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
January 18, 2018

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

Mr. Chair:

Your Committee on Zoning and Housing, which considered Bill 59 (2017), CD1 entitled:

"A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8, CHAPTER 14, CHAPTER 18, AND CHAPTER 22, REVISED ORDINANCES OF HONOLULU 1990, RELATING TO AFFORDABLE HOUSING INCENTIVES."

which passed second reading and a public hearing held at the July 12, 2017 Council meeting, reports as follows:

The purpose of the Bill is to provide financial support for the creation and maintenance of affordable dwelling units that are provided through compliance with bills and ordinances relating to an affordable housing requirement (Bill 58, 2017); planned development-transit ("PD-T") permits (Ordinance 17-54); interim planned development – transit ("IPD-T") permits (ROH Section 21-9.100-5); and qualifying rental housing projects pursuant to HRS Section 201H-36(a)(5) (Act 54, Session Laws of Hawaii 2017).

The Acting Director and a representative of Planning and Permitting testified in support of the Bill.

At your Committee meeting on January 18, 2018, testimony in support was received from Rick Jacobus, Street Level Urban Impact Advisors, Tyler Dos Santos-Tam, Executive Director, Hawaii Construction Alliance, Kevin Carney, Vice President, EAH Housing, Kathryn Inouye, Kobayashi Group, LLC, Christine Camp, Avalon Development,

Ricky Cassiday, David Arakawa, Land Use Research Foundation of Hawaii, Brooke Wilson, Hawaii Regional Council of Carpenters, Keith Kurahashi, and Chris Deuchar, Form Partners, LLC. Comments were received from Emily Porter. The MacNaughton Group, Rev. Bob Nakata, James Manaku, Victor Geminiani, Hawaii Appleseed Center for Law and Economic Justice, and Deja Ostrowski, Office of Hawaiian Affairs.

Written testimony was received in support from Castle & Cooke Hawaii, Kapolei Properties, LLC on behalf of the James Campbell Co., LLC, and Avalon Development.

Your Committee amended the Bill to a CD2 version that makes the following amendments:

A. In SECTION 1 of the bill ("Purpose and intent"), provides that the waiver of park dedication requirements applies to all affordable dwelling units, not just rental units.

B. In proposed new ROH Section 22-7.3(j), provides that the waiver of park dedication requirements applies to all affordable dwelling units, not just rental units.

C. In SECTION 8 of the bill, provides that the technical amendments made to ROH Sections 18-6.5(e) and (f) in SECTION 5 of the bill, and ROH Sections 22-7.3(a) through (i) in SECTION 6 of the bill, will not be repealed when the ordinance is repealed on June 30, 2026.

D. Makes miscellaneous technical and nonsubstantive amendments.

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Your Committee on Zoning and Housing is in accord with the intent and purpose of Bill 59 (2017), CD1, as amended herein, and recommends that it pass third reading in the form attached hereto as Bill 59 (2017), CD2. (Ayes: Pine, Anderson, Elefante, Kobayashi, Manahan – 5; Noes: None.)

Respectfully submitted,

Kymberly Pine

Committee Chair

At the 1/31/18 Council meeting, the Bill was further amended and subsequently passed third reading as Bill 59 (2017), CD2, FD1.

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON JAN 3 1 2018

COMMITTEE REPORT NO. 1

CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL **59 (2017), CD2**

A BILL FOR AN ORDINANCE

TO AMEND CHAPTER 8, CHAPTER 14, CHAPTER 18, AND CHAPTER 22, REVISED ORDINANCES OF HONOLULU 1990, RELATING TO AFFORDABLE HOUSING INCENTIVES.

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

SECTION 1. Purpose and Intent. The purpose of this ordinance is to provide financial support for the creation and maintenance of affordable dwelling units that are provided through compliance with bills and ordinances relating to an Affordable Housing Requirement ("AHR") (Bill 58, 2017), Planned Development–Transit ("PD–T") permits (Ordinance 17-54), Interim Planned Development-Transit ("IPD-T") permits (ROH Section 21-9.100-5), and qualifying rental housing projects pursuant to HRS Section 201H-36(a)(5) (Act 54, Session Laws of Hawaii 2017).

This ordinance: (1) provides for real property tax exemptions that apply exclusively to affordable rental dwelling units during the period in which the rental unit is subject to an affordable housing agreement; (2) provides that for projects that contain affordable units, real property taxes would be kept at the current assessment (tax holiday) during the project's construction period for up to three years or until construction is completed; (3) waives the wastewater system facility charges for affordable dwelling units; (4) waives plan review and building permit fees for affordable dwelling units; and (5) waives park dedication requirements for affordable dwelling units. The financial incentives will expire on June 30, 2026, except that the real property tax exemption for affordable rental units will continue for the entire required affordability period.

The ultimate goal of this ordinance is to help address Oahu's housing crisis by providing financial incentives that encourage building and maintaining of a more diverse and affordable housing stock over time.

SECTION 2. Chapter 8, Article 10, Revised Ordinances of Honolulu 1990 ("Real Property Tax Exemptions"), is amended by adding a new section to be designated by the Revisor of Ordinances and to read as follows:

"**Sec. 8-10. Exemption--Qualifying affordable rental dwelling units.**

(a) For the purposes of this section:

"Affordable housing agreement" means an affordable housing agreement as described in Section -1.9, or a "regulatory agreement" as defined in Section 8-10.20(a).

"Regulated period" means the period during which a project is subject to an affordable housing agreement.

(b) This section applies only to the following:

(1) Affordable rental dwelling units as defined in and as provided on-site or off-site pursuant to Chapter . The exemption provided in this section only applies to the affordable rental dwelling unit itself;

(2) Affordable rental dwelling units provided pursuant to a planned development–transit permit pursuant to Section 21-9.100-10, or an interim planned development–transit permit pursuant to Section 21-9.100-5. The exemption provided in this section only applies to the affordable rental dwelling unit itself; or

(3) Affordable rental dwelling units located on real property used in connection with a housing project developed in compliance with HRS Section 201H-36(a)(5). The exemption provided in this section does not apply to any portion of the property that is used for commercial or other non-residential purposes, and is not for the exclusive use of the tenants of the affordable rental dwelling units.

(c) Real property specified in subsection (b) that is subject to an affordable housing agreement will be exempt from property taxes for the duration of the regulated period.

(1) If the project fails to meet the requirements under this section at any time during the regulated period, the exemption will be canceled and the real property will be subject to taxes and penalties pursuant to subsection (h)(3).

(2) If the ownership of any portion of the real property that qualifies for an exemption under this section changes during the regulated period, the exemption will be canceled and the entire project, including any retained portion and the portion that changed ownership, will be subject to taxes and penalties pursuant to subsection (h)(3). The taxes and penalties do not apply to any portion of the real property for which a new claim is filed for an exemption within 30 days of the recordation or filing of the real property title change with the registrar of the bureau of conveyances or the assistant registrar of the land court, or both, as appropriate, if the director grants the exemption.

(3) If the ownership of the real property changes during the regulated period, a new claim for exemption must be filed within 30 days of the recordation of filing of such change with the registrar of the bureau of conveyances or the assistant registrar of the land court, or both, as appropriate. Failure to timely file a new claim for an exemption, or to meet the qualifications under this section, will result in cancellation of the exemption, and taxes and penalties will be imposed pursuant to subsection (h)(3).

(d) Where a project is situated upon a single parcel of land, if any portion of the property is ineligible for the property tax exemption under this section:

(1) The remaining eligible portion will not be deprived of the exemption; and

(2) The ineligibility of a portion of the property for exemption under this section will not disqualify that portion from an exemption under any other law.

(e) Exemptions claimed under this section disqualify the same property from receiving an exemption under HRS Section 53-38.

(f) Notwithstanding any provision in this chapter to the contrary, any real property determined by the director to be exempt from property taxes under this section will be exempt from property taxes effective as of the date the application is filed with the director; provided that the initial application for an exemption must be filed with the director within 60 days after the real property qualifies for the exemption, but in no event later than September 30th preceding the tax year for which the exemption is claimed. A copy of the affordable housing agreement that has been recorded with the registrar of the bureau of conveyances or the assistant registrar of the land court, or both, as appropriate, must be filed with the application along with any additional documents determined by the director to be necessary to supplement the application. After the initial year for which the real property has qualified for an exemption, a claim for a continued exemption must be filed annually on or before September 30th, together with a document from the agency regulating the project certifying that the project continues to be in compliance with the initial affordable housing agreement and is in compliance with the applicable rental requirements.

(g) In the event property taxes have been paid in advance to the city for real property that subsequently qualifies for the exemption, the director shall refund to the owner that portion of the taxes attributable to, and paid for the period after the qualification.

A BILL FOR AN ORDINANCE

(h) Cancellation of Exemption—Penalties.

(1) Notice by Director.

Following the initial year for which real property has qualified for an exemption under this section, if an owner fails to file a claim for continued exemption by the September 30th deadline, the director shall promptly mail a notice to the owner at the owner's address of record stating that unless a claim for continued exemption and all the necessary documents are received by the director by November 15th of the same year, the exemption will be canceled.

(2) Cancellation of Exemption.

An owner who has been sent a notice under subdivision (1) by the director and who fails to file for an exemption by the November 15th deadline will have the exemption canceled and the project will be subject to taxes and penalties pursuant to subdivision (3). In the event the director finds that the initial or a subsequent claim for exemption contains false or fraudulent information, the project fails to meet the requirements during the regulated period, or the owner fails to file annually during the regulated period as required under this section, the director shall cancel the exemption retroactive to the date the exemption was first granted pursuant to an initial filing under subsection (a), and the project will be subject to the taxes and penalties determined in subdivision (3).

(3) Back Taxes and Penalties.

In the event a project is subject to taxes and penalties, as provided in subdivision (2), the differences in the amount of taxes that were paid and those that would have been due but for the exemption allowed are payable, together with a penalty in the form of interest at 10 percent per annum, from the respective dates that these payments would have been due. The taxes and penalties due will be a paramount lien upon the real property. In the event a claim for an exemption is submitted after the September 30th deadline but on or before the November 15th deadline, a late filing penalty of $500.00 will be imposed."

A BILL FOR AN ORDINANCE

SECTION 3. Chapter 8, Article 10, Revised Ordinances of Honolulu 1990 ("Real Property Tax Exemptions"), is amended by adding a new section to be designated by the Revisor of Ordinances and to read as follows:

"Sec. 8-10. Exemption–During construction work for and marketing of affordable dwelling units.

(a) As used in this section:

"Qualifying construction work" means work to construct new buildings or portions thereof, or to construct additions or substantial rehabilitations, as defined in Section -1.2, to existing buildings; provided that the new or existing building is located on land that is classified in accordance with Section 8-7.1 as residential, residential A, hotel and resort, or commercial.

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

(1) The qualifying construction work creates affordable dwelling units pursuant to Chapter ;

(2) The qualifying construction work creates affordable dwelling units pursuant to a planned development–transit permit pursuant to Section 21-9.100-10, or an interim planned development–transit permit pursuant to Section 21-9.100-5; or

(3) The real property is developed in compliance with HRS Section 201H-36(a)(5).

(c) A claim for exemption must be filed with the department of budget and fiscal services on or before September 30th preceding the first tax year for which the exemption is claimed on a form as may be prescribed by the department, and must be supported by documentation establishing the date of the issuance of the building permit for demolition, if applicable, or the building permit for new buildings or portions thereof, additions, or substantial rehabilitations, and documenting the creation of affordable dwelling units pursuant to Chapter , a planned development–transit permit pursuant to Section 21-9.100-10, an interim planned development–transit permit pursuant to Section 21-9.100-5, or affordable rental dwelling units pursuant to HRS Section 201H-36(a)(5).

(d) The real property tax will be based on the assessed value of the property for the tax year immediately preceding the tax year during which the building permit for demolition, if applicable, or a building permit for new buildings or portions thereof, additions, or substantial rehabilitations for the qualifying construction work was issued.

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

(1) Three calendar years after issuance of a building permit for new buildings or portions thereof, additions, or substantial rehabilitations;

(2) Upon issuance of a certificate of completion; or

(3) Upon issuance of any certificate of occupancy;

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

SECTION 4. The following amendment is repealed on June 30, 2026. Chapter 14, Article 10, Revised Ordinances of Honolulu 1990 ("Wastewater System Facility Charges"), is amended by adding a new section to be designated by the Revisor of Ordinances and to read as follows:

"**Sec. 14-10. Waiver of wastewater system facility charges for affordable dwelling units.**

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

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

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

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

(b) An applicant for a waiver of wastewater system facility charges under this section must provide the city with information, as prescribed by the director, to demonstrate that the applicant qualifies for the waiver."

A BILL FOR AN ORDINANCE

SECTION 5. Section 18-6.5, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec.18-6.5 Exemptions.

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

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

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

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

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

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

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

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

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

certify in writing that the work to be performed will be in conformance with the requirements of this section.

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

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

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

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

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

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

(f) The building official shall waive the collection of any plan review and building permit fees exclusively for the creation of an "accessory dwelling unit," as defined in Section 21-10.1. The plan review and building permit fees that were collected for the creation of "accessory dwelling units" [~~from the effective date of Ordinance 15-41 (September 14, 2015),~~] after September 14, 2015, will be reimbursed if requested by the permittee. Building permit fees and plan review fees will not be waived where a permit was required and work started or proceeded without obtaining a permit. In these cases, fees will be required pursuant to Section 18-6.2(d).

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

(1) The percentage of affordable dwelling units as defined in and as provided within the project pursuant to Chapter ___; or

(2) The percentage of affordable dwelling units provided pursuant to a planned development–transit permit pursuant to Section 21-9.100-10, or an interim planned development–transit permit pursuant to Section 21-9.100-5.

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

SECTION 6. The following amendment is repealed on June 30, 2026. Section 22-7.3, Revised Ordinances of Honolulu 1990 ("Subdivision of Land - Scope"), is amended to read as follows:

"Sec. 22-7.3 Scope.

(a) Every subdivider, as a condition precedent to the:

(1) [~~the approval~~] Approval of a subdivision by the director; or

(2) [~~issuance~~] Issuance of a building permit for multiple-family development by the [~~building~~] department[~~,~~] of planning and permitting;

shall provide land in perpetuity or dedicate land for park and playground purposes, for [~~the~~] joint use by the occupants of lots or units in subdivisions as well as by the public. The dedication of land for a park [~~shall~~] will be subject to the maximum ceiling in land or money in lieu thereof, calculated in accordance with the formula designated in Sections 22-7.5 and 22-7.6. In lieu of providing land in perpetuity or dedicating land, the director may permit a subdivider to pay a fee equal to the value of the land [~~which~~] that would otherwise have [~~had~~] been required to be provided in perpetuity or dedicated, or combine the payment of a fee with the provision or dedication of land [~~to be provided or dedicated~~], the total value of such combination being not less than the total value of the land [~~which~~] that would otherwise have [~~had~~] been required to be provided in perpetuity or dedicated.

(b) [~~The provisions of this~~] This article [~~shall apply~~] applies to all subdivision of land into two or more lots for residential purposes, including developments under Section 21-8.30, and to construction of multiple-family developments. When a new building or group of buildings containing dwelling or lodging units is added to an existing multiple-family development, approved prior to [~~the effective date of this article,~~] October 16, 1976, the provisions of this article [~~shall~~] will apply only to such new additions, and not to the previously approved multiple-family development.

(c) When an existing building in a multiple-family development, approved prior to [~~the effective date of this article,~~] October 16, 1976, is enlarged or altered to increase the number of dwelling or lodging units, the provisions of this article will apply to the number of dwelling or lodging units added to the enlarged or altered building.

(d) When an existing building in a multiple-family development, approved prior to [~~the effective date of this article,~~] October 16, 1976, is enlarged or altered without increasing the total number of dwelling or lodging units, and the cost of such work exceeds [~~50 percent~~] 50 percent of the total replacement cost of the building at the time of the building permit application, the provisions of this article [~~shall~~] will apply to the total number of dwelling or lodging units contained in the enlarged or altered building. The [~~50 percent~~] 50 percent replacement cost is calculated on each individual building, and not on the total replacement cost of the multiple-family development. The percentage [~~shall~~] will be cumulative for each building [~~from the effective date of this article.~~] after October 16, 1976. The provisions of this article [~~shall~~] apply to all new or existing units in an enlarged or altered building whenever the cumulative [~~50 percent~~] 50 percent replacement cost is exceeded.

(e) Upon acceptance of the land by the city, the city shall thereafter assume the cost of improvements and their maintenance. Fees received [~~shall~~] will be disbursed for the acquisition or development of parks and playgrounds, including physical facilities.

(f) [~~The provisions of this~~] This article [~~shall~~] also [~~apply~~] applies to any change in the use of buildings to multiple-family dwelling use subsequent to [~~the effective date of this article.~~] October 16, 1976.

(g) In any zoning district or special [~~design districts~~] district where mixed uses of business, commercial, office, and dwelling units are permitted, the provisions of this article [~~shall~~] apply to all units where kitchen and bathroom facilities are provided, or electrical and plumbing systems are [~~so~~] located and designed[~~, by~~

~~which~~] so that these units may be readily converted to dwelling units without securing a new building permit or without undertaking any major alterations or renovation work.

(h) This article [~~shall~~] does not apply to those units where legal documents are drawn up by the applicant to assure that the units will not be converted to dwelling units. The legal documents [~~shall~~] must be recorded as covenants running with the land and subject to the review and approval of the director of [~~land utilization~~] planning and permitting and the corporation counsel. The legal documents [~~shall~~] must be fully executed and recorded with the [~~appropriate state agency,~~] registrar of the bureau of conveyances or the assistant registrar of the land court, or both, as appropriate, and proof of such recordation [~~shall~~] must be submitted to the director of [~~land utilization~~] planning and permitting prior to the issuance of building permits.

(i) [~~The provisions of this~~] This article [~~shall apply~~] applies to any conversion in use of any existing [~~non dwelling~~] nondwelling unit to a dwelling [~~units,~~] unit, and such conversion [~~shall not~~] cannot be undertaken unless the provisions of this article have been met.

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

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

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

(3) Affordable rental dwelling units provided in compliance with HRS Section 201H-36(a)(5)."

SECTION 7. Ordinance material to be repealed is bracketed and stricken. New material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the brackets, the material that has been bracketed and stricken, or the underscoring. The Revisor of Ordinances shall, pursuant to the Revisor's authority under ROH Section 1-16.3(b)(1), replace the phrase "effective date of this ordinance" or similar phrase used in the codified language of this ordinance with the actual date on which the ordinance takes effect. The Revisor of Ordinances shall, pursuant to the Revisor's authority under ROH Section 1-16.3(b)(6) replace reference numbers to agree with newly numbered chapters or sections.

SECTION 8. This ordinance takes effect upon its approval and will be repealed on June 30, 2026; provided that the following will not be repealed:

(1) The amendments made to ROH Sections 18-6.5(e) and (f) in SECTION 5 of this ordinance; and

(2) The amendments made to ROH Sections 22-7.3(a) through (i) in SECTION 6 of this ordinance.

A BILL FOR AN ORDINANCE

Notwithstanding the foregoing, any real property tax exemptions granted pursuant to Section 2 of this ordinance prior to its repeal on June 30, 2026, will continue for the regulated period, subject to the provisions in ROH Section 8-10.__ relating to ongoing requirements and the consequences of failing to meet those requirements.

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