

December 9, 2020

FOR ACTION

I. REQUEST

Approve the proposed draft Kakaako Reserved Housing Rule amendments, dated December 9, 2020, to allow for Payment of Equity Sharing without Sale or Transfer of Reserved Housing Unit and Direct the Executive Director to hold Public Hearings on the Rule Amendment.

II. BACKGROUND

In July 2018 the Hawaii Community Development Authority (HCDA/Authority) adopted the following recommendations of the Affordable Rental Housing Development Permitted Interaction Group (PIG). The PIG final report and Authority action is provided as Exhibit A.

1. Utilize the money in the reserved housing revolving fund to purchase land for development of affordable rental housing projects. Consider competitive solicitations for purchase of land for rental housing projects.
2. Consider cash in lieu or dedication of land option from developers instead of providing reserved housing units. Money collected from cash in lieu can be used to purchase land for affordable rental projects and/or for providing gap financing. Land dedicated by developers can be used for affordable rental housing projects.
3. Consider a policy to allow owners of reserved housing units to pay the equity sharing out front instead of waiting until the resale or transfer of the reserved housing unit. Money collected for early payment of equity sharing can be used for purchasing land for affordable rental housing projects and/or providing gap financing.
4. Explore establishing a rental housing unit rehabilitation micro-loan program to increase affordable housing using the existing Kakaako Community Development District (KCDD) housing stock.
5. Consider increasing zoning incentives (i.e., density and height) within the KCDD, especially in Transit Oriented Development (TOD) areas and on small lots, for projects that include rental housing. Increased density will increase the number of housing units that can be developed in the KCDD and even keeping the reserved

housing requirement at 20% will increase the number of affordable housing that will be produced.

6. Work closely with the Hawaii Housing Finance and Development Corporation (HHFDC) in prioritizing affordable rental housing projects in the KCDD for Low Income Housing Tax Credit (LIHTC), Rental Housing Revolving Fund (RHRF), Dwelling Unit Revolving Fund (DURF) funding.
7. Work with the HHFDC in lobbying the legislature for a broad-based financing mechanism for developing affordable rental housing projects.
8. Explore the option of developing a public parking structure in the Sheridan and Central Kakaako neighborhood zones. Parking stalls could be offered at a reduced rate for KCDD affordable housing projects. This would take away the burden of building expensive parking for affordable housing projects and significantly reduce development costs.

The recommendations were intended to encourage and facilitate development of affordable housing in Kakaako with specific focus on affordable rental housing. Some of the recommendations require amending the Authorities' administrative rules before they can be implemented. For this proposed action, staff is requesting amendment of Kakaako Reserved Housing Rules to implement recommendation #3 to allow the owner of a reserved housing unit to pay Authority's share of equity without having to transfer or sell the unit.

III. DISCUSSION

The current administrative rules governing reserved housing in KCDD, Hawaii Administrative Rules (HAR) Chapter 15-218 does not include the provision for payment of shared equity without sale of reserved housing unit. An amendment of Kakaako Reserved Housing Rules, HAR Chapter 15-218 is necessary to allow for payment of shared equity without sale of reserved housing unit. Staff is proposing amending the rule by adding language to allow for payment of equity sharing without sale of reserved housing unit. A working draft of the proposed amendment is provided as Exhibit B. The proposed amendment will be applicable to all reserved housing units in the KCDD regulated under the Authority's administrative rules pertaining to reserved housing units. Table below provides a summary of current outstanding equity in reserved housing units in the KCDD.

HCDA'S REMAINING EQUITY IN RESERVED HOUSING			
Project Name	No. of Unit	Regulated Term (Yr)	HCDA'S Remaining Equity
Ke Kilohana	375	2-5	\$34,897,301
400 Keawe	20	2	\$478,000
Keauhou Place	85	2-5	\$9,359,000
Symphony	100	5	\$9,569,300
Rycroft Terrace	162	10	\$6,590,550
Pacifica	124	2-10	\$1,041,250
Keola Lai	63	2	\$4,974,682
Aalii	150	2-5	\$22,925,807
TOTAL	1,079		\$89,835,890

IV. RECOMMENDATION

Approve the proposed draft Kakaako Reserved Housing Rules amendments, dated December 9, 2020, to allow for payment of equity sharing without sale or transfer of reserved housing unit and direct the Executive Director to hold public hearings on rule amendment and authorize the Executive Director to undertake all tasks necessary to effectuate the purpose of this For Action Item.

Attachments: Exhibit A - 2018 Permitted Interaction Group Final Report and Authority Action
Exhibit B - Proposed Draft HAR Chapter 15-218

Prepared By: Deepak Neupane, P.E., AIA, Executive Director

DN

Reviewed By: Deepak Neupane, P.E., AIA, Executive Director

DN

STATE OF HAWAII
HAWAII COMMUNITY DEVELOPMENT AUTHORITY
Kakaako Community Development District
Honolulu, Hawaii

July 11, 2018

Chairperson and Members
Hawaii Community Development Authority
State of Hawaii
Honolulu, Hawaii

HCDA Board Members:

SUBJECT

Shall the Authority adopt the recommendations of the Kakaako Affordable Rental Housing Task Force (Task Force)?

SUMMARY

The Task Force was formed at the September 6, 2017 Hawaii Community Development Authority (HCDA) Kakaako meeting to consider and recommend proactive strategies for encouraging low to middle-income rental housing development in Kakaako to expand the range of housing opportunities in the Kakaako Community Development District (KCDD).

The Task Force include members John Whalen (task force chair), Wei Fang, Jason Okuhama, and Phillip Hasha. Member Hasha was added to the task force at the October 4, 2017 meeting.

Permitted interactions of a group of board members is governed by Hawaii Revised Statutes (HRS) § 92-2.5(b) which provides that two or more members of a board, but less than a quorum may be assigned to investigate a matter relating to the official business of the board, provided that:

1. The scope of the investigation and the scope of each members authority are defined at a meeting of the board;
2. All resulting findings and recommendations are presented to the board at a meeting of the board; and
3. Deliberation and decision-making on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board.

AUTHORITY

Hawaii Revised Statutes § 206E-4.

BACKGROUND

The Task Force consulted with various stakeholders in the industry including affordable housing developers, the financing community including local banks, and state and county agencies to assess the issues facing development of affordable rental housing. The following is a summary of the Task Force findings.

TABLE 1: Affordable Rental Housing Project Toolbox for HCDA's CDDs					
Affordable Housing Incentives	Government Agency Offering Incentive				
	C&C of Honolulu	State of Hawaii		Federal	
		HCDA	HHFDC	IRS	HUD
201H Exemptions	√	√	√		
HCDA					
Exemption from provisions of Mauka Area Rules					
HCDA Permit Fee Exemption		√			
Density Bonus		√			
Height Increase		√			
Reduced Parking Requirement		√			
Public Facility Dedication Exemption		√			
Building Form Exemptions		√			
City & County of Honolulu					
Exemption from Building Permit Review Fee	√				
Exemption from Grading Permit Fee	√				
Exemption from Trenching Repair & Service Permit Fee	√				
Exemption from Storm Drain Connection Fee	√				
Exemption from Fire Department Plan Review Fee	√				
Deferral of Wastewater Charges until certificate of occupancy	√				
Deferral of water service fee until certificate of occupancy	√				
Free Land		√	√		
General Excise Tax (GET) Exemption			√		
Property Tax Exemption	√				
Low-Income Housing Tax Credit (LIHTC)			√	√	
Rental Housing Revolving Fund (RHRF)			√		
National Housing Trust Fund			√		√
Hula Mae Multi-Family Program (HMMFP)			√		√
HOME Investment Partnerships Program	√				√
Dwelling Unit Revolving Fund (DURF)			√		

- Almost all rental affordable housing projects in Honolulu need some form of local, state, and federal government funding;
- All projects required free land;

- Even with government funding and free land these projects still had a financing gap and required additional financing;
- The state through the Hawaii Housing Finance and Development Corporation (HHFDC) provides the bulk financing for these projects including gap financing. Table 1 below is a summary of local, state, and federal government financing and other incentives available for affordable housing development;
- Most affordable housing projects, including affordable rental housing projects, require additional density (floor area) to make the projects financially viable (Hale Kewalo, Halekauwila Place, Artspace, Nohona Hale, Kapiolani Residences);
- Local banks are willing and eager to finance affordable housing development by purchasing low income housing tax credits (LIHTC). However, local capacity and appetite for LIHTC appears to be limited-in the order of \$30 million. The capacity could be increased if several local banks pooled their resources.
- Local affordable housing developers have capacity to develop between 200-500 units annually.
- Locally there is adequate management capacity for affordable rental housing units.
- For most affordable rental housing (at or below 60% of AMI), developers indicate that mixed income projects are not viable because of financing available through LIHTC and other programs are much more attractive than the revenue generated from higher AMI units.
- The Honolulu City Council recently adopted Bills 58 (Ordinance 18-10) and 59 (Ordinance 18-01) establishing affordable housing requirements and financial support for the creation and maintenance of for-sale and rental multifamily housing projects.
- Structured parking, at a cost of \$35,000 to \$50,000 per stall, has a direct impact on the affordability of a project.

ANALYSIS

Several recent affordable rental housing projects in the Kakaako Community Development District (KCDD) have been financed through LIHTC and other financing provided by the HHFDC. Most affordable rental housing projects outside of the KCDD have also been financed through local, state and federal government subsidy (various Vista projects by developer Gary Furuta and the 7000 Hawaii Kai Drive project by Avalon Development). Out of eleven affordable rental housing projects in the KCDD only one project, the 680 Ala Moana building, was developed without local, state, or federal funding assistance. Kamehameha Schools developed the 680 Ala Moana building without any subsidy by converting a commercial building to a mixed-use project with 54 affordable rental housing units.

There have been 41 major residential mixed-use development projects in the KCDD approved by the HCDA since 1984 consisting of 11,913 residential units out of which 4,184 units (or 35%) are considered affordable. Out of the 4,184 affordable units, 1,774 units (or 42%) are rental units affordable at 100% or below of the area median income (AMI).

A point to note is that except for a small fraction (3%) of these affordable rental units, all required government financing in the form of LIHTC, RHRF and free land. All for-sale affordable housing units were developed using private funding.

TABLE 2: Kakaako Affordable Rental Housing Projects				
Project Name	No of Units	AMI	Status	Government Funding Source
Halekauwila Place	204	60%	Completed	LIHTC/Free Land/HCDA Gap Financing
440 Keawe Street	88	100%	Completed	GET Exemption
Artspace	84	60%	Under Construction	LIHTC/RHRF/Free Land
Keauhou Lane	209	100%	Completed	GET Exemption/RHRF
Kamakee Vista	225	60%	Completed	LIHTC/RHRF/Free Land
Kauhale Kakaako	267	60%	Completed	LIHTC/RHRF/Free Land
Pohulani	262	60%	Completed	LIHTC/RHRF/Free Land
Na Lei Hulu Kupuna	76	60%	Completed	LIHTC/RHRF/Free Land
Honuakaha	151	60%	Completed	LIHTC/RHRF/Free Land
Hale Kewalo	128	60%	Under Construction	LIHTC/RHRF/Free Land
Nohona Hale	111	60%	Pre-Development	LIHTC/RHRF/\$1 Per Yr lease
680 Ala Moana	54	100%	Completed	Privately Funded

Outside of the KCDD, all affordable rental housing projects and some for-sale housing projects (for example, Kapiolani Residences) have required government financing. It is rather obvious that there will be no affordable rental housing development in Honolulu without government financing and other forms of subsidies such as free land. The HCDA has provided direct financing (Halekauwila Place) or land at nominal lease rent (at \$1/year) for developing affordable rental housing projects in the KCDD. In the future, government financing in the form of LIHTC, RHRF and HMMFP will be essential for affordable rental housing projects. Since the enactment of the new federal tax laws in 2017 that reduced the corporate income tax burden from 35% to 21%, there is concern that the demand for LIHTC will decrease and it will also impact the value of LIHTC, creating the need for more gap financing options at the local and state level. This means that other financing mechanisms such as RHRF may need to be increased to keep a constant supply of funding for affordable housing projects.

As it is obvious that government financing and free land is essential for development of affordable rental housing projects, the HCDA can currently make some limited contribution. To continue with encouraging development of affordable rental housing projects the HCDA can use all or some of the money available (approximately \$3 million) in the reserved housing revolving fund to provide gap financing for affordable rental housing projects in the KCDD, or alternatively use that money to purchase land in the KCDD. The HCDA could make the land available at no cost for an affordable rental housing project to qualified developers using the

request for proposal type of procurement process that was utilized for development of Nohona Hale.

There is a possibility that the HCDA could increase its financial capacity to fund affordable rental projects by leveraging its current and future equity sharing in reserved housing units or allowing for a cash in lieu option to developers instead of providing reserved housing units. The HCDA currently has a substantial amount of money locked up in equity sharing in reserved housing units (see Table 3).

TABLE 3: RESERVED HOUSING HCDA EQUITY SHARING SUMMARY			
Project Name	No. of Units	Regulated Term (yr)	HCDA Equity Share Remaining
Ke Kilohana	375	2-5	\$36,683,899
400 Keawe	20	2	\$600,000
Keauhou Place	85	2-5	\$9,933,600
Symphony	100	5	\$9,633,200
Rycroft Terrace	162	10	\$6,773,620
Pacifica	124	2-10	\$1,670,450
Keola Lai	63	2	\$8,673,696
TOTAL	929		\$73,968,465

If the HCDA adopts a policy to allow the owners of the reserved housing units to pay the equity sharing out front (as is allowed by HHFDC), potentially \$74 million could be raised that could be reinvested in developing affordable rental housing projects. It would mean that the 929 units that are currently reserved housing units will no longer be reserved housing units, however, \$74 million invested in purchasing land and used as gap financing could produce more than the reserved housing units that are lost. These new units will be affordable rental units at lower AMIs and will be affordable in perpetuity since the HCDA will own the land on which these rental projects will be built. Currently, based on the provisions of the Kakaako Reserved Housing Rules, the equity sharing is established at the time of approval of the reserved housing program for a development project and is fixed in value, meaning that the equity sharing amount is fixed and not indexed to consumer price index or other similar indexes. An equity sharing amount of, say, \$40,000 today will still be \$40,000 in 5, 10, 20 or 30 years from today. So, as time goes by the value of equity sharing gets diluted. From that perspective it makes financial sense for the HCDA to take equity sharing out front and reinvest in affordable rental housing projects. The same concept could be used for future projects that will have reserved housing requirements. Assuming that at full build-out there will be an additional 10,000 residential units in the KCDD (the current number of units developed since 1984 is 11,913), the number of reserved housing units required will be 2,000 units. From Table 3 we can estimate that the average equity sharing for a reserved housing unit could be, say, \$80,000. That will generate \$160,000,000 in equity sharing over time. That money invested in purchasing land in the KCDD and for gap financing will generate far more than 2,000 reserved housing units. Again, these will be affordable rental units that will remain affordable in perpetuity.

Similar analysis can be made for a cash in lieu option instead of requiring reserved housing units. Depending on the value of market units the per unit cash in lieu amount will vary. However, an educated guess based on the average market value of the current residential units in the KCDD and the cash in lieu formula in the proposed amendment to the Kakaako Reserved Housing Rules would be that the average value of cash in lieu will be closer to \$200,000 per unit. At that value, 2,000 units will generate \$400,000,000 over time. That is a substantial amount of money to be invested in developing affordable rental housing projects.

That said, we have to keep in mind that availability of land and development capacity may be a limiting factor and since the money from either equity sharing or cash in lieu will not be coming in at one time, the actual number of rental units produced on a yearly basis will vary. The concept is based on a full build out scenario, but year to year production will vary and will depend on cash flow, availability of land, and development capacity. However, this approach has the potential of producing a substantial numbers of affordable rental housing units that are affordable at lower AMIs and will remain affordable in perpetuity. Alternatively, accepting land from developers in lieu of providing reserved housing units will produce the same results as the cash in lieu provision.

Since the new federal tax law will reduce the value of LIHTC in terms of demand as well as actual dollar value of the tax credit, it would necessitate increased financing at the local level in the form of RHRF, DURF and any other gap financing program. It will be necessary to create a broad-based financing mechanism for developing affordable housing.

TABLE 4: BASE VERSUS ACTUAL DENSITY FOR RECENT AFFORDABLE HOUSING PROJECTS		
Project	Base Density (FAR)	Actual Project Density (FAR)
Hale Kewalo	3.5	3.9
Halekauwila Place	2.7	3.5
Artspace	3.5	3.8
Nohona Hale	3.5	5.4
Kapiolani Residences	3.5	9.3

Most of the affordable housing projects, including affordable rental projects, require additional density for the projects to be financially viable. Recent examples are Hale Kewalo, Halekauwila Place, Artspace, and Nohona Hale in the KCDD and Kapiolani Residences in the Ala Moana area. Kapiolani Hale required nearly three times the density that was allowed under the City and County of Honolulu, Land Use Ordinance on the project site. Additional density could be another tool, in general, to increase the quantity of affordable housing as well as providing incentive for affordable rental housing.

The HCDA should also explore leveraging its reserved housing revolving fund to improve smaller dilapidated, walkup housing projects already existing within Kakaako. Industry experts, including member Hasha, have shared with the task force that there are several walkup rental

housing buildings in the KCDD that have high vacancy rates due to the poor condition of the units. Several of the small walkup buildings are owned and operated by families or small partnerships. As a result, most of the smaller unimproved buildings have gone without repair because of the owners' limited experience and inability to obtain funding for even small capital improvements. To encourage improvement and occupancy of these existing housing units, the HCDA could establish a rental unit rehabilitation micro-loan program where owners of smaller existing walkup buildings within KCDD could receive a short term, low interest loan from HCDA to improve their vacant units in exchange for leasing the improved unit at an affordable rate. This opportunity, in contrast to the redevelopment of an entire site, would require much less time, capital and would utilize Kakaako's existing housing inventory. However, it is likely that the such a program would require a limited term of affordability and therefore would not offer affordability in perpetuity.

RECOMMENDATIONS

The Task Force recommends that the Authority consider exploring the following options for encouraging development of more affordable rental housing projects.

1. Utilize the money in the reserved housing revolving fund to purchase land for development of affordable rental housing projects. Consider competitive solicitations for purchase of land for rental housing projects.
2. Consider cash in lieu or dedication of land option from developers instead of providing reserved housing units. Money collected from cash in lieu can be used to purchase land for affordable rental projects and/or for providing gap financing. Land dedicated by developers can be used for affordable rental housing projects.
3. Consider a policy to allow owners of reserved housing units to pay the equity sharing out front instead of waiting until the resale or transfer of the reserved housing unit. Money collected for early payment of equity sharing can be used for purchasing land for affordable rental housing projects and/or providing gap financing.
4. Explore establishing a rental housing unit rehabilitation micro-loan program to increase affordable housing using the existing KCDD housing stock.
5. Consider increasing zoning incentives (i.e., density and height) within the KCDD, especially in TOD areas and on small lots, for projects that include rental housing. Increased density will increase the number of housing units that can be developed in the KCDD and even keeping the reserved housing requirement at 20% will increase the number of affordable housing that will be produced.
6. Work closely with the HHFDC in prioritizing affordable rental housing projects in the KCDD for LIHTC, RHRF, DURF funding.

7. Work with the HHFDC in lobbying the legislature for a broad-based financing mechanism for developing affordable rental housing projects.
8. Explore the option of developing a public parking structure in the Sheridan and Central Kakaako neighborhood zones. Parking stalls could be offered at a reduced rate for KCDD affordable housing projects. This would take away the burden of building expensive parking for affordable housing projects and significantly reduce development costs.

Minutes of a Special Meeting
of the Members of the
Hawaii Community Development Authority
State of Hawaii

Wednesday, July 11, 2018

KAKAAKO BUSINESS

I. CALL TO ORDER/ROLL CALL

A business meeting of the Kakaako Members of the Hawaii Community Development Authority ("Authority" or "HCDA"), a body corporate and a public instrumentality of the State of Hawaii, was called to order by Chair Whalen at 9:04 AM, July 11, 2018 at Authority's principal offices at 547 Queen Street in Honolulu, Hawaii, 96813, pursuant to Article IV, Section 1 of the Authority's Bylaws.

Members Present:

1. Beau Bassett
2. Mary Pat Waterhouse
3. Wei Fang
4. Jason Okuhama
5. David Rodriguez (DOT Ex-officio)
6. John Whalen

Members Absent

William Oh
Kathy Sokugawa (DPP non-voting)
Mark Anderson (B&F Ex-officio)
Phillip Hasha

Others Present:

Garett Kamemoto, Interim Executive Director
Deepak Neupane, Kakaako Planning and Development Director
Aedward Los Banos, Administrative Services Officer
Francine Murray, HCDA Program Specialist
Tommilyn Soares, Secretary
Max Levins, Deputy Attorney General

II. APPROVAL OF MINUTES

The minutes for the June 6, 2018 Kakaako meeting were approved as presented.

III. ACTION ITEMS

Shall the Authority Authorize the Interim Executive Director to Execute a Contract with Elevator Services LLC for Elevator Maintenance and Repair Services at the American Brewery Building for a Three-Year Term Plus One-Year Options to Extend in an Amount Not to Exceed \$63,080.00 which shall be Paid from the Hawaii Community Development Authority's Revolving Funds, Leasing and Management Subaccount?

Mr. Garrett Kamemoto, Interim Executive Director and Acting Asset Manager referred to the report provided in the board packet and noted this contract is for the maintenance of the American Brewery Building's elevator.

There were no questions or comments made by board members and no public testimony.

MOTION

Member Okuhama motioned for the authority to authorize the Interim Executive Director to execute a contract with Elevator Services LLC for elevator maintenance and repair services at the American Brewery Building for a three-year term plus one-year options to extend in an amount not to exceed \$63,080.00 which shall be paid from the Hawaii Community Development Authority's revolving funds, leasing and management subaccount.

Member Fang seconded.

Mr. Kamemoto conducted the roll call vote. Motion passed with 6 yes votes and 3 excused.

Shall the Authority Authorize the Interim Executive Director to Execute a Contract with Elevator Services LLC for Elevator Maintenance and Repair Services at Kauhale Kakaako for a Three-Year Term Plus Two One-Year Options to Extend in an Amount Not to Exceed \$76,160.00 which shall be paid from the Hawaii Community Development Authority's Revolving Funds, Leasing and Management Subaccount?

Mr. Kamemoto referred to the report provided in the board packet and noted this contract is for the maintenance of the elevators located at Kauhale Kakaako.

Member Rodriguez asked if these are elevators for Kauhale Kakaako – building that the Hawaii Housing and Finance Development Corporation (HHFDC) owns?

Mr. Kamemoto responded that this elevator maintenance is for the parking structure at Kauhale Kakaako that HCDA maintains and not the housing portion of the building that is maintained by HHFDC.

There were no further questions or comments made by board members and no public testimony.

MOTION

Member Okuhama motioned for the authority to authorize the Interim Executive Director to execute a contract with Elevator Services LLC for elevator maintenance and repair services at Kauhale Kakaako for a three-year term plus two one-year options to extend in an amount not to exceed \$76,160.00 which shall be paid from the Hawaii Community Development Authority's revolving funds, leasing and management subaccount.

Member Bassett seconded.

Mr. Kamemoto conducted the roll call vote. Motion passed with 6 yes votes and 3 excused.

Shall the Authority Adopt the Recommendation of the Affordable Rental Housing Development Permitted Interaction Group?

Mr. Neupane presented the staff report provided in the board packet and highlighted the recommendations that the Affordable Rental Housing Development Permitted Interaction Group would like the board to adopt.

Member Waterhouse asked what the next steps are.

Chair Whalen asked as a matter of policy if any rule making changes are required.

Mr. Neupane responded that the loan program recommendation may require rulemaking and that he will check and confirm whether the rules need to be changed.

Member Waterhouse asked if all recommendations will be pursued.

Mr. Neupane said yes, all recommendations by the Affordable Rental Housing Task Force will be pursued. HCDA staff can provide updates to the board as necessary, and that the first update may come up in the next quarter (3 months) as staff will start to prepare the solicitation to purchase land. Mr. Neupane noted the solicitation is fairly simple; however, he is unsure what the interest and responses will be.

There was no public testimony.

MOTION

Member Bassett motioned for the authority to adopt the recommendation of the Affordable Rental Housing Development Permitted Interaction Group.

Member Waterhouse seconded.

Mr. Neupane conducted the roll call vote. Motion passed with six yes votes and three excused.

IV. INTERIM EXECUTIVE DIRECTOR REPORT

Monthly and Status report on the following:

- a. Approved permit applications that did not require HRS § 206E-5.6 public hearings.
- b. ACT 009 (18) re: Hawaii Community Development Authority

Garett Kamemoto referred to the report provided in the board packet and noted the recent Act that Governor Ige signed into law at the 2018 Legislative Session re: Private Roads.

There were no comments or questions and no public testimony.

V. ADJOURNMENT

Chairperson Whalen adjourned the regular meeting at 9:33 AM.

Approved and Submitted by,



John P. Whalen, Chairperson

AUG 01 2018

Date Approved by HCDA Board

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND
TOURISM

Amendments and Compilation of Chapter 15-218
Hawaii Administrative Rules

~~[September 6, 2017]~~ December 9, 2020

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. §150218-19 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)

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
housing units
- §15-218-21 Workforce housing project(s)
- §§15-218-22 to 15-218-28 (Reserved)

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)

WORKING DRAFT

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 or modify any provisions of this rule, if, based on market conditions and in its sole judgment, it determines that the requirements of this rule 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:
HRS §§206E-4, 206E-5, 206E-7)

§15-218-31 Sale and rental of reserved housing and workforce housing units. (a) The authority may advertise the sale or rental of reserved housing and workforce housing units and qualify and select persons for reserved housing and workforce housing units. It may also permit the developer of such units, or the developer's designated representative, to be responsible for advertising, qualifying, and selecting persons subject to the provisions of this chapter.

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

(c) Notice of the proposed sale or rental of reserved housing and workforce housing units shall be published in a newspaper of general circulation on two separate days. The notice shall include 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) The regulated term for a reserved housing or workforce housing unit

shall be ten years from the issuance of certificate of occupancy. If the owner of a reserved housing unit or a workforce housing unit wishes to sell the unit within ten years from the date of issuance of certificate of occupancy for the unit, the authority or an entity approved by the authority shall have the first option to purchase the unit.

(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]~~mortgages 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.

(g) The owner of a reserved housing or workforce housing unit may at any time, via submission of a written application to the executive director, pay all or a portion of the authority's share of equity without selling or transferring the reserved housing or workforce housing unit. The minimum amount of any partial payment of the authority's share of equity shall be not less than twenty-five percent of the authority's shared equity. This subsection shall apply

to all reserved housing units regulated under the authority's administrative rules pertaining to reserved housing units.

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

§15-218-42 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)

SUBCHAPTER 4

WORKFORCE HOUSING PROJECT(S): REPEALED

§15-218-55 REPEALED

Amendments to and compilation of chapter 218, title 15, Hawaii Administrative Rules, on the Summary Page dated June 21, 2018, were adopted on June 13, 2018, following public hearings held on June 6, 2018, and June 13, 2018, after public notice was given in the Honolulu Star Advertiser, The Maui News, West Hawaii Today, Hawaii-Tribune Herald, and the Garden Isle on May 1, 2018.

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

John P. Whalen
Chairperson
Hawaii Community Development
Authority

APPROVED AS TO FORM:

Deputy Attorney General

DAVID Y. IGE
Governor
State of Hawaii

Date:

Filed

WORKING DRAFT