



LAND USE RESEARCH  
 FOUNDATION OF HAWAII  
 1100 Alakea Street, Suite 408  
 Honolulu, Hawaii 96813  
 (808) 521-4717  
[www.lurf.org](http://www.lurf.org)

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June 29, 2017

Kymerly Marcos Pine, Chair  
 Ikaika Anderson, Vice Chair  
 and Members  
 Committee on Zoning and Housing  
 City Council, City and County of Honolulu  
 Honolulu, Hawaii 96813

**Comments, Opposition and Proposed Amendments Regarding Bill 58 (2017) and Proposed CD1 Establishing an Affordable Housing Requirement**

**Meeting of the Committee on Zoning and Housing  
 City Council of the City and County of Honolulu  
 City Council Committee Meeting Room, Thursday, June 29, 2017, at 9:00 a.m.**

The Land Use Research Foundation of Hawaii (“LURF”) is a statewide private, non-profit research and trade association whose members include major Hawaii landowners, developers, and a utility company. LURF’s mission is to educate and advocate for reasonable, rational and equitable land use planning, legislation, and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii’s significant natural and cultural resources and public health and safety.

LURF members have, and continue to include major landowners and housing developers who have successful experience building affordable housing and market housing for Hawaii residents. Since its formation in 1979, LURF has served on numerous state and county affordable housing advisory committees and task forces and its members have actively collaborated on various affordable housing policies and laws throughout the state.

**LURF’s Position.** LURF supports efforts to provide more affordable housing and housing for all income levels, and is willing to collaborate with all housing stakeholders and government agencies to create and implement reasonable and rational policies, funding, laws, regulations and incentives that will facilitate more affordable housing and housing at all income levels. However, LURF and its members believe that the current versions of Bill 58 will hinder, and not facilitate the building of more affordable and market housing inventory in Honolulu. Thus, LURF must **oppose the current version of Bill 58 (2017) and the Proposed CD1**, and provides the following **comments and recommended amendments**.

1. **Establish a Working Group and Collaborative Process.** The current versions of Bill 58 (2017) Affordable Housing Requirements and Bill 59 (2017) Incentives, did not involve a collaborative process or serious consideration of input from experienced housing developers. LURF respectfully recommends that the Council create a working group which would effectively engage the experienced housing developers, affordable housing advocates, government agencies and other stakeholders in a collaborative process to work on amendments to Bills 58 and 59.
2. **More government restrictions, requirements and inclusionary zoning (IZ) have not worked in Hawaii, and will have the opposite effect.** As our present housing crisis proves, more government regulation and IZ ordinances like Bill 58, will not be successful in encouraging the building of more housing – in fact, such government requirements are part of the cause of the shortage of housing in Hawaii. Among others, examples of the failure of IZ requirements include:
  - The City’s repeal of its own IZ buyer income and resale restrictions from 1999 to 2005.
  - Maui County’s IZ ordinance, which was in effect from 2006 to 2014, and resulted in only three affordable units being sold to qualified low-income buyers.

In his testimony before the City Council in 2013, Dr. Carl Bonham, Executive Director of the University of Hawaii Economic Research Organization (UHERO) and Professor of Economics and the University of Hawaii at Manoa, testified as follows:

In 2010, UHERO conducted a comprehensive review of studies that analyzed IZ policies across the United States (See Bonham, Burnett, and Kato, “Inclusionary Zoning: Implications for Oahu’s Housing Market”, February 2010). Approximately 90% of the studies concluded that IZ increases the market price of housing and decreases housing units available in the market. Of the 18 studies that were able to quantify the effect of inclusionary zoning on housing market outcomes, 13 found that IZ policies both increased the market price of housing and decreased housing units available in the market, and three more studies found evidence of at least one of those effects.

UHERO’s report concluded that “Inclusionary Zoning policies have failed in other jurisdictions, and are failing on Oahu.” Such policies have not delivered substantial numbers of affordable housing units to households the programs were designed to help.

The undersupply of housing services relative to household formation on Oahu is a chronic problem. While IZ policies are politically appealing, they mistakenly tax housing to encourage more of it! The effect of a tax on the production of any product, housing included, is relatively straightforward. The extra tax imposed by IZ increases the cost to developers and limits the

supply of housing provided. Facing the additional cost, developers will build fewer housing units, all else equal. In the worst case scenario, if the expected loss on the “affordable” units does not allow developers to meet their required rate of return, then projects will never get off the ground. The primary means of insuring the project is viable is to produce more upscale, higher priced homes to offset the loss on the subsidized housing. So, the IZ tax not only reduces the overall supply of housing, it also changes the mix of housing by encouraging higher end and more expensive housing developments.

(emphasis added)

3. **The proposed IZ affordable housing requirements in Bill 58 (AHR) are “infeasible” for most Oahu housing projects.** The conclusions of the City’s own Draft Financial Analysis Report prepared by Strategic Economics (See, *Affordable Housing Requirement Financial Analysis Draft Report (April 2016)*):
  - **Ala Moana High-rise condominium projects with a “Community Benefits Bonus”** are the only prototype that was found to be feasible under the proposed AHR based on current market conditions.
  - Outside of high rise projects in Ala Moana that require the CD Bonus, **condominium developments with or without the AHR** are currently not feasible in the locations tested.
  - **Kapalama, Pearl Ridge and Kapolei** projects with no subsidies and standard land and construction costs are not feasible, even without imposing AHR.
  - **Pearlridge low-rise condominiums** are not currently feasible, but may become feasible in the short- to mid-term.
  - None of the apartment prototypes tested are feasible under current market conditions, and are therefore unable to support the AHR at present.
4. **Instead of imposing IZ restrictions which have been proven not to work, and which have been evaluated as “infeasible,” the Council should implement “incentives.”** The Council should consider amending Bill 59 by including “incentives” recommendations of experienced housing developers and housing advocates, which would encourage the production of more affordable housing and housing for all income levels.

### **Summary of LURF’S Proposed Amendments to Bill 59 (2017) and CD1**

1. **Sec. 1.3 (b) Application Exceptions - ADD provision to allow projects with current unilateral agreements to elect application of certain provisions.** While many of the already entitled housing projects on Oahu are already “vested” with their Land use Commission and City zoning approvals and unilateral agreements (most of the projects in Ewa, Ho’opili, Koa Ridge, etc.), such projects may also be competing with new projects under Bill 58 and Bill 59, and

should also be able to take advantage of the flexibility of options, including, but not limited to: sliding scale of total units required, providing rental housing, off-site production, in-lieu fees, dedication of land, etc.

2. **Sec. 1.4 AH Requirement Phase-In on Geographical Basis - DELETE the proposed “phase-in of the AHR” on a geographical basis across Oahu (p. 6-7).** Based on the City’s own Financial Analysis Report (see above) the AHR should be limited to the Ala Moana area or other pilot project, where the City provides free land and infrastructure. There is no factual or financial justification to “phase-in” the AHR across Oahu.
3. **Sec. 1.4 Table Affordable Housing AMI Limits - DELETE the proposed 120% AMI upper income limit for Affordable Housing qualifications, and RETAIN the 140% AMI requirements (p. 7).** HUD, HCDA and HHFDC, and all other counties are using 140% AMI. Changing the qualifications to 120% will mean that residents earning between 120% - 140% AMI can no longer qualify for City affordable housing, disqualifying those residents who may best be able to qualify for housing loans.
4. **Sec. 1.4 Table Off-Site Production – CLARIFY that AH units located within the same TOD Zone of the same Neighborhood Plan qualify as “On-Site” units (p. 7).**
5. **Sec. 1.4 Table Off-Site Production – CLARIFY the authority of the DPP Director to approve AH units outside the DP/TOD Zone (p. 7).**  
  

*[Upon a showing of good cause, as described in the administrative rules and subject to terms and conditions approved by the director, the] The director shall have the discretion to allow the satisfaction of off-site production in other areas within the city.*
6. **Sec. 1.4 Table Off-Site Production – allow incentive for production of new housing in transit station areas or areas of need (p. 7).** Rather than a mandatory 25 percent “penalty” for building off-site, REVISE 25 percent requirement, to allow a 20 percent off-site dwelling unit requirement, if off-site units are within a rail transit station area or other “area of need,” as approved by the Planning Director.
7. **Sec. 1.4 (c) In Lieu Fees**
  - **AMEND amount of in-lieu fees.** The council should consult with experienced housing developers and housing agencies to determine a reasonable in-lieu fee amount that could provide funding to create more affordable housing units.

- **DELETE Council approval requirement for 25 units or more and allow DPP Director to approve all in-lieu fees (p. 8).**
  - **Sec. 1.4 (c) In Lieu Fees – ADD requirement that all in-lieu fees be deposited into the “Affordable Housing Fund” (p. 8).**
8. **Sec. 1.4 (d) Land – ADD option to convey “unimproved real property” with appraised value equal to the in-lieu fee (p. 8).**
9. **Sec. 1.5 – Period of Affordability - DELETE the *proposed 30-year IZ restrictions for For-Sale units and retain the current 10-year requirements (pp 8-9)*. LURF support the new State legislation allowing non-profit trusts to buy-back and resell affordable units, which would retain more affordable units. However, history has proven that even a ten-year IZ restriction has not worked in Honolulu, as first time buyers will choose to purchase other housing without IZ requirements (City waived its own IZ requirements from 1999 to 2005). Moreover, these restrictions “hold hostage” homeowners to remain in affordable housing by limiting the amount of equity that a first-time homeowner can earn and use to “move-up the housing ladder.” **Also DELETE what appear to be “in perpetuity reset” provisions which impose an additional 30-year IZ restriction for the resale of For-Sale units (p. 9).****
10. **Sec. 1.11 Rules – Add New provisions for periodic review and assessment of AH IZ ordinance.**
- New Provision: Require rules to include goals, objectives, and performance criteria to assess the effectiveness of the AH ordinance.
  - New Provision: Require Administration/Council review of the AH ordinance every two years, review shall include an assessment of the effectiveness of the AH ordinance.

**Conclusion.** Thus, based on the above, we respectfully urge the Zoning and Housing Committee to favorably consider LURF’s attached proposed amendments to Bill 58 (2017) and the proposed CD1; and to convene a working group to work on and propose further amendments to Bills 58 and 59.

We appreciate the opportunity to provide comments on this matter. Should you have any questions, please feel free to contact us at (808) 521-4717 or via e-mail at [darakawa@lurf.org](mailto:darakawa@lurf.org).