

**Reserved Housing
Written Testimony
Received**

July 16, 2017 – August 16, 2017



HOUSE OF REPRESENTATIVES

STATE OF HAWAII
STATE CAPITOL
HONOLULU, HAWAII 96813

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HAWAII COMMUNITY
DEVELOPMENT
AUTHORITY

August 15, 2017

Chair John Whalen and Board Members
Hawaii Community Development Authority
547 Queen Street
Honolulu HI 96813

Re: **Proposed Amendments to HCDA Rules**

Dear Chair Whalen and Board Members:

I would like to request that HCDA consider amendments to its administrative rules that provide for hardships concerning shared appreciation equity policies and programs. This matter arose approximately two years ago when a Kakaako resident was unable to obtain a HELOC. HCDA may wish to consider amendments similar to those promulgated by HHFDC as follows:

§15-307-127 Permitted transfers. (a) The following permitted transfers shall not result in the corporation's percentage share of the net appreciation becoming due and payable. However, the corporation's consent for the following transfers shall be required:

- (1) Creation of a lien or encumbrance which does not affect rights of occupancy provided that the total amount of liens and encumbrances cannot be greater than the sum of eighty per cent of the purchaser's original purchase price and the purchaser's share of net appreciation. In the case where a house lot was purchased and the purchaser contributed his labor to construct the dwelling, the then fair market value of the dwelling shall be included as part of the purchaser's share of net appreciation. In extreme hardship cases involving health and safety, the corporation may allow up to an additional twenty per cent of the purchaser's original purchase price and the purchaser's share of net appreciation provided that the lien or encumbrance would be a loan for capital improvement purposes only;
- (2) Transfer by devise, descent, or operation of law upon the death of a joint tenant or tenant by the entirety;
- (3) Transfer to a relative who meets eligibility requirements upon death of purchaser;

- (4) Transfer to spouse or children who meet eligibility requirements;
- (5) Transfer due to a property settlement whereby the spouse who meets eligibility requirements becomes owner;
- (6) Transfer into an inter vivos trust in which the purchasers remain the primary beneficiary and does not affect their rights of occupancy; or
- (7) Transfers into or from a community land trust or other non-profit organization established to maintain or sustain long-term housing affordability.

(b) If the corporation's rights under this subchapter are derived from the sale of a vacant lot by the corporation, the use of the land as security for a loan to be used by the purchaser to purchase the land or to finance the construction of a principal residence is a permitted transfer to which the corporation's consent is not required. The corporation shall consent in writing to the subordination of its lien or contingent lien rights under this subchapter to the lien of any mortgage placed on the property to finance the construction of a principal residence or the purchase of the vacant lot. [Eff Dec 02, 2010] (Auth: HRS §201H-4) (Imp: HRS §201H-47)

§15-307-131 Prepayment of corporation's percentage share of net appreciation. (a) The purchaser may pay all or part of the corporation's share of the net appreciation at any time without a sale or transfer of the dwelling unit.

(b) If only a partial payment is made to the corporation, the purchaser's original purchase price shall be increased for the purpose of making any later calculation to determine the balance of the corporation's share of the net appreciation.

(c) The minimum amount of partial payment is to be determined by the corporation. [Eff Dec 04, 2010] (Auth: HRS §201H-4) (Imp: HRS §201H-47)

Thank you for your consideration. Please contact me if you have any questions.

Sincerely,



SCOTT K. SAIKI
Speaker
District 26

cc: Janice Takahashi, HHFDC

Ryan Sakuda

m: Scott Saiki <scottsaike@gmail.com>
Sent: Monday, July 17, 2017 8:56 AM
To: Kay Yasufuku Tam; Ryan Sakuda
Subject: Fwd: HCDA Public Hearing Notice - Kakaako Reserved Housing Rules
Attachments: Public Hearing Notice-Final.pdf; ATT00001.htm

Pls cal. Also pls prep my prior testimony re shared equity peoposal to resubmit. Tx.

Sent from my iPhone

Begin forwarded message:

From: "Rep. Scott Saiki" <repsaiki@capitol.hawaii.gov>
Date: July 17, 2017 at 8:41:29 AM HST
To: Scott Saiki <scottsaike@gmail.com>
Cc: Ryan Sakuda <r.sakuda@capitol.hawaii.gov>
Subject: FW: HCDA Public Hearing Notice - Kakaako Reserved Housing Rules

From: Soares, Tommilyn [<mailto:tommilyn.soares@hawaii.gov>]
Sent: Sunday, July 16, 2017 11:15 AM
Subject: HCDA Public Hearing Notice - Kakaako Reserved Housing Rules

The Hawaii Community Development Authority will be holding, additional, public hearings on the Kakaako Reserved Housing Rule Amendments, see the public notice attached.

All written public testimony will be accepted through the HCDA website at www.dbedt.hawaii.gov/hcda or email dbedt.hcda.contact@hawaii.gov up to 12:00 p.m. the day before the respective public hearing dates (herein "Written Testimony Deadline"). Persons wishing to submit public testimony after the Written Testimony Deadline are encouraged to appear in person at the public hearing to present oral testimony. Please be advised that any written public testimony submitted to the HCDA will be treated as a public record and, as such, any contact information contained therein may be available for public inspection and copying.

Hawaii Community Development Authority
547 Queen Street
Honolulu, Hawaii 96813
Telephone: (808) 594-0300

**STATE OF HAWAII
HAWAII COMMUNITY DEVELOPMENT AUTHORITY**

**NOTICE OF PUBLIC HEARING
ON PROPOSED RULEMAKING: AMENDMENTS TO HAWAII
ADMINISTRATIVE RULES, TITLE 15, SUBTITLE 4, CHAPTER 218,
KAKAAKO RESERVED HOUSING RULES**

NOTICE IS HEREBY given of public hearings to be held by the Hawaii Community Development Authority (HCDA), a body corporate and a public instrumentality of the State of Hawaii, pursuant to Hawaii Revised Statutes (HRS) Sections 91-3, 92-41, 206E-5.6, and Hawaii Administrative Rules (HAR) Chapter 15-219, to consider proposed amendments to Hawaii Administrative Rules, Title 15, Subtitle 4, Chapter 218, "Kakaako Reserved Housing Rules", on the following dates and times and at the location specified below:

DATES/TIMES: **August 16, 2017**
 9:00 a.m.
 (Presentation and Public Hearing)

September 6, 2017
 1:00 p.m.
 (Public Hearing and Decision-Making)

PLACE: **Hawaii Community Development Authority**
 547 Queen Street, 2nd Floor
 Honolulu, Hawaii 96813

**SUMMARY OF PROPOSED AMENDMENTS RELATING TO
HAR CHAPTER 15-218, "KAKAAKO RESERVED HOUSING RULES"**

The overarching purpose of the proposed amendments to the Kakaako Reserved Housing Rules is to promote the development of additional reserved housing units and workforce housing units, and preserve the existing inventory of reserved housing units and workforce housing units in the Kakaako Community Development District. The proposed amendments will expand the sources of reserved housing units, encourage further development of for-sale and rental reserved housing and workforce housing units, preserve the existing reserved housing inventory, ensure consistency with affordable housing rules administered by other State and City agencies, and clarify specific existing provisions and terms applicable to reserved housing and workforce housing units in the Kakaako Community Development District, including the existing regulated term and

equity sharing provisions applicable to reserved housing units. With respect to workforce housing, the proposed amendments will establish buyback and equity sharing provisions for workforce housing units. Additionally, various housekeeping amendments are proposed for clarification and consistency.

The proposed Draft Amendment is available online at www.dbedt.hawaii.gov/hcda. A hard copy of the proposed Draft Amendment may also be obtained via regular mail upon payment of photocopying and postage handling fees. To request a hard copy, you may contact the HCDA by telephone at (808) 594-0300, by e-mail at dbedt.hcda.contact@hawaii.gov, or in person at 547 Queen Street, Honolulu, Hawaii 96813, during regular business hours (Monday through Friday, 7:45 a.m. to 4:30 p.m.) excluding State and Federal holidays.

Written public testimony regarding the proposed Draft Amendments will be accepted through the HCDA website at www.dbedt.hawaii.gov/hcda until 12:00 p.m. the day before the respective public hearing dates ("Written Testimony Deadline"). Persons wishing to present public testimony after the Written Testimony Deadline are encouraged to appear in person at the public hearing to present oral testimony. Persons who intend to present oral testimony may sign up at the beginning of each public hearing. Persons who intend to submit written testimony are requested to submit 30 copies of their statements on or before the date of the public hearing. Please be advised that any written public testimony submitted to the HCDA will be treated as a public record and, as such, any contact information contained therein may be available for public inspection and copying. Pursuant to HAR § 15-219-71, public comment or testimony may be limited to three minutes per speaker and speakers may be subject to questioning by the members of the HCDA board or by any other representative of the HCDA.

For any questions or concerns, you may call the HCDA at (808) 594-0300. Individuals who need auxiliary aids for effective communication are invited to contact Garrett Kamemoto, HCDA's ADA Compliance Coordinator via telephone at (808) 594-0300, or facsimile at (808) 587-0299, at least five working days prior to the date of the public hearing.

HAWAII COMMUNITY DEVELOPMENT AUTHORITY
JOHN P. WHALEN, CHAIRPERSON

Moses, Kuulei N

From: KAMANAOPONOCRABBE <PUBLICPOLICY@OHA.ORG>
Sent: Tuesday, August 15, 2017 3:05 PM
To: DBEDT HCDA Contact
Subject: Public Testimony Website Submission Kakaako Reserved Housing rules

Name

KAMANAOPONO CRABBE

Organization

OFFICE OF HAWAIIAN AFFAIRS

Address

560 N. NIMITZ HIGHWAY SUITE 200
HONOLULU, HI 96817
United States
[Map It](#)

Email

PUBLICPOLICY@OHA.ORG

Project Name

Kakaako Reserved Housing rules

Comment

COMMENT.
PLEASE SEE ATTACHED.

File Upload

- [Testimony-HCDA-Proposed-Rule-Changes-081617-FINAL.pdf](#)



OFFICE OF HAWAIIAN AFFAIRS

Administrative Testimony

Testimony of Kamana'opono Crabbe, Ph.D
Ka Pouhana, Chief Executive Officer

Hawai'i Community Development Authority
Proposed Amendments to HAR Chapter 15-218 (Kaka'ako Reserved Housing Rules)

August 16, 2017

9:00 a.m.

2nd Floor Meeting Room

The Administration of the Office of Hawaiian Affairs (OHA) respectfully offers the following **COMMENTS** on the proposed amendments to Hawai'i Administrative Rules Chapter 15-218 (Kaka'ako Reserved Housing Rules), and the stated purpose to promote the development of additional reserved and workforce housing units, while preserving the existing reserved and workforce housing inventory in the Kaka'ako Community Development District. **OHA continues to support efforts and policies that promote the production of affordable housing inventory at income levels that address the needs of Native Hawaiians and the larger community.**

Native Hawaiians have significant and unique housing needs and are particularly affected by the ongoing lack of affordable housing for all low income levels, including income levels that are well below the area median income (AMI). For example, research shows that Native Hawaiians are less likely to own a home, with Native Hawaiian homeownership rates lower than the state average.¹ More than half of Native Hawaiian renters, many of whom already live in overcrowded situations to reduce costs, live in homes they are struggling to afford. Accordingly, ensuring that Hawai'i's future housing supply accommodates local demand and a range of lower to median income levels is necessary to meaningfully address the Native Hawaiian community's housing needs.

The recently-released 2016 Hawai'i Housing Planning Study (Study) further demonstrates the growing need for housing that is affordable to low-median income households, for Native Hawaiians and local residents generally. **The Study specifically indicates that a majority, or 53%, of the projected state housing demand will be for units affordable to those at 60% AMI or below.**² The Study also shows that there will be very limited demand from Native Hawaiian and state residents for market-rate units, or for units that are priced for households above 140% AMI.³ As such, efforts to meet the housing needs of both Native Hawaiians and state residents generally should seek to increase the inventory of housing that is affordable to lower and median income levels, including levels well below the AMI.

¹ See OFFICE OF HAWAIIAN AFFAIRS, NATIVE HAWAIIAN HOMEOWNERSHIP HO'OKAHUA WAIWAI FACT SHEET VOL.2016, NO. 1, page 10, available at <http://www.oha.org/wp-content/uploads/NH-Homeownership-Fact-Sheet-2016.pdf>.

² See SMS, HAWAII'I HOUSING PLANNING STUDY 34 (2016), available at https://dbedt.hawaii.gov/hhfdc/files/2017/03/State_HHPS2016_Report_031317_final.pdf.

³ *Id.* at 34, Table 27b.

Collectively, the proposed amendments to the Kaka'ako Reserved Housing Rules are an encouraging step forward in meeting Hawai'i's growing affordable housing demand. OHA particularly appreciates the provision of a maximum sale or rental amount equal to a weighted average of no more than 120% AMI for all reserved or workforce units in a project, while providing developers with the flexibility of meeting this requirement by offering a range of units priced at up to 140% AMI. OHA, however, would not be opposed to a weighted average of 110% AMI or lower, which may encourage greater production of units at the 60% AMI level needed by a majority of Native Hawaiians and Hawai'i residents.

Additionally, OHA appreciated the inclusion of a thirty year buy-back provision and equity share as well as consideration for owner-made improvements when determining the buy-back price. These provisions will allow unit owners to accumulate equity over time, while discouraging speculation and allowing HCDA to develop and maintain a sustainable inventory of reserved and workforce housing.

As these proposed rule changes move forward, OHA humbly and respectfully requests the continued consideration of fair and equitable policies that provide Native Hawaiians and the greater community with truly affordable housing and home ownership opportunities, socio-economic growth, and upward mobility.

Mahalo nui for the opportunity to comment on this proposal.

Moses, Kuulei N

From: SiddarthaSavara <sid@sidsavara.com>
Sent: Friday, July 21, 2017 7:20 AM
To: DBEDT HCDA Contact
Subject: Public Testimony Website Submission Kakaako Reserved Housing rules

Name

Siddartha Savara

Email

sid@sidsavara.com

Project Name

Kakaako Reserved Housing rules

Do you support or oppose?

Oppose

Comment

<https://dbedt.hawaii.gov/hcda/files/2017/03/20170716-Kakaako-Reserved-Housing-Rules-Amendments-Draft-Final.pdf>

As a whole I am opposed to these proposed changes. Taken together they distort the market further, and allow even more benefits to accrue for the few that are lucky enough to win the "housing lottery" for one of these units. In the long term I do not believe this will resolve the issues at all, and in the short term making it more onerous to develop projects will further reduce the units produced today as well.

I have read all the proposed amendments. I will begin with the ones I feel are most concerning and objectionable.

I am opposed to §15-218-17 which includes increasing from 15% to 20% required for rental units. This is the worst part of the amendments being proposed, in my view because I think it is going to have a large negative impact with these few words on developers who wish to create rental units. This serves only to drive up the rental price on the other 80% of units, because now instead of the 6 families supporting one (85 % to 15%) we have 4 families supporting 1 (80% to 20%). What seems like a relatively small change, only 5% more rentals, actually has the effect of making the entire remaining 80% much less affordable to families. We don't have a slew of rentals going up as it is - by my math, the remaining 80% rentals will increase in price from 5-15% per month, which is a huge difference. How many families in Hawaii right now would be forced out of their homes if their rents went up that much? These are the same families that previously could have been in that 85% renting at market rate, but now cannot because they are in the 80% supporting 20% instead.

I am opposed to §15-218-30 even though I like that section in general. This is because of §15-218-30 (b), allowing households to "upgrade" within affordable housing unit areas. This to me is perhaps the worst part of the rules. All this does is shut out other families once one family has qualified one time. It builds a culture of dependency where that family can be subsidized indefinitely, and will actually incentivize people to keep their incomes low as their family grows to avoid being "priced out" of the units.

I am opposed to §15-218-35 (c) as worded as well as §15-218-42 . §15-218-35 and §15-218-42 combined are the third most objectionable changes, in my view. No appreciation for the affordable housing units should accrue at all to the owners. The unit should be able to be purchased by the authority for the original sale price, plus any improvements based on financial documentation provided by the owners. Otherwise, this is just a transfer of wealth from everyone in the state who did NOT qualify for that lottery unit to that individual. Further, IF we are considering fair market value at all, the provision that "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" should be removed. Either the owners should have some skin in the game, or should not be able to profit from this unit. It should not be a lose-lose scenario for the authority, where if the value goes up the authority pays more, and if the value goes down the authority pays the original price. I am similarly opposed to the equity sharing provision in §15-218-41, as no equity should be "shared" - all the equity increases, for sales at any time, should go to the authority.

I am also opposed to §15-218-42 Deferral of first option to purchase and equity sharing, as many of the terms serve to allow creation of legacy units where family pass them on from generation to generation.

I am opposed to section §15-218-45 "Rental of reserved housing or workforce housing unit by reserved housing or workforce housing owner during regulated term" as written as it contains no wording for the authority to receive any compensation for the rental of said units. This first off could turn into a real problem for the authority - in later years I could see people crying foul, that they were denied while someone else was approved, etc. Second of all, what's the point of removing this affordable unit from the pool and putting it in market rate? Why not try to keep it in the pool/incentivize keeping it in the pool? I would propose if any owner wants to rent a unit, they cannot on their own. The authority should be given the right to find a property manager to manage and rent out the property (or perhaps the association itself by default would rent the unit out), and that any rent collected, minus property management fees, above the mortgage should go to the authority. This would allow an owner who needs to vacate for emergency reasons a way to still keep the unit available, while removing the profit motive.

I am opposed to §15-218-31 (d) as it favors one population group who happened to live in an area during a particular point in time. All individuals on Oahu have already been "displaced" to wherever they are currently living, based on their current ability to purchase or rent units.

I support striking §15-218-55 to provide flexibility.

Under §15-218-32 Income, the asset limit (135% of income - I would propose it should be tied to AMI instead though) I am concerned that I don't see "Qualified Retirement Accounts" defined anywhere.

I support adding in a clarification for cash-in-lieu payments in §15-218-17 (d) (3).

I support §15-218-17 (e) which restricts the usage of other units until the affordable requirement has been fulfilled. While I am not in favor of such affordable requirements to begin with, I support putting teeth to the rules so everyone is on a level playing field.

I support adding §15-218-18 (b) (3) to allow discretion over parking.

The rest of my comments are in general over the rules.

The proposal as a whole essentially do two things:

1) distort the market further

2) turn such affordable housing units into even more of a lottery, where the lucky few will benefit at the expense of the sellers and other individuals purchasing units in any development construction.

My perspective is that all the parties involved, the developers, the land owners, the individuals looking to rent or purchase a home, are acting in their interests based on the rules set forth by HCDA. HCDA cannot impact the intent of the developers - only place incentives that will cause them to act a certain way.

As it is designed right now, the affordable housing regulations in general is based on coercion. Developers must find a way to force the numbers to pencil out in spite of providing units at below market rate, which means the developers and other market rate buyers must somehow subsidize these units.

The end result of these amendments is two things.

First, by making it even more difficult for developers to meet the requirements, it will disincentive developers further from building units. This will result in less units being built overall, and it will also result in the units that are built taking even longer to build - requiring further creative financing to make it work.

Second, many of the buyback provisions provide for "Fair rate of return" while ALSO saying that HCDA may not buyback the unit at below what it was sold BUT if it is above what the buyer paid, they get equity sharing based on the soaring real estate price information provided by the Honolulu Board of Realtors. I could not believe it when I first read it, but that is exactly what it says - that buyers will reap the rewards if they sell, but have zero risk in the event a bubble bursts.

Personally I would like it to be that buyback would be capped at original purchase price plus 80% of interest paid while the family was residing in the unit. Lets not forget that even simply getting the original purchase price back means they have not lost money, and have managed to live in the unit for that period of time for free minus any opportunity cost of that money.

My bigger issue though is what these amendments do not address - the long term problem that these units will eventually make it back into the market rate pool anyway. And then what? Even tighter rules and regulations to make it even more difficult for developers, so we can coerce more distorted, subsidized units?

One of the real issues that I see is that many units that are purchased by investors never make it back into the rental market. They sit vacant as investments, or as second homes that people use a tiny fraction of the year. To me, that is a much bigger

issue that needs to be addressed.

Rather than working to make it more difficult to develop at all, and forcing developers to work around rules put in place - I propose HCDA truly consider what it's like as someone who is purchasing these units as an investor, and what their incentives are.

One idea I have is incentivizing renting out the units vs. keeping them as vacation rentals or second homes. For example, by perhaps working with the Honolulu City Council to further raise investor property tax rates, but allowing property tax to be deducted based upon GET collected for rent (for example) as well as other money that was recirculated in Hawaii.

This would very quickly and easily align the investors' financial incentives with the outcome we really want for Honolulu - because by having more units on the market, the supply increases and the rental prices would adjust downwards based on increased competition.

Property tax is already deductible against income tax, I am proposing increasing (doubling, perhaps even tripling) the Class A investor property tax, but allowing reductions against it for 1) GET paid to the state and 2) maintenance fees. Why maintenance fees? Because most of the maintenance fees go right back into the hands of workers and local businesses. Because of that, higher maintenance fees for investors is great news for local families.

In summary, I am against these amendments because they will lead to a further shortage of housing in the short term, do not address the root cause of the issue in the long term, and further distort/provide even more of a lottery by allowing the lucky few who qualify for these units to gain in bubbles, but force HCDA to absorb the loss if the market prices drop.