REPORT OF THE COMMITTEE ON ZONING AND HOUSING

Voting Members:
Kymberly Marcos Pine, Chair; Carol Fukunaga, Vice-Chair;
Ikaika Anderson, Michael Formby, Ron Menor, Heidi Tsuneyoshi

Committee Meeting Held
March 28, 2019

Honorable Ann H. Kobayashi
Interim Chair, City Council
City and County of Honolulu

Madam Chair:

Your Committee on Zoning and Housing, which considered Bill 7 (2019) entitled:

"A BILL FOR AN ORDINANCE RELATING TO AFFORDABLE RENTAL HOUSING,"

transmitted by Departmental Communication 120 (2019), dated February 27, 2019, from the Planning Commission, introduced on February 28, 2019, and which passed First Reading at the March 8, 2019 Council meeting, reports as follows:

The purpose of Bill 7 (2019) is to create a temporary program to accelerate the construction of affordable rental housing in the apartment and business mixed use zoning districts by relaxing zoning and building code standards, and offering financial incentives. The Department of Planning and Permitting ("DPP") proposed this Bill as an alternative to the Council-initiated proposal introduced as Bill 6 (2019).

Your Committee finds that the Planning Commission, after a public hearing held on February 20, 2019, at which oral and written public testimony were received, voted to recommend approval of the proposal. The DPP's related report is included as an attachment to Departmental Communication 120 (2019).

At your Committee's meeting on March 28, 2019, the Acting DPP Director testified that the DPP supports and prefers Bill 7 (2019) to Bill 6 (2019).

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON APR 17 2019

COMMITTEE REPORT NO. 97

The Deputy DPP Director and the Assistant Fire Chief of the Honolulu Fire Department ("HFD") testified that the DPP and the HFD, respectively, have concerns about reducing the width of the fire exit stairwell from 48 to 36 inches when only one stairwell and no elevator is required because the stairwell will need to accommodate the HFD and other emergency personnel as well as residents.

The DPP Transit-Oriented Development ("TOD") Administrator testified that low-rise affordable rental housing should not be permitted in TOD special districts, which emphasize walkable streetscapes and denser development, and that prohibitions on condominium property regimes ("CPRs") should be retained.

The Hawaii Construction Alliance and five individuals offered comments on the Bill.

Written testimonies were received from the Building Industry Association of Hawaii and nine individuals in support of the Bill, and four individuals who commented on the Bill.

Your Committee prepared a CD1 version of the Bill, which makes the following amendments:

A. Combines SECTIONS 1 and 2 of the Bill to address the purpose, findings, and intent of the Bill.

B. Clarifies the definitions of "affordable rental housing project" and "declaration of restrictive covenants." Adds definitions of "bathroom," "building code," "building official," "floor area ratio," "heavy timber construction," "multifamily dwelling," and "multifamily dwelling unit."

C. Adds a new Section __-1.2, to provide that the chapter regulates affordable rental housing projects. Renumbers subsequent sections.

D. In renumbered Section __-1.3, limits the prohibition on CPRs to affordable rental housing projects located in TOD special districts.

E. Adds a new Section __-1.4, to require the recordation of a declaration of restrictive covenants.

F. Adds a new Section __-1.5, to provide for an expedited permitting process (formerly SECTION 7 of the Bill). Renumbers subsequent sections.

G. In renumbered Section __-1.6, clarifies that the penalty provisions under that section apply to violations under Articles 2 and 3, and combines the penalty provisions in subsection (d) with the violation provisions in subsection (a).

H. In Section __-2.2, deletes the prohibition against affordable rental housing projects in TOD special districts.

I. In development standard table in Section __-2.3, under minimum front yard, provides for a 10-foot minimum front yard except in TOD special districts if no front yard is required and at least two-thirds of the total length of the building along the street frontage is dedicated to residential or commercial use.

J. Adds a new Section __-2.8 to provide for a maximum number of affordable rental housing units for each zoning lot based on a formula set forth in that section.

K. Adds a new Section __-2.9 to provide for the maximum size of an affordable rental housing unit, which ranges from 500 square feet for a studio with one-bathroom, to 1,350 square feet for a four-bedroom/2.5 bathroom unit. Renumbers the subsequent section.

L. In Section __-3.2(c)(3), provides for a 20-minute (instead of one-hour) fire-rated entry door to units with automatic closure mechanisms. In Section __-3.2(c)(7), provides for two-hour fire-rated walls and 90-minute fire-rated doors (instead of two-hour) in the booster pump room.

M. In Section __-3.2(f)(2), provides for at least one fire exit stairwell a minimum of 36 inches (instead of 48 inches) wide, and if no elevator is provided, a second fire exit stairwell that is a minimum of 30 inches (instead of 36 inches) must be provided.

N. In Section __-3.2(f)(3), provides that buildings that are less than three stories in height with 35 or fewer units may have one fire exit stairwell that is a minimum of 36 inches (instead of 48 inches) wide. Also requires that the stairwell exit to both the ground floor and the roof; and requires with a standard-sized door at the rooftop exit, and a railed-off waiting area on the rooftop.

O. Adds a new Section __-3.2(i) to require the installation of smoke detectors with audio alarms that are electronically powered in all bedrooms and kitchens, and an alarm pull box that is electronically connected to set off an audio alarm on each floor.

P. In SECTION 3 (waiver of wastewater facility charges), SECTION 4 (waiver of plan review and building permit fees), and SECTION 5 (waiver of park dedication requirements) of the Bill, clarifies that the incentives apply to affordable rental housing units that are rented to households earning 100 percent or below of the AMI at prices affordable to such households.

Q. In renumbered SECTIONS 6 (real property tax exemption) and 7 (real property tax holiday) of the Bill, amends existing ROH sections (instead of creating new sections to specifically regulate affordable rental housing projects).

R. Adds a new SECTION 8 of the Bill to provide that upon repeal of the ordinance:

1. Affordable rental housing projects will be deemed a nonconforming use (formerly from SECTION 11 of the Bill); and

2. Any real property tax exemptions pursuant to the ordinance will remain in effect for the duration of the applicable exemption period in accordance with the provisions of the ordinance.

Renumbers subsequent SECTIONS.

S. In renumbered SECTION 9 of the Bill, instructs the Revisor of Ordinances as to replacing chapter and section numbers that are temporarily designated with letters.

T. In renumbered SECTION 10 of the Bill, provides that the real property tax exemptions in SECTIONS 6 and 7 of the Bill apply to tax years beginning July 1, 2020. Also provides that the amendments made in SECTIONS 3, 4, 5, 6, and 7 of the Bill will not affect the repeal date of Ordinance 18-1.

U. Makes miscellaneous technical and nonsubstantive amendments.

Your Committee believes that additional public testimony at the public hearing, recommended herein to be scheduled, on this Bill will provide further assistance to your Committee and to the Council in their deliberations on this Bill.

Your Committee on Zoning and Housing is in accord with the intent and purpose of Bill 7 (2019), as amended herein, and recommends that it pass Second Reading, be scheduled for a public hearing, and be referred back to Committee in the form attached hereto as Bill 7 (2019), CD1. (Ayes: Pine, Fukunaga, Menor Tsuneyoshi – 4; Ayes with reservations: None; Noes: None; Excused: Anderson, Formby – 2.)

Respectfully submitted,

Kymberly Pine

Committee Chair

CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL 7 (2019), CD1

A BILL FOR AN ORDINANCE

RELATING TO AFFORDABLE RENTAL HOUSING.

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

SECTION 1. Purpose, findings, and intent.

The purpose of this ordinance is to establish a temporary program to accelerate the construction of affordable rental housing in the apartment and business mixed use zoning districts by relaxing certain zoning and building code standards, and offering certain financial incentives.

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

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

The *Affordable Rental Housing Report and Ten-Year Plan* further states that "[t]he Special Action Team understands that the scarcity of safe, sanitary, and affordable rental housing constitutes a crisis for nearly two-thirds of the state's residents." The report urges state and county officials to act on issues that affect the affordability of housing, stating that "Act 127 is unequivocal that the lack of supply leads to higher rents for households of all income levels, leaving all tenants with less disposable income, increasing the personal stress of tenants, reducing tenant quality of life, and exacerbating the overcrowded living conditions. Without sufficient affordable rental housing, the future social, community, and economic consequences for Hawaii may be dire."

Act 127 states, in part, that "[a]lthough many reasons contribute to the lack of affordable rental housing units for low- and moderate-income households, the primary reason is a poor rate of return for investments in affordable rental housing projects." As the Affordable Rental Housing Study Update (2014) succinctly states, "[s]imply put, affordable rental housing is unprofitable, so the market won't address the need by itself. Government regulations that restrict affordable housing development and lengthen the time tenants qualify for affordable rental housing also contribute to the lack of affordable rental housing."

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

SECTION 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 RENTAL HOUSING

Article 1. General Provisions

Sec. __-1.1 Definitions.

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

"Affordable rental housing project" means a multifamily dwelling containing multi-family dwelling units that meet all of the following criteria:

(1) At least 80 percent of the total units are rented to households earning 100 percent and below of the AMI, at prices affordable to such households;

(2) No more than 20 percent of the total units in the affordable rental housing project are occupied by the property owners or individuals who are related by blood, marriage, or adoption to the property owners;

(3) Households occupying affordable rental housing units must have a lease for the unit with a minimum six month term, and a prohibition against subleasing;

(4) A declaration of restrictive covenants must be recorded in the State of Hawaii bureau of conveyances, or the office of the assistant registrar of the land court of the State of Hawaii, or both, as appropriate, and a copy thereof must be filed with the department of planning and permitting prior to the issuance of a building permit for the affordable rental housing project; and

(5) A certification must be filed annually with the director of budget and fiscal services using a form provided by the director of budget and fiscal services, affirming that at least 80 percent of the total units in the affordable rental housing are affordable rental housing units and no more than 20 percent of the total units in the affordable rental housing are occupied by the property owners or individuals who are related by blood, marriage, or adoption to the property owners.

"Affordable rental housing unit" means a unit in an affordable rental housing project.

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

"Bathroom" means a room that is equipped for taking a bath or shower, and that includes either a sink or toilet, or both. A 0.5 bathroom means any room that is equipped with a sink or toilet, or both, but is not equipped with a bath or shower.

"Building code" means the building code of the City and County of Honolulu, as amended.

"Building official" means the same as defined in Section 18-2.1.

"Declaration of restrictive covenants" means the declaration of covenants, conditions, and restrictions in a form approved by the director of budget and fiscal services and executed by the fee owners of the land on which an affordable rental housing project is situated, and that is recorded in the State of Hawaii bureau of conveyances, or the office of the assistant registrar of the land court of the State of Hawaii, or both, as appropriate. The declaration of restrictive covenants must run with the land for as long as the affordable rental housing project exists, and must give notice to all subsequent owners, grantees, successors, assignees, mortgagees, lienors, and any other person who claims an interest in the real property, that:

(1) The land and all improvements thereon are subject to the affordable rental housing requirements of this chapter;

(2) The land or a portion thereof may qualify for a real property tax exemption during the regulated period if rented to households earning 80 percent or below of the AMI;

(3) Mixed use projects are prohibited;

(4) The land or any portion thereof must not be submitted to a condominium property regime pursuant to HRS Chapter 514B, or any successor statute; and

(5) Violation of the declaration of restrictive covenants is subject to the enforcement provisions of this Chapters 8 and 21.

"Floor area ratio" or "FAR" means the same as defined in Section 21-10.1.

"Heavy timber construction" means the same as defined by the National Fire Protection Association.

"Multifamily dwelling" means the same as defined in Section 21-10.1.

"Multifamily dwelling unit" means the same as defined in Section 21-10.1.

Sec. __-1.2 Regulation of affordable rental housing projects.

This chapter regulates affordable rental housing projects.

Sec. __-1.3 Prohibition against condominium property regime.

A zoning lot located in a transit-oriented development special district on which an affordable rental housing project is situated must not be submitted to a condominium property regime pursuant to HRS Chapter 514B, or any successor statute.

Sec. __-1.4 Recordation of declaration of restrictive covenants.

The owner of the zoning lot on which an affordable rental housing project is situated shall record a declaration of restrictive covenants to encumber the land and all improvements thereon, as required under this chapter.

Sec. __-1.5 Expedited permit processing.

Upon acceptance of a complete application for a building permit to construct an affordable rental housing project, the building official shall approve or disapprove the application within 90 calendar days. If the building official fails approve or disapprove a building permit application for an affordable rental housing project within 90 days after acceptance of a complete application, the building permit application will be deemed approved.

Sec. __-1.6 Violation – Penalty.

(a) If the director of planning and permitting or the building official determines that the use of the affordable rental housing project is abandoned; or that an owner, or the heir, successor, or assign of the owner is violating any provision of Articles 2 or 3, the violator will be subject to the administrative enforcement provisions of Section 21-2.150-2; provided that notwithstanding the civil fines specified in Section 21-2.150-2(b)(1)(C) and 21-2.150-2(b)(1)(D), the violator will be subject to a civil fine equal to 10 times the amount of the real property tax assessed for the years of noncompliance.

(b) From time to time, or upon receipt of a complaint, the director of budget and fiscal services may conduct an audit of an affordable rental housing project to determine compliance with the requirements of this chapter.

Article 2. Permitted Uses, Development Standards, and Other Requirements

Sec. __-2.1 Administration.

The director of planning and permitting, or the director's duly appointed representative, shall administer this article. Unless specifically modified in this article, the permitted uses, development standards, and other requirements of chapters 21, 21A, 22, 23, and 25 apply to affordable rental housing projects. In the event of a conflict between applicable provisions, the provisions of this article will prevail.

Sec. __-2.2 Permitted uses.

Affordable rental housing projects are a permitted use in the apartment (A-1, A-2, and A-3), apartment mixed use (AMX-1, AMX-2, and AMX-3), and business mixed use BMX-3 and BMX-4) zoning districts pursuant to chapter 21.

Sec. __-2.3 Development standards

Affordable rental housing projects are subject to the following development standards and off-street parking and loading requirements, as illustrated in Figures __-2.6 and __-2.7:

Development Standard	Requirement
Maximum lot area	20,000 square feet
Minimum front yard	10 feet, except in TOD special districts if no front yard is required and at least two-thirds of the total length of the building along the street frontage is dedicated to residential or commercial use.
Minimum side and rear yards	5 feet
Maximum building area	80% of the zoning lot
Maximum building height	60 feet
Maximum density	4.0 FAR
Height setbacks	None
Off-street parking	None
Bicycle parking	None
Off-street loading	A minimum of one space, to accommodate garbage pickup and garbage bin storage
Yard encroachments	Parking, including bicycle parking, is allowed in the side and rear yards. One loading space may encroach a maximum of 5 feet into the front yard. Required fire exit stairwells and fire corridors may encroach into the front yard by a maximum of 5 feet.

Sec. __-2.4 Parking.

Parking, including bicycle parking, may extend into side and rear yards, provided that a solid wall, with a minimum height of four feet and a maximum height of six feet, is built along the applicable side or rear property boundary.

Sec. __-2.5 Bicycle parking.

The bicycle parking requirements of Section 21-6.150 do not apply to affordable rental housing projects; however, if the affordable rental housing project provides short- or long-term bicycle parking onsite, the bicycle parking may encroach into required yards.

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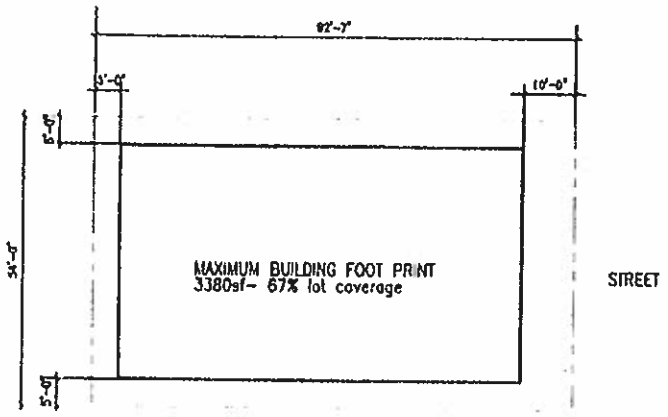
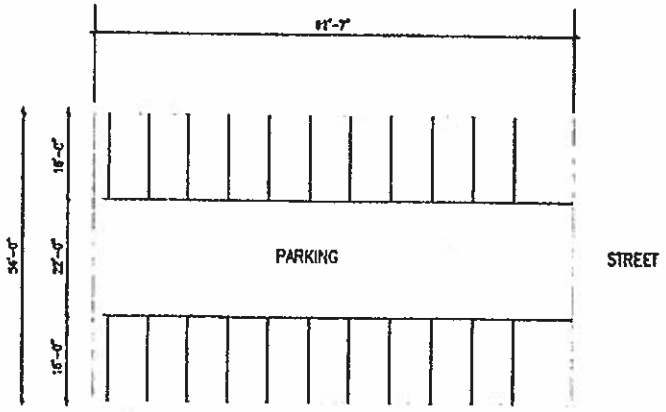
Sec. __-2.6 Examples of maximum building area and yards.

The following figures illustrate possible configurations of maximum building area and required yards; however, they do not necessarily reflect acceptable parking configurations or compliance with all other development standards:

Figure -2.6
5,000 SQUARE FOOT LOT



PLOT PLAN



PLOT PLAN
5000 SF LOT

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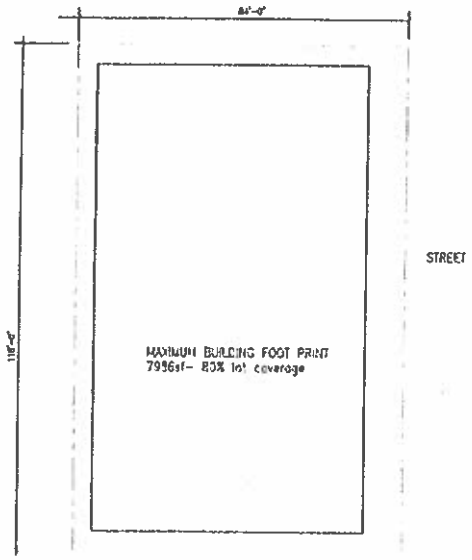
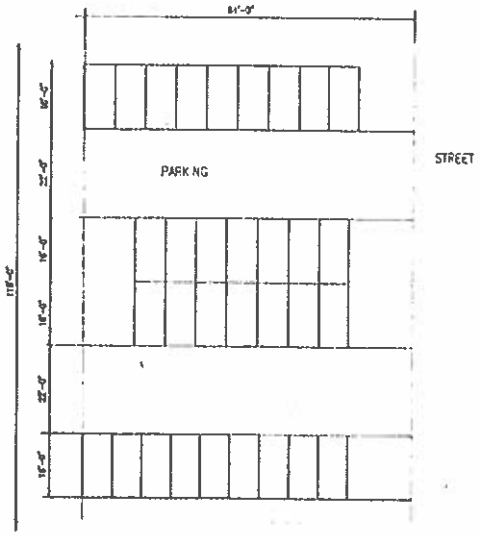
Figure -2.6
10,000 SQUARE FOOT LOT



PLOT PLAN
10,000 SF LOT



PLOT PLAN
10,000 SF LOT

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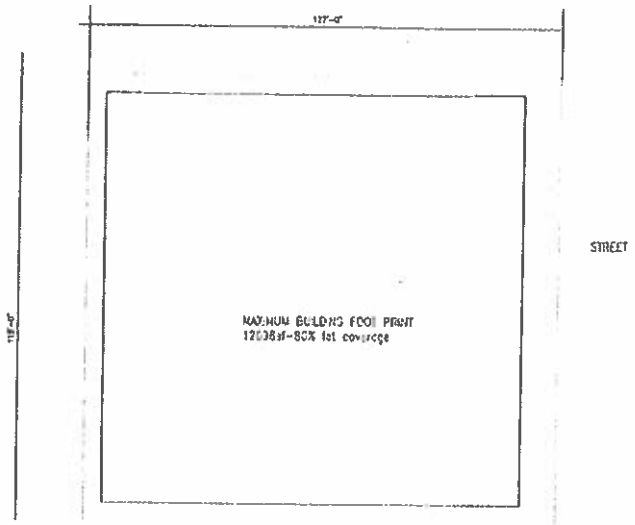
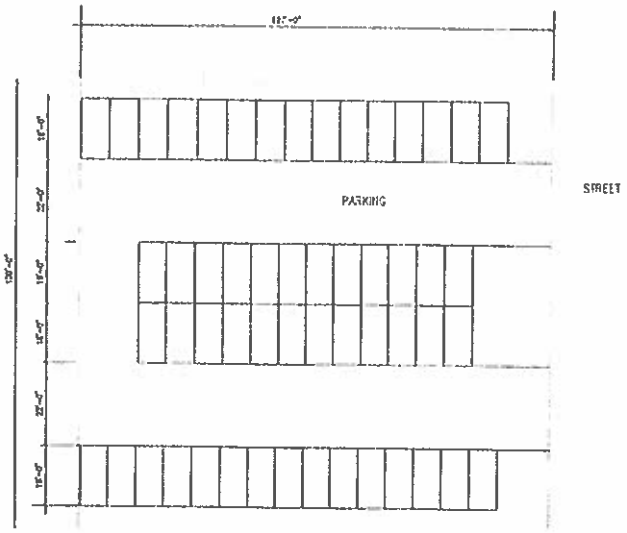
Figure –2.6
15,000 SQUARE FOOT LOT

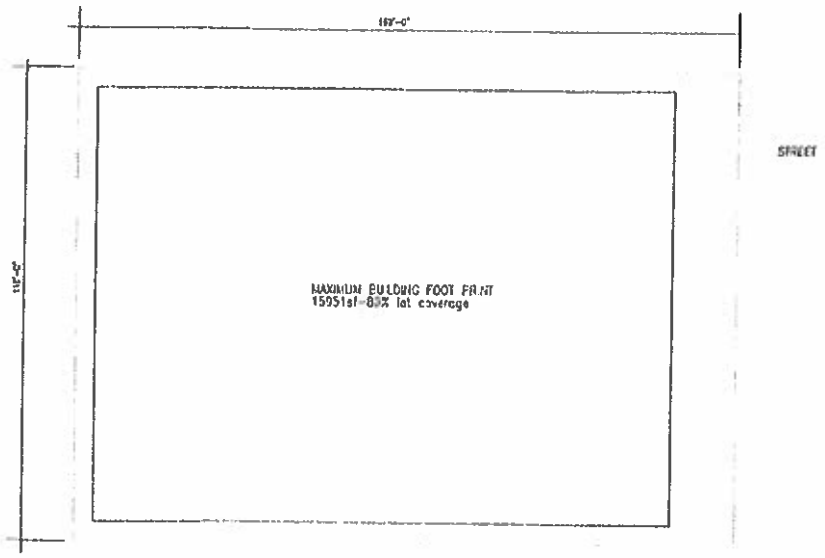


PLOT PLAN
15,000 SF LOT

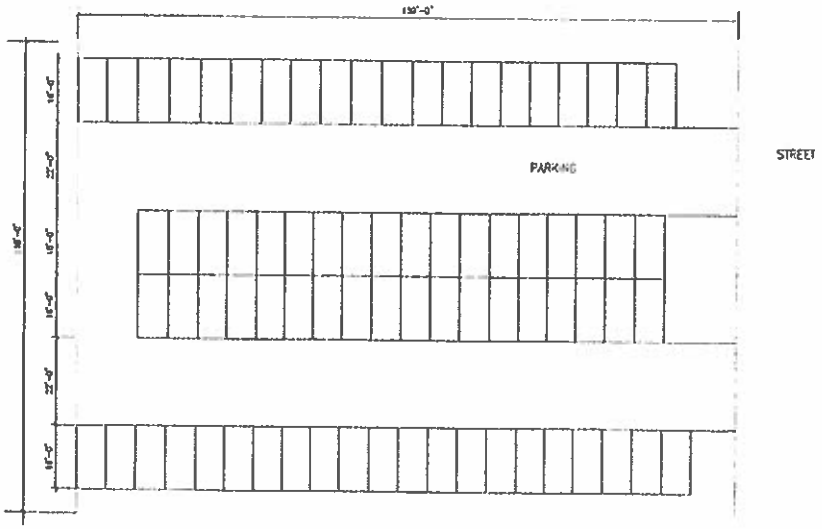


PLOT PLAN
15,000 SF LOT

Figure 2.6
20,000 SQUARE FOOT LOT



PLOT PLAN
20,000 SF LOT



PLOT PLAN
20,000 SF LOT

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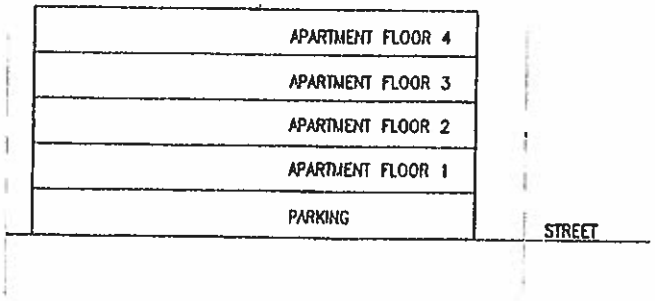
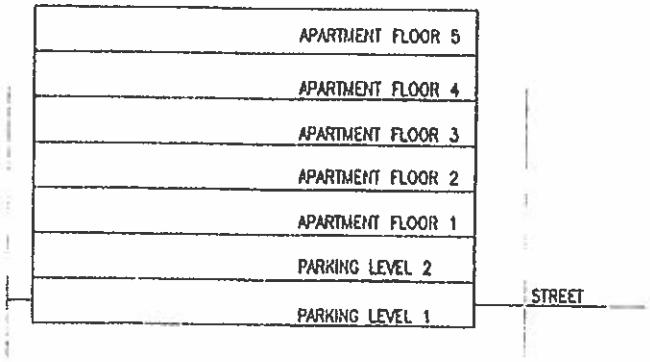
Sec. __-2.7 Examples of maximum building height.

The following figures illustrate possible configurations of building height; however, they do not necessarily reflect acceptable parking configurations or compliance with all other development standards:

Figure -2.7



SECTION OF 45 FEET MAXIMUM HIGH BUILDING



SECTION OF 60 FEET MAXIMUM HIGH BUILDING

Sec. __-2.8 Maximum number of units.

The maximum number of affordable rental housing units for each zoning lot is determined by dividing the square footage equivalent of the maximum allowable FAR for that zoning lot, excluding any public open space bonus FAR, by a factor of 800, and rounding down to the nearest whole number.

Sec. __-2.9 Maximum size of units.

The maximum size of an affordable rental housing unit in an affordable rental housing project is as follows:

Number of Bedrooms and Bathrooms	Maximum Floor Area (square feet)
Studio with 1 bathroom	500
One bedroom with 1 bathroom	650
One bedroom with 1.5 bathrooms	700
One bedroom with 2 bathrooms	750
Two bedrooms with 1 bathroom	800
Two bedrooms with 1.5 bathrooms	900
Two bedrooms with 2 bathrooms	1,000
Three bedrooms with 1.5 bathrooms	1,100
Three bedrooms with 2 bathrooms	1,200
Three bedrooms with 2.5 bathrooms	1,250
Four bedrooms with 2 bathrooms	1,300
Four bedrooms with 2.5 bathrooms	1,350

Sec. __-2.10 Nonconforming use.

Abandonment of use. If at any time a project ceases to qualify as an affordable rental housing project pursuant to this chapter, the project will be deemed a nonconforming multi-family dwelling use and must comply with the applicable nonconforming provisions of Section 21-4.110.

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Article 3. Building Construction Standards

Sec. __-3.1 Administration.

The building official, or the building official's duly appointed representative, shall administer this article. Unless specifically modified herein, the building and housing code requirements of Chapters 16 and 27, respectively, apply to affordable rental housing projects. In the event of a conflict between applicable provisions, the provisions of this article prevail.

Sec. __-3.2 Standards.

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

TABLE __-A

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

(b) Type of Construction. The minimum type of construction must comply with chapter 6 of the building code and Table __-A.

(c) Fire-resistance rated construction and requirements. The following requirements apply to affordable rental housing projects:

(1) Where an exterior wall is less than 10 feet from the property line, one-hour fire-rated exterior walls with no greater than 25% openings per wall surface; provided that windows in the openings may be unrated;

(2) One-hour fire-rated corridor walls for double loaded corridors and demising walls between units;

(3) Twenty-minute fire-rated entry doors to units with automatic closure mechanisms;

(4) Unrated interior walls within each unit;

(5) One-hour fire-rated floors and roof, or heavy timber floors and roof;

(6) Two-hour fire-rated walls between units and building stairs or passenger elevators;

(7) Two-hour fire-rated walls and 90-minute fire-rated door in the booster pump room described in subsection (d)(5); and

(8) All domestic water and fire sprinkler piping must be made of noncombustible material.

(d) Fire protection system. The installation of automatic sprinkler systems for protection against fire hazards must be designed and installed in compliance with section 903 of the building code; or, for residential occupancies of seven or fewer stories in buildings not exceeding 60 feet in height above grade, an automatic sprinkler system must be provided as follows:

(1) A common sprinkler/domestic main must be installed throughout the building;

(2) Vertical risers must be provided with a secured shutoff valve locked in the open position. All required outages must be provided with a fire watch;

(3) All sprinkler heads must be installed prior to the last plumbing fixture served within the unit. All sprinkler piping serving a sprinkler head must be kept to a minimum and no greater than 16 inches in length;

(4) The discharge density must be 0.05 gallons per minute per square-foot with a maximum of four sprinkler heads within each compartment;

(5) A booster pump must be provided to accommodate the domestic water and greatest hydraulic demanding sprinklers within a unit. The booster pump must provide a minimum of 40 pounds per square inch at the top of the riser;

(6) A manual wet stand pipe must be precharged from a domestic water supply tap. The stand pipe must be located in an exterior open stairwell with two-hour rated walls;

(7) For exterior walls that are between five and ten feet from the property line with a wall opening greater than a 10 percent, there must be a sprinkler head at all wall openings to provide a water curtain when the sprinkler head is activated;

(8) For buildings over 40 feet in height with type VA construction, a National Fire Protection Association 13 sprinkler system is required; and

(9) A mechanical engineer licensed in the State of Hawaii shall prepare the plans for the automatic sprinkler system required by this section.

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

(f) Fire Escape Stairs.

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

(2) At least one fire exit stairwell must be a minimum of 36 inches wide, and if no elevator is provided, a second fire exit stairwell with a minimum width of 30 inches must be provided.

(3) Buildings that are less than three stories in height with 35 or fewer units may have one fire exit stairwell that is a minimum of 36 inches wide and constructed of non-combustible material or heavy timber construction; provided that the total length of the building must not exceed 100 feet. The stairwell must exit to the ground floor, and must also exit to the roof, with a standard-sized door at the rooftop exit, and a railed-off waiting area on the rooftop.

(4) The fire chief may, at the fire chief's discretion, approve of alternative fire exits in lieu of a second fire exit stairwell, including a drop ladder system or a narrower second fire exit stairwell.

(g) Exterior Glass. Exterior glass in an affordable rental housing project will be exempt from the requirements of Chapter 32 (the Building Energy Conservation Code).

(h) Accessibility. Design of building and facilities must comply with the federal Fair Housing Act, 42 U.S.C. 3601 et. seq. Elevators are not required unless mandated by Section 1007.2.1 of the building code.

(i) Fire and smoke alarm systems. Smoke detectors with audio alarms that are electronically powered must be installed in all bedrooms and kitchens. An alarm pull box that is electronically connected to set off an audio alarm must be installed on each floor.

SECTION 3. Section 14-10.__, Revised Ordinances of Honolulu 1990, ("Waiver of wastewater system facility charges for affordable dwelling units"), as enacted in SECTION 4 of Ordinance 18-1, is amended by amending subsection (a) to read as follows:

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

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

(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); or

(4) Affordable rental housing units that are rented to households earning 100 percent and below of the AMI at prices affordable to such households pursuant to Chapter B."

SECTION 4. Section 18-6.5, Revised Ordinances of Honolulu 1990 ("Exemptions"), is amended by adding a new subsection (i) to read as follows:

"(i) The building official shall waive the collection of the plan review and building permit fees for the portion of an affordable rental housing project equal to the percentage of affordable rental housing units that are rented to households earning 100 percent and below of the AMI at prices affordable to such households pursuant to Chapter B."

SECTION 5. Section 22-7.3, Revised Ordinances of Honolulu 1990 ("Subdivision of Land - Scope"), as enacted in SECTION 6 of Ordinance 18-1, is amended by amending subsection (j) to read as follows:

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

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

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

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

(4) Affordable rental housing units that are rented to households earning 100 percent and below of the AMI at prices affordable to such households pursuant to Chapter B."

A BILL FOR AN ORDINANCE

SECTION 6. Section 8-10.__, Revised Ordinances of Honolulu 1990, as enacted in SECTION 2 of Ordinance 18-1, is amended to read as follows:

"Sec. 8-10.__ Exemption--Qualifying affordable rental dwelling units or affordable rental housing units.

(a) For the purposes of this section:

"Affordable housing agreement" means an affordable housing agreement as described in Section A-1.8, or a "regulatory agreement" as defined in Section 8-10.20(a).

"Declaration of restrictive covenants" means the same as defined in Chapter B.

"Exemption period" means the ten-year period commencing upon the effective date of the claim for a real property tax exemption pursuant to subsection (b)(4), and ending on June 30th of the last year of the ten-year period.

"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) That portion of real property used for affordable rental dwelling units as provided on-site or off-site pursuant to Chapter A;

(2) That portion of real property used for affordable rental dwelling units provided pursuant to a planned development–transit permit under Section 21-9.100-10, or an interim planned development–transit permit under Section 21-9.100-5; [~~or~~]

(3) That portion of real property used for 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)[.]; or

(4) That portion of real property used for affordable rental housing units that are rented to households earning 80 percent and below of the AMI at prices affordable to such households, as specified in the declaration of restrictive covenants pursuant to Chapter B.

(c) The exemption provided in this section does not apply to any portion of the real property that is:

(1) Used for commercial or other non-residential purposes;

(2) Not for the exclusive use of the tenants of the affordable rental dwelling units; or

(3) Subject to any other exemption from real property taxation.

(d) 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, and real property specified in subsection (b)(4) that is subject to a declaration of restrictive covenants will be exempt from property taxes for the duration of the exemption period.

(1) If the project fails to meet the requirements under this section at any time during the regulated period or exemption 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).

(e) 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.

(f) Exemptions claimed under this section disqualify the same property from receiving an exemption under HRS Section 53-38; provided that exemptions claimed under subsection (b)(4) also disqualify the same real property from receiving a real property tax exemption under any other law, except for Section 8-10.Y.

(g) 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 or the declaration of restrictive covenants 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~~]

(1) For exemptions claimed under subsections (b)(1), (b)(2), and (b)(3), 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.

(2) For exemptions claimed under subsection (b)(4), after the initial year for which the real property has qualified for an exemption, a report must be filed with the director of budget and fiscal services annually on or before September 30 during the regulated period. The report must certify that the affordable rental housing project continues to be in compliance with the declaration of restrictive covenants and the applicable rental requirements pursuant to this chapter, including but not limited to the number of affordable rental housing units that are rented to households earning 80 percent or below of the AMI.

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

(h) 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.

(i) 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 will be imposed."

SECTION 7. Section 8-10.__, Revised Ordinances of Honolulu 1990, as enacted in SECTION 3 of Ordinance 18-1, is amended to read as follows:

"**Sec. 8-10.Y Exemption–During construction work for and marketing of affordable dwelling units or affordable rental housing projects.**

(a) As used in this section:

"Qualifying construction work" means [~~work~~]:

(1) Work to construct new buildings or portions thereof, or to construct additions or substantial rehabilitations, as defined in Section A-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[.]; or

(2) Work to construct an affordable rental housing project pursuant to Chapter B.

(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 A;

(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)[~~.~~]; or

(4) The qualifying construction work creates affordable rental housing units that are rented to households earning 100 percent and below of the AMI at prices affordable to such households pursuant to Chapter B.

(c) A claim for exemption must be filed with the [~~department~~] director 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~~] director, 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[~~,~~]; 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); or affordable rental housing units that are rented to households earning 100 percent and below of the AMI at prices affordable to such households pursuant to Chapter B.

(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.

(f) If, within five years after the expiration of the claim an exemption under subsection (b)(4), an affordable rental housing project is not in compliance with the recorded declaration of restrictive covenant, the exemption will be retroactively revoked and the taxpayer shall reimburse the city for the total exemption amount."

SECTION 8. Upon the repeal of this ordinance:

1. Affordable rental housing projects developed pursuant to SECTION 2 of this ordinance will be deemed a nonconforming multi-family dwelling use and must comply with the applicable nonconforming provisions of Section 21-4.110; and

2. Any real property tax exemptions pursuant to Section 8-10.__(b)(4) in SECTION 6 of this ordinance, and pursuant to Section 8-10.Y(b)(4) in SECTION 7 of this ordinance will remain in effect for the duration of the ten-year exemption period in accordance with the provisions of this ordinance.

A BILL FOR AN ORDINANCE

SECTION 9. 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. In SECTIONS 3, 4, 5, 6, and 7 of this ordinance, the Revisor of Ordinances shall, pursuant to the Revisor's authority under ROH Section 1-16.3(b), replace the following:

(1) References to "Chapter A," "Section A-1.2," and "Section A-1.8" with the appropriately designated chapter and sections enacted by Ordinance 18-10;

(2) References to "Section 8-10.Y" with the appropriately designated section enacted by SECTION 3 of Ordinance 18-1; and

(3) References to "Chapter B" with the appropriately designated chapter enacted by this ordinance.

SECTION 10. This ordinance takes effect upon its approval and will be repealed five years after its effective date; provided that:

(1) Any real property tax exemption authorized pursuant to Section 8-10.__(b)(4) in SECTION 6 of this ordinance, and pursuant to Section 8-10.Y(b)(4) in SECTION 7 of this ordinance, will apply to tax years beginning July 1, 2020; and

(2) The amendments made in SECTIONS 3, 4, 5, 6, and 7 of this ordinance do not affect the repeal date of Ordinance 18-1.

A BILL FOR AN ORDINANCE

(3) No later than two years prior to the repeal date of this ordinance, the Director of Planning and Permitting shall submit to the City Council a report on the number of affordable rental housing units developed under this ordinance, and a recommendation regarding the repeal, modification, or extension of this ordinance.

INTRODUCED BY:

Kymberly Marcos Pine (br)

DATE OF INTRODUCTION:

February 28, 2019
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