

Chapter 42**AFFORDABLE RENTAL HOUSING*****Articles:**

- 1. General Provisions**
- 2. Permitted Uses, Development Standards, and Other Requirements**
- 3. Building Construction Standards**

Article 1. General Provisions**Sections:**

- 42-1.1 Definitions.**
- 42-1.2 Regulation of affordable rental housing projects.**
- 42-1.3 Prohibitions.**
- 42-1.4 Declaration of restrictive covenants.**
- 42-1.5 Building permit processing.**
- 42-1.6 Violation—Penalty.**

Sec. 42-1.1 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, and 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 or less;
- (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, and 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 or less.

“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.

***Editor’s Note:** Chapter 42 (Affordable Rental Housing) will be repealed on February 28, 2024, in accordance with Ord. 19-8.

“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, 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;
- (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.

(Added by Ord. 19-8)

Sec. 42-1.2 Regulation of affordable rental housing projects.

This chapter regulates affordable rental housing projects.

(Added by Ord. 19-8)

Sec. 42-1.3 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.

(Added by Ord. 19-8)

Sec. 42-1.4 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.

(Added by Ord. 19-8)

Sec. 42-1.5 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 to 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.

(Added by Ord. 19-8)

Sec. 42-1.6 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.

(Added by Ord. 19-8)

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

Sections:

- 42-2.1 Administration.**
- 42-2.2 Permitted uses.**
- 42-2.3 Development standards.**
- 42-2.4 Parking.**
- 42-2.5 Bicycle parking.**
- 42-2.6 Examples of maximum building area and yards.**
- 42-2.7 Examples of maximum building height.**
- 42-2.8 Maximum number of units.**
- 42-2.9 Maximum size of units.**
- 42-2.10 Compliance with applicable laws.**

Sec. 42-2.1 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.

(Added by Ord. 19-8)

Sec. 42-2.2 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.

(Added by Ord. 19-8)

Sec. 42-2.3 Development standards.

Affordable rental housing projects are subject to the following development standards and off-street parking and loading requirements, as illustrated in Figures 42-2.6 and 42-2.7:

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. 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.

(Added by Ord. 19-8)

Sec. 42-2.4 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.

(Added by Ord. 19-8)

Sec. 42-2.5 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.

(Added by Ord. 19-8)

Sec. 42-2.6 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 42-2.6
5,000 SQUARE FOOT LOT

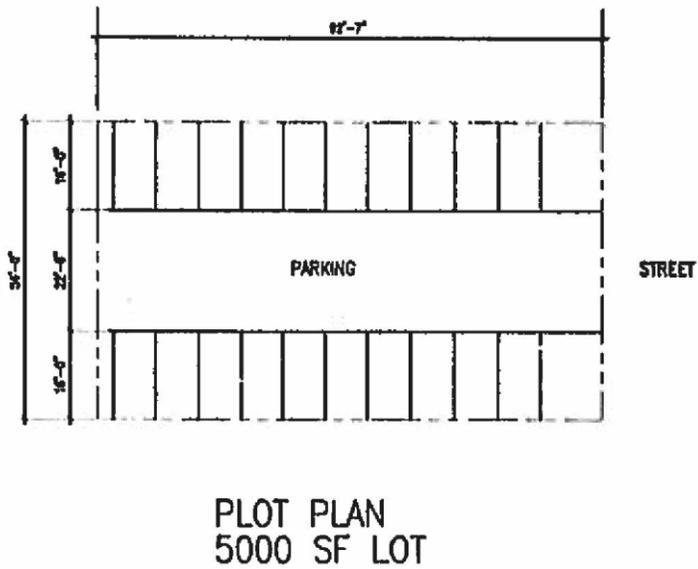
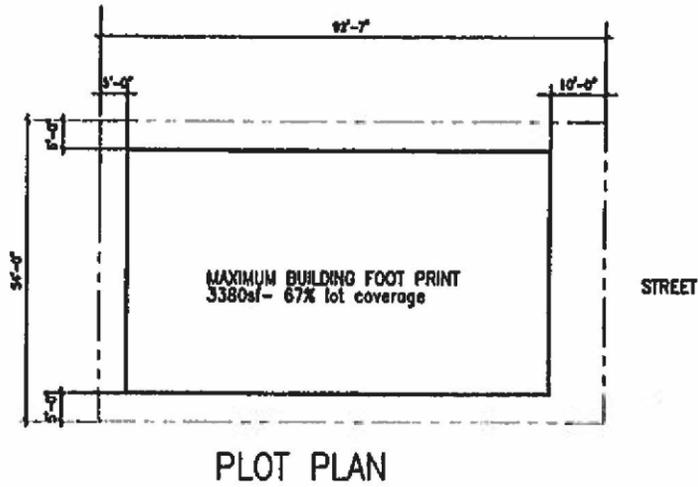
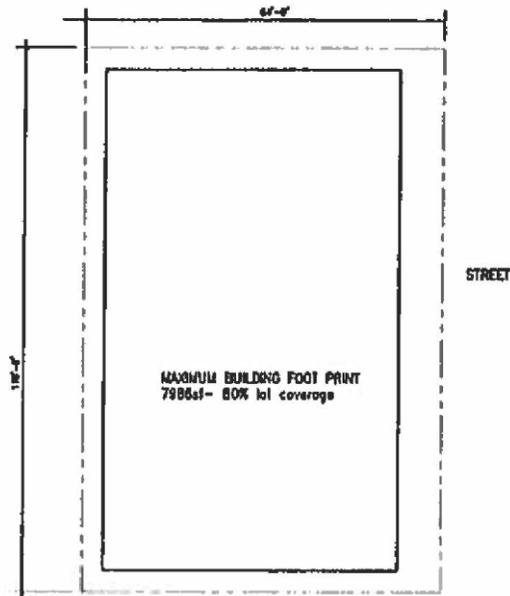
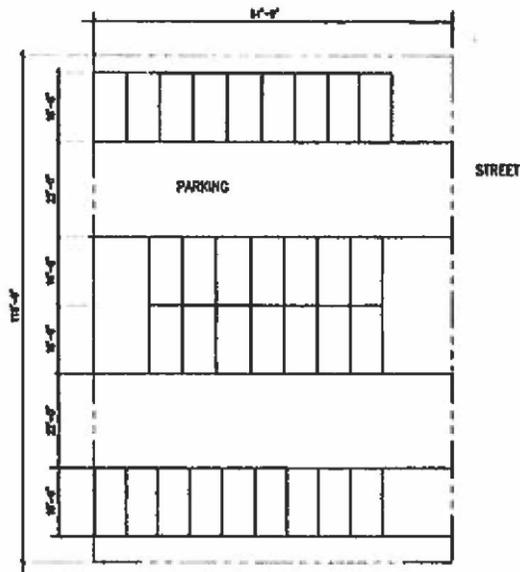


Figure 42-2.6
10,000 SQUARE FOOT LOT

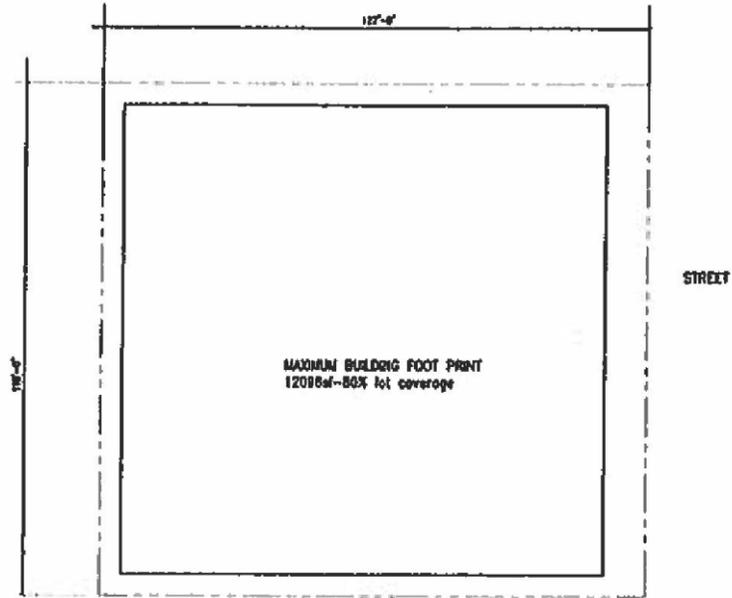


PLOT PLAN
10,000 SF LOT

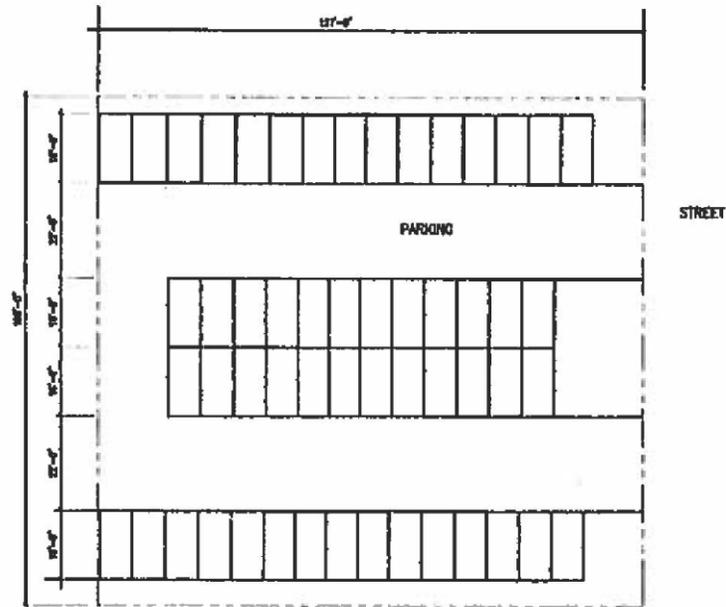


PLOT PLAN
10,000 SF LOT

Figure 42-2.6
15,000 SQUARE FOOT LOT

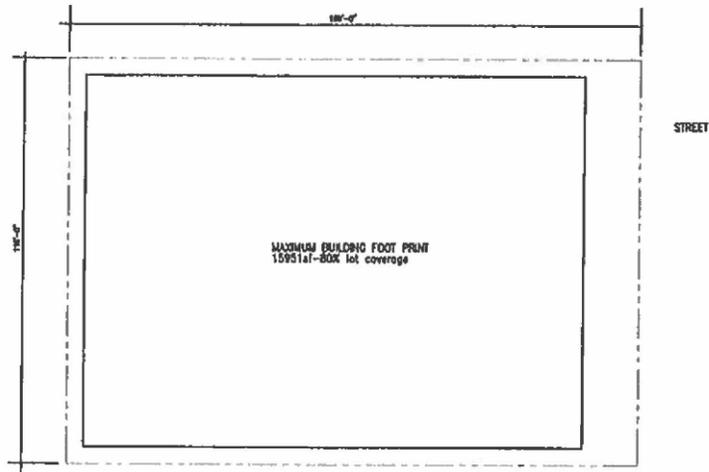


PLOT PLAN
15,000 SF LOT

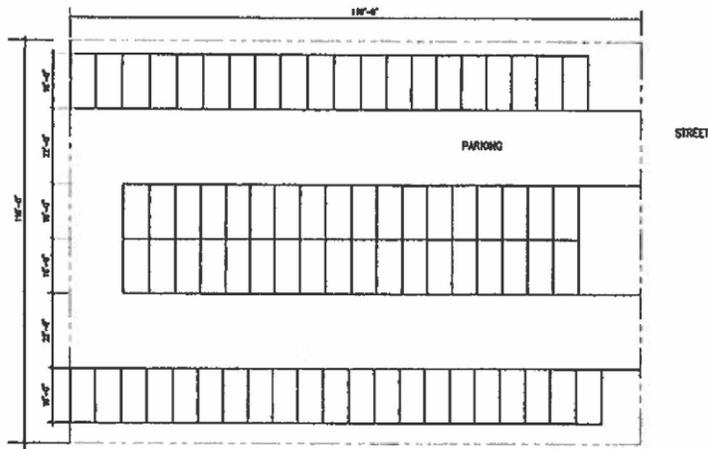


PLOT PLAN
15,000 SF LOT

Figure 42-2.6
20,000 SQUARE FOOT LOT



PLOT PLAN
20,000 SF LOT



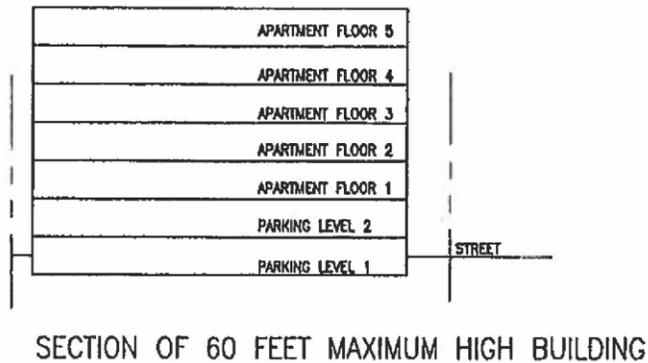
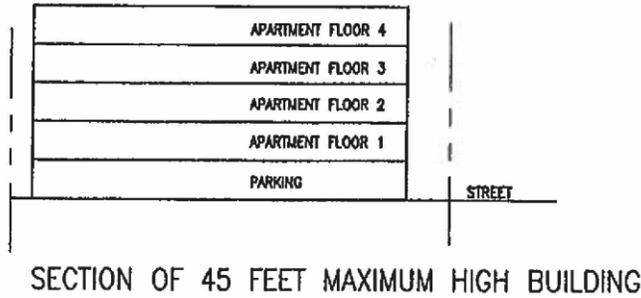
PLOT PLAN
20,000 SF LOT

(Added by Ord. 19-8)

Sec. 42-2.7 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 42-2.7



(Added by Ord. 19-8)

Sec. 42-2.8 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.

(Added by Ord. 19-8)

Sec. 42-2.9 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

(Added by Ord. 19-8)

Sec. 42-2.10 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 Section 504 of the Rehabilitation Act of 1973.

(Added by Ord. 19-8)

Article 3. Building Construction Standards

Sections:

42-3.1 Administration.

42-3.2 Standards.

Sec. 42-3.1 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.

(Added by Ord. 19-8)

Sec. 42-3.2 Standards.

- (a) **Building Heights and Areas.** The building height permitted by Table 42-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 42-A, except as provided in Section 506 of the building code.

TABLE 42-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 42-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.

(Added by Ord. 19-8)

