

**Hawaii Administrative Rules, Chapter 15-218
Kakaako Reserved Housing Rules Amendment
Public Hearing: March 28, May 3 and 17, 2017**

Staff Report
May 31, 2017

BACKGROUND

On May 7, 2014, the Authority initiated the amendments to Hawaii Administrative Rules, Chapter 15-218, Kakaako Reserved Housing Rules. On August 6, 2014, the Authority appointed a committee of Hawaii Community Development Authority members (Committee) to the investigate enhancement of reserved housing program in the Kakaako Community Development District (KCDD) and recommend necessary statutory and/or rule amendments. On March 1, 2015 the Committee completed and published its report on reserved housing program (Reserved Housing Investigative Committee Report) for the KCDD. On May 6, 2015, the Authority discussed the Reserved Housing Investigative Committee Report. On September 2, 2015, HCDA staff made a presentation to the Authority on the amendments to the Kakaako Reserved Housing Rules. On February 3, 2016, the Authority appointed a taskforce of Authority members (Taskforce) to develop a recommendation on reserved housing policy and subsequent amendment to the Kakaako Reserved Housing Rules. The Taskforce met with several stakeholders including Kakaako landowners, developers, real estate agents, and City & County of Honolulu agencies in developing a recommendation. On July 6, 2016, recommendation of the Taskforce was presented to the Authority at its public meeting. On September 7, 2016, the Taskforce presented recommendations on Kakaako Reserved Housing Rules amendment and staff presented a proposed draft amendment to the Kakaako Reserved Housing Rules to the Authority. Several stakeholders, including Kakaako landowners, developers, and affordable housing advocates provided testimony on the proposed draft Kakaako Reserved Housing Rules amendments. Subsequent to the September 7, 2016 Authority meeting, the Taskforce and HCDA staff held several meetings with stakeholders including Kakaako landowners and developers to discuss the proposed amendments. The Taskforce and HCDA staff received very valuable feedback from stakeholder cs at these meetings. On January 4, 2017, the Taskforce presented to the Authority a revised recommendation on Kakaako Reserved Housing Rules amendment that addressed some of the issues raised by stakeholders. On March 1, 2017, staff presented the proposed draft Kakaako Reserved Housing Rules amendments based on the revised recommendation from the Taskforce. Several stakeholders provided testimony on the proposed revised draft amendment. A public hearing on the proposed draft Kakaako Reserved Housing Rules amendment was held on March 28, May 3, and 17, 2017.

Table 1: Summary of Public Discussion on Kakaako Reserved Housing Rules

Date	Public Discussion
May 7, 2014	Authority initiates amendments to Hawaii Revised Statutes: Chapter 15-218, Kakaako Reserved Housing Rules.
August 6, 2014	Authority appoints a committee of HCDA members to investigate enhancement of reserved housing program in the KCDD and recommend necessary statutes and/or rules amendments.
March 1, 2015	Reserved Housing Investigative Committee Report published. Report available online.
May 6, 2015	Discussion on the Reserved Housing Investigative Committee Report.
September 2, 2015	HCDA staff made a presentation to the Authority on the amendments to the Kakaako Reserved Housing Rules.
February 3, 2016	Authority appointed a Taskforce to develop recommendation on reserved housing policy and subsequent amendments to the Kakaako Reserved Housing Rules.
July 6, 2016	Taskforce recommendation presented to the Authority.
September 7, 2016	HCDA staff presented a proposed draft amendment to the Kakaako Reserved Housing Rules to the Authority.
January 4, 2017	Taskforce presented to the Authority a revised recommendation based on stakeholder feedback.
March 1, 2017	HCDA staff presented the proposed draft Kakaako Reserved Housing Rules amendments based on revised recommendation from the Taskforce.
March 28, 2017	1 st Public hearing.

May 3, 2017	2 nd Public hearing
May 17, 2017	3 rd Public hearing
May 31, 2017	4 th Public hearing

Summary of major points raised in Public Testimony and HCDA Staff Comment

Proposed Amendment	Public Testimony	HCDA Staff Comment	HCDA Staff Suggested Alternative to Proposed Amendment
§ 15-217-5 "Moderate-income household" means a household whose household income is greater than eighty percent but does not exceed one hundred forty percent of the area median income.	Moderate income should be 120% of AMI or below.	The term "moderate income" is not defined for HCDA by statute. HHFDC defines "moderate income" households as those earning above 120% up to 140% of AMI (§15-307-2). City and County of Honolulu. Affordable Housing Rules for Unilateral Agreements defines moderate income household as "a household whose income is greater than 80%, but which does not exceed 140% of the AMI". HUD guidelines also include household income of 140% or greater, depending on the locality, within the definition of "moderate income".	
§15-218-19 Unit Type and Corresponding Factor	Remove proposed unit size factor.	Section 15-218-19 provides incentive if developers provide larger reserve housing units. The unit type and corresponding factor also act as a higher multiplier factor in determining sales price of the unit for larger units.	
§15-218-20 Occupancy guidelines for sale or rental of reserved housing units	Remove Occupancy Guidelines	Section 15-218-20 is a guideline for the developer to be utilized when the number of applications for a reserved housing units exceed the number and type of reserved housing units available. It allows for families to purchase a reserved housing unit based on family size. It can be modified by the Authority, if necessary.	
§15-218-34 Maximum allowable sales price for reserved and workforce housing calculated based on an AMI of no more than 140%, provided that the weighted average sales of all reserved housing or workforce housing units shall be the price calculated based on an AMI of no more than 120%	Since moderate income should be 120% of AMI or below, the maximum sales price should be based on 120% of AMI rather than 140% of AMI	Limiting the weighted average sales price to 120% of AMI as proposed; will result in at least 50% of the required reserved housing units priced at or below 120% of AMI. Similarly at least 50% of the workforce housing units will be priced at or below 120% of AMI. Limiting the maximum allowable sales price to 120% of AMI, as suggested, will make the project financially unfeasible and/or unattractive to a developer, therefore, impacting the production of reserved or workforce housing units.	

<p>§15-218-35 Terms of Reserved Housing and Workforce Housing for sale.</p> <p>(1) The Authority or an entity approved by the Authority shall have the first option to purchase.</p> <p>(2) Buyback price based on the original fair market value of the unit appreciated annually by a corresponding annual median sales price percent change index for condominiums published by the Honolulu Board of Realtors.</p> <p>(3) Subsequent mortgage placed on reserved housing or workforce housing unit by the owner shall not exceed eighty percent of the original price and require approval by the executive director.</p>	<p>(1) Imposing buyback with no term limit and requiring equity sharing with the HCDA could hamper the ability to sell such mortgages into secondary market such as Fannie Mae, Freddie Mac, VA, and FHA.</p> <p>(2) Use of price index fails to provide true and accurate representation of the reserved housing units in Kakaako and serves to limit purchasers upside potential associated with owning reserved housing units.</p> <p>(3) Acts as disincentive for owners of reserved housing or workforce housing owners to maintain or make improvements to the units, especially when combined with the buyback provisions.</p> <p>(4) Wording in §15-218-35(c) appears to indicate that improvements made by the owner will not be considered in determining buyback price.</p>	<p>(1) Buyback and equity sharing provisions have been part of the HCDA reserved housing rules (Mauka Area Rules) since the rules were first adopted in the early 1980s. In the sale and resale of reserved housing units over the years, concerns regarding secondary market such as Freddie Mac, Fannie Mae, VA, or FHA have never been raised. Information obtained from Freddie Mac, Fannie Mae, VA and FHA website indicates that the buyback and equity sharing provisions of the proposed amendment are consistent with the guidelines provided by these agencies.</p> <p>(2) In the proposed rule amendment, the buyback price is calculated based on annual median sales price percent change for condominiums published by the Honolulu Board of Realtor (HBR). The past 30 year of annual median sales price change data for condominiums published by HBR shows an annual return of 4.7%. The proposed formula for calculating buyback price provides good return to the reserved housing owner on his/her equity in the reserved housing unit. Additionally, buyback by the HCDA will not necessitate the reserved housing owner to engage a real estate broker for the sales, thus resulting in substantive savings for the owner.</p> <p>(3) The intent of the provision is to protect HCDA's shared equity in the unit, which could be achieved by modifying the provision in a manner where the amount of subsequent mortgage is no more than the fair market value of the unit minus HCDA equity sharing.</p> <p>(4) The intent is to include the value of owner improvements in calculating buyback price. The language in §15-218-35(c) will be modified to include that.</p>	<p>(3) Amend § 15-218-35(d) to read as follows:</p> <p>“Any subsequent mortgage placed on the reserved housing or workforce housing unit by the owner shall require approval from the executive director and shall not exceed the fair market value of the unit less the authority's share of equity in the unit as determined in §15-218-41(b).”</p> <p>(4) Amend §15-218-35(c) to read as follows:</p> <p>“The buyback price shall be determined based on the original fair market value of the reserved housing or workforce housing unit appreciated annually by a corresponding annual median sales price percent change index for condominiums published by the Honolulu Board of Realtors plus the cost of improvements made by the owner, if any, less the authority's share of equity in the unit. The owner shall provide financial documents</p>
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§15-218-41 Equity Sharing Requirements.	<p>(1) Imposing buyback with no term limit and requiring equity sharing with the HCDA could hamper the ability to sell such mortgages into secondary market such as Fannie Mae, Freddie Mac, VA, and FHA.</p> <p>(2) Equity sharing and buyback provisions will make reserved housing and workforce housing units unattractive to buyers and decrease the buyer pool.</p> <p>(3) Buyback price formula will not allow owners of reserved housing or workforce housing to realize the maximum financial gain from sale of the unit.</p>	<p>(1) Buyback and equity sharing provisions have been part of the HCDA reserved housing rules (Mauka Area Rules) since the rules were first adopted in the early 1980s. In the sale and resale of reserved housing units over the years, concerns regarding secondary market such as Freddie Mac, Fannie Mae, VA, or FHA have never been raised. Information obtained from Freddie Mac, Fannie Mae, VA and FHA website indicates that the buyback and equity sharing provisions of the proposed amendment are consistent with the guidelines provided by these agencies.</p> <p>(2) The purpose of reserved housing program is to provide housing opportunity for low to moderate income households. Workforce housing is a voluntary program and not a requirement on the developer. The sale of reserved housing units in projects such as the Symphony, and Ke Kiloohana indicates that there are buyers that are very willing to purchase reserved housing units with equity sharing and buyback restrictions.</p> <p>(3) The purpose of reserved housing program is to provide housing opportunity for low to moderate income households. Workforce housing is a voluntary program and not a requirement on the developer. The buyback price formula is equitable and provides for substantial gain by the owners in case of buyback, while preserving the public’s interest in preserving affordability.</p>	<p>(1) Amend §15-218-35(a) to read as follows:</p> <p>“If the owner of a reserved housing or workforce housing unit wishes to sell the unit within thirty years from the date of issuance of certificate of occupancy for the unit, the authority or an entity approved by the authority shall have the first option to purchase the unit.”</p> <p>The proposed 30 years is consistent with other programs.</p>
§15-218-46 Cash-in-lieu. Cash-in-lieu is based on higher of (a) 7% of gross revenue of the project; or (b) difference between the average fair market value of the unit and average reserved housing sales price multiplied by the number of reserved housing units required.	Cash-in-lieu requirement shall not be less than the cost to build a reserved housing or workforce housing unit. Oppose proposed cash-in-lieu formula.	The proposed cash-in-lieu formula is based on a sliding scale. Projects with luxury units will be subject to higher cash-in-lieu payment than projects that are affordable to household incomes closer to 140% of AMI. Several cities, including Boston, San Francisco, and Denver utilize a similar formula.	

<p>General.</p>	<ul style="list-style-type: none"> (1) Decision making on reserved housing rules amendment should be postponed to provide small landowners/stakeholders in the central and mauka area of the Kakaako Community Development District more time to evaluate the impact of the proposed amendments on properties, businesses, and people. (2) It is not prudent to place additional regulation and restrictions on the housing market that benefits working class and first-time home buyers. Buyback and equity sharing provisions may have unforeseen consequences. (3) To address the current housing crisis there needs to be a shift in focus of how government views housing development and move from regulatory stance to production oriented stance. The proposed amendments revert to inclusionary zoning and exaction process that have proven ineffective over time. Incentivize the developers to build more affordable housing using one or more of the following incentive: (a) access to infrastructure, (b) density bonus, (c) waiver of sewer, water, and permitting fees, (d) waiver of GET, (e) waiver of real property taxes for a fixed period of time. (4) Make creative rules that encourage development of affordable housing instead of making the task more difficult by placing increased burden on residential developments community and un-subsidized buyers. Spread affordable housing requirement to all new projects including retail, commercial, and hotel development. 	<ul style="list-style-type: none"> (1) Several meetings were held by HCDA staff and HCDA Reserved Housing Taskforce with stake holders to discuss proposed Reserved Housing Rules amendments. In addition Kakaako Reserved Housing Rules amendment was discussed at the Authority’s public meetings on March 1, 2015; May 6, 2015, September 2, 2015; February 3, 2016; July 7, 2016; September 7, 2016; January 4, 2017; and March 1, 2017. Various stakeholders were also contacted by HCDA staff by email and provided information on Kakaako Reserved Housing Rules amendments. In addition 4 separate public hearing were scheduled to collect public testimony, beyond the 2 hearings required by law. (2) The proposed rule amendments provide opportunity for “moderate to low income” households to become home owners. It also ensures long-term affordability of reserved housing units. Without the proposed maximum allowable pricing, qualifying income, equity sharing, and buyback provisions, reserved housing and workforce housing units will be sold at market. (3) The proposed rule amendments provide substantial incentives to the developer for producing reserved housing units. These incentives are: (a) 20% floor area bonus for providing reserved housing, (b)100% floor area bonus for workforce housing projects, (c) no public facilities dedication fee requirement for reserved housing and workforce housing, (d) flexibility in providing off street parking and loading, (e) additional building height, and (f) flexibility in yard setbacks. Additionally, the HCDA invested over \$225 million in infrastructure improvement in the Kakaako Community Development District to encourage development. Through the provisions of Hawaii Revised Statutes Section 201H-38, a developer can receive exemptions from permit fees and waivers from City & County and HCDA zoning requirements for affordable housing projects. Waiver of GET and property tax is also available for affordable housing projects. There are a number of incentives that are already available to developers for developing affordable housing projects. 	<ul style="list-style-type: none"> (2) To provide additional financial incentives for developing Workforce Housing, amend §15-218-21(a) to read as follows: “New residential project(s) where at least seventy-five percent of the residential units are set aside for purchase or for rent by households earning no more than one hundred forty per cent of the AMI shall qualify as a workforce housing project.” Also amend the definition of Workforce Housing to read as follows: “Workforce housing project" means new multi-family residential development where at least seventy-five per cent of the residential units are set aside for purchase or for rent by households earning no more than one hundred forty per cent of the AMI.
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		(4) Since over 80% of redevelopment in the Kakaako Community Development District is residential development, imposing reserved housing requirement on commercial, retail, and hotel projects will not result in any significant gain in reserved housing units. It will not lighten the burden on residential projects.	
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Summary of all public testimonies and staff comment is provided as Exhibit A. Based on the public testimony staff is suggesting alternatives to some of the proposed amendments for consideration by the Authority. The staff suggested alternative is provided in column 4 of the summary of major points raised in public testimony and HCDA staff comment above. The Reserved Housing financial analysis and Workforce Housing financial analysis is provided as Exhibit B. Both financial analyses indicate that residential development projects with reserved housing or workforce housing under the proposed Kakaako Reserved Housing Rules meet typical return on cost necessary to make the development financially feasible.