

CITY AND COUNTY OF HONOLULU  
ADMINISTRATIVE RULES

TITLE 20

DEPARTMENT OF PLANNING AND PERMITTING

ADOPTION OF CHAPTER 25

201H HOUSING PROGRAM RULES

SUMMARY

Title 20 Administrative Rules of the Department of Planning and Permitting, City and County of Honolulu, Chapter 25, entitled "Part 5 - 201H Housing Program Rules," is adopted.

CITY AND COUNTY OF HONOLULU  
ADMINISTRATIVE RULES

TITLE 20

DEPARTMENT OF PLANNING AND PERMITTING

CHAPTER 25

Part 5 - 201H HOUSING PROGRAM RULES

Subchapter 1 Rules of General Applicability

- § 20-25-1 Purpose
- § 20-25-2 Definitions
- § 20-25-3 Information Dissemination
- § 20-25-4 Non-Discrimination

Subchapter 2 Eligibility and Application Processing

- § 20-25-5 Eligible Projects
- § 20-25-6 Eligible Land Uses
- § 20-25-7 Eligible Applicants
- § 20-25-8 Determining Eligibility
- § 20-25-9 Application Processing
- § 20-25-10 Application Contents
- § 20-25-11 Exemptions from Statutes, Ordinances, Charter Provisions, Rules
- § 20-25-12 Development Agreement
- § 20-25-13 Recommendation to City Council

Subchapter 3 Fees

- § 20-25-14 Fees

DEPARTMENT OF PLANNING AND PERMITTING  
CITY AND COUNTY OF HONOLULU

TITLE 20, CHAPTER 25

Part 5 - 201H HOUSING PROGRAM RULES

SUBCHAPTER 1  
RULES OF GENERAL APPLICABILITY

**§ 20-25-1 Purpose.** These rules for the 201H Housing Program are adopted under the Hawaii Administrative Procedure Act, Chapter 91, Hawaii Revised Statutes, as amended ("HRS"), pursuant to Ordinance of the City and County of Honolulu. They are intended to implement Section 46-15.1, HRS, which grants the same housing powers to the City and County of Honolulu as those granted to the State of Hawaii Housing Finance and Development Corporation for the purpose of developing, constructing, and providing low-and moderate-income housing pursuant to Chapter 201H, HRS.

[Eff NOV 25 2018 ] (Auth: HRS §§46-15.1, RCH §§ 4-105.4, 6-1503, ROH §§ 1-9.1, 2-24.12) (Imp: HRS § 46-15.1)

**§ 20-25-2 Definitions.** Unless otherwise clear from the context and unless otherwise specifically provided by law, words, phrases and/or abbreviations used herein shall be defined as follows:

"Area Median Income" or "AMI" means the median income for the Honolulu Metropolitan Statistical Area as most recently determined by the U.S. Department of Housing and Urban Development, with adjustment for family size.

"City" means the City and County of Honolulu.

"DPP" means the Department of Planning and Permitting, City and County of Honolulu.

"Director" means the Director of the Department of Planning and Permitting, City and County of Honolulu, or the Director's designated representative.

"Housing project" or "Project": (1) Includes all real and personal property, buildings and improvements, commercial spaces, lands for farming and gardening, and community facilities acquired or constructed or to be acquired or constructed, and all tangible or intangible assets held or used in connection with the housing project; and (2) May also be applied to the planning of the buildings and improvements, the acquisition of property by purchase, lease, or otherwise, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements, and all other work in connection therewith.

"Low-income Household" means a household whose income (by family size) does not exceed 80 percent of the Area Median Income.

"Moderate-income Household" means a household whose income (by family size) is greater than 80 percent but does not exceed one hundred 120 percent of the AMI.

"Program" means Chapter 201H, HRS, Housing Program as administered by the City.  
[Eff NOV 25 2018 ] (Auth: HRS § 46-15.1, RCH §§ 4-105.4, 6-1503, ROH §§ 1-9.1, 2-24.12) (Imp: HRS §§ 46-15.1, 201H-4)

**§ 20-25-3 Information Dissemination.** The Director shall provide information and assistance to the public, as needed, to ensure the Program is well-understood and effectively implemented. The Director may use all available news media to publish or distribute explanations of these rules and applicable regulations.  
[Eff NOV 25 2018 ] (Auth: HRS § 46-15.1, RCH §§ 4-105.4, 6-1503, ROH §§ 1-9.1, 2-24.12) (Imp: HRS §§ 46-15.1, 201H-4)

**§ 20-25-4 Non-Discrimination.** There shall be no discrimination practiced against any household under the Program on the grounds of race, color, national origin, marital status, parental status, handicap, religion, sexual orientation, gender, or human immune-deficiency virus infection status.  
[Eff NOV 25 2018 ] (Auth: HRS § 46-15.1, RCH §§ 4-105.4, 6-1503, ROH §§ 1-9.1, 2-24.12) (Imp: HRS §§ 46-15.1, 201H-4, 201H-5)

## SUBCHAPTER 2 ELIGIBILITY AND APPLICATION PROCESSING

**§ 20-25-5 Eligible Projects.** Projects developed under these rules shall provide housing designed to be economically integrated, as stipulated in Chapter 201H, HRS, and contain at least 30 dwelling units of which at least 51 percent will be affordable to low-and moderate-income households. The total number of units in the project are to be distributed as follows:

- a. At least 20 percent of the units in the project must be set aside for households earning annual incomes of less than 80 percent AMI.
- b. At least 31 percent of the total number of units must be affordable to moderate-income households earning annual incomes ranging between 81 percent and 120 percent AMI, or lower AMI.
- c. A maximum of 49 percent of the total units may be sold or rented at rates determined by the Applicant, including market rates.

The variously-priced units may not be segregated and must be randomly dispersed (individually or in clusters) throughout the project horizontally, and if applicable, vertically, to the maximum extent feasible.

Projects developed solely for low- and moderate-income households that include and are specifically designed for persons with special needs may contain less than 30 dwelling units.

Projects developed solely for low- and moderate-income households, i.e., 100 percent of the units are affordable, must contain at least 15 units, or obtain a waiver from the DPP.

Affordable units (those for sale or rent) must remain affordable for a period of not less than 30 years.

[Eff NOV 25 2018 ] (Auth: HRS § 46-15.1, RCH §§ 4-105.4, 6-1503, ROH §§ 1-9.1, 2-24.12) (Imp: HRS §§ 46-15.1, 201H-4, 201H-38, 201H-40)

**§ 20-25-6 Eligible Land Uses.** In addition to providing land for residential purposes, the City may allow portions of the land dedicated to the project to be used for commercial, industrial, and other uses, provided it is an integral part of the project and is primarily for the benefit of the residents of the project.

In the designation of commercial, industrial, and other uses, the City must consider the extent to which the proposed uses:

- a. Conform to the objectives and policies of the City's Sustainable Communities or Development Plan, in which the project is geographically located;
- b. Provide employment opportunities to the residents of the project;
- c. Provide necessary and convenient amenities and services to the residents of the project;
- d. Mitigate adverse impacts on the proposed residential units and adjacent land uses; and
- e. Positively impact the economic feasibility of the project.

[Eff NOV 25 2018 ] (Auth: HRS § 46-15.1, RCH §§ 4-105.4, 6-1503, ROH §§ 1-9.1, 2-24.12) (Imp: HRS §§ 46-15.1, 201H-4, 201H-44)

**§ 20-25-7 Eligible Applicant.** An eligible Applicant will be deemed qualified to apply if:

- a. The Applicant is licensed or otherwise authorized by all applicable laws to do business in the State of Hawaii;
- b. The Applicant, or managing employee(s) or affiliate(s), has a reasonable amount of experience in the type of work it proposes to do; and
- c. The Applicant has obtained control of the project site.

A person, association, partnership or corporation may act as the applicant, developer, or contractor.

[Eff NOV 25 2018 ] (Auth: HRS § 46-15.1, RCH §§ 4-105.4, 6-1503, ROH §§ 1-9.1, 2-24.12) (Imp: HRS § 46-15.1, HRS §§ 201H-4, 201H-32, 201H-40, 201H-41)

**§ 20-25-8 Determining Eligibility.** In order for the DPP to determine whether the Project is eligible for processing under the Program, the following shall be provided by the applicant:

- a. The Applicant's contact information and the Project's name and address;
- b. A breakdown of the units by the AMI of target households and length of affordability;
- c. Evidence of site control for the project, e.g., deed, lease, agreement of sale, option agreement, or comparable document; and
- d. An Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) or Environmental Impact Statement (EIS), pursuant to Chapter 343, HRS, as necessary.

Upon receipt of a request for determination of eligibility, the Director will notify the applicant in writing, within 10 working days of its receipt, whether the Project is eligible for processing under the Program.

[Eff NOV 25 2018 ] (Auth: HRS § 46-15.1, RCH §§ 4-105.4, 6-1503, ROH §§ 1-9.1, 2-24.12) (Imp: HRS § 46-15.1, HRS §§ 201H-4, 201H-38, 201H-40, 201H-41)

**§ 20-25-9 Processing of Applications.** The DPP must have the application instructions and processing procedures available for potential applicants.

Upon receipt of an application, the Director will notify the applicant in writing, within 10 working days of its receipt, whether the application is complete for processing. Upon acceptance of the complete application, the DPP will have a maximum of 90 days to process the application and present it with recommendations and draft resolution to the City Council.

The City Council has 45 days from the date of its receipt of the DPP's recommendation to act on the proposed resolution. The Council may require modifications to the project during the course of its deliberations. The City Council may:

- a. Vote to approve the Resolution.
- b. Vote to approve the Resolution with conditions.
- c. Vote to deny the Resolution.
- d. Choose to not act upon the Resolution. If no action is taken, the Resolution is deemed to be adopted after the 45-day Council review period lapses.

[Eff NOV 25 2018 ] (Auth: HRS § 46-15.1, RCH §§ 4-105.4, 6-1503, ROH §§ 1-9.1, 2-24.12) (Imp: HRS §§ 201H-4)

**§ 20-25-10 Application Contents.** Applications shall minimally contain the following information:

- a. Project location and contacts.

- b. Materials provided for the determination of eligibility, pursuant to Section 20-\_\_-8 above, and a statement confirming that the information previously submitted either remains correct or identifies how it has changed and why.
- c. A project narrative that includes:
  - 1. The State Land Use Classification and City Zoning District for the site.
  - 2. How the project is consistent with the goals and policies of the Sustainable Communities or Development Plan, in which the project is geographically located. The applicable goals and objectives from the Plan, as appropriate.
  - 3. The current and historic site conditions. The degree to which existing structures, if any, will be renovated or demolished.
  - 4. The flood zone designation for the site from the Federal Emergency Management Agency current Flood Insurance Rate Map(s). Whether the property is in a tsunami evacuation zone. Mitigating measures that will be taken to ensure the safety of residents, as applicable.
  - 5. Whether the proposed project will relocate any tenants, and if so, the assistance that will be provided. A relocation plan, if necessary.
  - 6. Each proposed building; the type of construction being proposed; the dwelling unit mix including the types of units by bedroom size, the total number of each type of unit and floor area for each type; the square feet attributable to common areas in the buildings; the square feet of non-residential spaces on the site, if any; project amenities; and, proximity to services and employment.
  - 7. The number of resident, guest, and handicapped parking spaces, bicycle stalls, loading stalls, and how the site will be accessed by vehicles, pedestrians, and people on bicycles.
  - 8. The existing water, sewer, drainage, roads, and electrical improvements and what additional improvements are needed to accommodate the project.
  - 9. The topography and soils and what mitigation is needed, if any, to accommodate new structures, access, and stormwater management.
- d. The proposed exemptions; their approximate dollar value, as applicable; the degree to which they deviate from development standards of the underlying City Zoning District, as applicable; and, the reason why each exemption is sought.
- e. Confirmation of municipal sewer system capacity or from the State of Hawaii Department of Health documenting approval for an alternative treatment system.
- f. A letter confirming water availability.

- g. A letter confirming the availability of electricity.
- h. The project development schedule.
- i. A project management plan, including a sales and/or rental plan that ensures affordability to the target population.
- j. A vicinity map and land use map from the appropriate Development or Sustainable Communities Plan.
- k. Two sets of fully dimensioned drawings and/or plans drawn to scale and prepared by a licensed professional. Staff may request additional copies after acceptance of the application. The plans shall include:
  - 1. Property lines, lot areas, all existing and proposed easements with dimensions, and the purpose of easements.
  - 2. Location of all existing and proposed improvements.
  - 3. The dimensions of proposed buildings and those that are to remain, and all setbacks from property lines.
  - 4. Existing contours at vertical intervals of five feet where the slope is greater than 10 percent, and not more than two feet where the slope is less than 10 percent. Proposed grading must be shown with contours and spot elevations.
  - 5. Preliminary floor plans and floor area calculations, showing all dimensions used in calculating proposed floor area and building area.
  - 6. Exterior building elevations and sections with dimensions and existing/proposed finish grades, including all building heights and envelopes measured from these grades and dimensions between structures.
  - 7. Open space plans and area calculations, showing all dimensions and elements used in calculating these areas, including the total proposed and total required open space. The open space plan should specify 1) areas devoted to public, semi-public, and private open space, including parks, plazas, and playgrounds; 2) an integrated circulation system indicating proposed movement of vehicles, goods, pedestrians, and bicyclists within the project area and adjacent areas, including streets and driveways, sidewalks and pedestrian ways, bicycle lanes, bicycle tracks, and multi-use paths.
  - 8. Off-street parking and loading plans and calculations with dimensions of all stalls, aisles, driveways and setbacks from property lines and proposed structures, showing the total number of proposed parking and loading stalls.
  - 9. Preliminary landscaping and screening plans.
- l. A breakdown of the development costs for the project.

1. The sources of all financing.
  2. Documentation describing whether any operating subsidies have been awarded or are being contemplated.
- m. The Applicant's experience developing or managing affordable housing.
  - n. Efforts associated with community outreach and comments received.
  - o. A traffic impact assessment or study, if required by DPP's Traffic Review Branch.
  - p. The status of the Land Use Commission application, as applicable, and any correspondence that documents that status.
  - q. A draft development agreement (optional, may also be submitted after the City Council votes on the Project).
  - r. Other items that DPP deems necessary in its sole and absolute discretion.
- [Eff NOV 25 2018 ] (Auth: HRS § 46-15.1, RCH §§ 4-105.4, 6-1503, ROH §§ 1-9.1, 2-24.12) (Imp: HRS §§ 201H-4, 201H-32, 201H-38, 201H-40, 201H-41, 201H-44)

**§ 20-25-11 Exemptions from Statutes, Ordinances, Charter Provisions, and Rules.** Projects may be exempt from statutes, ordinances, charter provisions, and rules of any governmental agency relating to planning, zoning, and construction standards for subdivision, development and improvement of land and the construction of units thereon, as provided in Chapter 201H, HRS.

Proposed exemptions, the degree to which they differ from existing requirements or standards, and the reasons why the exemptions are sought must be identified in the application.

Exemptions shall be reviewed by the various entities that normally administer the specified requirements or standards. Recommendations pertaining to the requested exemptions shall be compiled by DPP, reviewed, and included in the report forwarded to the City Council.

[Eff NOV 25 2018 ] (Auth: HRS § 46-15.1, RCH §§ 4-105.4, 6-1503, ROH §§ 1-9.1, 2-24.12) (Imp: HRS §§ 201H-4, 201H-38)

**§ 20-25-12 Development Agreement.** The City may enter into a development agreement with an eligible developer or contractor once the City Council adopts a resolution allowing a particular 201H housing project. The development agreement, once signed and notarized, must be recorded with the Bureau of Conveyances or Registrar of the Land Court. The primary purpose of recording the development agreement is to ensure that the Council's decision and affordability requirements are communicated to future land owners and are maintained over time.

The agreement must minimally include the following:

- a. The purpose of the agreement;
- b. A description of the role and responsibility of the DPP, the applicant, and other parties to the agreement;
- c. The number of units for each household AML category and minimum period during which affordability will be maintained;
- d. Reference to the City Council resolution that itemizes approved exemptions and conditions of approval; and
- e. Standard clauses for: indemnity, severability, termination, assignability, damages, non-discrimination, affirmative action, amendment of agreement, and arbitration.

The right to enforce the agreement will be granted to the City. The agreement is subject to the approval of the Corporation Counsel of the City as to form and legality. [Eff NOV 25 2018 ] (Auth: HRS § 46-15.1, RCH §§ 4-105.4, 6-1503, ROH §§ 1-9.1, 2-24.12) (Imp: HRS §§ 201H-4, 201H-34.5, RCH § 9-305.1)

**§ 20-25-13 Recommendation to City Council.** The DPP may recommend approval of the project to the City Council, including exemptions from statutes, ordinances, charter provisions, and rules, when the DPP has determined the project fulfills the intent of the Program and:

- a. The project primarily or exclusively includes affordable housing units;
- b. The project meets minimum requirements of health and safety; and
- c. The development of the project does not contravene any safety standards, tariffs, or rates and fees approved by the public utilities commission for public utilities or Board of Water Supply.

If, after review of the application, the DPP has not been able to document fulfillment of the intent of the Program, the DPP shall recommend approval with conditions or denial to the City Council.

[Eff NOV 25 2018 ] (Auth: HRS § 46-15.1, RCH §§ 4-105.4, 6-1503, ROH §§ 1-9.1, 2-24.12) (Imp: HRS §§ 201H-4, 201H-5, 201H-34.5)

### SUBCHAPTER 3 FEES

**§ 20-25-14 Fees.** The City shall have the right to charge fees for processing applications under this program. Fees shall be established in a manner similar to how other permit processing fees are established.

[Eff NOV 25 2018 ] (Auth: HRS § 46-15.1, RCH §§ 4-105.4, 6-1503, ROH §§ 1-9.1, 2-24.12) (Imp: HRS §§ 201H-4)

These Rules of the Department of Planning and Permitting, Rules Relating to the 201H Program, are adopted following a public hearing held on September 28, 2018, notice of which was published in the Honolulu Star-Advertiser on August 29, 2018.

These Rules shall become effective upon their approval by the Mayor of the City and County of Honolulu and ten days after filing with the City Clerk.

DEPARTMENT OF PLANNING AND  
PERMITTING  
CITY AND COUNTY OF HONOLULU

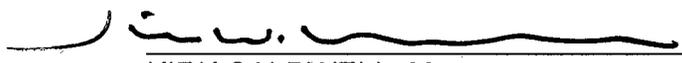
  
KATHY L. SOKUGAWA  
Acting Director

APPROVED AS TO FORM AND LEGALITY:

  
Deputy Corporation Counsel **DUANE W.H. PANG**

Date 10/30/18

APPROVED:

  
KIRK CALDWELL, Mayor  
City and County of Honolulu

Date November 15, 2018

RECEIVED this 15th day of November,  
2018.

  
for Glen I. Takahashi, City Clerk  
City and County of Honolulu