

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

Rules Amending Title 15
Hawaii Administrative Rules

_____, 2017

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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§15-218-55 Repealed

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

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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]~~ this chapter 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, 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]~~ this chapter shall continue to be separately and fully effective. [Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-4 Interpretation by the executive director. (a) In administering this chapter, the executive director ~~[may]~~, when deemed necessary, may 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]~~ this chapter shall be public record, and shall be effective on the date signed 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)

§15-218-5 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 the 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 [+].

"HUD" means the United States, Department of Housing and Urban Development.

"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 forty 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;].~~

Commented [R11]: This definition is not used in the Proposed Draft Rule; however, it was not previously removed. It is now removed.

"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[+].

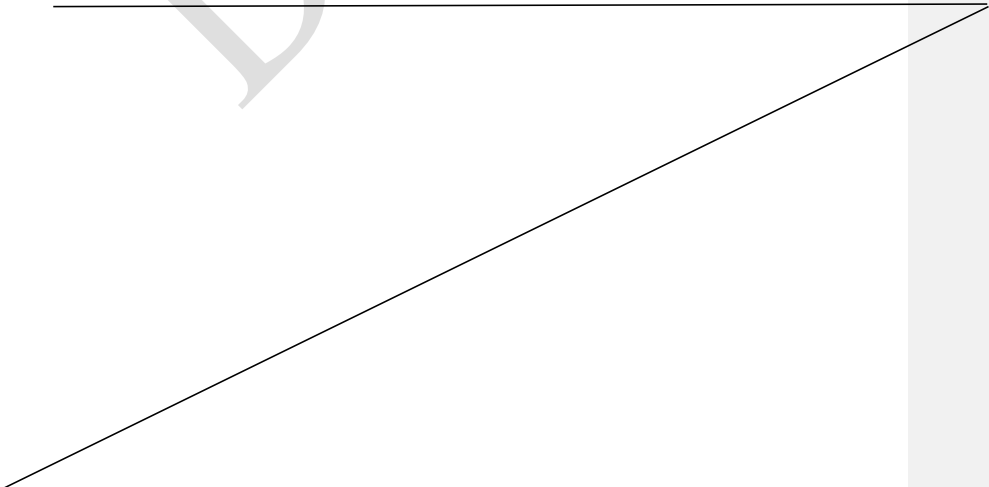
~~["Residential floor area" means the gross total residential floor area including the dwelling unit(s) and limited common areas such as lobby, hallways, storage, covered recreation area, and similar areas set aside for the residents; and]~~

"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 forty per cent of the AMI [~~which does not require financial assistance for construction from Federal, State, or County governmental bodies, and which meets the size requirements set forth in subchapter 4 of this chapter~~].

Commented [R12]: This was removed based on Staff's May 31 Report to the Board. It allows Workforce housing projects to take advantage of other federal, state, or city programs.

Terms not defined in this section shall be accorded their commonly accepted meanings. [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. The developer shall execute agreements with the HCDA as are appropriate to conform to this requirement, and ~~[such]~~ the 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~~] The 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[-]; 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. In addition, the developer shall provide the authority a copy of a duly executed construction contract with a general construction contractor licensed to conduct business in the State of Hawaii for the construction of the reserved housing units.

(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]~~ ensure 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]~~ the requirements for reserved housing for a limited duration, if, in its sole judgment, it determines that ~~[these]~~ the 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.]~~ Hawaii administrative rules, 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 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>Factor</u> |
|--------------------|---------------|
| <u>0 Bedroom</u> | <u>0.70</u> |
| <u>1 Bedroom</u> | <u>0.90</u> |
| <u>2 Bedrooms</u> | <u>1.00</u> |
| <u>3 Bedrooms</u> | <u>1.08</u> |
| <u>3+ Bedrooms</u> | <u>1.16</u> |

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

§15-218-20 Occupancy guidelines for sale or rental of reserved housing units. (a) The following occupancy guidelines shall be used for sale or rental of reserved housing units during the initial application period when the number of applications exceeds the number and type of reserved housing units available:

Occupancy Guideline

| <u>Reserved Housing Unit Type</u> | <u>Preferred Household Size</u> | <u>Minimum Household Size</u> |
|-----------------------------------|---------------------------------|-------------------------------|
| <u>Studio</u> | <u>1 person</u> | <u>1 person</u> |
| <u>1 Bedroom</u> | <u>2 persons</u> | <u>1 person</u> |
| <u>2 Bedrooms</u> | <u>3 persons</u> | <u>2 persons</u> |
| <u>3 Bedrooms</u> | <u>4 persons</u> | <u>2 persons</u> |
| <u>4 Bedrooms</u> | <u>5 persons</u> | <u>3 persons</u> |

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

(b) The maximum household size shall be based on permissible household size determined by the City and County of Honolulu housing code.

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

§15-218-21 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 or for rent by households earning no more than one hundred forty per cent of the AMI[, and which does not require financial assistance for design and

construction from federal, state, or county governmental bodies] shall qualify as a workforce housing project.

Commented [R13]: This was removed based on Staff's May 31 Report to the Board. It allows Workforce housing projects to take advantage of other federal, state, or city programs.

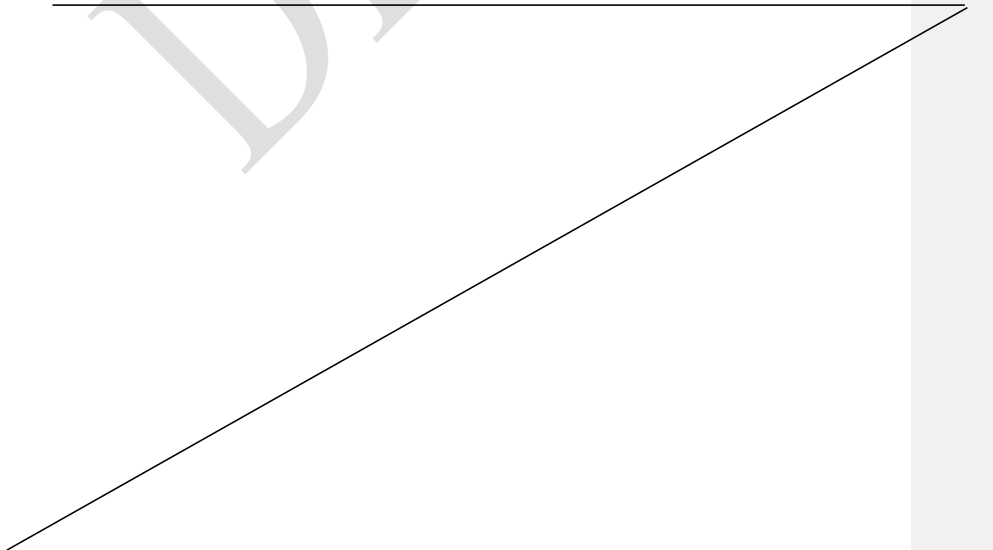
(b) Workforce housing projects shall not be used to satisfy the reserved housing requirement(s) for any residential project(s) that are required to provide reserved housing in accordance with subchapter 2.

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

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

(e) The authority may also consider modifying off street parking requirements of the mauka area rules for workforce housing projects. [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~~] §§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; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-30 General qualifications for purchase of reserved housing or workforce housing units. (a) The following shall be qualifications for purchasing or ~~[leasing of]~~ renting reserved housing or workforce 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 or workforce housing unit under this chapter;
- ~~[(4)]~~ (5) Shall be the owner or lessee and occupant of the reserved housing or workforce 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[-]; and

- (7) Has sufficient gross income to qualify for the loan to finance the purchase of the reserved housing or workforce housing unit, or in case of a rental reserved housing or workforce housing unit demonstrate an ability to pay rent as established by the authority and meet any additional criteria established by the authority 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 or workforce housing unit may apply to purchase a larger reserved housing or workforce 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 occupancy guideline established in section 15-218-20;
- (2) The applicant has resided in the current reserved housing or workforce housing unit for at least one year; and
- (3) The applicant qualifies to purchase a reserved housing or workforce housing unit in accordance with subsection (a), except that the applicant's current ownership of a reserved housing or workforce housing unit shall not disqualify the applicant under subsection (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)

(c) If a household includes two or more persons

regularly living together that are related by blood, marriage, or by operation of law, the majority interest restriction shall apply to all household members. [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 and workforce housing units. (a) The authority may advertise the sale or rental of reserved housing and workforce housing units and qualify and select persons for reserved housing and workforce 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 and workforce 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 and workforce housing units shall be published in a newspaper of general circulation on two separate days. The notice shall include[7] but not be limited to[7] the following:

- (1) General description of the project in which the reserved housing or workforce housing units are located including its location, number of reserved housing or workforce housing units, size of the reserved housing or workforce 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 or workforce housing units for sale, and occupancy

- guidelines~~[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 and workforce housing for sale, 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~~[-]~~ within a five-year period.

(e) Applicants shall be allowed to select a reserved housing or workforce housing unit based on maximum income limits, qualifying income, preference, occupancy guidelines~~[permissible household sizes]~~, and availability of the reserved housing or workforce 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 or workforce 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 and workforce housing applicants shall provide financial and family information with the reserved housing or workforce 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 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 or workforce housing unit and shall be verified by submittal of most current state [~~or~~]and 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~~] in this section, assets include [~~7~~] all cash, securities, and real and personal property at

current fair market value, less any outstanding liabilities secured by ~~[such]~~ these 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 or a workforce 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 and workforce housing units:

- (1) Applicants for reserved housing and workforce housing units 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.]~~ housing or workforce housing 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. The authority may require verification of occupancy from the purchaser or the lessee of a reserved housing or workforce housing unit and the purchaser or the lessee shall provide occupancy verification within thirty calendar days from the date of receipt of notification from the authority.

(c) Any deed, lease, agreement of sale, mortgage, or other instrument of conveyance issued by the authority shall expressly contain the restrictions on ~~[use]~~ occupancy 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 and workforce 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 and workforce housing unit sale price:

- (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) 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.]~~ Annually within forty-five days of HUD updating area median income limits, the executive

director shall establish and publish a formula for calculating the applicable sale price of a reserved housing and workforce housing unit based on the factors enumerated in subsection (a).

(c) The maximum allowable sales price of a reserved housing or a workforce housing unit may be calculated based on an AMI of no more than one hundred forty percent, provided that the weighted average sales price of all reserved housing or workforce housing units in a project shall be the price calculated based on an AMI of no more than one hundred and twenty percent.

[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 and workforce 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.]~~ (a) 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.

Commented [R14]: This was added based on Staff's May 31 Report to the Board. It reduces the buyback period to 30 years.

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

- (1) The owner shall notify the authority in writing of the intent to sell the reserved housing or 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). 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 paragraph (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.

(c) 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 allowable 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 acceptable to the authority indicating the actual cost of improvements before the cost is eligible for inclusion in determining the buyback price. The buyback price shall be no less than the original sale price of the reserved housing or workforce housing unit. The amount paid by the authority to the seller shall be the difference, if any, between the purchase price determined and the total of the outstanding principal balances of the mortgages and liens assumed by the authority.

Commented [R15]: This was amended and text added based on Staff's May 31 Report to the Board. It clarifies that some owner improvements will be factored into the sales price.

(d) 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 buyback price established by subsection (c).

Commented [R16]: This was added based on Staff's May 31 Report to the Board. This allows additional financing options for buyers.

[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 or workforce 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, up to a maximum of the authority's share of equity in the unit. The person in default shall be entitled to any amount remaining after payment of the authority's share of equity in the unit. [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) above~~] section 15-218-35 and section 15-218-41 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 and workforce 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 or workforce housing unit as provided for in section 15-218-35(a), the owner of the reserved housing or workforce housing unit may sell the unit at fair market price. The authority's share of the equity in

the reserved housing or workforce housing unit shall become due upon sale of the unit.

(b) The authority's share of the equity in the reserved housing or workforce 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 or workforce 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 or workforce housing unit is less than the original reserved housing or workforce housing unit sales price, subsection (b) shall not be applicable.

(d) The authority shall make allowance for cost of improvements made by the owner of the reserved housing or workforce housing unit in determining the authority's share of equity sharing. The owner of the reserved housing or workforce 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 or workforce 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.

(g) The authority's interest created by the provisions of this section shall constitute a lien on the real property and shall be superior to any other mortgage or lien except for:

- (1) Any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller;
- (2) Any mortgage insured or held by a federal housing agency; and
- (3) Any mortgage or lien created for any other purpose provided that the authority has previously consented to it in writing.

[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 and workforce housing for rent. Reserved housing and workforce housing units for rent shall be regulated for a period of thirty years from the date of issuance certificate of occupancy for the project. The maximum allowable rent may be calculated based on an AMI of one hundred and forty percent. The weighted average rent of all reserved housing or workforce housing units in a project shall not exceed the allowable rent calculated based on one hundred twenty percent of AMI. [Eff and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-44 Factors to be used for determining monthly rent for reserved housing and workforce housing unit for rent. Monthly rent for reserved housing or 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. Annually within forty-five days of HUD updating area median income limits, 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 in this section. [Eff and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-45 Rental of reserved housing or workforce housing unit by reserved housing or workforce housing owner. The authority may on a case-by-case basis consider request from a reserved housing or workforce housing owner to rent the reserved housing or workforce housing unit. The rental of reserved housing or workforce housing units by owner shall be regulated by sections 15-218-32, 15-218-43 and 15-218-44. [Eff and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-46 Cash-in-lieu. The authority, at its sole discretion, may permit a cash 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 and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

~~§15-218-43~~ **§15-218-47 Effects of subsequent rule amendments.** (a) In the case of subsequent rule amendments, reserved housing and workforce 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~~[7]~~; or
- (2) Be governed by the amended rules.

(b) The authority~~[7]~~ or any other entity that the authority transfers the reserved housing or workforce housing to shall notify all reserved housing or workforce housing owners of any change made by law, ordinance, rule, or regulation within one hundred eighty days of ~~[such]~~ the changes. ~~[Such]~~ The 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]~~ the new provision.

(c) No reserved housing or workforce housing unit owner shall be entitled to modify the restrictions or conditions on use, transfer, or sale of the reserved housing or workforce 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 and workforce housing units developed, constructed and sold pursuant to this chapter. [Eff 11/11/11; §15-218-43; am, ren §15-218-47, and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

~~§§15-218-44~~ **§§15-218-49 to 15-218-54**
(Reserved)~~[7]~~

~~[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 per cent of the AMI, which does not require financial assistance for construction from Federal, State, or County governmental bodies, and which meets the following unit size requirements]~~ 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) 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) 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) Workforce housing projects shall be exempt from the provisions of Hawaii administrative rules, section 15-217-65.~~

~~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 to 15-218-66 (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

Statutes, which were adopted on _____,
and filed with the Office of the Lieutenant Governor.

JESSE K. SOUKI
Executive Director
Hawaii Community Development
Authority

LUIS SALAVERIA
Director
Department of Business,
Economic Development &
Tourism

APPROVED AS TO FORM:

Deputy Attorney General

DAVID Y. IGE
Governor
State of Hawaii

Filed

DRAFT