REPORT OF THE COMMITTEE ON ZONING AND HOUSING

Voting Members:
Kymberly Marcos Pine, Chair; Ikaika Anderson, Vice-Chair;
Brandon Elefante, Ann H. Kobayashi, Joey Manahan

Committee Meeting Held
June 29, 2017

Honorable Ron Menor
Chair, City Council
City and County of Honolulu

Mr. Chair:

Your Committee on Zoning and Housing, to which was referred Bill 58 (2017) entitled:

"A BILL FOR AN ORDINANCE ESTABLISHING AN AFFORDABLE HOUSING REQUIREMENT,"

as transmitted by Departmental Communication 376 from the Department of Planning and Permitting ("DPP"), dated May 19, 2017 and which passed First Reading at the Council's meeting of June 7, 2017, reports as follows:

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

Mayor Kirk Caldwell and a representative from the DPP testified in support of the Bill.

At your Committee meeting on June 29, 2017, Sanford Carr Development, R.M. Towill Corporation, Hawaii Construction Alliance, Office of Hawaiian Affairs, and Downtown Capital LLC, offered comments on the Bill. Testimony in support was received from the Street Level Advisors. Testimony in opposition was received from the Hawaii Chapter of the National Association of Industrial and Office Properties. Written testimony

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ADOPTED ON JUL 12 2017 COMMITTEE REPORT NO. 273

in support was received from 16 individuals. The Castle & Cooke of Hawaii and one individual opposed the measure. The YWCA and two individuals offered comments.

Your Committee has prepared a CD1 version of the Bill that makes the following amendments:

A. In SECTION 1 of the bill: (1) removes reference to payment of an in-lieu fee or the provision of improved land as a way to satisfy the affordable housing requirement; and (2) removes reference to the phasing in of the affordable housing requirement based on geographical area.

B. In Section __-1.1 ("Purpose"), removes reference to payment of an in-lieu fee or the provision of improved land as a way to satisfy the affordable housing requirement.

C. In Section __-1.2 ("Definitions"): (1) deletes the definitions of "city," "council," and "HRS;" (2) adds definitions of "declarant," "HUD," "legal obligation," "off-site," and "on-site;" and (3) clarifies the definition of "Rail transit station area."

D. In Section __-1.3(a)(3) ("Applicability"), clarifies that the affordable housing requirement applies to the conversion of hotels, offices, or other uses into multifamily dwellings <u>containing ten or more total dwelling units</u>; or to conversion of rental dwelling units into for-sale dwelling units containing ten or more total dwelling units.

E. In Section __-1.4(a) ("Affordable housing requirement"): (1) removes reference to the phasing in of the affordable housing requirement based on

geographical area; (2) clarifies that if a combination of options is used, the declarant shall designate the proportionate share of the affordable housing requirement that each option will fulfill, and the sum of the proportionate shares must equal one; and (3) provides that fulfillment of the requirement may account for varying unit sizes, lower income ranges, rounding, or other factors, subject to the director's approval, as established in rules adopted pursuant to Section __-1.10.

F. In Table __-1.4: (1) deletes options relating to payment of an in-lieu fee or the provision of improved land as a way to satisfy the affordable housing requirement; and (2) deletes the four-year phase-in of the affordable housing requirement and provides that the requirement takes effect on the effective date of the ordinance.

G. Deletes original Section __-1.4(c), relating to the payment of an in-lieu fee as a way to satisfy the affordable housing requirement.

H. Deletes original Section __-1.4(d), relating to the provision of improved land as a way to satisfy the affordable housing requirement.

I. In Section __-1.5 ("Period of affordability"), clarifies that affordable units created must remain affordable for not less than 30 years from the date when the unit is initially sold or initially rented to a qualified buyer or renter; and that when a for-sale affordable dwelling unit is resold and the real property title changes within the initial period of affordability, the unit must remain affordable for not less than 30 years from the resale recordation date.

J. Deletes Section __-1.6 relating to the affordable housing development account of the housing development special fund, and renumbers subsequent sections.

K. In Section __-1.7(a) ("Procedures"), provides that if the permit applicants are not the fee owners of the project site and any applicable off-site zoning lot used to satisfy the affordable housing requirement, the affordable housing agreement and the declaration of restrictive covenants must also be executed by all of the fee owners of those parcels.

L. In Section __-1.7(b) ("Procedures"), specifies that on an annual basis, the declarant shall submit a written status report to the director documenting the declarant's compliance with the affordable housing requirement. The status report must be submitted to the director by December 31 of each year until such time as the term of the declaration of restrictive covenants expires.

M. Makes miscellaneous technical and nonsubstantive amendments for purposes of drafting conventions, grammar, clarity, and style.

REPORT OF THE COMMITTEE ON ZONING AND HOUSING

Voting Members:
Kymberly Marcos Pine, Chair; Ikaika Anderson, Vice-Chair;
Brandon Elefante, Ann H. Kobayashi, Joey Manahan

Your Committee on Zoning and Housing is in accord with the intent and purpose of Bill 58 (2017), as amended herein, and recommends that it pass Second Reading, be scheduled for public hearing, and thereafter be referred back to Committee in the form attached hereto as Bill 58 (2017), CD1. (Ayes: Pine, Anderson, Elefante, Kobayashi – 4; Noes: None; Excused: Manahan – 1.)

Respectfully submitted,

Kymberly Pine

Committee Chair

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ADOPTED ON JUL 12 2017

COMMITTEE REPORT NO. 273

CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL 58 (2017), CD1

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, which involves ensuring 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 may be resold by the buyer at market prices, which would 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, and to provide for-sale or for-rental units.

ATTACHMENT TO CR-273

A BILL FOR AN ORDINANCE

SECTION 2. The Revised Ordinances of Honolulu 1990 is amended by adding a new chapter to be appropriately designated by the Revisor of Ordinances and to read as follows:

"Chapter __

AFFORDABLE HOUSING REQUIREMENT

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, or substantially rehabilitating existing dwelling units. These new or rehabilitated dwelling units are to remain affordable for a minimum of 30 years.

Sec. __-1.2 Definitions.

As used in this chapter, unless the context requires otherwise:

"Area median income" or "AMI" means the median income determined by HUD annually for the Honolulu Metropolitan Statistical Area as adjusted for household size.

"Declarant" means the person executing the affordable housing agreement and the declaration of restrictive covenants required by Section ___-1.7.

"Department" means the department of planning and permitting.

"Development agreement" means the same as that described and authorized under Chapter 33.

"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 planning and permitting, or the director's authorized representative.

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

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

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

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

"On-site" means construction or other activities that occur on the project site.

"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.

"Rail transit station area" means the 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 will 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 will apply. Where there is no neighborhood TOD plan that has been adopted or that is under consideration, then the area within, including properties intersecting, a one-half mile radius of a future rail transit station identified in the Honolulu High Capacity Transit Corridor Project Environmental Impact Statement, accepted by the Governor of the State of Hawaii on December 16, 2010, and any future amendments or supplements thereto, will apply.

"Rental" or "for-rental" means a dwelling unit that is leased or rented for a term of between 30 days and 30 years in length.

"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 human immunodeficiency virus/acquired immune deficiency syndrome; 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" of a structure 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 have the meanings given to such terms as set forth in Section 21-10.1: "accessory dwelling unit," "development," "dwelling unit," "dwelling, multifamily," "floor area," "group living facilities," "hotel," "ohana dwelling unit," and "zoning lot."

Sec. __-1.3 Applicability.

(a) This chapter applies to any of the following:

(1) New construction of 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 containing ten or more total dwelling units; or conversion of rental dwelling units into for-sale dwelling units containing ten or more total dwelling units; or

(4) Any of the following that include ten or more dwelling units:

(A) Cluster housing permits;

(B) Planned development housing permits; or

(C) Multi-family dwelling units.

(b) This chapter does not apply to any of the following:

(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;

(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;

(5) Micro-units;

(6) Accessory dwelling units;

(7) Ohana dwelling units;

(8) Group living facilities; or

(9) Special needs housing.

Sec. __-1.4 Affordable housing requirement.

(a) The affordable housing requirements set forth in Table ___-1.4 of this subsection apply to all projects subject to this chapter pursuant to Section __-1.3. The requirements must be met by satisfying one or a combination of the options in this section subject to the director's approval. If a combination of options is used, the declarant shall designate the proportionate share of the affordable housing

requirement that each option will fulfill, and the sum of the proportionate shares must equal one. Fulfillment of the requirement may account for varying unit sizes, lower income ranges, rounding, or other factors, subject to the director's approval, as established in rules adopted pursuant to Section __-1.10. Affordable for-sale dwelling units must be owner occupied.

TABLE __-1.4
AFFORDABLE HOUSING REQUIREMENTS, 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]
The following requirements will take effect on the effective date of this ordinance.			
Within a rail transit station area	For Sale	20 percent	25 percent
	For Rental	15 percent	
All areas outside of a rail transit station area	For Sale	10 percent	15 percent
	For Rental	5 percent	

1 For-sale affordable dwelling units must be sold to households earning 120 percent and below of the AMI. At least one-half of those units must be sold to households earning 100 percent and below of the AMI.

2 For-rental affordable dwelling units must 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.

(b) 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 of subsection (a).

(c) 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, and subject to terms and conditions approved by the director, the director will have the discretion to allow the satisfaction of off-site production in other areas within the city.

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 initially sold or initially rented to a qualified buyer or renter. When a for-sale affordable dwelling unit is resold and the real property title changes within the initial period of affordability, the unit must remain affordable for not less than 30 years from the resale recordation date. The director may adopt 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 Appeals.

Appeals from the decision of the director must be filed within 30 days of the mailing or service of the director's decision.

Sec. __-1.7 Procedures.

(a) 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 permit applicants shall execute an affordable housing agreement acceptable to the director and execute and record a declaration of restrictive covenants that encumbers the project site and any off-site zoning lot that is used to satisfy the affordable housing requirement imposed in connection with the principal project and that describes the affordable housing requirements acceptable to the director, including without limitation, the enforcement of such requirements. If the permit applicants are not the fee owners of the project site and any applicable off-site zoning lot used to satisfy the

affordable housing requirement, the affordable housing agreement and the declaration of restrictive covenants must also be executed by all of the fee owners of those parcels. The director may defer the requirement to record the declaration of restrictive covenants until a time not later than issuance of the first building permit for a dwelling unit or as otherwise acceptable to the director. The form and content of the declaration will be subject to the director's approval and the city must be a party. The declaration must be recorded in the bureau of conveyances (regular system) or the office of the assistant registrar of the land court of the State of Hawaii, or both, as appropriate. The term of the declaration of restrictive covenants must be for the period of affordability and shall run with the land and bind and give notice to all subsequent grantees, assignees, mortgagees, lienors, and any other person who claims an interest in the project site or any zoning lot on which the affordable housing requirement is being satisfied.

(b) On an annual basis, the declarant shall submit a written status report to the director documenting the declarant's compliance with the affordable housing requirement of this article. The status report must be submitted to the director by December 31 of each year until such time as the term of the declaration of restrictive covenants expires.

Sec. __-1.8 Violation.

A breach of the restrictive covenants recorded under Section __-1.7 with respect to a project may result in civil enforcement and the city may seek to enforce the terms of the restrictive covenants by appropriate action at law or suit in equity against the parties and their successors and assigns. The director may take appropriate action to terminate or stop the project until applicable conditions are met, including but not limited to revoking any permits issued for the project and withholding issuance of other permits related to the project.

Sec. __-1.9 Administration and fees.

(a) The director shall administer this article.

(b) Fees for the administration and implementation of this chapter will be assessed on the owners of for-sale affordable dwelling units and the occupants of for-rental affordable dwelling units subject to this chapter.

(c) Applicable fees.

(1) For-sale affordable dwelling units will be subject to an annual monitoring fee of $50.00 per unit.

(2) For-sale affordable dwelling units will 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 will be subject to an annual monitoring fee of $300.00 per unit, which may be paid in $25.00 monthly installments.

(d) The director may take action to refer delinquent payments of fees pursuant to this section to a debt collector on behalf of the city.

(e) All monies collected from fees pursuant to this section must be deposited in the general fund and will be used for the administration and implementation of this chapter.

Sec. __-1.10 Rules.

The director may adopt rules pursuant to HRS Chapter 91 to implement, administer, and enforce this chapter.

SECTION 3. In Section 2 of this ordinance, the Revisor of Ordinances shall, pursuant to the Revisor of Ordinances' authority under Section 1-16.3(b)(1), replace the phrase "effective date of this ordinance," with the actual effective date.

A BILL FOR AN ORDINANCE

SECTION 4. This ordinance takes effect upon its approval.

INTRODUCED BY:

Ron Menor (br)

DATE OF INTRODUCTION:

May 25, 2017
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