

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 7<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
PHONE: (808) 768-8000 • FAX: (808) 768-6041  
DEPT. WEB SITE: [www.honolulu.gov](http://www.honolulu.gov) • CITY WEB SITE: [www.honolulu.gov](http://www.honolulu.gov)

KIRK CALDWELL  
MAYOR



KATHY K. SOKUGAWA  
ACTING DIRECTOR

TIMOTHY F. T. HIU  
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI  
DEPUTY DIRECTOR

April 25, 2019

The Honorable Kymberly Marcos Pine, Chair  
and Members  
Committee on Zoning and Housing  
Honolulu City Council  
530 South King Street, Room 202  
Honolulu, Hawaii 96813

Dear Chair Pine and Councilmembers:

SUBJECT: Bill 7 (2019), CD1, Affordable Rental Housing

Thank you for this opportunity to comment on the CD1 version of the above bill. Included are comments from Real Property Division, City Department of Budget and Fiscal Services.

Fundamentally, we support Bill 7, as a bold way to incentivize long-term, affordable rentals. The private sector is to be commended for taking the initiative to propose this strategy. Its strengths include:

- No dependence on government subsidies as a fundamental part of the financing of these projects.
- Affordability is tied to the life of the buildings, which should be considerably longer than current policies that require affordability for 10, 20 or 30 year terms.

However, as stated in our director's report, we did have reservations about the initial proposal, but have strived to agree to as many of the proffered exemptions that do not jeopardize public health and safety. We also believe the proposed program should not be burdened with unnecessary provisions as well. This not only creates over-regulation, but will slow down the permit review process, and add conditions that may make projects infeasible.

19APR25 AM 9:32 CITY COUNCIL

19APR29 AM 9:47 CITY CLERK

DEPT. COM. 285

The Honorable Kymberly Marcos Pine, Chair  
and Members  
April 25, 2019  
Page 2

Under this perspective, we offer the following comments on the CD1 version of Bill 7, based on recent discussions and as well as taking a fresh look at the original Bill 7:

- Condominium Property Regime (CPR). Section \_\_-1.3 of CD1 would prohibit CPRs only in Transit-Oriented Development (TOD) special districts. We generally do not support CPRs, as in the long run, for apartment units or by floors of a building. It will be difficult to enforce the affordable housing requirement when each CPR unit will be under different owners, trying to comply cumulatively, as one project.

On the other hand, we do not object to allowing commercial spaces to be under separate CPRs for purposes of leasing, taxing and financing.

- Restrictive Covenant vs Annual Certification. We note that bill proponents have recently shifted their position and prefer filing an annual self-certification form over the filing of a restrictive covenant. It should be noted that both versions of Bill 7, the original and the CD1, already require an annual certification with respect to confirming that tenants meet income requirements. So the new position is to drop the filing of a restrictive covenant, not substituting the restrictive covenant with an annual report.

While an annual certificate requirement will clearly remind landowners of the obligations of Bill 7, it is not a disclosure document for the public, and in particular, prospective property buyers. A restrictive covenant is a well-understood repository for special conditions associated with the property. We continue to support its requirement.

We are pleased that bill proponents are aware that annual certification is not a "standalone" requirement, but that income-related documents from each tenant must be kept for purposes of confirming household income under an audit, as provided under proposed Section \_\_-1.6(b) of Bill 7 CD1, and Section \_\_-1.30(c) of Bill 7.

Bill 7 itemizes certain specific elements that need to be included in the declaration of restrictive covenants. As a disclosure document, the declaration must specifically reference compliance with this affordable rental program, and it should reference penalties for violating provisions of Bill 7. These disclosures are not included in CD1 version of Bill 7. Based on recent discussions, we support dropping the prohibition on mixed use projects.

- Relocation of the Section on Expedited Permit Processing: No objection.
- Penalties. Section \_\_-1.6 of CD1 notes that LUO enforcement provisions apply to both Articles 2 and 3 of Bill 7. We suggest that they apply only to Article 2 and not Article 3. Article 3 relates to building code matters, and enforcement should use penalties that already apply to building code violations, as provided under Chapter 16, Article 10, ROH.
- Front Yard in TOD Special District. Section \_\_-2.3 of CD1 requires a 10-foot yard unless within a TOD special district where no front yard is required, and at least two-thirds of the total length of the building is dedicated to residential or commercial use. So far, TOD Special Districts do not provide for no front yard. This new provision is unclear whether it applies only to the ground level, or all floors of a building. Given its lack of clarity, we ask that this provision be dropped.
- New Sections -8 and -9 - Maximum Number of Units and a Control on the Size of Units Per Lot. We continue to oppose these limits as being unnecessary, reducing flexibility. Density will be controlled by floor area, as is now done in apartment and business mixed use zoning districts.
- 20-Minute Fire-Rated Entry Doors. This is no change from existing code requirements. It could be retained in Bill 7 as a redundant provision, or dropped.
- Fire Exit Stairwells. We maintain our position that the first stairwell should be 36 inches wide. The second stairwell should also be 36 inches wide, if no elevator is provided.

For buildings with 35 or fewer units, the single stairwell must be at least 48 inches wide. We agree with the Honolulu Fire Department (HFD) that access to the roof is required but should not be considered an exit.

- Smoke Detectors and Fire Alarms. We defer to HFD on this proposal, but our understanding is that they do not support smoke detectors in kitchens. Also, it is our understanding that pull boxes are not favored; rather, the preference is to have the sprinkler system directly connected to the smoke alarms. This system does not depend on human intervention.
- Fee Waivers. We do not object to the clarification that they only apply to the affordable units, and not to all the units in a building.

The Honorable Kymberly Marcos Pine, Chair  
and Members  
April 25, 2019  
Page 4

- Real Property Tax Exemptions. See attachment from Real Property Division, Budget and Fiscal Services.
- Demise of Program. We have no objections to the clarification on the duration of the real property tax exemption. However, we request an amendment with regard to the zoning status of the buildings at the end of this program. The use will continue to be multi-family dwellings; therefore, they should not be limited to the status of nonconforming use. However, they are likely to be nonconforming structures in that they exceed allowed density and have yard encroachments based on underlying zoning standards. They are likely to be deficient in parking as well. We suggest amended language:

“Upon the repeal of this ordinance, affordable rental housing and the structures developed pursuant to this ordinance shall be considered nonconforming, as provided under Chapter 21-4.110.”

We look forward to continued discussions on this important bill. In the interim, please contact me at 768-8000 should you have any questions.

Very truly yours,



Kathy K. Sokugawa  
Acting Director

Attachment

APPROVED:



---

Roy K. Amemiya, Jr.  
Managing Director

**Bill 7 CD1 (2018) Proposed Changes from Real Property Division  
April 25, 2019**

(text is highlighted in yellow)

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 housing 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 30<sup>th</sup> 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 pursuant to Section 21-9.100-10, or an interim planned development–transit permit pursuant to 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) The exemption amount is the total assessed value of the real property multiplied by the ratio of the living area rented to households earning up to 80 percent of the AMI at rental rate limits established by the United States Department of Housing and Urban Development for households earning 100% AMI to the total building living area.

(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)(1), (b)(2) or (b)(3) 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)]~~ (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 the exemption period, whichever one applies, 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)]~~ (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 or exemption period, whichever one applies, a new claim for exemption must be filed within 30 days of the recordation or 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)]~~ (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 as described in subsection (b) will be exempt from property taxes effective as of the filing date of the claim for exemption but only if the claim is filed with the director within 60 days after any certificate of occupancy is issued by the department of planning and permitting. When a claim for exemption is

filed more than 60 days after any certificate of occupancy has issued but on or before September 30, the effective date of the exemption approved by the director will be July 1 of the succeeding tax year. 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 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 30<sup>th</sup>, 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.]

(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 30<sup>th</sup>, 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<sup>th</sup> 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 section, 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 and not exceeding the rental rate limits established by the United States Department of Housing and Urban Development for households earning 100 percent AMI for the applicable household size.

(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 30<sup>th</sup> 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 determined in 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 or exemption 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))~~ (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 exemption is submitted after the September 30<sup>th</sup> deadline but on or before the November 15<sup>th</sup> 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 a new 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; [øf]
  - (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 under Chapter A was issued.
- (e) The claim for exemption, once allowed, will expire:
- (1) Three calendar years after issuance of a building permit for a new buildings pursuant to Chapter A or B or portions thereof, additions, or substantial rehabilitations pursuant to Chapter A;
  - (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 of the expiration of the claim for exemption under subsection (b)(4), an affordable rental housing project is not in compliance with the recorded restrictive covenants, the exemption will be retroactively revoked and the taxpayer shall reimburse the city for the total exemption amount."

G:interDeptMedia/M Hung apt proposal/17 Apr Bill 7 CD1 RPD