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DEVELOPMENT AUTHORITY



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Ref. No.: GF PRA 16-10.218.1

September 15, 2017

To: The Honorable David Y. Ige  
Governor of Hawaii

From: Jesse K. Souki, Executive Director   
Hawaii Community Development Authority

Subject: Final Approval of the Amendments to Hawaii Administrative Rules  
(HAR) Chapter 15-218, Relating to the Kakaako Reserved Housing  
Rules of the Hawaii Community Development Authority

Pursuant to Administrative Directive No. 09-01, the Authority is requesting your approval of the enclosed Amendments to HAR Chapter 15-218, Kakaako Reserved Housing Rules. Your approval to conduct a public hearing on the Amendments was received on October 21, 2016.

In accordance with Hawaii Revised Statutes Section 206E-5.6, the Authority held two public hearings on the Amendments. The public hearings were held on August 16 and September 6, 2017. Notice was published in newspapers of general circulation in all the counties with a link to the Amendments that were posted online. All public testimony received for this version of the Amendments was considered before the Authority adopted the Amendments at a public hearing on September 6, 2017. A summary of testimonies received and staff analysis of the testimonies is provided as Exhibit A.

In addition to the legally required hearings, the Amendments before the Authority were shaped by formal public hearings on March 28, May 3, May 17, May 31, and various public meetings and stakeholder input as early as May 7, 2014, when the Authority first decided at a public meeting that it would initiate rulemaking on this matter. Information and materials are archived online at <http://dbedt.hawaii.gov/hcda/2017-reserved-housing-rules-proposed-amendments/>.

Among other things, the Amendments include the following:

- Preserves affordable for-sale and rental units produced under the Authority's mandatory Reserved Housing and voluntary Workforce Housing programs for 30 years;
- Relaxes off-street parking requirements;

- Allows cash-in-lieu payment as an alternative to built units;
- Removes restriction preventing Workforce Housing program from receiving financial assistance from county, state, and federal sources;
- Reduces sales price from a fixed 140 percent of adjusted median income (AMI) to 120 percent of AMI on average of all Reserved Housing or Workforce Housing units in a project;
- Applies the existing protections for Reserved Housing units to Workforce Housing units to ensure more affordable units are preserved, including the buy-back provision for resale by the Authority to other families needing affordable units, the 30-year requirement discussed above, and shared equity to ensure a portion of the public's investment is returned to the Authority's housing programs and the buyer is able to benefit from a portion of the accumulated equity;
- Allows the Authority to designate another buyer for the affordable units, like a land trust, to ensure long-term affordability; and
- Clarifies certain definitions and existing provisions.

The Amendments do not affect existing incentives and bonuses, like the 100 percent bonus developable area under the voluntary Workforce Housing program that is an allowed deviation from the community development plan in exchange for affordable units. Or, the fact that project area set aside for affordable units are not used to compute public facilities fees and other rule based requirements.

The Attorney General's Office has reviewed the proposed Amendments and has signed off as to form.

The Amendments were presented to the Small Business Regulatory Review Board (SBRRB) at its September 21, 2016 meeting. The SBRRB subsequently approved the Authority's request to proceed with the public hearings. SBRRB is copied on this transmittal.

Please contact me at 594-0320 (desk), 824-0392 (mobile), or by email at [jesse.k.souki@hawaii.gov](mailto:jesse.k.souki@hawaii.gov) if you require additional information.

Exhibit A-Summary of Public Testimony and HCDA Staff Analysis

Attachment: (1) 3 sets of the Amendments to HAR Chapter 15-218, Kakaako Reserved Housing Rules

c: Small Business Regulatory Review Board, DBEDT

# Summary of Public Testimony and HCDA Staff Analysis

Proposed Amendment	Public Testimony	HCDA Staff Analysis
§ 15-218-5 "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 (HAR§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 thus providing financial incentives to developers.
§15-218-20 Occupancy guidelines for sale or rental of reserved housing units	Remove Occupancy Guidelines	Section 15-218-20 is a guideline for developers 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, could make projects financially unfeasible and/or unattractive to a developer, therefore, impacting the production of reserved or workforce housing units.
§15-218-35 Terms of Reserved Housing and Workforce Housing for sale. (1) The Authority or an entity approved by the Authority shall have the first option to purchase. (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. (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>(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. In a telephone conference held between Freddie Mac representative, Mortgage Bankers Association of Hawaii, and HCDA staff on June 5, 2017, the Freddie Mac representative indicated that a longer regulated term will not hamper the ability for financial institutions to sell mortgages in a secondary market. In fact, Freddie Mac would prefer a longer regulated term. Considering all testimonies provided on this matter the regulated term for buyback was changed to 30 years instead of continuous buyback.</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. Based on testimonies provided on this provision,</p>

		<p>the limit on second mortgage placed on a RH or Workforce housing unit was changed from 80% of original sale price to the buyback price established by the HCDA.</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>(1) Buyback and equity sharing provisions have been part of the HCDA reserved housing rules (Maui 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, V/A, or FHA have never been raised. Information obtained from Freddie Mac, Fannie Mae, V/A and FHA website indicates that the buyback and equity sharing provisions of the proposed amendment are consistent with the guidelines provided by these agencies. In a telephone conference held between Freddie Mac representative, Mortgage Bankers Association of Hawaii, and HCDA staff on June 5, 2017, the Freddie Mac representative indicated that a longer regulated term will not hamper the ability for financial institutions to sell mortgages in a secondary market. In fact, Freddie Mac would prefer a longer regulated term. Considering all testimonies provided on this matter the regulated term for buyback was changed to 30 years instead of continuous buyback.</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 Kihohana 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>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>
<p>§15-218-41 Equity Sharing Requirements.</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, V/A, 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) 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.</p> <p>(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.</p> <p>(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)</p>
<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.</p>	<p>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.</p>	
<p>General.</p>		

<p>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.</p> <p>(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.</p> <p>(5) The HCDA should consider amendments to its administrative rules that provide for hardships concerning share appreciation equity policies and programs. The HCDA may wish to consider amendments similar to those promulgated by HHFDC.</p> <p>(6) Supports the provision of a maximum sale or rental amount equal to a weighted average of no more than 120% of area median income (AMI) for all reserved and workforce housing units. Would not be opposed to if the weighted average was lowered to 110% of AMI. Kakaako was envisioned as a mixed use mixed income community and the Authority should reinforce housing policies that support mixed income community in the district.</p> <p>(7) Opposes change of percentage of reserved housing units required if the units are provided as rental reserved housing unit. The proposed amendment requires 20% instead of the current 15%.</p> <p>(8) Opposes provisions of §15-218-35(c), §15-218-41, and §15-218-42. No appreciation for affordable housing should accrue to the owners because it is a transfer of wealth from everyone in the state to a few lucky individuals. The Authority should be able to purchase the unit at the original sale price. No equity should be shared and all equity increase should go to the Authority. Deferral of first option to purchase and equity sharing will create legacy</p>	<p>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 &amp; 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.</p> <p>(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.</p> <p>(5) The comment pertains to provisions of §15-218-35(d) and §15-218-42. §15-218-35(d) has been amended to provide that any subsequent mortgage placed on the reserved housing or workforce housing unit shall not exceed the buyback price established by the Authority. Previously the provision limited the amount of subsequent mortgage placed on the reserved housing unit to 80% of the original sales price. The amended language gives the owner of the reserved housing unit opportunities to benefit from owner's equity in the unit while protecting the Authority's share of equity in the unit. §14-218-42 was amended to include language from Hawaii Administrative Rules §15-307-127 (HHFDC Rules cited in the testimony).</p> <p>(6) 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. The HCDA's Mauka Area Plan and Rules and the Kakaako Reserved Housing Rules implement policies that are supportive of mixed use, that are affordable at 100% or below of area median income have been developed in Kakaako. Another 300 affordable rental housing units are scheduled to be developed in the foreseeable future increasing the supply of affordable rental units to over 1,800. This combined with over 2,000 for-sale units priced at or below 140% of AMI provides a good mix of housing for low to moderate income households. Out of approximately 11,000 housing units developed in Kakaako in the last 30 years approximately 34% is affordable for household income of 140% of AMI or below.</p> <p>(7) Reserved housing units can be provided as for-sale units or rental units. The proposed amendment makes the requirement 20% of the total residential units whether the reserved housing provided are for-sale units or rental units.</p> <p>(8) §15-218-30(b) allows for owners of reserved housing units to purchase a larger reserved housing unit if the owner's household size has increased. Income qualification is still required. The provision was added to encourage families to continue living in Kakaako even when their family size increased. This promotes diversity in the district.</p> <p>(9) §15-218-35(c) establishes the buyback price formula and provides for opportunity for the reserved housing or workforce housing unit to build equity in the unit and benefit from the equity. It is reasonable that the owner of a reserved or workforce housing unit benefit financially from sale of the unit at a later date. The buyback formula prevents the owner from benefiting from a windfall from sale of the unit while realizing a fair return. Similarly, §15-218-41 provides for owner to benefit from equity in the unit. Provisions of §15-218-42 will create legacy units since the new buyer will have to meet income and other qualification requirements.</p>	<p>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.</p> <p>(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.</p> <p>(5) The HCDA should consider amendments to its administrative rules that provide for hardships concerning share appreciation equity policies and programs. The HCDA may wish to consider amendments similar to those promulgated by HHFDC.</p> <p>(6) Supports the provision of a maximum sale or rental amount equal to a weighted average of no more than 120% of area median income (AMI) for all reserved and workforce housing units. Would not be opposed to if the weighted average was lowered to 110% of AMI. Kakaako was envisioned as a mixed use mixed income community and the Authority should reinforce housing policies that support mixed income community in the district.</p> <p>(7) Opposes change of percentage of reserved housing units required if the units are provided as rental reserved housing unit. The proposed amendment requires 20% instead of the current 15%.</p> <p>(8) Opposes provisions of §15-218-35(c), §15-218-41, and §15-218-42. No appreciation for affordable housing should accrue to the owners because it is a transfer of wealth from everyone in the state to a few lucky individuals. The Authority should be able to purchase the unit at the original sale price. No equity should be shared and all equity increase should go to the Authority. Deferral of first option to purchase and equity sharing will create legacy</p>
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	<p>units where families can pass the unit from one generation to the next.</p> <p>(10) Opposes provisions of §15-218-45.</p> <p>(11) Opposes provisions of §15-218-31(d)</p> <p>(12) Supports deleting §15-218-55 to provide flexibility.</p> <p>(13) Supports §15-218-17(e) which requires developers to provide financial guarantee to the Authority for construction of reserved housing units.</p> <p>(14) Supports §15-218-18(b)(3) which provides flexibility in off street parking requirements.</p>	<p>(10) §15-218-45 provides for rental of a reserved or workforce housing unit by the owner. Household income and other qualifying requirements are still applicable so the unit will still remain a qualifying reserved or workforce housing unit.</p> <p>(11) 15-218-31(d) gives priority for applicants who have been displaced from housing within the Kakaako Community Development District as a result of redevelopment. It is reasonable to provide additional opportunities for families living in Kakaako to remain in Kakaako if those families qualify to purchase a reserved or workforce housing</p>
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DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND  
TOURISM

Amendments and Compilation of Chapter 15-218  
Hawaii Administrative Rules

September 6, 2017

SUMMARY

1. §15-218-1 is amended
2. §15-218-3 to §15-218-5 are amended
3. §15-218-17 and §15-218-18 are amended
4. §15-218-19 to §15-218-21 are added
5. §15-218-29 to §15-218-35 are amended
6. §15-218-36 and §15-218-37 are repealed
7. §15-218-38 to §15-218-42 are amended
8. §15-218-43 is renumbered to §15-218-47 and amended
9. §15-218-44 to §15-218-46 are added
10. §15-218-48 is added
11. §15-218-55 is repealed
12. Chapter 218 is compiled

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

SUBTITLE 4

HAWAII COMMUNITY DEVELOPMENT AUTHORITY

CHAPTER 218

KAKAAKO RESERVED & WORKFORCE HOUSING RULES

Subchapter 1 General Provisions

- §15-218-1 Purpose and intent
- §15-218-2 Administration
- §15-218-3 Severability
- §15-218-4 Interpretation by the executive  
director
- §15-218-5 Definitions
- §§15-218-6 to 15-218-16 (Reserved)

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Subchapter 2 Reserved Housing and Workforce  
Housing Requirements

- §15-218-17 Requirement for reserved housing units
- §15-218-18 Adjustments to height, density, and  
general development requirements for  
reserved housing units
- §15-218-19 Unit type and corresponding factor
- §15-218-20 Occupancy Guidelines for sale or rental  
of reserved housing and workforce  
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- §15-218-21 Workforce housing project(s)
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Subchapter 3    Sale and Rental of Reserved  
Housing and Workforce Housing  
Units

§15-218-29	Purpose
§15-218-30	General Qualifications for purchase of reserved housing and workforce housing units
§15-218-31	Sale and rental of reserved housing and workforce housing units
§15-218-32	Income
§15-218-33	Occupancy requirements
§15-218-34	Factors to be used for reserved housing and workforce housing unit sale price determination
§15-218-35	Terms of reserved housing and workforce housing units for sale
§15-218-36	Repealed
§15-218-37	Repealed
§15-218-38	Foreclosure
§15-218-39	Transfers of title pursuant to a mortgage foreclosure
§15-218-40	Incorporation in deed
§15-218-41	Equity sharing requirements
§15-218-42	Deferral of first option to purchase and equity sharing
§15-218-43	Terms of reserved housing and workforce housing for rent
§15-218-44	Factors to be used for determining monthly rent for reserved housing and workforce housing unit for rent
§15-218-45	Rental of reserved housing or workforce housing unit by reserved housing or workforce housing owner during regulated term
§15-218-46	Cash-in-lieu
§15-218-47	Effects of subsequent rule amendments
§15-218-48	Fees for administering reserved housing and workforce housing program
§§15-218-49 to 15-218-54    (Reserved)	

Subchapter 4 Repealed

§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]

## SUBCHAPTER 1

### GENERAL PROVISIONS

**§15-218-1 Purpose and intent.** Consistent with the intent of section 206E-33, Hawaii Revised Statutes, the purpose of this chapter is to establish an increased supply of housing for low-or moderate-income households within the Kakaako community development district. Such housing targeted to low-or moderate-income households, is henceforth termed "reserved housing" and "workforce housing" in the subsequent subchapters. Reserved housing shall be required as a condition of multifamily residential development or redevelopment within the Kakaako community development district. Workforce housing shall be voluntary as part of workforce housing program described in 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)

**§15-218-2 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 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, 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 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 the area median family 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, 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.

"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 percent 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. 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 percent of the area median income.

"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.

"Multi-family residential development" means residential building consisting of more than one residential unit.

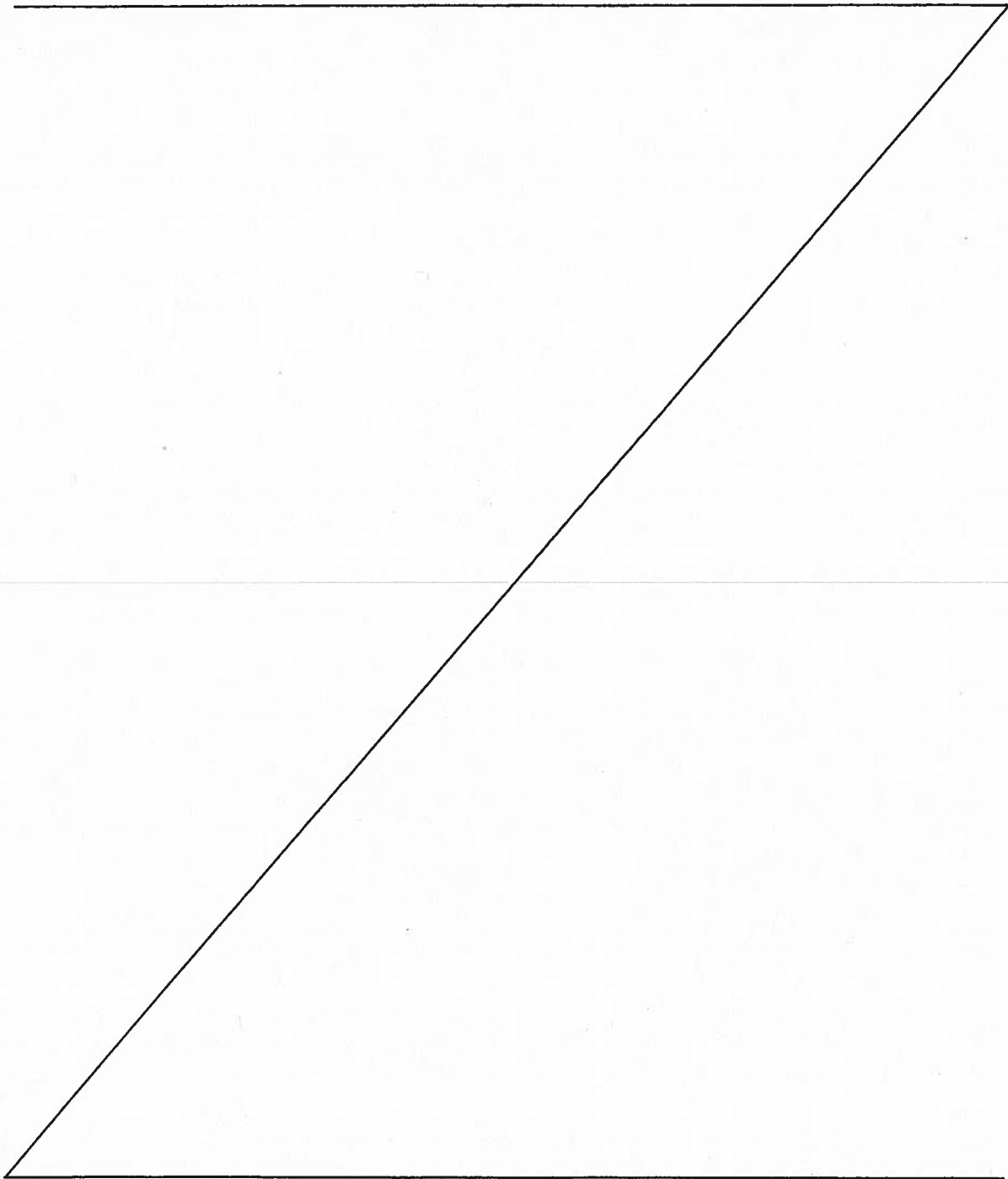
"Reserved housing" means housing designated for residents in the low-income or moderate-income ranges who meet such eligibility requirements as the authority may adopt by rule.

"Workforce housing project" means new multi-family residential development 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.

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 AND WORKFORCE 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 provide at least twenty percent 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) 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 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) through the following alternatives instead of providing reserved housing units within the development:

- (1) By providing reserved housing units elsewhere within the mauka area;
- (2) By providing 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. 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 construction of reserved housing units shall commence prior to the issuance of the initial certificate of occupancy for the project for which 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 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 ensure that the reserved housing units are provided and that they are occupied by qualified persons for the regulated term.

(j) The authority may suspend the requirements for reserved housing for a limited duration, if, in its sole judgment, it determines that 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 multi-family residential development on a lot greater than 20,000 square feet that meets 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.

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

- (1) Building height;

- (2) Street setbacks;
- (3) Off-street parking; and
- (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 Table below shall be utilized in determining the total number of reserved housing units required to be provided for any development.

RESERVED HOUSING UNIT TYPE AND CORRESPONDING FACTOR TABLE

Unit Type	Factor
0 Bedroom	0.70
1 Bedroom	0.90
2 Bedrooms	1.00
3 Bedrooms	1.08
3+ Bedrooms	1.16

[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 and workforce 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

Unit Type	Preferred Household Size	Minimum Household Size
Studio	1 person	1 person
1 Bedroom	2 persons	1 person
2 Bedrooms	3 persons	2 persons
3 Bedrooms	4 persons	2 persons
4 Bedrooms	5 persons	3 persons

The corresponding household size may be modified by the authority if the 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 percent of the residential units are set aside for purchase or for rent by households earning no more than one hundred forty percent of the AMI shall qualify as a workforce housing project.

(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 percent, 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 and loading requirements of the mauka area rules for workforce housing projects. [Eff and comp                      ] (Auth: HRS §§206E-4, 206E-5, 206E-7)  
(Imp: HRS §§206E-4, 206E-5, 206E-7)

**§§15-218-22 to 15-218-28 (Reserved)**

### SUBCHAPTER 3

#### SALE AND RENTAL OF RESERVED HOUSING AND WORKFORCE HOUSING UNITS

**§15-218-29 Purpose.** The rules set forth in this subchapter shall govern the sale, rental, or transfer of reserved housing and workforce 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 and workforce housing units.** (a) The following shall be qualifications for purchasing or 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 or a workforce 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 or a workforce housing unit under this section;
- (4) Has never before purchased a reserved housing or workforce housing unit under this chapter;
- (5) Shall be the owner or lessee and occupant of the reserved housing or workforce housing unit;
- (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 exceeds 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).

(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:

**§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 but not be limited to 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 or workforce 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;
- (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 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, 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 submitted false information, made misstatements, or withheld important information shall be disqualified from purchasing or renting a reserved housing or a workforce 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 percent 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 and federal tax returns.

(c) The assets of the applicant shall not exceed one hundred thirty-five percent of the applicable income limit set forth in subsection (a). As used in this section, assets include all cash, securities, and real and personal property at current fair market value, less any outstanding liabilities secured by these assets. Qualified retirements accounts and gifts of up to twenty percent 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 unit; and
- (2) The purchaser or lessee shall physically occupy the reserved 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 15-218-35 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 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 or the workforce 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 Factors to be used for reserved housing and workforce housing unit sale price determination.** (a) The following factors shall be

used in determining the reserved housing and workforce housing unit respective sale price:

- (1) Down payment amount shall not exceed ten percent 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 percent of gross monthly household income;
  - (3) Interest rate shall be derived by taking the average of the thirty-year fixed rate mortgage rates for six consecutive months including the most current rate published by the Federal Home Loan Mortgage Corporation (Freddie Mac); and
  - (4) Unit type and corresponding factor as provided in section 15-218-19.
- (b) Annually within forty-five days of HUD's update of area median income (AMI) limits, the executive director shall establish and publish a formula for calculating the applicable sale price of reserved housing and workforce housing units 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 Terms of reserved housing and workforce housing units for sale.** (a) If the owner of either a reserved housing unit or a workforce housing unit wishes to sell the unit within thirty

years from the date of purchase of 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 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 workforce housing unit;
- (2) The authority shall notify the owner of authority's 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 the improvements before the cost shall be 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 buyback price determined and the total of the outstanding principal balances of the mortgages and liens assumed by the authority.

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

**§15-218-38 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 subject to the restrictions of 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, 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 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 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 or workforce housing unit shall be a percentage of the resale fair market value of the unit. The percentage shall be determined as follows: original fair market value minus the original reserved housing or workforce housing sales price divided by original fair market value. The percentage shall be rounded to the nearest one percent.

(b) 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 value. The authority's share of the equity in the reserved housing or

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

(c) If the authority's percentage share of equity is less than one-half of one percent, 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 (a) shall not be applicable.

(d) 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.

(e) The resale price and terms shall be approved by the authority.

(f) 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 mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of a reserved housing or workforce housing unit;
- (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 the mortgage or lien 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 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 the 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 the 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 organization 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 units for rent shall be based on no more than thirty percent of the applicable AMI. Monthly rent shall include all utilities and other building operating costs but may exclude

telephone, cable television, and internet service, and parking fees. 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's update of area median income limits, the executive director shall establish and publish a formula for calculating the applicable monthly rents for reserved and workforce housing units 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 during regulated term.** The authority may on a case-by-case basis consider requests from a reserved housing or workforce housing unit owner to rent the reserved housing or workforce housing unit during the regulated term. 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 allow a developer to provide a cash payment in lieu of providing the required reserved housing units. The amount of such cash-in-lieu payment shall be the higher of:

- (1) Seven percent of the gross revenue of the development project; or
- (2) The difference between the average fair market value of the unit in the development project and the average reserved housing unit sale price in the development 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)

**§15-218-47 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; or
- (2) Be governed by the amended rules.

(b) The authority 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 the changes. 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 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)

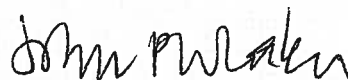
**§15-218-48 Fees for administering reserved housing and workforce housing program.** The authority may establish, revise, charge, and collect fees, premiums, and charges as necessary, reasonable, or convenient,

for administering its reserved housing and workforce housing program. At the beginning of each fiscal year the executive director shall publish a schedule of fees for administering the reserved housing and workforce housing program. [Eff and comp        ]  
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

**§§15-218-49 to 15-218-54 (Reserved)**

Amendments to and compilation of chapter 218, title 15, Hawaii Administrative Rules, on the Summary Page dated September 6, 2017, were adopted on September 6, 2017, following public hearings held on August 16, 2017, and September 6, 2017, after public notice was given in the Honolulu Star Advertiser, The Maui News, West Hawaii Today, Hawaii-Tribune Herald, and the Garden Isle on July 16, 2017.


They shall take effect ten days after filing with the Office of the Lieutenant Governor.



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John P. Whalen  
Chairperson  
Hawaii Community Development  
Authority

APPROVED AS TO FORM:

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Deputy Attorney General

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DAVID Y. IGE  
Governor  
State of Hawaii

Date:

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