Reviewed and Approved by the Executive Director
December 14, 2023

FOR ACTION

I. REQUEST

Approve the Revised Ordinances of Honolulu Chapter 32 Affordable Rental Housing Program for Certification for Exemption from General Excise Taxes as a "Government Assistance Program" under Hawaii Revised Statutes Sections 237-29 and 201H-36(a)(2) and Hawaii Administrative Rules Section 15-306-2

II. FACTS

A. The Revised Ordinances of Honolulu (ROH) Chapter 32 (**Exhibit A**) provides relaxed development standards and financial incentives for Affordable Rental Housing (ARH) Projects as long as a minimum of 80% of the dwelling units are rented to households earning no more than 100% of Honolulu's Area Median Income (AMI) for at least 15 years. An overview and Frequently Asked Questions of ROH Chapter 32 is included as **Exhibit B**.

These projects (sometimes referred to as "Bill 7" projects because of the original bill for an ordinance) proceed directly to the building permit process; no prior discretionary approval is required in most cases. However, an executed declaration of restrictive covenants must be included with the building permit application. The declaration of restrictive covenants form BFS-RPA-M-32 can be found at the City and County of Honolulu's (the City) real property tax website at www.realpropertyhonolulu.com.

ARH projects are permitted in apartment, apartment mixed-use (AMX), and business mixed-use (BMX) zoning districts, as well as the apartment precinct and apartment mixed-use sub-precinct of the Waikiki Special District, on lots up to 20,000 square feet.

B. Project Considerations

1. The maximum number of affordable rental housing units for each zoning lot is determined by dividing the square footage equivalent of the maximum allowable floor area ratio (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.

2. The maximum size of an affordable rental housing unit in an affordable rental housing project ranges from 500 square feet for a studio unit with one bathroom to 1,350 square feet for a four-bedroom unit with two and one-half bathrooms.

3. Articles 2 and 3 of ROH Chapter 32 provide for specific development and building construction standards, including examples provided in ROH §32-2.6 and ROH §32-2.7.

4. The building construction standards specified in ROH §32-3.2.

C. ARH projects are eligible for the following fee waivers, tax exemptions, and cash grants:

1. Waiver of Building Permit and Plan Review fees (ROH §18-6.5(i)).

2. Waiver of Water Systems Facilities Charge and New Meter Cost.

3. Waiver of Wastewater System Facility Charges (ROH §43-10.8).

4. Waiver of Park Dedication requirements (ROH §22-7.3(j)).

5. Real Property Tax Exemption (10 years) for units rented at 80% AMI during a 15-year regulated period (ROH §8-10.33).

6. Property Tax Freeze during construction (ROH §8-10.34).

7. Cash Grants of up to $10 million ($9,000 - $15,000 per dwelling unit) (ROH §32-4.2).

D. Restrictions

1. No more than 20% of the total units may be occupied by the property owners or individuals who are related by blood, marriage, or adoption to the property owners.

2. For a period of at least 15 years, the affordable units must be rented at or below the maximum rent established by the City's Department of Planning and Permitting for households earning 100% or less of the City's AMI for the applicable household size.

3. Units may not be used as short-term rentals (units require a minimum six-month lease and a prohibition against subleasing).

4. If the use of an ARH project is abandoned or in violation of any of the permitted uses, development standards, and other requirements of the program, the violator will be subject to enforcement, including potential civil fines.

E. ROH §32-2.3 Development Standards:

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

Development Standard	Requirement
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. One loading space may encroach a maximum of 5 feet. Required fire exit stairwells and fire corridors may encroach into the front yard by a maximum of 5 feet.

F. The City has requested that the Hawaii Housing Finance and Development Corporation (HHFDC) Board of Directors recognize the ROH Chapter 32 program as a "government assistance program" and adopt a policy for the granting of general excise and use tax exemptions for the planning, design, financing, construction, sale, or lease of ROH Chapter 32 projects in the City. A copy of the City's letter dated December 1, 2023, is included as **Exhibit C.**

G. Statutory Authority

1. Pursuant to Hawaii Revised Statutes (HRS) §237-29, all gross income received by any qualified person or firm for the planning, design, financing, construction, sale, or lease in the State of a housing project which has been certified or approved under section HRS §201H-36 shall be exempt from General Excise Taxes (GET).

2. HRS §201H-36(a)(2) states that in accordance with, HRS §237-29, HHFDC may approve and certify for exemption from GET any qualified person or firm involved with a newly constructed, or moderately or substantially rehabilitated project developed under a government assistance program approved by HHFDC.

3. Chapter 15-306, Hawaii Administrative Rules (HAR), entitled "General Excise Tax Exemptions" further state that in approving or disapproving a project for exemption from GET, the corporation shalt determine whether:

    a. The project is an eligible housing project under these rules;

    b. The exemption from GET will achieve cost savings to assure economic feasibility which will encourage and enable the production or preservation of as many lower cost housing units as possible; and

    c. The project is consistent with any other requirements under the law or under this chapter.

    In this case, an "eligible housing project" pursuant to HAR §15-306-2, means a housing project which meets both an income and a development criteria as follows:

    <u>Income Criteria</u>

    (1) At least 20% of the units in the project are rented or sold to households with incomes of up to 50% of the AMI as determined by the U.S. Department of Housing and Urban Development (HUD); or

(2) At least 40% of the units are rented or sold to households with incomes of up to 95% of the HUD AMI; or

(3) At least 60% of the units must be rented or sold to households with incomes of up to 140% of HUD AMI.

Development Criteria

(1) HAR §15-306-2 includes rental projects which are developed under a "government assistance program," as defined below, approved by HHFDC.

"Government assistance program" means any housing program qualified by the corporation and administered or operated by the State, the corporation, the United States, or any of their political subdivisions, agencies, or instrumentalities, corporate or otherwise, which may be used to effectuate housing development and acquisition for the provision of affordable housing for qualified persons in the State. "Government assistance program" includes, but is not limited to, the United States Department of Agriculture's 502 and 515 programs; the Federal Housing Administration's 235 program; the United States Department of Housing and Urban Development's HOME, HOPE, 202, and 811 programs; the section 802 military housing program; the military construction and family housing program; the military housing privatization initiative program; the low income housing tax credit program; the corporation's rental housing revolving fund program; the corporation's rental assistance program; the corporation's dwelling unit revolving fund program; tax exempt or taxable multi-family bond financing programs administered by the corporation or any of the counties; the acquisition of land and existing structures for the provision of affordable housing, for which the legislature has appropriated or otherwise authorized funding; residential projects developed by the department of Hawaiian home lands; and residential projects developed by the Hawaii public housing authority. [Emphasis added.]

4. The legislative intent for the GET exemption is to achieve cost savings to assure the economic feasibility in the development of a housing project which will encourage and enable the production of as many lower cost housing units as possible.

III. DISCUSSION

A. ROH Chapter 32 is the City's approach to incentivizing private sector investment in new affordable rental housing. Under ROH Chapter 32, developers receive only nominal financial assistance, so instead of cash they receive incentives such as exemptions from certain zoning laws. ROH Chapter 32 allows higher density redevelopment of property zoned Apartment, AMX, or BMX. In exchange for allowing more apartments to be built on a property, the apartment rents must be affordable to tenants who earn up to 100% of the City's AMI. The aim of ROH Chapter 32 is to encourage private developers to build thousands of new apartments in the City in the next seven years that working people can afford to rent.

B. In Hawaii's high development and construction cost environment, the ROH Chapter 32 Program is consistent with the legislative intent of the GET exemption to achieve cost savings to assure economic feasibility which will encourage and enable the production of as many lower cost housing units as possible.

C. Chapter 15-306 HAR should consider the ROH Chapter 32 Program as a "government assistance program."

D. If approved, ROH Chapter 32 projects must still apply for the exemption and comply with the provisions of Chapter 15-306 HAR.

IV. RECOMMENDATION

That the HHFDC Board of Directors approve the following:

A. The ROH Chapter 32 Program Initiative as an eligible government assistance program for the purpose of certifying ROH Chapter 32 projects for exemption from general excise and use taxes, in accordance with HRS §201H-36.

B. Authorize the Executive Director to certify the ROH Chapter 32 projects for exemption from general excise and use taxes subject to the review of the application and·compliance with all HHFDC requirements for application for certification of projects pursuant to Chapter 15-306, HAR, including but not limited to:

1. A thirty year minimum term of affordability, for new construction;

2. Compliance with HRS §104-2 relating to prevailing wages and hours of employees; and

3. The execution of a Declaration of Restrictive Covenants, Conditions and Restrictions recorded at the Bureau of Conveyances.

C. Authorize the Executive Director to take all actions necessary to effectuate the purposes of this For Action.

Attachments: Exhibit A – ROH Chapter 32
Exhibit B – Overview of the ROH Chapter 32 Program
Exhibit C – Letter from Mayor Rick Blangiardi

Prepared by: Heather N. Murakami, Development Specialist HM

Reviewed by: Randy Chu, Development Branch Chief RC

Approved by the Board of Directors as

☒ **Circulated** ☐ **Amended**

On December 14, 2023

Development Branch

Please take necessary action.

Executive Director

CHAPTER 32: AFFORDABLE RENTAL HOUSING

Article

Editor's note:

In accordance with Ordinance 19-8, as amended by Ordinance 23-12: Chapter 32 will be repealed on June 1, 2030; and, upon the repeal of Chapter 32, affordable rental housing projects developed thereunder will be deemed a non-conforming multi-family dwelling use and must comply with the applicable non-conforming provisions of § 21-4.110.

In accordance with Ordinance 19-8, as amended by Ordinance 23-12: the Director of Planning and Permitting shall submit to the City Council, no later than May 21, 2022, a report on the number of affordable rental housing units developed under this chapter, and a recommendation regarding the repeal, modification, or extension of this chapter.

ARTICLE 1: GENERAL PROVISIONS

Section

§ 32-1.1 Definitions.

For the purposes of this chapter, the following definitions apply unless the context clearly indicates or requires a different meaning.

Affordable Rental Housing Project. A multifamily dwelling containing only dwelling units that meet all of the following criteria:

(1) (A) At least 80 percent of the total units are rented to households earning 100 percent and below of the AMI; and

(B) For a period of at least 15 years after a certificate of occupancy is issued for the affordable rental housing project, the affordable units are rented at or below the rental rate limits established by the United States Department of Housing and Urban Development for households earning 100 percent of the AMI for the applicable household size;

(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. A unit in an affordable rental housing project that:

(1) Is rented to a household earning 100 percent and below of the AMI; and

EXHIBIT A

(2) For a period of at least 15 years after a certificate of occupancy is issued for the affordable rental housing project, the affordable units are rented at or below the rental rate limits established by the United States Department of Housing and Urban Development for households earning 100 percent of the AMI for the applicable household size.

Area Median Income or ***AMI.*** 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. 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. Has the same meaning as defined in Chapter 21, Article 10.

Building Code. The building code of the City and County of Honolulu, as amended.

Building Official. Has the same meaning as defined in § 18-2.1.

Declaration of Restrictive Covenants. 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;

(A) If rented to households earning 80 percent or below of the AMI; and

(B) For a period of at least 15 years after a certificate of occupancy is issued for the affordable rental housing project, the affordable units are 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;

(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 ofChapters 8 and 21.

Floor Area Ratio or ***FAR.*** Has the same meaning as defined in § 21-10.1.

Dwelling Unit. Has the same meaning as defined in § 21-10.1.

Heavy Timber Construction. Has the same meaning as defined by the National Fire Protection Association.

Multifamily Dwelling. Has the same meaning as defined in § 21-10.1.

Transient Vacation Unit. Has the same meaning as defined in Chapter 21, Article 10.

(1990 Code, Ch. 42, Art. 1, § 42-1.1) (Added by Ord. 19-8; Am. Ord. 20-13)

§ 32-1.2 Regulation of affordable rental housing projects.

This chapter regulates affordable rental housing projects.

(1990 Code, Ch. 42, Art. 1, § 42-1.2) (Added by Ord. 19-8)

§ 32-1.3 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.

(1990 Code, Ch. 42, Art. 1, § 42-1.3) (Added by Ord. 19-8)

§ 32-1.4 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.

(1990 Code, Ch. 42, Art. 1, § 42-1.4) (Added by Ord. 19-8)

§ 32-1.5 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.

(1990 Code, Ch. 42, Art. 1, § 42-1.5) (Added by Ord. 19-8)

§ 32-1.6 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 Article 2, the violator will be subject to the administrative enforcement provisions of § 21-2.150-2; provided that in addition to the civil fines specified in §§21-2.150-2(b)(1)(C) and 21-2.150-2(b)(1)(D), the violator will be subject to penalties equal to the following amounts:

(1) The differences in the amount of taxes that were paid and those that would have been due but for the exemption for affordable rental housing units pursuant to § 8-10.33(b)(4);

(2) The differences in the amount of taxes that were paid and those that would have been due but for the exemption for qualifying construction work pursuant to § 8-10.34(a)(2);

(3) The amount of wastewater system facility charges waived for affordable rental housing units pursuant to § 43-10.8(a)(4);

(4) The amount of plan review and building permit fees waived for the affordable rental housing units pursuant to § 18-6.5(i); and

(5) The value of the park dedication requirements waived for the affordable rental housing units pursuant to § 22-7.3(j)(4);

together with a penalty in the form of interest at 10 percent per annum on the amounts imposed under subdivisions (1), (2), (3), (4), and (5), from the dates that the respective payments would have been due, but for the exemption or waiver.

(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 ofChapter 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.

(1990 Code, Ch. 42, Art. 1, § 42-1.6) (Added by Ord. 19-8; Am. Ord. 20-13)

ARTICLE 2. PERMITTED USES, DEVELOPMENT STANDARDS, AND OTHER REQUIREMENTS

Section

§ 32-2.1 Administration.

TThe 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, 25, and 26 apply to affordable rental housing projects; provided that the special district requirements pursuant to §§ 21-9.20 through 21-9.90-6 and related exhibits do not apply to affordable rental housing projects if the assessed value of the existing buildings on the proposed affordable rental housing project site does not exceed 30 percent of the assessed value of the land. In the event of a conflict between applicable provisions, this article will prevail.

(1990 Code, Ch. 42, Art. 2, § 42-2.1) (Added by Ord. 19-8; Am. Ord. 20-13)

§ 32-2.2 Permitted uses.

Affordable rental housing projects are a permitted use in the apartment, apartment mixed use, and business mixed use zoning districts, and in the apartment precinct, including the apartment mixed use subprecinct, of the Waikiki special district, pursuant to Chapter 21.

(1990 Code, Ch. 42, Art. 2, § 42-2.2) (Added by Ord. 19-8; Am. Ord. 20-13)

§ 32-2.3 Development standards.

Affordable rental housing projects are subject to the following development standards and off-street parking and loading requirements, as illustrated in Figures 32-2.6 and 32-2.7:

Development Standard	Requirement
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. 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.

(1990 Code, Ch. 42, Art. 2, § 42-2.3) (Added by Ord. 19-8)

§ 32-2.4 Parking.

Parking, including bicycle parking, may extend into side and rear yards, provided that a solid wall, with a minimum height of 4 feet and a maximum height of 6 feet, is built along the applicable side or rear property boundary.

(1990 Code, Ch. 42, Art. 2, § 42-2.4) (Added by Ord. 19-8)

§ 32-2.5 Bicycle parking.

The bicycle parking requirements of § 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.

(1990 Code, Ch. 42, Art. 2, § 42-2.5) (Added by Ord. 19-8)

§ 32-2.6 Examples of maximum building area and yards.

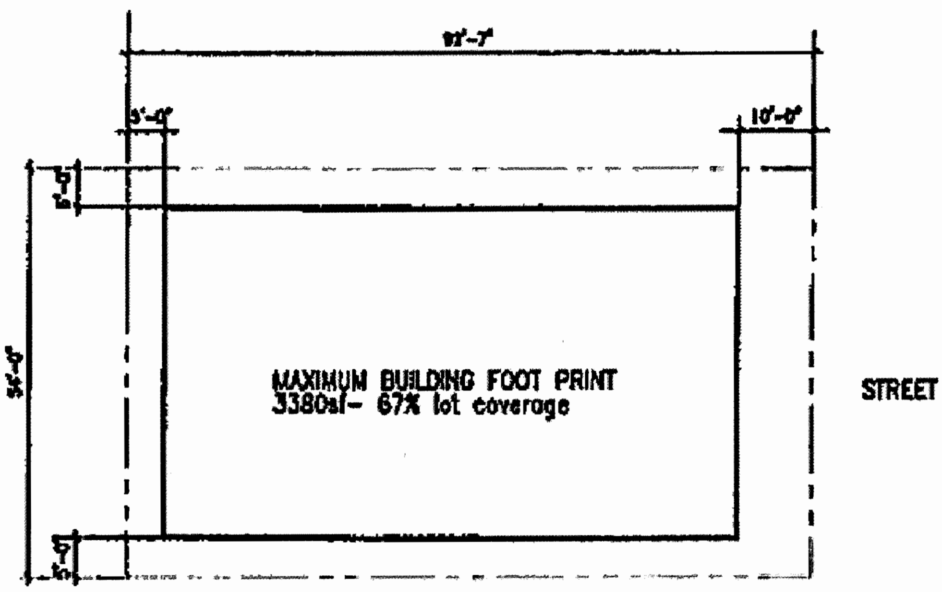
The following figures illustrate possible configurations of maximum building area and required yards; however, they do not necessarily reflect acceptable parking configurations or compliance with all other development standards:

Figure 32-2.6

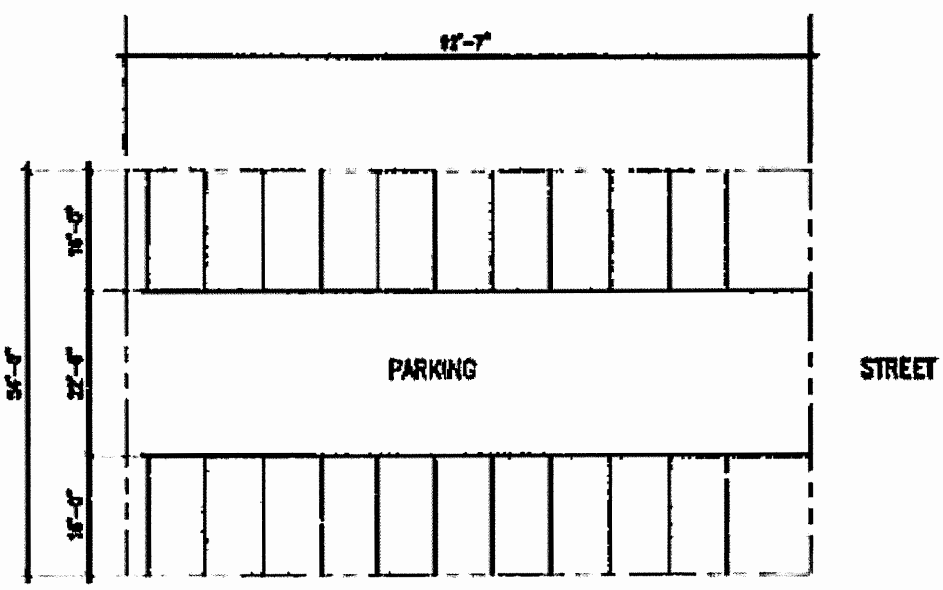
5,000 SQUARE FOOT LOT

EXHIBIT A

Figure 32-2.6
5,000 SQUARE FOOT LOT



PLOT PLAN



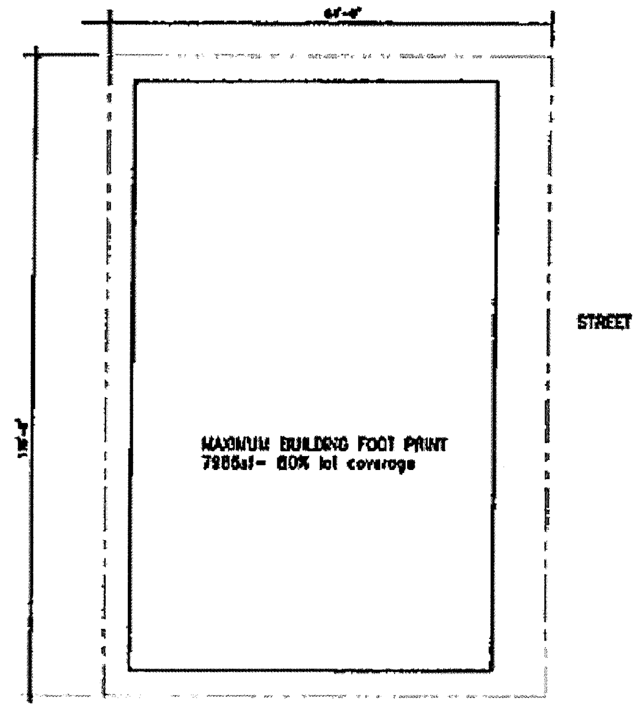
PLOT PLAN
5000 SF LOT

Figure 32-2.6

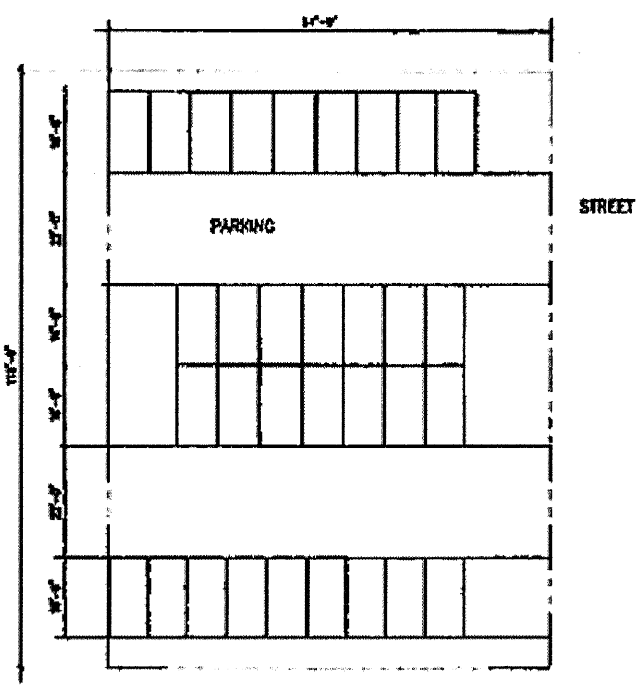
10,000 SQUARE FOOT LOT

EXHIBIT A

Figure 32-2.6
10,000 SQUARE FOOT LOT



PLOT PLAN
10,000 SF LOT



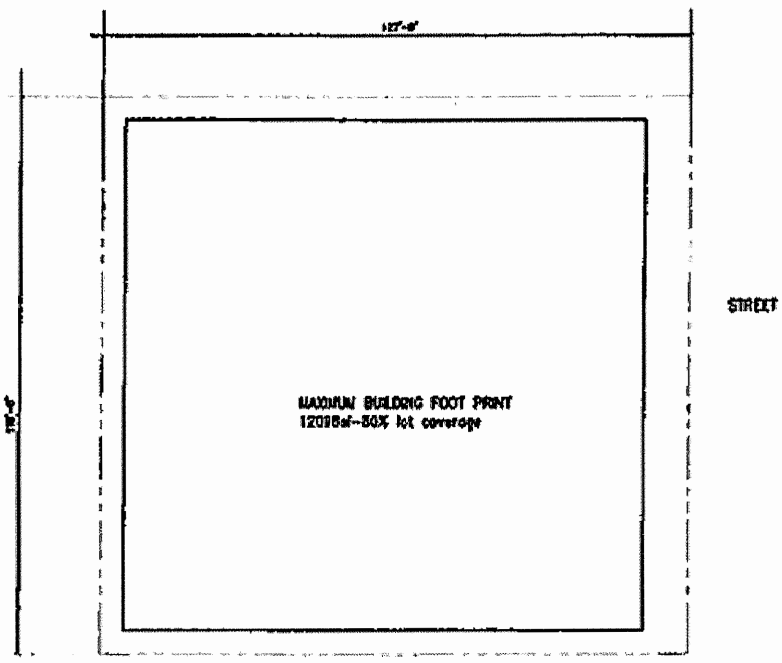
PLOT PLAN
10,000 SF LOT

Figure 32-2.6

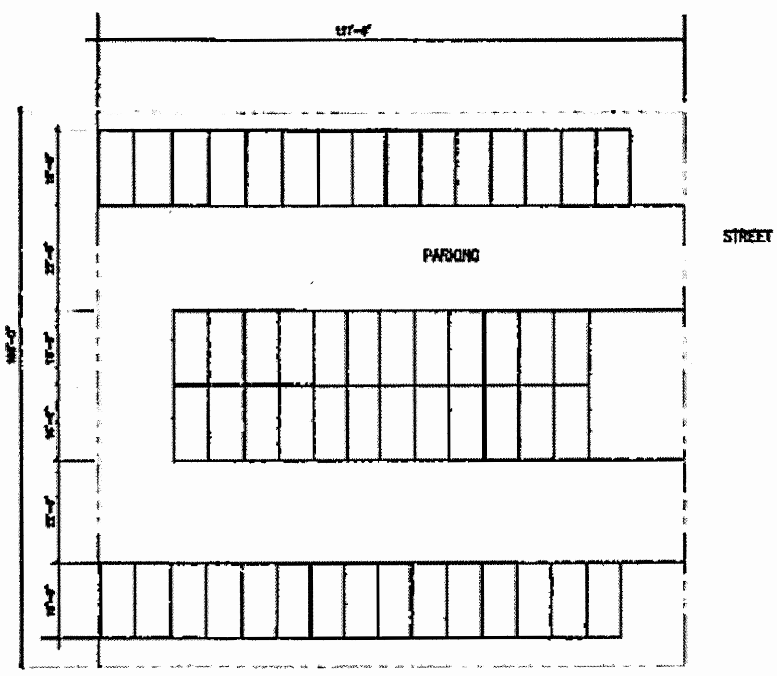
15,000 SQUARE FOOT LOT

EXHIBIT A

Figure 32-2.6
15,000 SQUARE FOOT LOT



PLOT PLAN
15,000 SF LOT



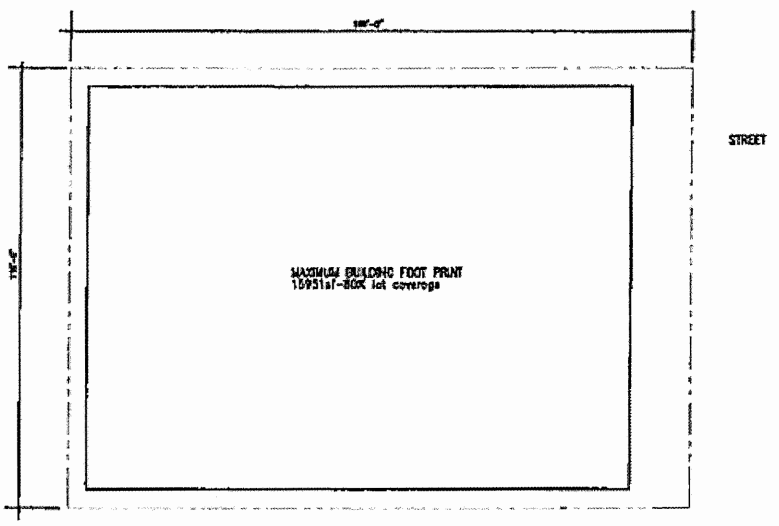
PLOT PLAN
15,000 SF LOT

Figure 32-2.6

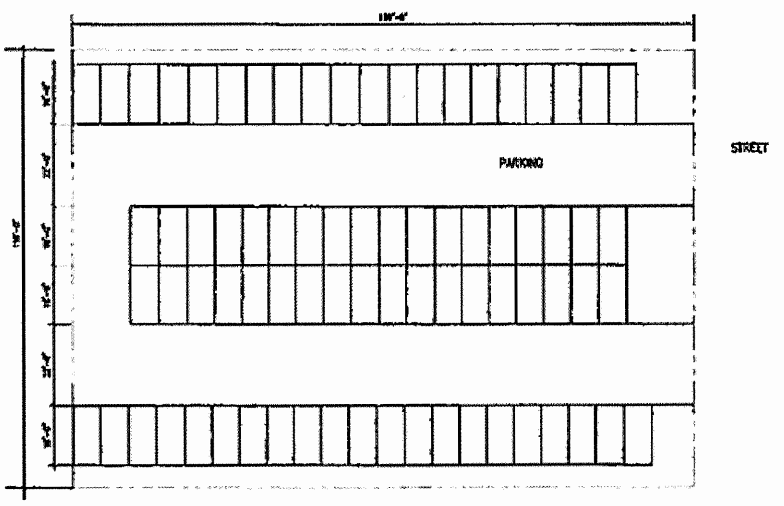
20,000 SQUARE FOOT LOT

EXHIBIT A

Figure 32-2.6
20,000 SQUARE FOOT LOT



PLOT PLAN
20,000 SF LOT



PLOT PLAN
20,000 SF LOT

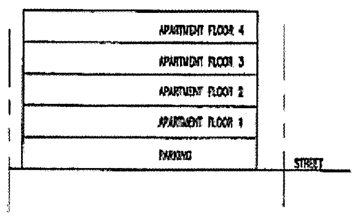
(1990 Code, Ch. 42, Art. 2, § 42-2.6) (Added by Ord. 19-8)

§ 32-2.7 Examples of maximum building height.

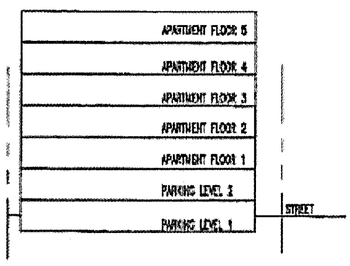
The following figures illustrate possible configurations of building height; however, they do not necessarily reflect acceptable parking configurations or compliance with all other development standards:

Figure 32-2.7

EXHIBIT A



SECTION OF 45 FEET MAXIMUM HIGH BUILDING



SECTION OF 60 FEET MAXIMUM HIGH BUILDING

(1990 Code, Ch. 42, Art. 2, § 42-2.7) (Added by Ord. 19-8)

§ 32-2.8 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.

(1990 Code, Ch. 42, Art. 2, § 42-2.8) (Added by Ord. 19-8)

§ 32-2.9 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)
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

(1990 Code, Ch. 42, Art. 2, § 42-2.9) (Added by Ord. 19-8)

§ 32-2.10 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 § 504 of the Rehabilitation Act of 1973.

(1990 Code, Ch. 42, Art. 2, § 42-2.10) (Added by Ord. 19-8)

ARTICLE 3. BUILDING CONSTRUCTION STANDARDS

Section

32-3.1 Administration

32-3.2 Standards

§ 32-3.1 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 16A, respectively, apply to affordable rental housing projects. In the event of a conflict between applicable provisions, this article will prevail.

(1990 Code, Ch. 42, Art. 3, § 42-3.1) (Added by Ord. 19-8)

§ 32-3.2 Standards.

(a) *Building heights and areas.* The building height permitted by Table 32-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 32-A, except as provided in Section 506 of the building code.

TABLE 32-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**
TABLE 32-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	7	7	7	7	5
A	80% of land area	80% of land area	80% of land area	80% of land area	80% of land area

(b) *Type of construction.* The minimum type of construction must comply with Chapter 6 of the building code and Table 32-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 percent 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 5 and 10 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 5 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 16B (the Building Energy Conservation Code).

(h) *Accessibility.* Design of building and facilities must comply with the federal Fair Housing Act, 42 USC §§ 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.

(1990 Code, Ch. 42, Art. 3, § 42-3.2) (Added by Ord. 19-8)

ARTICLE 4: GRANTS

Section

§ 32-4.1 Administration.

The director of budget and fiscal services, or the director's duly appointed representative, shall administer this article.

(Added by Ord. 21-12)

§ 32-4.2 Grants.

EXHIBIT A

(a) A grant is established for the purpose of incentivizing the completion of construction of affordable rental housing units provided for in this chapter.

(b) For affordable rental housing units rented to households earning more than 60 percent of the AMI, but less than or equal to 100 percent of the AMI, the amount of the incentive shall be $11.25 per square foot of dwelling floor area contained in the building permit issued by the department of planning and permitting for the affordable rental housing project.

(c) For affordable rental housing units rented to households earning 60 percent and below of the AMI, the amount of the incentive shall be $15 per square foot of dwelling floor area contained in the building permit issued by the department of planning and permitting for the affordable rental housing project.

(d) Grants authorized under this article shall not exceed $9,000 per dwelling unit within a project eligible under subsection (b).

(e) Grants authorized under this article shall not exceed $15,000 per dwelling unit within a project eligible under subsection (c).

(f) The aggregate of grant payments made under this article shall not exceed $10,000,000.

(g) All grants payable to the owner of an eligible affordable rental housing project shall only be authorized upon issuance of a certificate of occupancy for that project.

(h) An intent to claim a grant under this article shall be submitted upon the filing of a building permit application.

(i) The intent to claim shall be made to the director of planning and permitting on a form prescribed by the director of planning and permitting. The director of planning and permitting shall forward the intent to claim and estimated amount of the grant to the director of budget and fiscal services no later than 30 days after receipt of the intent to claim.

(j) A claim for the grant shall be made by the owner of an affordable rental housing project no earlier than the date of issuance of a certificate of occupancy for the affordable rental housing project and no later than one year after the issuance of the certificate of occupancy, provided that an initial intent to claim was submitted pursuant to subsection (h).

(k) A claim for the grant shall be made to the director of planning and permitting on a form prescribed by the director of planning and permitting and must be supported by documentation establishing the number of square feet of dwelling space permitted by the building permit for the project and a copy of the certificate of occupancy for the project. The director of planning and permitting shall forward the amount determined to be paid as a grant to the director of budget and fiscal services no later than 30 days after receipt of a claim, and the director of budget and fiscal services shall pay the grant amount to the claimant no later than 30 days after receipt of the information from the director of planning and permitting.

(l) No claim for a grant payment shall be made for an affordable rental housing project with a certificate of occupancy issued after the repeal of this chapter.

(m) The director of budget and fiscal services may waive the requirements of subsection (h) for affordable rental housing projects containing one or more grant-eligible units for which a building permit application had been submitted, or a building permit was issued, prior to April 21, 2021 if the waiver is consistent with the purpose of this article and in the public interest.

(Added by Orc. 21-12)

§ 32-4.3 Reporting.

The director of budget and fiscal services and the director of planning and permitting shall provide reports to the city council every six months beginning on April 21, 2021, that at a minimum must include:

(1) The number of building permit applications submitted under the grant program established by this article for the six-month period and cumulatively;

(2) The number of building permits approved under the grant program for the six-month period and cumulatively;

(3) The number of grant applications submitted under the grant program at each AMI tier for the six-month period and cumulatively;

(4) The number of grant claims approved under the grant program for the six-month period and cumulatively;

(5) The number of affordable rental housing units supported with grants for the six-month period and cumulatively;

(6) The amount of grant funds disbursed for the six-month period and cumulatively;

(7) The number of waivers granted under §32-4.2(m) for the six-month period and cumulatively;

(8) The number of affordable rental housing units built under the grant program for the six-month period and

cumulatively; and

(9) A description of any violations of this article discovered during the six-month period and actions taken against the violator.

(Added by Ord. 21-12)

EXHIBIT A

Affordable Rental Housing Projects under ROH Chapter 32

ROH Chapter 32 provides relaxed development standards and financial incentives for **Affordable Rental Housing (ARH) Projects** as long as **a minimum of 80% of the dwelling units are rented to those earning no more than 100% of Honolulu's Area Median Income (AMI) for a minimum of 15 years**.

These projects (sometimes referred to as "Bill 7" projects because of the original bill for an ordinance) proceed directly to the building permit process; no prior discretionary approval is required in most cases. However, an executed declaration of restrictive covenants must be included with the building permit application.

ARH projects are permitted in apartment, apartment mixed-use, and business mixed-use zoning districts, as well as the apartment precinct and apartment mixed-use sub-precinct of the Waikiki Special District, on lots up to 20,000 square feet. See eligibility map.

Project Considerations

- The **maximum number of affordable rental housing units** for each zoning lot is determined by dividing the square footage equivalent of the maximum allowable floor area ratio (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.
- The **maximum size of an affordable rental housing unit** in an affordable rental housing project ranges from 500 square feet for a studio unit with one bathroom to 1,350 square feet for a four-bedroom unit with 2.5 bathrooms.
- Refer to Articles 2 and 3 of ROH Chapter 32 for specific development and building construction standards, including examples provided in §32-2.6 and §32-2.7.
- See building construction development standards in §32-3.2.

Financial Incentives

ARH projects are eligible for the following fee waivers, tax exemptions, and cash grants:

- Waiver of Building Permit and Plan Review fees (ROH 18-6.5(i)).
- Waiver of Water Systems Facilities Charge and New Meter Cost
- Waiver of Wastewater System Facility Charges, Waiver of Water Systems Facilities Charge, and New Meter Cost (ROH 43-10.8).
- Waiver of Park Dedication requirements (ROH 22-7.3(j)).
- Real Property Tax Exemption (10 years) (ROH 8-10.33).
- Property Tax Freeze during construction (ROH 8-10.34).
- Cash Grants of up to $10 million ($9,000 - $15,000 per dwelling unit) (ROH 32-4.2).

EXHIBIT B

Restrictions

- **No more than 20% of the total units may be occupied by the property owners** or individuals who are related by blood, marriage, or adoption to the property owners.
- For a period of at least 15 years, the affordable units must be rented at or below the maximum rent established by DPP for households earning 100% or less of Honolulu's AMI for the applicable household size.
- Units **may not be used as short-term rentals** (units require a minimum six month lease).
- If the use of an ARH project is abandoned or in violation of any of the permitted uses, development standards, and other requirements of the program, the violator will be subject to enforcement, including potential civil fines.

§32-2.3 Development Standards:

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. One loading space may encroach a maximum of 5 feet. Required fire exit stairwells and fire corridors may encroach into the front yard by a maximum of 5 feet.

EXHIBIT B

FAQs Related to Affordable Rental Housing Projects under ROH Chapter 32

1. What is an affordable rental housing (ARH) project?

   An ARH project (sometimes referred to as a "Bill 7" project because of the original bill for an ordinance) means a multi-family dwelling where at least 80 percent of the total units are rented to households earning 100 percent and below of the area median income (AMI) for a period of at least 15 years. These projects fall under the Revised Ordinances of Honolulu (ROH) Chapter 32. ARH projects must execute a declaration of restrictive covenant.

2. Who can live in an ARH project?

   No more than 20 percent of the total units can be occupied by property owners or individuals who are related by blood, marriage, or adoption to the property owners. The units may not be used as short-term rentals, meaning they may not be rented for a duration of less than 30 days.

3. What is an ARH unit?

   An ARH unit is a unit within an ARH project that is rented to a household earning 100 percent and below of the AMI for a period of at least 15 years.

4. What does 100 percent of AMI mean?

   The Department of Planning and Permitting updates the income limits and maximum rent for the various AMI groups on an annual basis. The most current income guidelines and maximum rent including utilities can be found at https://www.honolulu.gov/rep/site/dpp/pd/pd_docs/2022_income_limits.pdf.

5. Where are ARH projects permitted?

   ARH projects are permitted in any Apartment, Apartment Mixed Use, and Business Mixed Use District. This also includes the Apartment and Apartment Mixed Use Precincts of the Waikiki Special District.

6. Can an ARH project contain a commercial use?

   A commercial use is allowed, provided that it is located on the ground floor and the use is permitted in the underlying zoning district.

7. Can the site be a condominium property regime (CPR)?

   The site can only be a CPR if it contains a ground floor commercial use that is permitted by the underlying zoning. The ground floor commercial units may be a CPR. However, the residential units, market rate or affordable, may not be individual CPR units.

8. Can I designate only a portion of my site to an ARH project?

   No, the site and all improvements on it, including existing structures and uses, are subject to the ARH requirements.

EXHIBIT B

9. What are the zoning requirements/applicable development standards for an ARH Project?

   ROH Chapter 32 allows for the relaxation of certain zoning standards, but note that where it is silent regarding zoning matters, the ARH project must comply with ROH Chapter 21 (Land Use Ordinance) and all other land use regulations and building code.

10. If my site is located within a special district, does it need to comply with the special district requirements?

    ARH projects located in a special district may be exempt from the special district requirements, provided that the assessed value of the existing buildings on the site does not exceed 30 percent of the assessed value of the land. For example, if a site is vacant, then the existing building value is $0. Therefore, the ARH project is exempt from special district requirements as the existing building value is does not exceed 30 percent of the assessed land value.

11. Can an ARH project unit be used as a bed and breakfast home?

    Units in an ARH project cannot be used as a bed and breakfast home or transient vacation unit.

12. Is an ARH project subject to City Council approval?

    An AHR project is processed as ministerial building permit and is not subject to City Council approval or any other discretionary approvals, except when subject to special district requirements (see #11 Q/A).

13. What happens when there is a conflict between building and housing code requirements and ARH provisions?

    The building and housing code requirements of ROH Chapters 16 and 16A respectively, apply to ARH projects. In the event of a conflict between applicable provisions, the ROH Chapter 32 provisions of the ARH prevail.

14. What kind of building construction standards do ARH provisions set forth?

    ROH Chapter 32 of the ARH sets forth specific building construction standards that modify building heights and areas, types of construction, fire-resistance rated construction and requirements, fire protection system requirements, means of egress, fire escape stairs, etc.

15. Do subdivision requirements apply to ARH projects?

    Subdivision requirements under ROH Chapter 22 do not apply to ARH projects.

16. How are ARH projects enforced?

    If the use of an ARH project is abandoned or in violation of any of the permitted uses, development standards, and other requirements of the program, the violator will be subject to enforcement, including potential civil fines.

17. Are there financial incentives to build ARH projects?

    Various fee waivers, tax exemptions, and cash grants are available for participating and eligible ARH projects. A summary of these incentives is listed on DPP's Affordable Housing webpage at www.honolulu.gov/dpp/planning/affordable-housing.

EXHIBIT B

OFFICE OF THE MAYOR

KE KE'ENA O KA MEIA

CITY AND COUNTY OF HONOLULU

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HOPE PO'O HO'OKELE

December 1, 2023

2023 DEC -6 P 4:45

Mr. Gary Mackler, Chair
Ms. Carol Reimann, Vice Chair
Hawai'i Housing Finance and Development Corporation
677 Queen Street, Suite 300
Honolulu, Hawai'i 96813

Dear Mr. Mackler and Ms. Reimann:

SUBJECT: Requesting Recognition of Revised Ordinances of Honolulu Chapter 32 as a "Government Assistance Program" for Certification of Exemption from General Excise Tax

This letter asks the Hawai'i Housing Finance and Development Corporation ("HHFDC") Board of Directors to adopt a policy of recognizing projects developed under the City and County of Honolulu's ("City") Affordable Rental Housing Project, established by Revised Ordinances of Honolulu ("ROH") Chapter 32, as projects "developed under a government assistance program" pursuant to Hawai'i Revised Statutes ("HRS") § 201H-36(a)(2). Recognizing these projects as "government assistance program" projects will allow HHFDC to certify qualified projects for general excise tax exemptions pursuant to HRS §§ 201H-36(a) and 237-29.

ROH Chapter 32 establishes a temporary program to accelerate the construction of affordable rental housing in the City's apartment and business mixed-use zoning districts. Eighty percent of the units in a project developed under the City's Affordable Rental Housing Project must be used to provide affordable housing to households earning 100 percent of the Area Median Income ("AMI") for a minimum of fifteen years. The City assists in the development of these projects by relaxing certain zoning and building code standards and providing grant monies for the development of affordable rental housing under ROH § 32-4.2.

EXHIBIT C

The City established its Affordable Rental Housing Project in 2019 and began funding grants for City affordable rental housing projects developed under ROH Chapter 32 in 2021. However, there have been a limited number of projects developed under this program and it is clear that additional financial incentives are needed to encourage the development of affordable rental housing through the City's Affordable Rental Housing Program. Based on discussions with HHFDC staff and the City's affordable housing team, I understand that the general excise tax exemptions available through HRS §§ 201H-36 and 237-29 will further encourage the development of affordable rental housing through the City's program and make more affordable rental housing projects viable.

In July, 2018, the State Special Action Team on Affordable Rental Housing published a Ten-Year-Plan pursuant to Act 127 (Session Laws of Hawai'i 2016), stating 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." Affordable rental housing projects developed under ROH Chapter 32 and supported by HRS § 237-29 tax exemptions may be part of the solution to this larger problem. Therefore, I ask you to support of the City's Affordable Rental Housing Project by recognizing it as a "government assistance program" under HRS § 201H-36 and certifying affordable rental housing projects for general excise tax exemptions in accordance with HRS § 237-29. This will encourage the development of affordable rental housing within the City.

Craig Hirai, the City's Chief of Affordable Housing Policy and Strategy, will be available to answer any questions you may have at your Board meeting.

Sincerely,

Rick Blangiardi

Rick Blangiardi
Mayor

EXHIBIT C