI.
- \$3.6 million divided by \$70,000 could yield up to 51 units provided at 120 percent and below of the AMI.
- \$3.6 million divided by \$170,000 could yield up to 21 units provided at 80 percent and below of the AMI.

This outcome compares to only 20 units (10 units at 100 percent and 10 units at 120 percent AMI levels) if they were provided on site in the principal project. Of course, the actual affordability gap and funds needed on specific projects would vary widely (the financial analysis estimated a range of \$23,000 to \$216,000), but the potential for providing more units is clear. Given the proposed cuts in federal funds for affordable housing, the potential in-lieu fee revenues could yield a critical funding source for affordable housing developers. Additionally, the funds will be safeguarded in the City's existing Affordable Housing Development account so they can only be used for that purpose.

The \$45 per square foot in-lieu fee is discounted by 40 percent, to \$27 per square foot, outside of TOD areas to conform to the same discount rate on the off-site for-sale option. Aligning the in-lieu fee discount to this option (the lowest discount/most expensive option), ensures it will remain the least desirable option both inside and outside of TOD areas. (All delivery options are discounted outside of the TOD areas to acknowledge, generally, the weaker markets and lower development entitlements than what is being provided through new TOD zoning.) The fees will increase annually by a factor equal to the Consumer Price Index for All Urban Consumers (CPI-U), which is used for its high stability (a result of its larger sample size over local indices).

Phasing. Only housing markets in the Ala Moana and Downtown/Chinatown TOD areas can currently support the AHR, as shown in the AHR Financial Analysis. Phasing in the requirements to the remaining areas allows future projects that have not purchased land more time to adjust and absorb the cost of complying with the AHR. New requirements generally place downward pressure on land costs once developers adjust what they are willing to pay. Similar means of pricing in the costs of complying with the AHR are achieved by exempting projects already in process, which have likely locked in their land costs. At the same time, the phase-in incentivizes development in the other TOD areas since they will be subject to a lower requirement for a couple of years.

Period of Affordability. Maintaining Oahu's affordable housing supply has proven difficult due to the limited periods of affordability under current rules, such as the 10-year restriction period imposed on affordable housing required through UAs. In practice, the restriction period is frequently less. For example, military personnel routinely request hardship exemptions for resale when they are transferred. The AHR will restrict affordable units for at least 30 years in order to build up the portfolio over time. When the unit is resold or otherwise transferred, the 30-year affordability period starts over, keeping the unit affordable for a longer period and not losing it from the affordable inventory. This extended period of affordability is the most critical element of the AHR and is aligned with industry practice in hundreds of localities across the country, although some have chosen to impose 60-years or even permanent restrictions on their affordable units.

Some people have argued that the extended period will limit a homeowners' ability to build equity and move up the housing ladder with a large profit after their

period of affordability ends. Nevertheless, the public purpose of the AHR is to help grow and maintain a stable supply of affordable and workforce housing. Fortunately, a carefully crafted policy can create and maintain a significant supply of affordable housing while also providing a fair return on investment to home buyers.

As an example, assuming appreciation is tied to the CPI-U, say there is an average 1 percent increase per year on overall value (a conservative assumption), then a \$300,000 home could appreciate by \$3,000 the first year, \$3,300 the next, and so forth. With a 10 percent down payment, that \$30,000 investment could appreciate by up to 10 percent per year. Compounded annually, that amount could grow to over \$77,000 in 10 years. Homeowners would also be building equity since payments include paying down the mortgage balance. Although the actual amount would vary depending on the interest rate and term of mortgage, the principal payments could add up to an additional \$40,000 to \$60,000 in equity over 10 years, providing a down payment of \$117,000 to \$137,000 on a seller's future home purchase.

Recent national data has shown that this equity-building works in practice. A 2009 Urban Institute study of seven programs included the City of San Francisco, which has similar affordability issues as Honolulu. For the 10-year period ending in 2010, the typical seller of an affordable home made \$70,000 on resale, for an average rate of return of 11 percent annual compounded interest on the down payment. Grounded Solutions Network uses HomeKeeper national data to track the number of affordable home sellers able to buy market rate homes. Of 80 programs, the national average comes out to 59 percent of affordable housing sellers able to buy market rate homes.

Some developers and bankers have expressed concern that an extended period of affordability will limit their ability to finance projects. They believe the extended period and shared, or limited, equity requirements will restrict the mortgages from being resold on the secondary market, such as through the Federal Housing Administration (FHA), Fannie Mae, and Freddie Mac. This is a common concern, but not a major issue in reality. For most inclusionary programs, buyers were able to obtain financing. According to Rick Jacobus, the FHA, Fannie Mae, and Freddie Mac all finance both shared appreciation and deed restricted units, although FHA has somewhat stricter requirements.³ Fannie Mae and Freddie Mac are about to announce plans to make financing these homes even easier because Congress has essentially required them to help expand lending to these programs (2008 Housing Economic and Recovery Act legislation).

Conclusion and implementation. Based on the forgoing, and as an exercise of the police power of the City, the Director of the DPP recommends approval of the attached AHR, including a three-year phase-in by geography. The Director further recommends that the AHR be located in a separate chapter of the Revised Ordinances of Honolulu (ROH) for ease of use and to improve its effectiveness as a stand-alone regulation, although it is functionally tied to the Land Use Ordinance (Chapter 21, ROH).

³ Fannie Mae guidelines are relatively easy to follow: https://www.fanniemae.com/content/fact_sheet/resale-restrictions.pdf.

At this time, the Director is not recommending that the AHR replace existing affordable housing mechanisms, such as UAs. Since some developers have asked that the AHR, along with development incentives and fee waivers, be an opt-in program for existing and future UAs (assuming the affordable units and period of affordability that are provided equal or exceed the AHR), the Director recommends that this option be explored, separately, after adoption of the AHR.

Other cities depend on a department of housing to administer this type of program, but the administrative functions can be accommodated, initially, through existing City departments. In addition, the Director recommends exploring a formal partnership with a nonprofit, such as a community land trust, or other governmental agency that has its own affordable housing program to share in the administrative responsibilities. The Director further recommends continuing coordination with other jurisdictions that have affordable housing programs, such as the HCDA and HHFDC, to align requirements, where possible, and coordinate similar administration, compliance, data management, and monitoring responsibilities.

It is further recommended to establish financing for the administration of the affordable housing program at the same time as adopting the AHR to ensure its successful implementation. A transfer-of-ownership fee and two monitoring fees are recommended for both financial and educational purposes (i.e., to continually remind owners of their restricted property over the long period of affordability). The recommended fees are estimates of what it will cost to administer the AHR program, based on the DPP's experience of administering the affordable housing provided through UAs (mostly limited to for-sale units). Staff have found that applicants in the 80 percent and below AMI groups require more time to process because of the diversity and complexities of their income—this could apply to applicants closer to 100 percent of the AMI as well, but the current requirements are limited to 80 percent, 120 percent, and 140 percent of the AMI.

The for-sale transfer-of-ownership fee is set to cover the required staff time to process the transaction—the fee also flags transactions of affordable housing to prevent their resale at market rates, mostly as a safeguard in case title companies overlook the restrictive covenant. The for-sale monitoring fee is minimal because it only needs to cover maintenance of the affordable housing database, investigations for compliance issues, and responses to inquiries that do not lead to sales or transfers of title—the broader purpose of this fee is to remind owners that they own an affordable dwelling unit. While for-sale units are only verified at time of sale or transfer, rental units require more frequent verification of income (which is also more complex), in addition to the same items under for-sale monitoring. Therefore, the monitoring fee for affordable rental units is recommended to be higher than the affordable for-sale units because of the additional staff time.

Additional fee recommendations will be provided to councilmembers by the City's consultant, Rick Jacobus, who has already been tasked to work with City staff and its partners to update and simplify the administrative fees. This work includes a refined

analysis of the program's staff requirements as it grows over time, and it will identify the associated costs. The effort will address administrative and regulatory issues identified by developers and recommend new technologies to make it easier to qualify buyers, monitor compliance, administer the system, and make resales of affordable homes easier for individual homeowners.

Overall, the AHR is expected to involve a higher volume of activity than the current program due to a greater number of projects being required to provide affordable housing, with compliance required for the longer restriction period. (The current requirement through UAs restricts affordability to 10 years, so an increase to 30 years under the AHR will multiply the number of affordable units in the portfolio over the years.) The longer restriction period will also create additional administrative responsibilities, including more direct support for the affordable for-sale unit resales. For instance, project developers, who currently identify new eligible buyers for affordable unit resales, will no longer have a "stake" in a completed project and the City will have to rely on realtors and escrow officers to help enforce the affordability requirements on resales or transfers. Therefore, the successful implementation of the AHR will require a gradual expansion of administrative capacity to grow and maintain the affordable housing supply.

This expanded administrative capacity needs to include dedicated staff with the sole responsibility and specialized training to oversee the AHR and current UA affordable housing programs. Staff could be located in existing departments, a newly created housing department, or through partnerships with a nonprofit or State agency that have similar administrative responsibilities for their affordable housing programs. City staff will also be needed to effectively support the development of new projects and affordable housing agreements, as well as to manage any partnership contracts. The burden on staff resources, developers, and individual homeowners (for resales) can be minimized by investing in data systems to manage the portfolio of affordable housing units. This management system could include support for qualifying purchasers and renters, tracking and monitoring compliance, and many other tasks.

Most ongoing administrative details can be developed or refined as the AHR program is implemented, but the Jacobus memo emphasized that financial aspects should be carefully planned before adopting an AHR. The program needs a scalable source of revenue if it is to successfully administer a portfolio of affordable housing that is likely to grow substantially over the decades. Best practice is to rely on fee revenue, which increases along with the administrative workload.

Financial Incentives. To help offset costs of complying with the AHR, a companion affordable housing incentives bill is being introduced to the Council. That bill proposes the following: waive wastewater facilities charges, park dedication fees, and DPP building permit and plan review fees for qualified affordable housing; exempt real property taxes for rental projects for as long as the units remain affordable; exempt any increase in property tax attributed to the construction work of projects that include affordable dwelling units until built; and waive fees and property taxes for rental projects

developed per new State legislation that establishes qualifying affordable rental projects under HRS 201H-36(a)(5). In those projects, all units are restricted to households earning at or below 140 percent of the area median income (AMI), with at least 20 percent of units at or below 80 percent of the AMI. Water fees are set under a separate rate-making process by the BWS, and the Mayor has requested consideration for similar waivers for water hook-up fees.

The development incentives are intended to facilitate the production of the affordable housing supply, while the administrative fees, on the other hand, will provide a sustainable revenue source to effectively support the program once the affordable housing is built.

VI. RESEARCH REPORTS

The reports documented in this section, along with related affordable housing resources, are located on the Mayor's Office of Housing website at www.honolulu.gov/housing/resources-on-affordable-housing.

City-Sponsored Studies. The DPP commissioned two studies and a policy memo to analyze the AHR, tailored specifically for Honolulu development conditions:

- Residential Nexus Analysis. Keyser Marston Associates, Inc., 2015
- Affordable Housing Requirement Financial Analysis. Strategic Economics, 2016
- Policy Memo on Affordable Housing Requirement. Rick Jacobus, 2017

Background Research. The staff housing work group followed best practices identified by recent national studies on inclusionary housing:

- Delivering on the Promise of Inclusionary Housing: Best Practices in Administration and Monitoring. Jacobus, 2009
- Economics of Inclusionary Development. Urban Land Institute, 2016
- Inclusionary Housing, Jacobus. Lincoln Institute, 2015
- Making Inclusionary Housing More Flexible. Hickey, 2015
- Separating Fact from Fiction to Design Effective Inclusionary Housing Programs. Sturtevant, 2016

City Policies.

- Housing Oahu: Affordable Housing Strategy, 2015



A BILL FOR AN ORDINANCE

ESTABLISHING AN AFFORDABLE HOUSING REQUIREMENT.

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

SECTION 1. Purpose, findings, and intent.

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

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

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

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

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



A BILL FOR AN ORDINANCE

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

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

"Chapter __

AFFORDABLE HOUSING REQUIREMENT

Articles:

1. General Provisions

Article 1. General Provisions

Sections:

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

Sec. __-1.1 Purpose.

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



A BILL FOR AN ORDINANCE

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

Sec. __-1.2 Definitions.

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

“City” means the City and County of Honolulu.

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

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

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

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

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

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

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

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

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

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

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



A BILL FOR AN ORDINANCE

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

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

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

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

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

“TOD” means transit-oriented development.

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

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

“Accessory dwelling unit”

“Development”

“Dwelling unit”

“Dwelling, multifamily”



A BILL FOR AN ORDINANCE

“Floor area”

“Group living facilities”

“Hotel”

“Ohana dwelling unit”

“Zoning lot”

Sec. __-1.3 Applicability.

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



A BILL FOR AN ORDINANCE

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

Sec. ___-1.4 Affordable housing requirement.

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



A BILL FOR AN ORDINANCE

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

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

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



A BILL FOR AN ORDINANCE

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

Sec. ___-1.5 Period of affordability.

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



A BILL FOR AN ORDINANCE

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

Sec. __-1.6 Affordable housing development account.

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

Sec. __-1.7 Appeals.

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

Sec. __-1.8 Procedures.

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



A BILL FOR AN ORDINANCE

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

Sec. __-1.9 Violation.

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

Sec. __-1.10 Administrative Fees.

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

Sec. __-1.11 Rules.

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



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

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



A BILL FOR AN ORDINANCE

SECTION 4. This ordinance takes effect upon its approval.

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