# 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

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Committee Meeting Held
May 2, 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), CD1 entitled:

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

which passed second reading on and was the subject of a public hearing held at the April 17, 2019 Council meeting, reports as follows:

The purpose of Bill 7 (2019), CD1 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 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 was 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 April 25, 2019, your Committee Chair postponed action on the Bill with the intention of further discussing possible amendments to the Bill at a special meeting to be held on May 2, 2019.

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**CITY COUNCIL**
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON MAY 8 2019 COMMITTEE REPORT NO. 148

At your Committee's meeting on May 2, 2019, the DPP Acting Director testified that the DPP generally supports the Bill, but was concerned about the deletion of the requirement that the declaration of restrictive covenants be recorded with the State Bureau of Conveyances or the State Land Court. The DPP Acting Director also requested that the penalty provisions revert back to the penalty provisions in the original version of the Bill, which included a civil fine of ten times the real property tax exemption.

The Assistant Chief of the Honolulu Fire Department ("HFD") testified that the HFD has no objections to the current CD2 version of the Bill, which provides for wider fire exit stairwells.

The Administrator for the Real Property Assessment Division ("RPAD") of the Department of Budget and Fiscal Services ("BFS") testified that the BFS recommends that the declaration of restrictive covenants be recorded with the State Bureau of Conveyances or State Land Court. The RPAD Administrator also testified that the BFS prefers limiting the rent amounts to ensure affordability.

At your Committee's meeting on May 2, 2019, the Honolulu Board of Realtors testified in support of the Bill. One individual testified in opposition to the Bill. The Disability and Communication Access Board and one individual offered comments on the Bill.

Your Committee received written testimony in support of the Bill from the Honolulu Board of Realtors. Written testimony in opposition to the Bill was received from one individual. The Building Industry Association and two individuals submitted comments on the Bill.

Your Committee prepared a CD2 version of the Bill, which makes the following amendments:

A. In SECTION 1 of the Bill ("Purpose, findings, and intent") amends the last paragraph to provide that high density development on small parcels of land is often not feasible, even in transit oriented-development special districts, due to the small size of the parcel.

B. In Section __-1.1 ("Definitions"):

1. Revises the definition of "affordable rental housing project" by:

(a) Providing that at least 80 percent of the total units are rented to households earning 100 percent and below of the AMI (deletes the requirement that the rent amount be at prices affordable to such households. Makes a conforming amendment to the definition of "affordable rental housing unit";

(b) Adds a new criterion (4) providing that all leases for dwelling units must allow the lessee to terminate the lease early if the lessee or any member of the lessee's family residing with the lessee is rendered unable to access the unit by reason of an accident or medical condition. Renumbers subsequent criteria accordingly;

(c) Revises criterion (5) to require the fee owners of the land on which an affordable rental housing project is situated to execute a declaration of restrictive covenants, a copy of which must be filed with the DPP (deletes the requirement that the declaration

of restrictive covenants be recorded with the State Bureau of Conveyances or the State Land Court);

2. Clarifies the definition of "bathroom";

3. Adds definitions of "bed and breakfast home" and "transient vacation unit;"

4. Revises the definition of "declaration of restrictive covenants" by:

   (a) Deleting the requirement that the declaration of restrictive covenants be recorded with the State Bureau of Conveyances or the State Land Court;

   (b) Revising criterion (2) to reference "exemption period" instead of "regulated period."

   (c) Revising criterion (3) to provide that excluding any portion of the ground floor of the affordable rental housing project that is designated for commercial use if commercial use is otherwise permitted by the underlying zoning, mixed use projects are prohibited;

   (d) Revising criterion (4) to provide that the property on which an affordable rental housing project is situated may only be submitted to a condominium property regime pursuant to HRS Chapter 514B or any successor statute if it contains a ground floor commercial use that is permitted by the underlying zoning of the property; provided further that the only condominium units created are one condominium unit for the ground floor commercial portion of the project and one condominium unit for the residential portion of the

project, and the one condominium unit for the residential portion of the project must not be further divided into separate condominium units.

5. Defines "dwelling unit" instead of "multifamily dwelling unit."

C. In Section __-1.3, revises the section title to "Prohibitions," and adds

1. Subsection (a) to provide that excluding the ground floor if commercial use is otherwise permitted by the underlying zoning, mixed use projects are prohibited;

2. Subsection (b) to provide that the property on which an affordable rental housing project is situated may only be submitted to a condominium property regime pursuant to HRS Chapter 514B or any successor statute if it contains a ground floor commercial use that is permitted by the underlying zoning of the property; provided further that the only condominium units created are one condominium unit for the ground floor commercial portion of the project and one condominium unit for the residential portion of the project, and the one condominium unit for the residential portion of the project must not be further divided into separate condominium units; and

3. Subsection (c) to prohibit the use of a unit in an affordable rental housing project as a bed and breakfast home or transient vacation unit.

D. In Section __-1.4, revises the section title to read "Declaration of restrictive covenants," and adds

1. Subsection (a) to provide that the owner of the zoning lot on which an affordable rental housing project is situated shall execute (instead of record) a declaration of restrictive covenants; and

2. Subsection (b) to provide that upon the sale, transfer, or demise of title to the property, or any portion thereof, on which an affordable rental housing project is situated, the owner shall disclose the declaration of restrictive covenants to the prospective transferee, and upon the transfer of title, the new owner shall execute a declaration of restrictive covenants in substantially the same form as the declaration of restrictive covenant executed by the prior owner, and file a copy of the executed declaration of restrictive covenants with the DPP.

E. In Section __-1.5, revises the section title to read "Building permit processing," and adds:

1. Subsection (a) to provide that the executed declaration of restrictive covenants for an affordable housing rental project must be filed with any building permit application for the project; and

2. Includes the building permit expedited processing provisions as subsection (b).

F. In Section __-1.6 ("Violation – Penalty"):

1. Provides that subsection (a) applies to violations under Article 2, and amends the penalty provision to provide that in addition to the civil fines specified in Section 21-2.150-2(b)(1)(C) and 21-2.150-2(b)(1)(D), a violator shall pay an amount equal to 10 times the amount of the real property tax assessed for the years of noncompliance.

2. Adds a new subsection (b) to provide that violations under the Building Code and Article 3 will be subject to the violations and penalty provisions of Chapter 16, Article 10. Re-alphabetizes the subsequent subsection.

3. In re-alphabetized subsection (c), provides that the director of budget and fiscal services <u>or the director of planning and permitting, or both</u>, may conduct periodic compliance audits.

G. In Section __-2.2 ("Permitted uses"), clarifies that affordable rental housing projects may be developed on real property owned by the State Department of Education for purposes of providing public school faculty housing.

H. In Section __-2.3 ("Development standards"):

1. Provides that no off-street loading spaces are required (instead of a minimum of one space); provided that loading and garbage storage must be accommodated on site.

2. Provides for a minimum front yard of 10 feet, or the minimum front yard required by the underlying zoning, whichever is less. Also deletes the provision that would have allowed for no front yard in TOD special districts if at least two-thirds of the total length of the building is dedicated to residential or commercial use.

3. Provides for minimum side and rear yards of 5 feet, or the minimum side and rear yards required by the underlying zoning, whichever is less.

I. Adds a new Section __-2.11, which requires affordable rental housing projects to comply with all applicable laws, including but not limited to the federal Fair Housing Act, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973.

J. In Section __-3.2(f)(2), provides that buildings with more than 35 units must have at least one fire exit stairwell a minimum of 36 inches wide, and if no elevator is provided, a second fire exit stairwell a minimum of 36 inches (instead of 30 inches) wide must be provided.

K. In Section __-3.2(f)(3), provides that buildings with 35 or fewer units (removes reference to less than three stories in height) may have one fire exit stairwell that is a minimum width of 48 inches (instead of 36 inches), must be constructed of non-combustible material or heavy timber construction, and must exit to the ground floor (deletes the exit to the rooftop and railed rooftop requirement).

L. In Section __-3.2(h), provides that elevators are not required unless mandated by Section 1007.2.1 of the Building Code, or required by applicable federal accessibility laws, and clarifies that elevators may be provided in affordable rental housing projects, even though not required.

M. In Section __-3.2(i), removes the requirement for a smoke detector in all kitchens.

N. In SECTIONS 3 (waiver of wastewater system facility charges), 4 (waiver of plan review and building permit fees, 5 (waiver of park dedication requirements), and 7 (real property tax holiday during construction and marketing phase) of the Bill, deletes requirements that the rent amount must be at prices affordable to households earning 100 percent and below of the AMI.

O. In SECTION 6 (real property tax exemption) of the Bill, deletes requirements that the rent amount must be at prices affordable to households earning 80 percent and below of the AMI.

P. In new proposed Section 8-10.X(b)(4), provides that the real property tax exemption applies to that portion of real property used for affordable rental housing units that are rented to households earning 80 percent and below of the AMI, and rented at or below the rental rate limits established by the United States Department of Housing and Urban Development for households earning 80 percent of the AMI for the applicable household size or less.

Q. In new proposed Section 8-10.X(d)(1) and 8-10.X(d)(2), refers to the regulated period <u>or exemption period, whichever is applicable</u>, and refers to the penalty provisions in Section 8-10.X(i)(3) (instead of Section 8-10.X(h)(3)).

R. In new proposed Section 8-10.X(g), provides that a copy of the <u>executed</u> declaration of restrictive covenants must be filed with the application for a real property tax exemption.

S. In new proposed Section 8-10.X(g)(2), refers to the "exemption period" instead of the "regulated period."

T. In new proposed Section 8-10.X(g)(3), refers to the penalty provisions in Section 8-10.X(i)(3) (instead of Section 8-10.X(e)(3)).

U. In new proposed Section 8-10.X(i)(2), refers to subsection (g) (instead of subsection (a)).

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V. In new proposed Section 8-10.Y(f), refers to the executed (instead of recorded) declaration of restrictive covenants.

W. In SECTION 8 of the Bill (repeal of the ordinance), corrects the duration of the real property tax exemptions pursuant to Section 8-10.Y(b)(4) in SECTION 7 of the ordinance to the period as determined in Section 8-10.Y(e).

X. In SECTION 9 of the Bill, which instructs the Revisor of Ordinances as to replacing chapter and section numbers that are temporarily designated with letters, adds reference to Section 8-10.X, as designated in SECTION 6.

Y. Makes miscellaneous technical and nonsubstantive amendments.

Your Committee on Zoning and Housing is in accord with the intent and purpose of Bill 7 (2019), CD1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as Bill 7 (2019), CD2. (Ayes: Anderson, Formby, Fukunaga, Menor, Pine, Tsuneyoshi – 6; Ayes with reservations: None; Noes: None.)

Respectfully submitted,

Kymberly Pine
Committee Chair

At the 5/8/19 Council meeting, the Bill was further amended and subsequently passed Third Reading as Bill 7, CD2, FD1.

**CITY COUNCIL**
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON MAY 8 2019

COMMITTEE REPORT NO. 148

# CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL 7 (2019), CD2

## 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. In addition, high-density development on these small parcels of land is often not feasible, even in transit-oriented development special districts, due to the small size of the parcel. 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 only dwelling units that meets 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;

(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) All leases for dwelling units must allow the lessee to terminate the lease early if the lessee or any member of the lessee's family residing with the lessee is rendered unable to access the unit by reason of an accident or medical condition;

(5) The fee owners of the land on which an affordable rental housing project is situated shall execute a declaration of restrictive covenants, and shall file a copy thereof with the department of planning and permitting prior to the issuance of a building permit for the affordable rental housing project; and

(6) 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 that is rented to a household earning 100 percent and below of the AMI.

"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, or combination of adjoining rooms that provide access to one another, 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, or combination of adjoining rooms that provide access to one another, that is equipped with a sink or toilet, or both, but is not equipped with a bath or shower.

"Bed and breakfast home" means the same as defined in Chapter 21, Article 10.

"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, which at a minimum provides 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 exemption period if rented to households earning 80 percent or below of the AMI;

(3) Excluding any portion of the ground floor of the affordable rental housing project that is designated for commercial use if commercial use is otherwise permitted by the underlying zoning, mixed use projects are prohibited;

(4) The property on which an affordable rental housing project is situated may only be submitted to a condominium property regime pursuant to HRS Chapter 514B or any successor statute if it contains a ground floor commercial use that is permitted by the underlying zoning of the property; provided further that the only condominium units created are one condominium unit for the ground floor commercial portion of the project and one condominium unit for the residential portion of the project, and the one condominium unit for the residential portion of the project must not be further divided into separate condominium units; and

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

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

"Dwelling unit" 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.

"Transient vacation unit" means the same as defined in Chapter 21, Article 10.

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

This chapter regulates affordable rental housing projects.

**Sec. __-1.3 Prohibitions.**

(a) Excluding the ground floor if commercial use is otherwise permitted by the underlying zoning, mixed use affordable rental housing projects are prohibited.

(b) The property on which an affordable rental housing project is situated may only be submitted to a condominium property regime pursuant to HRS Chapter 514B or any successor statute if it contains a ground floor commercial use that is permitted by the underlying zoning of the property; provided further that the only condominium units created are one condominium unit for the ground floor commercial portion of the project and one condominium unit for the residential portion of the project, and the one condominium unit for the residential portion of the project must not be further divided into separate condominium units.

(c) Units in an affordable rental housing project must not be used as a bed and breakfast home or transient vacation unit.

**Sec. __-1.4 Declaration of restrictive covenants.**

(a) The owner of the zoning lot on which an affordable rental housing project is situated shall execute a declaration of restrictive covenants, as required under this chapter.

(b) Upon the sale, transfer, or demise of title to the property, or any portion thereof, on which an affordable rental housing project is situated, the owner shall disclose the declaration of restrictive covenants to the prospective transferee, and upon the transfer of title, the new owner shall execute a declaration of restrictive covenants in substantially the same form as the declaration of restrictive covenant executed by the prior owner, and file a copy of the executed declaration of restrictive covenants with the department of planning and permitting.

# A BILL FOR AN ORDINANCE

**Sec. __-1.5 Building permit processing.**

(a) The declaration of restrictive covenants that has been executed by the owner of the zoning lot on which an affordable rental housing project is situated, must be filed with any building permit application for the affordable rental housing project, along with any additional documents determined by the director to be necessary to supplement the application.

(b) 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 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 Article 2, the violator will be subject to the administrative enforcement provisions of Section 21-2.150-2; provided that in addition to 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 ten times the amount of the real property tax assessed for the years of noncompliance.

(b) If the building official determines that the affordable rental housing project violates the building code or any provision of Article 3, the violator will be subject to the violations and penalty provisions of Chapter 16, Article 10.

(c) From time to time, or upon receipt of a complaint, the director of budget and fiscal services, or the director of planning and permitting, or both, 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, apartment mixed use, and business mixed use zoning districts pursuant to Chapter 21. Affordable rental housing projects may be developed on real property owned by the state department of education for purposes of providing public school faculty housing.

# A BILL FOR AN ORDINANCE

**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, or the minimum front yard required by the underlying zoning, whichever is less |
| Minimum side and rear yards | 5 feet, or the minimum side and rear yards required by the underlying zoning, whichever is less |
| 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 | None, provided that loading and garbage storage must be accommodated on site. |
| Yard encroachments | Parking, including bicycle parking, is allowed in the side and rear yards.<br>One loading space may encroach a maximum of 5 feet into the front yard.<br>Required fire exit stairwells and fire corridors may encroach into the front yard by a maximum of 5 feet. |

# A BILL FOR AN ORDINANCE

**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.**

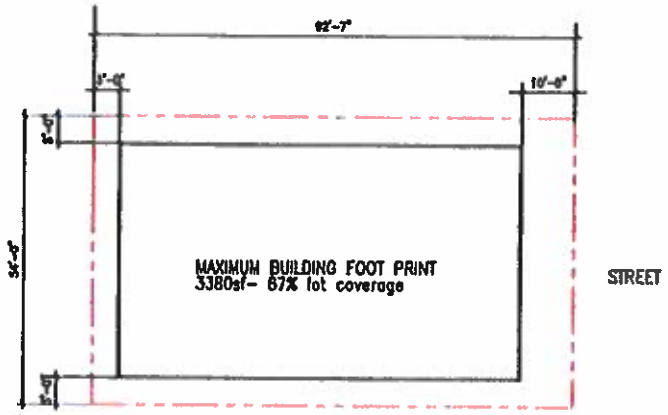
The bicycle parking requirements of Section 21-6.150 do not apply to affordable rental housing projects; however, if the affordable rental housing project provides short- or long-term bicycle parking onsite, the bicycle parking may encroach into required yards.

# A BILL FOR AN ORDINANCE

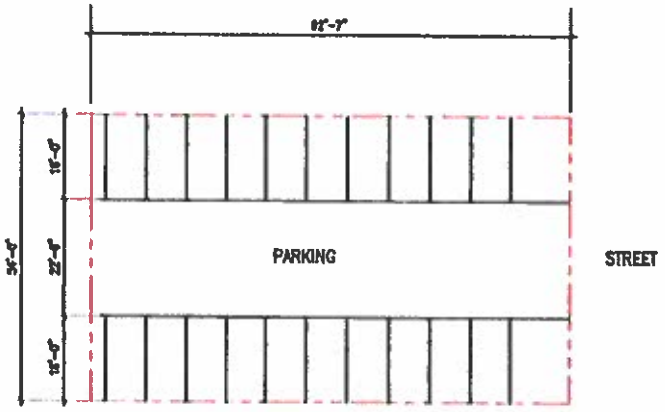
**Sec. __-2.6 Examples of maximum building area and yards.**

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

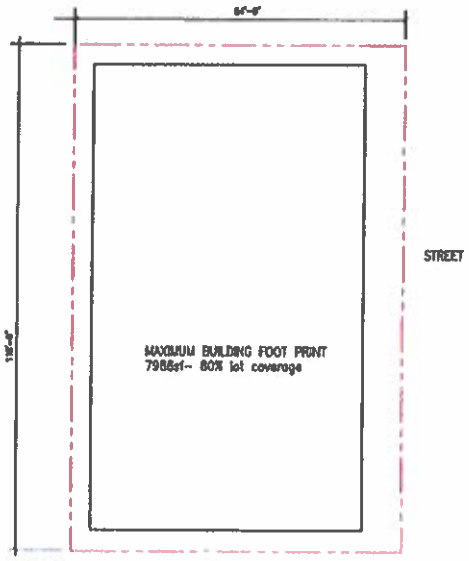



PLOT PLAN

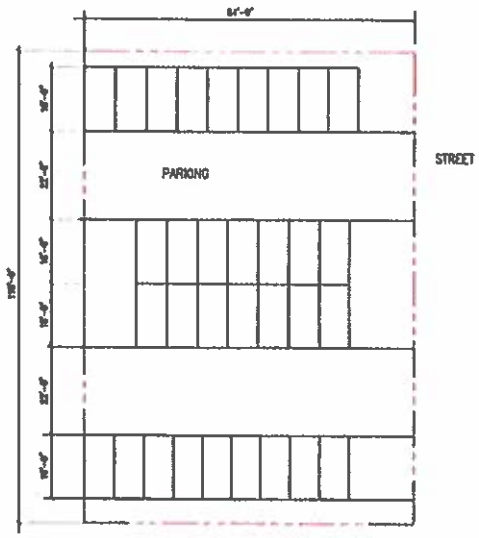



PLOT PLAN
5000 SF LOT

Figure -2.6
10,000 SQUARE FOOT LOT

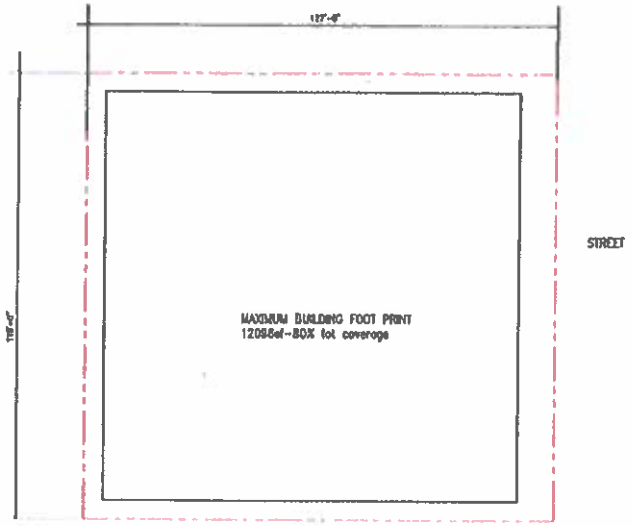



PLOT PLAN
10,000 SF LOT

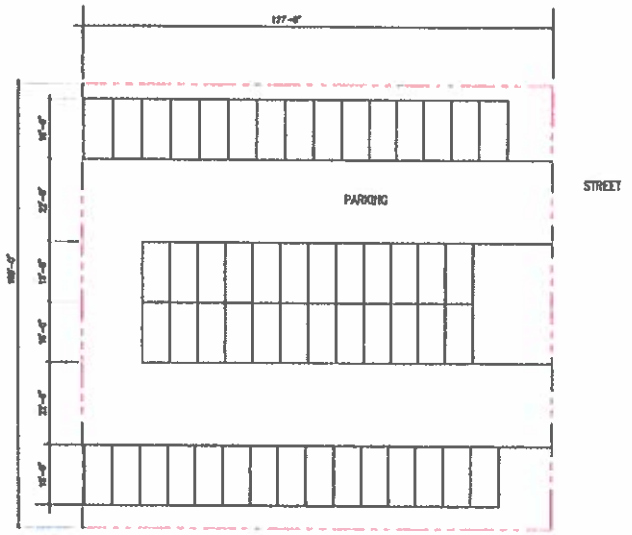



PLOT PLAN
10,000 SF LOT

Figure –2.6
15,000 SQUARE FOOT LOT

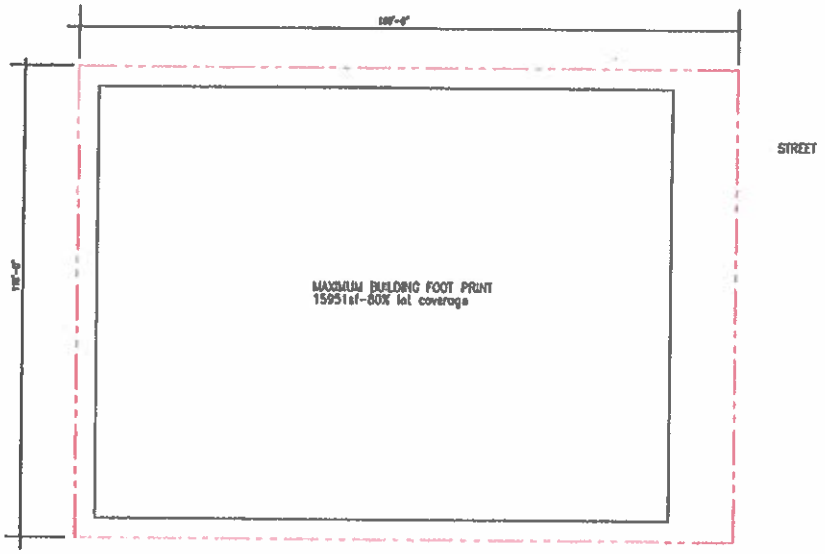



PLOT PLAN
15,000 SF LOT

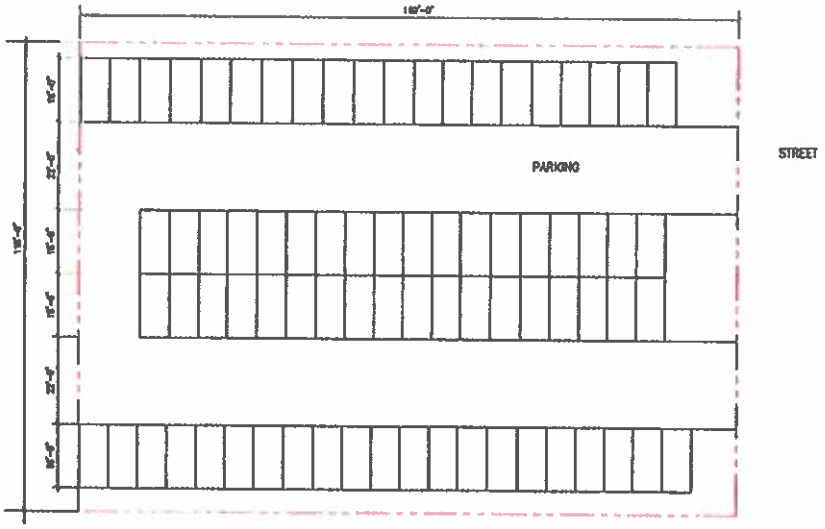



PLOT PLAN
15,000 SF LOT

Figure 2.6
20,000 SQUARE FOOT LOT




PLOT PLAN
20,000 SF LOT



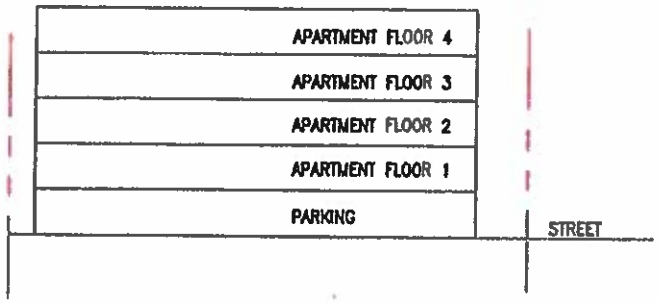

PLOT PLAN
20,000 SF LOT

# A BILL FOR AN ORDINANCE

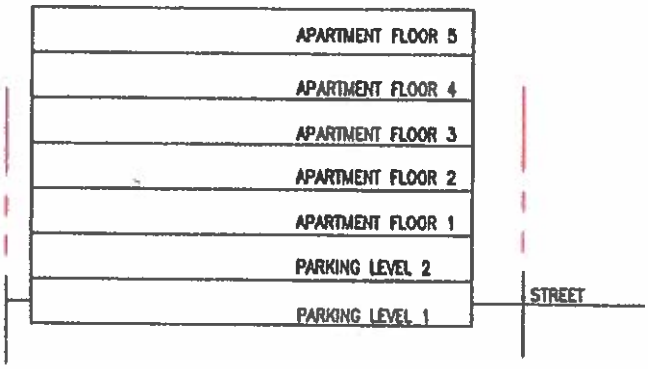
**Sec. __-2.7 Examples of maximum building height.**

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.

**Sec. __-2.11 Compliance with applicable laws.**

Affordable rental housing projects must comply with all applicable laws, including but not limited to the federal Fair Housing Act, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973.

**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<br>A | 7<br>80% of land area | 7<br>80% of land area | 7<br>80% of land area | 7<br>80% of land area | 5<br>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) Except as provided in subdivision (3), at least one fire exit stairwell must be a minimum width of 36 inches, and if no elevator is provided, a second fire exit stairwell with a minimum width of 36 inches must be provided.

(3) Buildings with 35 or fewer units may have a single fire exit stairwell that is a minimum width of 48 inches 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.

(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, or required by applicable federal accessibility laws. Elevators may be provided in affordable rental housing projects, even though not required.

(i) Fire and smoke alarm systems. Smoke detectors with audio alarms that are electronically powered must be installed in all bedrooms. 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 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 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 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.X 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, and rented at or below the rental rate limits established by the United States Department of Housing and Urban Development for households

earning 80 percent of the AMI for the applicable household size or less.

(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, whichever is applicable, the exemption will be canceled and the real property will be subject to taxes and penalties pursuant to subsection (i)(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 or exemption period, whichever is applicable, 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 (i)(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 (i)(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 that has been recorded with the registrar of the bureau of conveyances or the assistant registrar of the land court, or both, as appropriate, or the declaration of restrictive covenants that has been executed by the owner of the zoning lot on which an affordable rental housing project is situated, 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 exemption 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 (i)(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)~~] (g), 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 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 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 for an exemption under subsection (b)(4), an affordable rental housing project is not in compliance with the executed declaration of restrictive covenants, 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.X(b)(4) in SECTION 6 of this ordinance, will remain in effect for the duration of the ten-year exemption period in accordance with the provisions of this ordinance, and any real property tax exemptions pursuant to Section 8-10.Y(b)(4) in SECTION 7 of this ordinance will remain in effect for the duration of the exemption period as determined under Section 8-10.Y(e) 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.X" with the appropriately designated section enacted by SECTION 2 of Ordinance 18-1;

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

(4) 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.X(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