

Rules Amending Title 15
Hawaii Administrative Rules

September 7, 2016

1. Chapter 218 of Title 15, Hawaii Administrative Rules, entitled "Kakaako Reserved Housing Rules" is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, [AND] &
TOURISM

SUBTITLE 4

HAWAII COMMUNITY DEVELOPMENT AUTHORITY

CHAPTER 218

KAKAAKO RESERVED HOUSING RULES

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Historical note: Chapter 15-218 is based substantially upon Chapter 15-22. [Eff 9/8/86, 1/28/88, 7/28/88, 12/10/88, 3/9/89, 7/8/89, 10/28/89, 1/29/90, 2/24/90, 7/26/90, 9/15/90, 10/3/94, 12/15/94, 8/14/95, 11/25/96, 1/25/97, 3/27/97, 6/13/97, 8/1/97, 9/19/97, 8/16/99, 1/13/00, 9/15/01, 6/13/05, 11/11/11,]

SUBCHAPTER 1

GENERAL PROVISIONS

§15-218-1 Purpose and intent. Consistent with the intent of section 206E-33, Hawaii Revised Statutes, the purpose of these rules is to establish an increased supply of housing for [residents of] low- or moderate-income households within the Kakaako community development district. Such housing targeted to low- or moderate-income [housing,] households, henceforth termed "reserved housing" in the subsequent [subchapters] subchapters, shall be required as a condition of [new residential] multi-family residential development or redevelopment within the Kakaako community development district. [Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-2 Administration. The authority, through its executive director, shall administer the provisions of this chapter. [Eff 11/11/11; comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-3 Severability. If a court of competent jurisdiction finds any provision or provisions of this chapter to be invalid or ineffective in whole or in part, the effect of that decision shall be limited to those provisions which are expressly stated in the decision to be invalid or ineffective, and all other provisions of these rules shall continue to be separately and fully effective. [Eff 11/11/11; comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-4 Interpretation by the executive director. (a) In administering this chapter, the executive director may, when deemed necessary, render written interpretations to clarify or elaborate upon the meaning of specific provisions of this chapter for intent, clarity and applicability to a particular situation.

(b) A written interpretation shall be signed by the executive director and include the following:

- (1) Identification of the section of this chapter in question;
- (2) A statement of the problem;
- (3) A statement of interpretation; and
- (4) A justification statement.

(c) A written interpretation issued by the executive director shall be the basis for administering and enforcing the pertinent section of this chapter. All written interpretations rendered pursuant to these rules shall be public record, and shall be effective on the date signed by the executive director. [Eff 11/11/11; comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-5 Definitions. As used in this chapter, the following words and terms shall have the following meanings unless the context shall indicate another or different meaning or intent:

"Area median income" means [area median income (AMI) for Honolulu that is provided to Fannie Mae by the Federal Housing Finance Agency;] the area median income (AMI) determined by the United States, Department of Housing and Urban Development annually for the Honolulu metropolitan statistical area as adjusted for household size;

"Authority" or "HCDA" means the Hawaii community development authority established by section 206E-3, [HRS;] Hawaii Revised Statutes;

"Developer" means a private person or an entity who has legal rights to perform or cause to be performed any man-made change over, upon, under, or

across improved or unimproved real property within the mauka area;

"Eligible borrower" means any person or family, irrespective of race, creed, national origin, or sex, who:

- (1) Has never before obtained a loan under this part; and
- (2) Meets other qualifications as established by rules adopted by the authority;

"Executive director" means the executive director of the authority;

"Fair market value" means the unencumbered fair market value of a property that has no State or County restrictions attached thereto, as determined by a real estate appraiser licensed or certified to practice in the State of Hawaii subject to requirements of section 466K-4, Hawaii Revised Statutes;

"Floor area ratio" or "FAR" means the ratio of floor area to land area expressed as a per cent or decimal which shall be determined by dividing the total floor area on a development lot by the lot area of that development lot;

"Gross revenue" means the gross receipt from sale of all residential units, associated parking, and other common area elements in a project for the purpose of calculating cash-in-lieu payment in lieu of providing for-sale reserved housing units. For rental reserved housing, the capitalized value of net operating rent shall be utilized as gross revenue for the purpose of calculating cash-in-lieu payment;

"Household" means:

- (1) Single person;
- (2) Two or more persons regularly living together related by blood, marriage, or by operation of law;
- (3) A live-in aide, who is essential to the care and well-being of a household member subject to proper documentation and credential as a qualified caregiver; or
- (4) No more than five unrelated persons who have lived together for at least one year, who have executed an affidavit, and who have

provided proof acceptable to the authority in its sole discretion. Affidavits from family members or neighbors are not acceptable;

"Household income" means the total annual income, before taxes and personal deductions, received by all members of the applicant's household, including, but not limited to, wages, salaries, overtime pay, commissions, fees, tips and bonuses, compensation for personal services, social security payments, retirement benefits, income derived from assets, cost of living allowance, net income from business or profession, unemployment benefits, welfare benefits, interest and dividend [payments;] payments. Household income shall exclude income of a co-mortgagor who is not a household member, income from employment of minor children including foster children, and income from employment of full-time students under the age of twenty-three years;

"HRS" means the Hawaii Revised Statutes;

"Land trust" means a recorded instrument as defined in chapter 558, HRS;

"Licensed life care facilities" means licensed assisted living facilities as defined in section 321-15.1, HRS;

"Low-income household" means a household whose household income does not exceed eighty per cent of the area median income;

"Moderate-income household" means a household whose household income is greater than eighty per cent but does not exceed one hundred twenty per cent of the area median income;

"Multi-family [dwelling] residential development" means residential building consisting of more than one residential unit;

"Net appreciation" means the resale fair market value of a reserved housing unit less the original contract price of the same and actual sales costs incurred, if any;

"Reserved housing" means housing designated for residents in the low-income or moderate-income ranges

who meet such eligibility requirements as the authority may adopt by rule; and

["Residential floor area" means the gross total residential floor area including the dwelling unit(s) and limited common areas such as lobby, hallways, storage, covered recreation area, and similar areas set aside for the residents; and]

"Workforce housing project" means new multi-family residential [project(s)] development where at least seventy-five per cent of the residential units are set aside for purchase [by families between one hundred to one hundred forty per cent of the AMI,] or for rent by households earning no more than one hundred twenty per cent of the AMI and which does not require financial assistance for design and construction from Federal, State, or County governmental [bodies, and which meets the size requirements set forth in subchapter 4 of this chapter.] bodies. [Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§§15-218-6 to 15-218-16 (Reserved).

SUBCHAPTER 2

RESERVED HOUSING REQUIREMENTS

§15-218-17 Requirement for reserved housing units. (a) Every developer applying for a development permit for approval to construct multi-family [dwelling units on a lot greater than 20,000 gross square feet shall construct and reserve at least twenty per cent of the total residential floor area as reserved housing units. The percentage of residential floor area developed as reserved housing shall be fifteen per cent if the units are developed as rental units.] residential development of ten residential units or more shall provide at least

twenty per cent of the total number of residential units in the development as reserved housing units. Reserved housing units may be provided as for-sale units or rental units.

(b) ~~[Such reserved]~~ Reserved housing units shall be sold or rented to persons qualifying under the terms and conditions set forth under subchapter ~~[3.]~~ 3 of this chapter. The developer shall execute agreements with the HCDA as are appropriate to conform to this requirement, and such agreements shall be binding upon the developer and any successors in interest, and shall run with the land. The agreement shall provide that the developer must provide certification to the authority as to the compliance of the requirements herein to qualify for a certificate of occupancy for the project for which provisions of this chapter are applicable.

(c) Occupants of reserved housing units shall have access to and use privileges for the same amenities as all other occupants of the development. Reserved housing units shall be distributed in the building in such a manner that they do not form an isolated section of the project.

(d) If the authority so determines, it may allow the developer to meet the requirement of subsection (a) above through the following alternatives instead of providing reserved housing units within the development:

- (1) By providing such reserved housing units elsewhere within the mauka area; ~~[or]~~
- (2) By providing such reserved housing units elsewhere within urban Honolulu. The authority may impose additional reserved housing requirements in approving transfer of reserved housing from mauka area to other locations within urban Honolulu. Such additional reserved housing requirements shall be determined on a case-by-case basis by the authority at the time of approval of the development ~~[permit.]~~ permit; or
- (3) By allowing a cash-in-lieu payment instead of providing reserved housing units.

(e) The [delivery] construction of reserved housing units shall [be required] commence prior to the issuance of the initial certificate of occupancy for the project for which [provision of this chapter are applicable and] reserved housing is required and shall be secured by the developer with a financial guaranty bond from a surety company authorized to do business in Hawaii, an acceptable construction set-aside letter, or other financial instruments acceptable to the authority prior to the approval of the building permit for the project by the authority.

(f) The developer shall execute such agreements as are necessary to implement any alternative reserved housing requirement, and such agreements shall be binding upon the developer and any successors in interest, and shall run with the land.

(g) Licensed life care facilities shall be exempt from the reserved housing requirement. In a proposed development that includes licensed life care facilities as well as residential dwelling units, the reserved housing requirements shall apply only to the residential dwelling portion of the development.

(h) No construction shall commence for any [development within the mauka area on a lot greater than 20,000 square feet] multi-family residential development consisting of ten or more residential units, unless the development conforms to the provisions of this chapter and the authority has certified that the development complies with the requirements of this chapter.

(i) The authority may require guarantees, may enter into recorded agreements with developers and with purchasers and tenants of the reserved housing units, and may take other appropriate steps necessary to assure that [these] the reserved housing units are provided and that they are occupied by qualified persons for the [required duration.] regulated term.

(j) The authority may suspend these requirements for reserved housing for a limited duration, if, in its sole judgment, it determines that these requirements may unduly impede, preclude, or otherwise negatively impact the primary objective of the

authority to promote redevelopment within the Kakaako community development district.

(k) When it has been assured to the satisfaction of the authority and it has determined that the proposed development meets the requirements and standards of this section, the authority shall certify the development permit application approved as to the reserved housing requirements of this chapter. [Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-18 Adjustments to height, density, and general development requirements for reserved housing units. (a) Except as otherwise provided, any developer who applies for a development permit proposing a multi-family residential development [on a lot greater than 20,000 square feet who meets] of ten or more residential units that meets all applicable provisions of this chapter shall be entitled to adjustments in FAR and general development requirements as follows:

- (1) Residential floor area for reserved housing shall be excluded from calculations of floor area ratio; and
- (2) Residential floor area for reserved housing shall be exempt from the provisions of [Hawaii administrative rules, section 15-217-65; and
- (3) For reserved housing units, the off-street parking space requirement shall be one stall per unit.] section 15-217-65.

(b) The authority may also consider modifying the following requirements of the mauka area rules as an incentive to providing [additional] reserved housing by an applicant:

- (1) Building height;
- (2) Street setbacks; [and]
- (3) Off-street parking; and
- ~~[(3)]~~ (4) Loading space. [Eff 11/11/11; am and comp] (Auth: HRS §§206E-4,

206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-19 Reserved housing unit type and corresponding factor. The reserved housing unit type and corresponding factor provided in the table below shall be utilized in determining the total number of reserved housing required to be provided for any development.

RESERVED HOUSING UNIT TYPE AND
CORRESPONDING FACTOR TABLE

<u>Unit Type</u>	<u>0 BR 1 BA</u>	<u>1 BR 1 BA</u>	<u>2 BR 1 BA</u>	<u>2 BR 1.5 BA</u>	<u>2 BR 2 BA</u>	<u>3 BR 1.5 BA</u>	<u>3 BR 2 BA</u>	<u>3+ BR 2+ BA</u>
<u>Factor</u>	0.68	0.81	0.92	1.0	1.08	1.16	1.28	1.44

[Eff _____] (Auth: HRS §§206E-____, 206E-____, 206E-____) (Imp: HRS §§206E-____, 206E-____, 206E-____)

§15-218-20 Reserved housing unit type and permissible household size. The reserved housing unit type and corresponding household size provided in the table below shall be utilized for the purpose of maximizing the number of households benefiting from the reserved housing program.

RESERVED HOUSING UNIT TYPE AND
CORRESPONDING HOUSEHOLD SIZE

<u>Reserved Housing Unit Type</u>	<u>Corresponding Household Size</u>	
	<u>Minimum</u>	<u>Maximum</u>
Studio	1 person	2 persons
1 Bedroom	1 person	3 persons
2 Bedrooms	2 persons	5 persons
3 Bedrooms	3 persons	7 persons
4 Bedrooms	4 persons	9 persons

The corresponding household size may be modified by the authority if the reserved housing units are unsold, unrented, or involves a live-in aide.

[Eff _____] (Auth: HRS §§206E-_____, 206E-____, 206E-____) (Imp: HRS §§206E-____, 206E-____, 206E-____)

§15-218-21 For-sale reserved housing schedule.
The following area median income and percentage of reserved housing provided shall be utilized in determining the mix of reserved housing provided in a project.

FOR-SALE RESERVED HOUSING SCHEDULE

<u>Area Median Income</u>	<u>Percentage of Reserved Housing Provided</u>
80 per cent or less	10
80 per cent - 110 per cent	60
110 per cent - 120 per cent	30

[Eff _____] (Auth: HRS §§206E-_____, 206E-____, 206E-____) (Imp: HRS §§206E-____, 206E-____, 206E-____)

[§§15-218-19] §§15-218-22 to 15-218-28
(Reserved).

SUBCHAPTER 3

SALE AND RENTAL OF RESERVED HOUSING UNITS

§15-218-29 Purpose. The rules set forth in this subchapter shall govern the sale, rental or transfer of reserved housing provisions of subchapter 2. [Eff 11/11/11; comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-30 Qualifications for reserved housing.

(a) The following shall be qualifications for purchasing or ~~[leasing]~~ renting of reserved housing units by a buyer or a tenant. The buyer or the tenant:

- (1) Shall be at least the age of majority;
- (2) Shall not have a majority interest in a principal residence or a beneficial interest in a land trust on a principal residence within or without the State for a period of three years immediately prior to the date of application for a reserved housing unit under this section;
- (3) Shall not have a spouse or dependent child who has a majority interest, in a principal residence or a beneficial interest in a land trust on a principal residence for a period of three years immediately prior to the date of application for a reserved housing unit under this section;
- (4) Has never before purchased a reserved housing unit under this chapter;
- ~~[(4)]~~ (5) Shall be the owner or lessee and occupant of the reserved housing unit; ~~[and]~~
- ~~[(5)]~~ (6) Shall not have a record or history of conduct or behavior, including past rent

payments, which may prove detrimental to other tenants or the authority. This criterion shall be applied within parameters set by federal laws on discrimination, including the Americans with Disabilities ~~Act.~~ Act; and

(7) Has sufficient gross income to qualify for the loan to finance the purchase of the reserved housing unit, or in case of a rental reserved housing unit demonstrate an ability to pay rent as established by the HCDA and meet any additional criteria established by the HCDA for the respective rental housing development for which the applicant is applying.

(b) Subject to approval of the executive director, a current owner of a reserved housing unit may apply to purchase a larger reserved housing unit provided that:

(1) The applicant's current household size determined by the number of individuals on title and their dependents, has increased and exceed the maximum household size established in section 15-218-20;

(2) The applicant has resided in the current reserved housing unit for at least one year; and

(3) The applicant qualifies to purchase a reserved housing unit in accordance with section 15-218-30(a), except that the applicant's current ownership of a reserved housing unit shall not disqualify the applicant under section 15-218-30(a)(2), (3), and (4). [Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-31 Sale [and rental] of reserved housing units. (a) The authority may advertise the sale ~~[or rental]~~ of reserved housing units and qualify and

select persons for reserved housing units. It may also permit the developer of such units, or the developer's designated representative, to be responsible for advertising, qualifying, and selecting persons subject to the provisions of this chapter.

(b) Applications for the purchase [or rental] of reserved housing units shall be accepted on a first-come, first-served or on a lottery basis. The applications shall be submitted in person by the applicant. Only completed applications shall be acceptable. Applicants shall not be required to submit a deposit amount exceeding \$500.

(c) Notice of the proposed sale [or rental] of reserved housing units shall be published in a newspaper of general circulation on two separate days. The notice shall include, but not be limited to, the following:

- (1) General description of the project in which the reserved housing units are located including its location, number of reserved housing units, size of the reserved housing units by number of bedrooms, and sales prices or rental rates;
- (2) Qualification requirements for purchase of reserved housing units including maximum income limits, restrictions on ownership of property, the authority's first option to purchase and shared equity requirements for reserved housing units for sale, and permissible household sizes;
- (3) A statement that buyers or renters shall be selected on a first-come, first-served or on a lottery basis, whichever is applicable;
- (4) Where and when applications may be obtained and the first date, including time and place, when applications will be accepted, and subsequent dates, times, and places for submission of applications;
- (5) Deadline for submission of applications; and
- (6) [In the case of a reserved housing unit for sale, the] The deposit amount and mode of acceptable payment.

The time period between publication of the notice and the first acceptance of applications shall not be less than fourteen business days. The period shall be computed from the first day of publication of the notice.

(d) Priority shall be given to applicants who have been displaced from housing within the Kakaako community development district as a result of [development] redevelopment in the mauka [area.] area within a five-year period.

(e) Applicants shall be allowed to select a reserved housing unit based on maximum income limits, qualifying income, preference, permissible household sizes, and availability of the reserved housing unit.

(f) In the event the developer, or the developer's designated representatives have accepted and processed applications and selected applicants for reserved housing units, a certification shall be submitted to the authority that the selection was made on a first-come, first-served or a lottery basis. Applicants shall be listed in the order in which the applications were accepted and the list shall be available for inspection by the authority. The final applications for those persons selected shall be made available to the authority and the authority shall review the applications to ensure that the applicants meet the eligibility requirements established under this chapter.

(g) Reserved housing applicants shall provide financial and family information with the reserved housing application.

(h) The authority may also require applicants to provide documentation to verify information submitted to the authority, including but not limited to:

- (1) Asset verification;
- (2) Verification of deposit;
- (3) Verification of employment; and
- (4) Credit bureau report. An applicant found to have [willfully] wilfully submitted false information, made misstatements, or withheld important information shall be disqualified from purchasing or renting a reserved

housing unit under this chapter. The authority retains its right to recover any money wrongfully gained by the applicant or to any other recourse provided by law. [Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-32 Income. (a) The household income of the applicant shall not exceed one hundred **[forty]** twenty per cent of the area median income (AMI) as determined by the United States Department of Housing and Urban Development.

(b) The adjusted household income shall be the income earned during the most current calendar year preceding the date of application to purchase or rent a reserved housing unit and shall be verified by submittal of most current state or federal tax returns.

(c) The assets of the applicant shall not exceed one hundred thirty-five per cent of the applicable income limit set forth in subsection (a) above. As used herein, assets include, all cash, securities and real and personal property at current fair market value, less any outstanding liabilities secured by such assets. Qualified retirements accounts and gifts of up to twenty per cent of the purchase price to assist in the down payment for purchase of a reserved housing unit shall not be counted towards assets.

[Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-33 Occupancy requirements. (a) The following are occupancy requirements for reserved housing units:

- (1) Applicants for reserved housing shall certify that, if selected, all applicants will be occupants of the reserved unit; and

- (2) The purchaser or lessee shall physically occupy the reserved [unit; and
- (3) The city and county of Honolulu maximum occupancy limits for a residential dwelling unit shall apply.] unit.

(b) Violation of subsection (a) shall be sufficient reason for the authority, at its option, to purchase the unit as provided in section [15-218-36] 15-218-35 or evict the renter from the unit, as applicable.

(c) Any deed, lease, agreement of sale, mortgage, or other instrument of conveyance issued by the authority shall expressly contain the restrictions on use prescribed in this section.

[(d) The restriction prescribed in subsection (a) above shall not apply if the authority waives its option to purchase the reserved housing unit or subsequent to the expiration of the option to purchase period.] [Eff 11/11/11; am and comp]
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-34 [Affordability criteria.] Factors to be used for reserved housing unit sale price determination. (a) The following [criteria shall be used in determining price and income equivalencies of units for sale:] factors shall be used in determining the reserved housing unit sale price determination:

- (1) Down payment amount shall not exceed ten per cent of the purchase price;
- (2) [Monthly payments, which consist of] Maximum allowable monthly housing cost consisting of mortgage payment including principal and interest, real property taxes, mortgage insurance premium, and fees and costs required by the bylaws of a condominium property regime, shall not exceed thirty-three per cent of gross monthly [income or some other percentage approved by the United States Department of Housing and Urban Development; and] household income;

- (3) Interest rate shall be derived by taking the average of [the interest rate on thirty year fixed rate mortgages posted for major Honolulu banks in the first week of each of the preceding six months.] thirty-year fixed rate mortgage rates for six consecutive months including the most current rate published by Freddie Mac; and
- (4) Reserved housing unit type and corresponding factor as provided in section 15-218-19.
- (b) [The following criteria shall be used in determining price and income equivalencies of units for rent: monthly rent and all utilities and other building operating costs (excluding telephone, cable television and internet service) shall not exceed thirty-three per cent of the renter's gross monthly income.] At the beginning of each year or soon thereafter, the executive director shall establish and publish a formula for calculating the applicable sale price of a reserved housing based on the factors enumerated in subsection (a) above. [Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-35 [Term] Terms of reserved housing [requirements.] for sale. (a) [The regulated term for reserved housing units that are for sale shall be five years from the date of issuance of certificate of occupancy. Reserved housing rental units shall be regulated for fifteen years. The authority may suspend or modify regulated term and qualifying income requirements on a project by project basis, if, in its sole judgment, it determines that these requirements are negatively impacting the sale or rental of reserved housing units as the primary objective of the authority to promote redevelopment within the Kakaako community development district.

(b) During the regulated term, a reserved unit owner shall not purchase additional limited common elements or personal property.

(c) During the regulated term, the executive director shall approve any initial or subsequent mortgage placed on a reserved unit which does not exceed eighty per cent of the original purchase price of the unit.

(d) After the end of the regulated term, the owner may sell the unit or assign the property free from any transfer or price restrictions except for applicable equity sharing requirements set forth in section 15-218-41. If the owner of a reserved housing unit wishes to sell the unit, the authority or an entity approved by the authority shall have the first option to purchase the unit.

(b) Sale or transfer of reserved housing units shall be as follows:

- (1) The owner shall notify the authority in writing of the intent to sell the reserved housing unit;
- (2) The authority shall notify the owner of its decision within sixty days of receipt of the owner's notification required in subsection (b)(1) above. The authority may:
 - (A) Waive its option to purchase the unit;
 - (B) Agree to purchase the unit; or
 - (C) Designate another buyer for the unit;
- (3) If the authority fails to notify the owner of a decision in the manner prescribed in subsection (b)(2), the authority shall have waived its first option to purchase the unit;
- (4) The authority may purchase the unit either outright, free and clear of all liens and encumbrances; or by transfer subject to an existing mortgage. If by outright purchase, the authority shall ensure that all existing mortgages, liens, and encumbrances are satisfactorily paid by the owner; and
- (5) In any purchase by transfer subject to an existing mortgage, the authority shall agree to assume and to pay the balance on any first mortgage created for the purpose of enabling the owner to obtain funds for the

purchase of the unit and any other mortgages which were created with the approval and consent of the authority. In these cases, the amount to be paid to the owner by the authority shall be the difference between the price as determined in section 15-218-35(c)(1) or (2) and the principal balance of all mortgages outstanding and assumed at the time of transfer of title to the authority.

(c) The purchase price shall be based on the lower of:

- (1) The reserved housing sales price calculated based on the applicable AMI at the time of resale of the unit; or
- (2) The original sales price of the reserved housing unit escalated by a corresponding consumer price index factor from the date of the initial purchase to the date of resale on the unit.

(d) A reserved housing unit owner shall not purchase additional limited common elements such as storage space or additional parking space as part of the reserved housing unit purchase.

(e) Any subsequent mortgage placed on the reserved housing unit by the owner of the reserved housing unit shall not exceed eighty per cent of the original purchase price of the reserved housing unit and shall require approval by the executive director.
[Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

[§15-218-36 First option to purchase. If the owner of a reserved housing unit wishes to sell the unit during the regulated term, the authority or an entity approved by the authority shall have the first option to purchase the unit. The purchase price shall be based on the lower of:

- (1) The current fair market price of the reserved housing unit as determined by the

authority less the authority's share of equity in the unit as determined by section 15-218-42; or

- (2) The reserved housing unit price calculated based on the AMI at the time of sale of the unit.] [Eff 11/11/11; R]
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

[§15-218-37 Sale or transfer of reserved housing units. Sale or transfer of reserved housing units during the regulated term shall be as follows:

- (1) The authority or an entity approved by the authority shall have the first option to purchase the unit in the manner indicated in section 15-218-36;
- (2) The owner shall notify the authority in writing of the intent to sell the reserved housing unit;
- (3) The authority shall notify the owner of its decision within sixty days of receipt of the owner's notification required in subsection (a)(2) above. The authority may:
 - (A) Wave its option to purchase the unit,
 - (B) Agree to purchase the unit, or
 - (C) Designate another buyer for the unit;
- (4) If the authority fails to notify the owner of a decision in the manner prescribed in subsection (a)(3), the authority shall have waived its first option to purchase the unit;
- (5) The authority may purchase the unit either outright, free and clear of all liens and encumbrances; or by transfer subject to an existing mortgage. If by outright purchase, the authority shall ensure that all existing mortgages, liens, and encumbrances are satisfactorily paid by the owner; and
- (6) In any purchase by transfer subject to an existing mortgage, the authority shall agree to assume and to pay the balance on any

first mortgage created for the purpose of enabling the owner to obtain funds for the purchase of the unit and any other mortgages which were created with the approval and consent of the authority. In these cases, the amount to be paid to the owner by the authority shall be the difference between the price as determined in section 15-218-36 (1) or (2) and the principal balance of all mortgages outstanding and assumed at the time of transfer of title to the authority.] [Eff 11/11/11; R] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-38 Foreclosure. In the event of a foreclosure, any law to the contrary notwithstanding, a mortgagee under a mortgage covering a reserved housing unit and land or leasehold interest subject to the restrictions of [sections 15-218-35, 15-218-36, and 15-218-37,] section 15-218-35, shall, prior to commencing mortgage foreclosure proceedings, notify the authority [of (1) any default of the mortgagor under the mortgage within ninety days after the occurrence of the default; and (2) any intention of the mortgagee to foreclose the mortgage under chapter 667, HRS. The authority shall be a party to any foreclosure action, and shall be entitled to all proceeds remaining in excess of all customary and actual costs and expenses of transfer pursuant to default, including liens and encumbrances of record. The person in default shall be entitled to any amount remaining provided the amount shall not exceed the lower of the amounts computed in section 15-218-35.] of:

- (1) Any default of the mortgagor under the mortgage within ninety days after the occurrence of the default; and
- (2) Any intention of the mortgagee to foreclose the mortgage under chapter 667, HRS.

The authority shall be a party to any foreclosure action, and shall be entitled to all proceeds remaining in excess of all customary and actual costs and expenses of transfer pursuant to default, including liens and encumbrances of record. The person in default shall be entitled to any amount remaining provided the amount shall not exceed the lower of the amounts computed in section 15-218-35.
[Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-39 Transfers of title pursuant to a mortgage foreclosure. The conditions prescribed in [sections 15-218-35, 15-218-36, and 15-218-37(a)(1) through (6)] section 15-218-35 above shall be automatically extinguished and shall not attach to subsequent transfers of title pursuant to a mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure after a foreclosure action is commenced. [Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-40 Incorporation in deed. The provisions of sections 15-218-35 [through 15-218-37, and section] and 15-218-41 shall be incorporated in any deed, lease, mortgage, agreement of sale, or other instrument of conveyance for reserved housing units. [Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-41 Equity sharing requirements.
(a) [The authority's share of the equity in the reserved housing unit shall become due upon resale of the reserved housing unit.] If the authority waives its first option to purchase a reserved housing as provided for in section 15-218-35(a), the owner of the

reserved housing may sell the reserved housing unit at fair market price. The authority's share of the equity in the reserved housing unit shall become due upon sale of the reserved housing unit.

(b) The authority's share of the equity in the reserved housing unit shall be ~~[the higher of:]~~ a percentage of the resale fair market value of the unit. The percentage shall be determined as follows: original fair market value minus original reserved housing sales price divided by original fair market value. The percentage shall be rounded to the nearest one per cent.

- ~~[(1) An amount equal to the difference between the original fair market price of the unit as determined by the authority and its original sales contract price; or~~
- ~~(2) An amount equivalent to the percentage of net appreciation calculated as the difference between the original fair market price of the unit as determined by the authority and its original contract price divided by the original fair market price of the unit.~~

~~(c) At its sole discretion, the authority may allow the project developer to buy out the shared appreciation provisions for all or a portion of the reserved housing units by making a cash payment to the authority of an amount equal to the amount for equity sharing calculated in subsection (b) above.]~~

(c) If the authority's percentage share of equity is less than one-half of one per cent, or if the resale fair market value of the reserved housing unit is less than the original reserved housing sales price, the provisions of section 15-218-41(b) shall not be applicable.

(d) The authority shall make allowance for cost of improvements made by the owner of the reserved housing in determining the authority's share of equity sharing. The owner of the reserved housing unit shall provide financial documents acceptable to the authority before the cost of improvements made by the owner can be deducted from the ~~[sale]~~ resale price.

(e) The authority shall determine the fair market value of the reserved housing unit at the time of original sale and also at the time of resale.

(f) The resale price and terms shall be approved by the authority. [Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-42 Deferral of first option to purchase and equity sharing. The authority may [consider deferring the equity sharing in case an owner of a reserved housing unit wishes to transfer title to the unit by devise or through the laws of descent to a family member who would otherwise qualify for purchase of a reserved housing unit under this chapter.] defer its first option to purchase and equity sharing in the following instances:

- (1) Transfer by devise, descent, or operation of law upon the death of a joint tenant or tenant by entirety;
- (2) Transfer to a relative who meets eligibility requirements upon death of purchaser;
- (3) Transfer to spouse or children who meet eligibility requirements;
- (4) Transfer due to a property settlement whereby the spouse who meets eligibility requirements becomes owner;
- (5) Transfer into an inter vivos trust in which the purchasers remain the primary beneficiary and does not affect their rights of occupancy; and
- (6) Transfer into a community land trust or other non-profit organizations established to maintain or sustain long-term housing affordability. [Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-43 Terms of reserved housing for rent. Reserved housing for rent shall be provided at AMI of eighty per cent or below. Reserved housing for rent shall be regulated for a period of thirty years from the date of issuance certificate of occupancy for the project. [Eff _____] (Auth: HRS §§206E-____, 206E-____, 206E-____) (Imp: HRS §§206E-____, 206E-____, 206E-____)

§15-218-44 Factors to be used for determining monthly rent for reserved housing unit for rent. Monthly rent for reserved housing unit for rent shall be based on no more than thirty per cent of the applicable AMI. Monthly rent shall include all utilities and other building operating cost but may exclude telephone, cable television, and internet service as well as parking. Allowance for tenant furnished utilities and other services shall be based on data published by the authority on an annual basis. At the beginning of each year or soon thereafter, the executive director shall establish and publish a formula for calculating the applicable monthly rents of a rental reserved housing based on the factors enumerated above. [Eff _____] (Auth: HRS §§206E-____, 206E-____, 206E-____) (Imp: HRS §§206E-____, 206E-____, 206E-____)

§15-218-45 Rental of reserved housing unit by reserved housing owner. The authority may on a case-by-case basis consider request from a reserved housing owner to rent the reserved housing unit. Such rental of reserved housing units shall be regulated by the provisions of sections 15-218-43 and 15-218-44. [Eff _____] (Auth: HRS §§206E-____, 206E-____, 206E-____) (Imp: HRS §§206E-____, 206E-____, 206E-____)

§15-218-46 Cash-in-lieu. The authority may permit a cash payment in lieu payment in lieu of

providing reserved housing units. The amount of cash-in-lieu payment shall be higher of:

- (1) Seven per cent of gross revenue of the project; or
- (2) Difference between the average fair market value of the unit in the project and average reserved housing unit sale price in the project multiplied by the number of reserved housing units required. For determining a partial cash-in-lieu payment, a proportional formula shall be utilized.
[Eff _____] (Auth: HRS §§206E-____, 206E-____, 206E-____) (Imp: HRS §§206E-____, 206E-____, 206E-____)

~~[§15-218-43]~~ §15-218-47 Effects of subsequent rule amendments. (a) In the case of subsequent rule amendments, reserved housing owners shall be permitted at their election to:

- (1) Remain subject to the rules in effect at the time of the purchase of the unit, or
 - (2) Be governed by the amended rules.
- (b) The authority, or any other entity that the authority transfers the reserved housing to shall notify all reserved housing owners of any change made by law, ordinance, rule or regulation within one hundred eighty days of such changes. Such notice shall clearly state the enacted or proposed new provisions, the date upon which they are to be effective and offer to each owner of reserved housing units constructed and sold prior to the effective date, an opportunity to be governed by such new provision.
- (c) No reserved housing unit owner shall be entitled to modify the restrictions or conditions on use, transfer, or sale of the reserved housing unit, without the written permission of the holder of a duly-recorded first mortgage on the unit and the owner of the fee simple or leasehold interest in the land underlying the unit.

(d) This section shall apply to all reserved housing units developed, constructed and sold pursuant to this chapter. [Eff 11/11/11; ren §15-218-43 and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

[§§15-218-44] §§15-218-48 to 15-218-54 (Reserved).

SUBCHAPTER 4

WORKFORCE HOUSING PROJECT(S)

§15-218-55 Workforce housing project(s).

(a) New residential project(s) where at least seventy-five per cent of the residential units are set aside for purchase [by families earning between one hundred to one hundred forty] or for rent by households earning no more than one hundred twenty per cent of the AMI, and which does not require financial assistance for design and construction from Federal, State, or County governmental [bodies, and which meets the following unit size requirements] bodies shall qualify as a workforce housing project.

[Unit Type	Maximum Unit Size (Square Feet)
Studio with one bathroom	500
One bedroom with one bathroom	650
Two bedroom with one bathroom	800
Two bedroom with one and a half bathroom	900
Two bedroom with two bathroom	1,000
Three bedroom with one and a half bathroom	1,100
Three bedroom with two bathroom	1,200
Four bedroom with two bathroom	1,300

(b) Workforce housing project(s) shall be exempt from the requirements of sections 15-218-35, 15-218-36, and 15-218-41 of subchapter 3 of this chapter.

(c)] (b) Workforce housing projects shall not be used to satisfy the reserved housing requirement(s) for any residential project(s) that are required to provide reserved housing in accordance with subchapter 2.

[(d)] (c) Workforce housing project(s) shall receive a floor area bonus of one hundred per cent, provided that such bonus floor area shall be used towards the construction of workforce housing project(s) only.

[(e) In approving development permit for a qualified workforce housing project the authority may consider modification(s) to the provisions of Hawaii administrative rules, chapter 217, title 15, mauka area rules.

(f)] (d) Workforce housing projects shall be exempt from the provisions of [Hawaii administrative rules,] section 15-217-65.

(e) All provisions of this chapter shall be applicable to subchapter 4 unless specifically exempted.

(f) Workforce housing shall be exempt from the provisions of section 15-218-39 of this chapter. [Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-56 Factors to be used for workforce housing unit sale price determination. (a) The following factors shall be used in determining the workforce housing unit sale price determination:

- (1) Down payment amount shall not exceed ten per cent of the purchase price;
- (2) Maximum allowable monthly housing cost consisting of mortgage payment including principal and interest, real property taxes, mortgage insurance premium, and fees and

costs required by the bylaws of a condominium property regime, shall not exceed thirty-three per cent of gross monthly household income;

(3) Interest rate shall be derived by taking the average of thirty-year fixed rate mortgage rates for six consecutive months including the most current rate published by Freddie Mac; and

(4) Reserved housing unit type and corresponding factor as provided in section 15-218-19.

(b) At the beginning of each year or soon thereafter, the executive director shall establish and publish a formula for calculating the applicable sale price of a workforce housing based on the factors enumerated in subsection (a) above.

[Eff _____] (Auth: HRS §§206E-____, 206E-____, 206E-____) (Imp: HRS §§206E-____, 206E-____, 206E-____)

§15-218-57 Terms of workforce housing. (a) If the owner of a workforce housing unit wishes to sell the unit, the authority or an entity approved by the authority shall have the first option to purchase the unit.

(b) Sale or transfer of workforce housing units shall be as follows:

(1) The owner shall notify the authority in writing of the intent to sell the workforce housing unit;

(2) The authority shall notify the owner of its decision within sixty days of receipt of the owner's notification required in subsection (b)(1) above. The authority may:

(A) Waive its option to purchase the unit;

(B) Agree to purchase the unit; or

(C) Designate another buyer for the unit;

(3) If the authority fails to notify the owner of a decision in the manner prescribed in subsection (b)(2), the authority shall have waived its first option to purchase the unit;

(4) The authority may purchase the unit either outright, free and clear of all liens and encumbrances; or by transfer subject to an existing mortgage. If by outright purchase, the authority shall ensure that all existing mortgages, liens, and encumbrances are satisfactorily paid by the owner; and

(5) In any purchase by transfer subject to an existing mortgage, the authority shall agree to assume and to pay the balance on any first mortgage created for the purpose of enabling the owner to obtain funds for the purchase of the unit and any other mortgages which were created with the approval and consent of the authority. In these cases, the amount to be paid to the owner by the authority shall be the difference between the price as determined in section 15-218-56(c)(1) or (2) and the principal balance of all mortgages outstanding and assumed at the time of transfer of title to the authority.

(c) The purchase price shall be based on the lower of:

(1) The workforce housing sales price calculated based on the applicable AMI at the time of resale of the unit; or

(2) The original sales price of the workforce housing unit escalated by a corresponding consumer price index factor from the date of the initial purchase to the date of resale on the unit.

(d) Any subsequent mortgage placed on the workforce housing unit by the owner of the workforce housing unit shall not exceed eighty per cent of the original purchase price of the reserved housing unit and shall require approval by the executive director.

[Eff _____] (Auth: HRS §§206E-____, 206E-____, 206E-____) (Imp: HRS §§206E-____, 206E-____, 206E-____)

§15-218-58 Terms of workforce housing for rent.
Workforce housing for rent shall be provided at AMI of
one hundred twenty per cent or below. If a rental
workforce housing unit is sold or converted to a
for-sale workforce housing unit, the authority shall
have the first option to purchase such workforce
housing unit. The sale of such workforce housing unit
shall be regulated in accordance with the provisions
of section 15-218-56. [Eff _____] (Auth:
HRS §§206E-____, 206E-____, 206E-____) (Imp: HRS
§§206E-____, 206E-____, 206E-____)

§15-218-59 Factors to be used for determining
monthly rent for workforce housing unit for rent.
Monthly rent for workforce housing unit for rent shall
be based on no more than thirty per cent of the
applicable AMI. Monthly rent shall include all
utilities and other building operating cost but may
exclude telephone, cable television, and internet
service as well as parking. Allowance for tenant
furnished utilities and other services shall be based
on data published by the authority on an annual basis.
At the beginning of each year or soon thereafter, the
executive director shall establish and publish a
formula for calculating the applicable monthly rents
of a rental workforce housing unit based on the
factors enumerated above. [Eff _____] (Auth:
HRS §§206E-____, 206E-____, 206E-____) (Imp: HRS
§§206E-____, 206E-____, 206E-____)

§15-218-60 Rental of workforce housing unit by
workforce housing owner. The authority may on a
case-by-case basis consider request from a workforce
housing owner to rent the workforce housing unit.
Such rental of workforce housing units shall be
regulated in accordance with the provisions of
sections 15-218-57 and 15-218-58.
[Eff _____] (Auth: HRS §§206E-____, 206E-____,
206E-____) (Imp: HRS §§206E-____, 206E-____, 206E-____)

§15-218-61 Deferral of first option to purchase workforce housing unit. The authority may defer its first option to purchase a workforce housing unit in the following instances:

- (1) Transfer by devise, descent, or operation of law upon the death of a joint tenant or tenant by entirety;
- (2) Transfer to a relative who meets eligibility requirements upon death of purchaser;
- (3) Transfer to spouse or children who meet eligibility requirements;
- (4) Transfer due to a property settlement whereby the spouse who meets eligibility requirements becomes owner;
- (5) Transfer into an inter vivos trust in which the purchasers remain the primary beneficiary and does not affect their rights of occupancy; and
- (6) Transfers into a community land trust or other non-profit organizations established to maintain or sustain long-term housing affordability. [Eff _____] (Auth: HRS §§206E-____, 206E-____, 206E-____) (Imp: HRS §§206E-____, 206E-____, 206E-____)

§15-218-62 Incorporation in deed for workforce housing. The provisions of section 15-218-56 shall be incorporated in any deed, lease, mortgage, agreement of sale, or other instrument of conveyance for workforce housing units. [Eff _____] (Auth: HRS §§206E-____, 206E-____, 206E-____) (Imp: HRS §§206E-____, 206E-____, 206E-____)

[§§15-218-56 to 15-218-66] §§15-218-63 to 15-218-73 (Reserved)."

2. Material, except source notes, to be repealed is bracketed. New material is underscored.

3. Additions to update source notes to reflect these amendments and compilation are not underscored.

4. The amendment to and compilation of chapter 15-218, Hawaii Administrative Rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

AEDWARD LOS BANOS
Interim Executive Director
Hawaii Community Development
Authority

APPROVED AS TO FORM:

Deputy Attorney General