

**DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU
STATE OF HAWAII**

**AMENDMENT OF THE AFFORDABLE HOUSING RULES
FOR UNILATERAL AGREEMENTS
Adopted February 12, 2010**

DEPARTMENT OF PLANNING AND PERMITTING

AFFORDABLE HOUSING RULES
FOR UNILATERAL AGREEMENTS

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CHAPTER 1

RULES OF GENERAL APPLICATION

§1-1 Applicability. The City and County of Honolulu is empowered by the provisions stated in §46-4, Hawaii Revised Statutes to regulate zoning of real property within its jurisdiction. These rules implement §21-2.80, Revised Ordinances of Honolulu, and are authorized by §6-1504, Revised Charter of Honolulu.

Conditions that the City Council of the City and County of Honolulu is authorized to impose on the use of real property for which a zone change has been requested necessary to prevent circumstances adverse to the public health, safety, and welfare are stated in a Unilateral Agreement. A Unilateral Agreement is prepared, executed, and recorded in the Bureau of Conveyances, State of Hawaii, as a covenant running with the real property by the owner of the real property for which a zone change is requested, and incorporated into and made a part of the ordinance effecting the zone change.

The Department of Planning and Permitting, City and County of Honolulu, is the agency the City Council of the City and County of Honolulu designated to be responsible for monitoring compliance with the housing component stated in a Unilateral Agreement. These rules are applicable to and are intended to provide for integrated communities, uniform implementation, administration, and enforcement of the terms of the Unilateral Agreement. Unless specified in the Unilateral Agreement, these rules shall apply to those projects providing a total of ten (10) housing units or more.

(Eff: **FEB 28 2010** 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

§1-2 Definitions. The words, phrases, and abbreviations defined below shall have the same meaning throughout these rules, unless otherwise specifically provided by law, specifically stated otherwise in these rules, or clearly inappropriate in the context.

(Eff: **FEB 28 2010** 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

Affordable Housing (AH): Dwelling units constructed for sale or rent to households in the target group.

Applicant: Household applying for affordable housing.

Area Median Income: The Area Median Income (AMI) determined by HUD annually for the Honolulu Metropolitan Statistical Area as adjusted for household size.

BFS: The Department of Budget and Fiscal Services, City and County of Honolulu.

Chapter 201H: Chapter 201H, Hawaii Revised Statutes, stating certain authority pertaining to housing which is granted to the State of Hawaii and which powers are granted to the counties by the provisions of §46-15.1, Hawaii Revised Statutes.

City: The City and County of Honolulu.

Continued Occupancy: The point in time that a tenant ceases to be an eligible household but is allowed to continue residing in the affordable housing unit. Ceasing to be an eligible household occurs when household income exceeds the targeted income group of the unit.

Director: The Director of the Department of Planning and Permitting, City and County of Honolulu.

DPP: The Department of Planning and Permitting, City and County of Honolulu.

Dwelling Unit: A single structure or a single unit in a two-family detached or multi-family structure, designated for residential use by one household and does not include time-share units which are part of a full service hotel.

Fair Market Rent: The maximum periodic rent, including utilities, established by HUD under Federal housing programs which can be paid for dwelling units containing varying number of bedrooms.

Fair Market Value: The fair market value of the property as determined by an independent professional appraiser authorized to practice in the State of Hawaii.

Full Service Hotel: A hotel that provides on-site management, housekeeping services, food and beverage facilities (providing breakfast, lunch, or dinner), and recreational facilities.

FHA: Federal Housing Administration.

Grantee's Original Purchase Price: The sum for which the grantee purchased the property from the Grantor.

Gross Household Income: The total annual income from all sources received by the Household head and spouse and by each additional member of the Household. The Gross Household Income shall include, but shall not be limited to, the following:

- (1) Wages, salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
- (2) Pensions and Social Security;
- (3) Income derived from assets;
- (4) Dividends and interest;
- (5) Net income from business or profession;
- (6) Deferred compensation;
- (7) Cost of Living Adjustment;
- (8) Variable Housing Allowance;
- (9) Basic Allowance for Quarters.

The Gross Household Income shall exclude the following:

- (1) Income of a co-mortgagor, who is not a household member.
- (2) Income from employment of minor children (including foster children).

- (3) Income from the employment of full-time students under the age of 23 years.
- (4) Income of a live-in aide, as defined below.

HRS: Hawaii Revised Statutes, as amended.

Household:

- (1) a single person; or
- (2) two or more persons regularly living together related by blood, marriage, or by operation of law; or
- (3) a live-in aide, as recognized by the Director, who is essential to the care and well-being of a household member. The Director has the authority to qualify a person as a caregiver, provided proper documentation and credentials are provided; 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 DPP in its sole discretion. Affidavits from family members or neighbors are not acceptable.

HUD: The United States Department of Housing and Urban Development.

Land: The lot on the surface of the earth on which it is suitable to construct one or more dwelling units.

Low Income Household: A household whose income does not exceed eighty percent of the Area Median Income.

Minor: A person less than eighteen years of age.

Moderate Income Household: A household whose income is greater than eighty percent, but which does not exceed one hundred forty percent of the Area Median Income.

Participant: Any person or entity whose services will aid the City in accomplishing the purpose of the Program but who is not in partnership with the City.

Person: An individual or a legal entity.

Program: The provisions pertaining to the affordable housing component stated in a Unilateral Agreement and in a written agreement between a developer and DPP.

Real Property: The lot on the earth's surface, the air above, and the ground below, as well as all appurtenances to the land, including buildings, structures, fixtures, fences and improvements erected upon or affixed to the same.

RCH: The Revised Charter of the City and County of Honolulu 1973, as amended.

ROH: The Revised Ordinances of Honolulu 1990, as amended.

Rule: Each statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of the agency, adopted and promulgated in accordance with Chapter 91, HRS.

State: The State of Hawaii.

Subsidy: The amount recoverable as determined by DPP, from the total costs expended on the project, which is part of the Program. Recoveries include, but are not limited to, tax relief, unrecovered development and land cost, or any cost allocable to the administration of the project by DPP.

Target Group: A household included in an income category and intended to be a beneficiary of a Program.

Transit-Oriented Development: A compact, mixed use development within a transit-oriented development zone, as adopted under Chapter 21, Revised Ordinances of Honolulu.

Unilateral Agreement: A covenant running with the land prepared,

executed, and recorded in the Bureau of Conveyances, State of Hawaii, by the owner of the real property for which a zone change is requested and incorporated into and made a part of the ordinance effecting the zone change which states the conditions under which a developer has agreed to use that real property.

§1-3 Severability; Prevailing Agreements. If any rule stated in these rules is determined to be invalid, illegal, or unenforceable, that determination shall not affect the validity, legality, or enforceability of the remaining rules unless that effect is made impossible by the absence of the omitted rule or portion of a rule. If there is a conflict between any rule and the provisions stated in Ordinances pertaining to zoning enacted by the City Council of the City and County of Honolulu or in a Unilateral Agreement, the enacted Ordinances or the Unilateral Agreement shall take precedence over the rule.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

§1-4 Authority of DPP. DPP may employ attorneys, accountants, appraisers, surveyors, hearing officers, investigators, and other persons as required, and may do all things necessary and convenient to administer, implement, and enforce a Unilateral Agreement, other agreements entered into in conjunction with a Unilateral Agreement, and these rules. The Director may delegate to any person, specific authority and responsibility for assigned duties and tasks.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

§1-5 Investigations. The Director shall conduct an investigation of any written complaint or situation which indicates a possible violation of an affordable housing condition contained within a Unilateral Agreement, an agreement entered into by the city and any person or entity in conjunction with a Unilateral Agreement, or of these rules. The Director is authorized to examine the books, accounts, records and files of any person connected with the matter under investigation, and may conduct hearings regarding any matter under investigation. If the Director finds any violation, the Director may order the responsible parties to cease and desist from continuing the violation or to take affirmative action to conform to the obligations stated in any agreement. If necessary, the Director may withhold the processing of permits, and/or initiate a criminal, civil or administrative action, in the name of the City in any court of competent jurisdiction for the enforcement of the orders.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.150)

FEB 28 2010

§1-6 Collection of Information. From time to time, the Director may require any party to a Unilateral Agreement or other agreement to provide such information as may be reasonably required for the administration and enforcement of a Unilateral Agreement, condition requiring affordable housing, or these rules.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

§1-7 Dissemination of Information. The Director shall disseminate information and render assistance to the parties to a Unilateral Agreement, or other agreements made in conjunction with the Unilateral Agreement, in order that those agreements and these rules may be understood and effectively administered, implemented, and enforced.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

§1-8 Contracts. The Director shall determine the form and content of all documents necessary for the purposes of implementing a Unilateral Agreement, other agreements made in conjunction with the Unilateral Agreement, and these rules.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

§1-9 Burden of Proof; Oaths; Affidavits. The party having the burden of proof of any fact or event shall make such proof by competent and credible evidence and testimony acceptable and satisfactory to the Director or his designated agent. Evidence at any hearing may be required to be given under oath or by sworn written material. False oaths and affidavits shall constitute perjury and a violation of §710-1060, HRS.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

§1-10 Special Fund. All moneys received or collected by the City or DPP under the program shall be deposited in the Affordable Housing Fund.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

CHAPTER 2

TERMS AND CONDITIONS

§2-1 Affordable Housing Agreement and Implementation Schedule: Preparation; Approval. The developer shall prepare an affordable housing agreement and implementation schedule acceptable to DPP for the delivery of the affordable housing units. The developer will deliver the implementation plan to DPP for its approval prior to the commencement of construction or as stipulated in the unilateral agreement.

As determined appropriate by the Department of Planning and Permitting, the affordable housing agreement and implementation schedule shall include a variety of dwelling types to be delivered throughout the various phases of a project. It is the intent of the City's affordable housing program to provide a variety of unit types that is dispersed throughout a project. The proposed agreement and schedule should minimize the clustering of identical affordable housing unit types within the same area.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

§2-2 Affordable Housing Agreement and Implementation Schedule: Contents. The affordable housing agreement and implementation schedule shall contain the following information:

- (1) The planned location of the affordable housing units.
- (2) The type (e.g., number of bedrooms per unit, single- or multi-family unit) of affordable housing units and supporting information that justifies the types of bedroom mix of affordable housing units.
- (3) The maximum base sales prices and/or rents of the affordable housing units.
- (4) The projected delivery schedule of all market and affordable housing units for each phase of the project.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

§2-3 Affordable Housing Agreement and Implementation
Schedule: Effect. The affordable housing agreement and implementation schedule shall ensure that:

- (1) The number of affordable housing units sold or rented to low and moderate income households shall total a minimum of thirty percent (30%) of the total number of dwelling units planned to be constructed. Provided, however, that ten percent (10%) or more of the residential units planned to be constructed shall be sold or rented to households earning eighty percent (80%) or less of the area median income (AMI).

No less than twenty percent (20%) of the total number of dwelling units planned to be constructed shall be sold or rented to households earning one hundred twenty percent (120%) or less of the AMI.

(For example, the following illustrates the various delivery options on how a 30% AH unit requirement could be fulfilled with no less than 20% of the AH units at 120% or less of the AMI.

Example 1:

10% AH to 80% or less of the AMI;
10% AH to between 80% and 120% of the AMI; and
10% AH to between 120% and 140% of the AMI.

Example 2:

15% AH to 80% or less of the AMI;
5% AH to between 80% and 120% of the AMI; and
10% AH to between 120% and 140% of the AMI.

Example 3:

20% AH to 80% or less of the AMI;
0% AH to between 80% and 120% of the AMI; and
10% AH to between 120% and 140% of the AMI.

Example 4:

10% AH to 80% or less of the AMI;
15% AH to between 80% and 120% of the AMI; and

5% AH to between 120% and 140% of the AMI.

Example 5:

15% AH to 80% or less of the AMI;
15% AH to between 80% and 120% of the AMI; and
0% AH to between 120% and 140% of the AMI.

Example 6:

30% AH to 80% or less of the AMI;
0% AH to between 80% and 120% of the AMI; and
0% AH to between 120% and 140% of the AMI.)

- (2) Only those affordable housing units sold or rented to eligible households within the target income groups shall be counted toward fulfillment of the requirements in the unilateral agreement.
- (3) The type of affordable housing units defined by the number of bedrooms in the unit shall be similar to or larger than the type of market units defined by the number of bedrooms. Deviations shall be permitted pursuant to the provisions stated in §2-4.
- (4) To the maximum extent possible, the affordable housing units shall be constructed and delivered simultaneously with the market units.
- (5) All members of the public shall have an equal opportunity to apply for the units.

(Eff: FEB 28 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

§2-4 Affordable Housing Agreement and Implementation Schedule: Type Deviations. Deviations to the type of affordable unit requirements may be permitted, provided that the total unilateral agreement affordable housing requirement is satisfied as stated in the Unilateral Agreement or in these rules.

(Eff: FEB 28 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

§2-5 Total Unilateral Agreement Affordable Housing Requirement: Definition. Unless specified within a unilateral agreement,

the term "total unilateral agreement affordable housing requirement" is defined as the total number of housing units multiplied by 0.30. (Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

§2-6 Total Unilateral Agreement Affordable Housing Requirement: Satisfaction. The total unilateral agreement affordable housing requirement is effectively satisfied only if:

- (1) The sum of the products of the actual number of affordable housing units delivered, multiplied by its corresponding factor, stated in paragraph (3), equals or exceeds the agreement affordable housing requirement; and
- (2) At least one third of the unilateral requirement is satisfied through units intended for households earning eighty percent (80%) or less of the median income for the Honolulu Metropolitan Statistical Area.
- (3) The unit types and corresponding factors for affordable housing units constructed are provided in the following table:

FACTOR TABLE

TYPE	0-BR/ 1-BA	1-BR/ 1-BA	2-BR/ 1-BA	2-BR/ 1.5-BA	2-BR/ 2-BA	3-BR/ 1.5-BA	3-BR/ 2-BA	3+BR/ 2+BA
FACTOR	0.68	0.81	.92	1.00	1.08	1.16	1.28	1.44

(For example, where the Developer produces 1,000 units:

Requirement Computation: The total unilateral agreement affordable housing requirement is computed as follows:

$$1,000 \times 0.3 = 300 \text{ affordable housing units.}$$

Satisfaction Calculation: The developer may satisfy the total unilateral agreement affordable housing requirement by producing any acceptable combination of types of affordable housing units which, when multiplied by the relevant type factor, equals or exceeds 300 credits.

The developer may produce the following acceptable combination:

100 2-BR/1.5-BA	100 X 1.00 = 100.00
100 2-BR/2-BA	100 X 1.08 = 108.00
72 3-BR/2-BA	72 X 1.28 = <u>92.16</u>
	300.16 or 300 credits

The developer has satisfied the total unilateral agreement affordable housing requirement by earning 300 credits.)

- (4) The unit types and corresponding factors for affordable housing units constructed within a transit oriented development are provided in the following table:

FACTOR TABLE FOR TRANSIT ORIENTED DEVELOPMENTS

TYPE	0-BR/ 1-BA	1-BR/ 1-BA	2-BR 1-BA	2-BR/ 1.5-BA	2-BR/ 2-BA	3-BR/ 1.5-BA	3-BR/ 2-BA	3+BR/ 2+BA
FACTOR	0.86	1.12	1.34	1.50	1.66	1.82	2.06	2.38

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

§2-7 Delivery Options. The developer may satisfy the affordable housing requirement by providing one or more of the following options determined to be acceptable to DPP.

- (1) Affordable housing units constructed on the rezoned project site for sale at prices determined by the method stated in §2-10.
- (2) Affordable rental housing units constructed on the rezoned project site, the rental rates of which satisfy §2-10. Affordable units committed to be rented to low-income households for more than ten (10) years may be eligible for enhancement credits as determined by DPP. The neighborhood, size of units, and specific target groups, and transit-oriented development zone may be taken into consideration in determining enhancement credit eligibility. To be eligible for enhancement credits, supporting

documentation would need to be submitted to DPP for consideration. Supporting documentation could include, and are not limited to; deed restrictions, restrictive covenants, surety bonding, and other documentation that commit a project to provide affordable housing.

- (3) Conveyance to a qualified non-profit affordable housing provider of improved fee simple real property, free of encumbrances, within or outside the project site, zoned and suitable for the construction of affordable housing units, with all necessary off-site infrastructure completed up to the property line. The appraised value of the real property conveyed to the housing provider must be equal to the in-lieu cash payment described in §2-7(5).
- (4) Sale or rental of affordable housing units as stated in paragraphs (1) and (2), constructed on a site other than the real property described in the rezoning ordinance. The rental units must be rented out for a minimum of ten (10) years, after which the City shall be given the first option to purchase the project if it is offered for sale after the ten-year rental period, at a price which an independent appraiser, mutually agreed upon by BFS and owner, determines to be the fair market value.
- (5) A cash contribution ("in-lieu fee") is available to satisfy the affordable housing requirement only for projects totaling one hundred (100) total units or less. Applicable in-lieu fee amount or formula shall be set and amended by City Council resolution.

For project(s) providing more than one hundred (100) total units, in-lieu fee may be accepted only under extreme economic circumstances and when approved by the Director.

- (6) Finished house-lots for affordable housing owner-builder through a self- help program, under guidelines to be formulated by DPP.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

§2-8 Documentation. All documents related to the sale of affordable housing units, including, but not limited to, deeds, condominium property regimes, presale notices, and purchaser applications, must be submitted to DPP for its written approval.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 23 2010

§2-9 Construction Quality Standards. Prior to the commencement of construction, the developer shall submit to DPP conceptual and schematic plans and outline specifications for the increment being developed.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 23 2010

§2-10 Pricing. (a) The affordable housing units base price must be priced such that a purchaser who makes a down payment of ten percent shall not be required to make monthly payments (which consist of principal, prorated real property taxes, prorated insurance premiums, plus, if applicable, fees and costs required by the Bylaws of a condominium property regime) exceeding thirty-three percent (33%) of the purchaser's gross monthly income.

(b) The sales price of the affordable housing units shall be calculated assuming an interest rate which is derived by taking the average of the Average Conventional 30 year Interest Rate on fixed rate mortgages for the Western Region of the U.S. from the Freddie Mac Primary Mortgage Market Survey for the week of the date of the submittal of the marketing plan and the interest rate one year preceding that date.

(c) If the developer secures a lower 30-year fixed mortgage interest rate, the developer may adjust the prices accordingly. The confirmable rate shall be submitted to DPP with the proposed prices.

(d) For rental units not participating in a government affordable housing tax credit or Section 8 program(s), units rented to households earning 80% of the median income or below for Honolulu, the monthly rent, including utilities (electricity, water, and gas), charged for rental affordable housing units shall not exceed the Section 8 Fair Market Rents. For units rented to households earning above eighty percent 80% of the median income for Honolulu, the monthly rent shall be a maximum of thirty percent (30%) of the median income of the target group, adjusted according to the number of bedrooms under HUD's Occupancy Requirements.

(e) For government affordable housing tax credit or Section 8 rental units, monthly rental rates may not exceed those approved under the program(s).

(f) The prices and rents stated in §2-10(a) and §2-10(d) shall meet the occupancy criteria stated in §3-5.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

§2-11 Chapter 201H HRS Exemptions. If the Project has been granted any exemption by the City Council pursuant to the provisions stated in Chapter 201H, HRS, the developer shall offer affordable housing units for sale or rent subject to the requirements of Chapter 201H, HRS.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

§2-12 Affordable Housing Credits. Housing credits shall remain valid for 10 years from the date the credits are certified by the DPP. Based on market conditions, a one time extension of certified credits may be approved by the Director. If the Project has been granted excess units in satisfying a unilateral agreement for affordable housing unit requirement, affordable housing unit credits may be requested for other projects only if:

- (1) Excess affordable housing units are certified by DPP;
- (2) DPP authorizes the transfer of affordable housing unit credits;
- (3) The excess and receiving sites are within the same geographical area, designated transit-oriented development area, or under extreme circumstances within an area acceptable to the DPP; and
- (4) No more than fifty percent (50%) of any receiving project's unilateral agreement affordable housing unit requirement is fulfilled by credits from another unilateral agreement, except in a transit-oriented development zone where the amount of eligible credits shall be determined by the director.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

CHAPTER 3

APPLICANT QUALIFICATION

§3-1 Eligibility Requirements: Application. A prospective purchaser or renter of an affordable housing unit in a project shall submit an application to the developer on a form and in the manner prescribed by DPP.

(Eff. FEB 28 2010 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

§3-2 Eligibility Requirements: Criteria. To qualify, an applicant must meet the following eligibility requirements on the date the application is submitted:

- (1) Be a citizen of the United States or a resident alien.
- (2) Be at least eighteen years of age.
- (3) Be domiciled in the State of Hawaii and have a bona-fide intent to reside in the affordable housing unit.
- (4) Have sufficient gross household income to qualify for the loan to finance the purchase; or in the case of a rental, demonstrate an ability to pay rent as determined by the City and meet any additional criteria established by the City for the respective rental housing development for which the applicant is applying.
- (5) The total household income shall not exceed the allowed annual household income for the target group as adjusted for size.
- (6) Be a person who, either oneself or together with a household member, does not own or has not owned, for the one year preceding the date of application, and from date of application to escrow closing, a majority interest in fee simple or leasehold lands suitable for dwelling purposes, or majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to such land.

- (7) Be a household member who does not own and has not owned, for the one year preceding the date of application and from date of application to escrow closing, a majority interest in fee simple or leasehold lands suitable for dwelling purposes or a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to such land, except when husband and wife are living apart under a decree of separation from bed and board issued by the family court pursuant to section 580-71, HRS.
- (8) Not be a person who previously has received assistance under a program designed and implemented by any State or county agency to assist persons to purchase affordable housing units.

Provided, however, that the Director may determine on a case by case basis that an applicant who currently owns a dwelling unit purchased with or without the assistance of such program is eligible to apply for assistance if there has been either:

- (A) A significant change in household size as stated in §3-5; or
- (B) An extreme hardship, such as divorce, death in the household, change in place of employment to Oahu from any other island in the State of Hawaii; and

Provided further, that the applicant sells the dwelling unit before escrow closing for the new affordable housing unit.

- (9) If renting a unit under the Program, be a person who does not own, for the duration of the rental period, a majority interest in fee simple or leasehold lands suitable for dwelling purposes or a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to such land, except when husband and wife are living apart under a decree of separation from bed and board issued by the family court pursuant to section 580-71, HRS.

- (10) If renting a unit under the Program, be a household member who does not own, for the duration of the rental period a majority interest in fee simple or leasehold lands suitable for dwelling purposes or a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to such land, except when husband and wife are living apart under a decree of separation from bed and board issued by the family court pursuant to section 580-71, HRS.
- (11) Be an owner-occupant of the affordable housing unit during the restriction period and cannot rent out the unit during that time, except in unforeseen hardship circumstances (e.g. active military deployment, serious illness) which prevents the continued occupancy of the affordable housing unit. Hardship circumstances waivers would require the approval by the Director.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)
 FEB 28 2010

§3-3 Eligibility Requirements: Sole Application. The name of any applicant, co-applicant/spouse or any member of the household may only appear on one application for the project. The appearance of any one name on more than one application will be sufficient reason for DPP to disqualify all applications containing that name. However, if a large project is offered in several smaller phases, an applicant may apply for each phase of the project.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)
 FEB 28 2010

§3-4 Eligibility Requirements: Falsification. An applicant who has made an application for assistance and willfully submitted false information, made misstatements, or withheld necessary information, may be determined by DPP to be ineligible to purchase or to rent an affordable housing unit developed under the Program. The City shall not waive its right to recover any money wrongfully gained by the applicant or to any other recourse provided by law from an applicant determined to be ineligible pursuant to §3-1 through §3-4.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)
 FEB 28 2010

§3-5 Occupancy Requirements. For the purpose of maximizing the number of persons to be benefited by the Program by matching household size with the affordable housing unit type, based on the

number of bedrooms in the affordable housing unit, the occupancy requirement for each type of affordable housing unit is as follows:

<u>Dwelling Unit Type</u>	<u>Occupancy Requirements</u>
Studio	1-2 Persons
1 Bedroom	1-3 Persons
2 Bedroom	2-5 Persons
3 Bedroom	3-7 Persons
4 Bedroom	4-9 Persons

DPP may modify the occupancy requirements stated above in this Section if affordable housing units are unsold, unrented, or involves a live-in aide approved by the Director.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

§3-6 Income Limits. The income limits for a purchaser or a renter to qualify to apply for assistance under the Program shall be based upon the income levels determined and adjusted from time to time for the City and County of Honolulu by the United States Department of Housing and Urban Development, which income levels the City Council determines are applicable to the project and are stated in the unilateral agreement.

Income qualification of an applicant will be based on the applicant's gross household income, defined above in §1-2.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

§3-7 Income Verification. (a) The Gross Household Income of an applicant for benefits under the Program shall be certified by DPP or DPP's authorized agent prior to the transfer of title.

(b) DPP or DPP's authorized agent will determine the Gross Household Income and compliance with certain other eligibility requirements based on the households' current payroll information, latest income tax return(s), or other DPP approved income verification form(s) as required by DPP.

(c) In the case of rental units, a copy of the verification shall be retained in the developer's file for future review by DPP or DPP's authorized agent. Annual verification shall be made by reference to the

households' current payroll information, latest tax return(s), or other DPP approved income verification form(s). The documentation shall be retained by the developer and the developer shall provide access to such documentation to DPP or DPP's authorized agent at all reasonable times for later review.

(d) An eligible household may continue renting the affordable housing unit under continued occupancy when the household's income exceeds the maximum of the target group for the unit, provided, that the affordable rental unit is required to remain affordable for a rent restricted term under the unilateral agreement or affordable housing agreement.

A household may continue to occupy the affordable unit, provided, that the rent may be adjusted to a rate not to exceed the greater of the affordable rent or 30% of the household's income, adjusted by household's size, and number of bedrooms/baths. If the rental unit is vacated during the affordable housing agreement period, it must be rented to an eligible household to continue to be counted as an affordable housing unit.

(e) Live-in aide income may be excluded in qualifying eligible affordable housing recipients, based on HUD or other government guidelines. The exclusion of income would need to be approved by the Director.

(Eff: FEB 28 2010 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

§3-8 Eligibility Determination by DPP. In addition to fulfilling the requirements stated in §3-7, the developer shall submit to DPP or DPP's authorized agent the following supporting documents, in a form satisfactory to DPP, for the certification of the applicant's eligibility:

- (1) Application for benefits under the Program pertaining to the project.
- (2) Income and Income Limit Summary Sheet.
- (3) Owner-Occupant Affidavit.
- (4) If required by DPP, Real Property Disclosure Form and documents indicating applicant's interest.

- (5) Deposit, Receipt, Offer and Acceptance Agreement, sales agreement, or agreement to rent.

DPP or DPP's authorized agent's determination of an applicant's eligibility shall be made as expeditiously as possible.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

§3-9 Non-Discrimination. There shall be no discrimination against any applicant.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

CHAPTER 4

SELECTION

§4-1 Excess Applicants. If there are more applicants than there are affordable housing units available in a project, in conformance with Hawaii law, DPP may determine that the selection of applicants shall be by one of the following means for each designated income group(s):

- (1) By lottery; or
- (2) First-come, first-served, on the advertised date that applications are taken.

A waiting list for eligible applicants not selected shall be maintained and updated from time to time.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

CHAPTER 5

RESTRICTIONS ON TRANSFER, SALE/BUYBACK, AND USE

§5-1 Subject to Restrictions; Encumbrances. Each affordable housing unit will be subject to and encumbered by the restrictions on transfer, use and sale of affordable housing units stated in §§201H-47, 49, and 50, HRS, except as those restrictions are modified in §5-2, §5-3, and §5-4. The restrictions on transfer, sale/buyback, and use shall be fully stated in their entirety in all instruments conveying or renting any interest in an affordable housing unit.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

§5-2 Principal Residence. Affordable housing units purchased under the Program shall be occupied as the purchaser's principal residence for the duration of the transfer restriction (buyback) period. The City, developer, or designated affordable housing provider shall have the right during the restriction period to verify owner occupancy of the principal residence.

The City, developer, or designated affordable housing provider shall reserve the right to seek financial recourse from the purchaser if this provision is violated. Terms of the financial recourse shall be fully stated in their entirety in all instruments conveying or renting any interest in an affordable housing unit. Financial recourse may include the appreciated value of the affordable housing unit. Funds collected from any financial recourse action shall be credited to the entity that provided the affordable housing subsidy or to the City to fulfill an outstanding affordable housing unit obligation. The City reserves the right to disqualify units which are non-compliant with the restriction period requirement.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

§5-3 Term of Restrictions. (a) If the purchaser wishes to transfer title to the real property, the BFS shall have the option to (1) either purchase the real property, or (2) require the purchaser to sell the real property to a "qualified resident" as defined in §201H-112, HRS, at the price and upon terms that preserve the intent of §§201H-127, 129, and 130, HRS, and who is in the same income category as the original purchaser at the time of the original sale, approved by BFS. The restrictions on transfer, use and sale of the affordable housing units shall be in effect for ten years for qualified buyers.

(b) If renting, the units must be rented for a minimum restriction period of ten (10) years, after which the City shall be given the first option to purchase the project if it is offered for sale after the ten-year rental period, at a price which an independent appraiser, mutually agreed upon by BFS and the developer or subsequent owner, determines to be the fair market value.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

§5-4 New Restriction Period. If an affordable housing unit is repurchased by BFS and resold to a new owner during the restriction period, a new restriction period equal to the original restriction period may be imposed upon the new owner.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

§5-5 Waiver. If an owner wishes to sell an affordable housing unit during the buyback restriction period, BFS may waive the transfer restriction for that specific transaction. A waiver by BFS will be determined on each separate request based on the following criteria:

- (1) The purchaser wishes to transfer title to the real property by devise or through the laws of descent to a household member who would otherwise qualify under these rules.
- (2) The sale or transfer of the real property would be at a price and upon terms that preserve the intent of this section without the necessity of BFS repurchasing the real property; provided that, in this case, the purchaser shall be required to sell the unit or lot and sell or assign the property to a person who is a "qualified resident" as defined in section 201H-112, HRS, and who is in the same income category as the original purchaser at the time of the original sale, approved by BFS.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

§5-6 Consent. Only mortgages and liens consented to in advance by the City and created for the purpose of financing, refinancing, purchase of the fee, repayment of subsidy, maintenance and repair of the affordable housing unit or essential improvements, or other household expenditures of an emergency or life-threatening nature may be placed on the property.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

CHAPTER 6

PERIODIC AND FINAL REPORTS

§6-1 Status Report. The developer will provide a status report on the sales or rental of affordable housing units to the target income groups each year on dates determined by DPP in hard copy and electronic format and when the project is completed or when the sales or leasing to a target income group is completed. The report shall be separated by target income groups and shall contain the following information:

- (1) Apartment or lot number and name of project.
- (2) Name of purchaser or renter.
- (3) Tax Map Key.
- (4) Street address of each affordable housing unit.
- (5) Date of purchase or rent for each affordable housing unit.
- (6) Sale price or monthly rent for each affordable housing unit.
- (7) The annual gross income of each household or renter.
- (8) Target group income limit.
- (9) Unit size by number of bedrooms in each affordable housing unit.
- (10) Household size of purchaser or lessee of each affordable housing unit.
- (11) A copy of the deed or lease document used to convey property to individual homeowners in the project.
- (12) If Shared Appreciation Equity is in effect, a copy of the document which establishes the Original Fair Market Value, the Grantee's Original Purchase Price, the Owner's Share of

Equity, and the City's Share of Equity, and other terms and conditions of the Shared Appreciation Equity.

(13) Owner's Closing Statement for the sale of each affordable housing unit.

(14) The developer shall retain the approved documents for a period of no less than ten (10) years after DPP approval of the project.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

CHAPTER 7

PUBLIC INFORMATION

§7-1 Public Information. All rules, orders, or opinions of DPP shall be on file and available for public inspection at the offices set forth below. Copies of compilations of rules are available to the public at a price to be fixed by DPP to cover mailing and publication costs. The public may obtain information on matters within the jurisdiction of DPP, by inquiring at:

- (1) The Office of the City Clerk, Honolulu Hale, 530 South King Street, 1st Floor, Honolulu, HI 96813; or
- (2) The Department of Planning and Permitting, 650 South King Street, 7th Floor, Honolulu, Hawaii 96813.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

§7-2 Submittal or Requests for Information. Inquiries may be made in person at the offices set forth above during business hours, or by submitting a request for information in writing to the Director.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

CHAPTER 8

ADOPTION, AMENDMENT, AND REPEAL OF RULES

§8-1 Petition. Any interested person may petition DPP for the adoption, amendment, or repeal of any rule, at any time.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

§8-2 Submission. The petitioner shall submit five copies of the petition to DPP, which shall include:

- (1) A statement of the nature of the petitioner's interest;
- (2) A draft of the substance of the proposed rule, the amendment to a rule, or a designation of the rule sought to be repealed; and
- (3) An explicit statement of the reasons in support of the action proposed.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

§8-3 Disposition of Petition. Within 30 days after the filing of the petition, DPP shall either deny the petition in writing and shall state its reasons for such denial, or initiate proceedings in accordance with Section 91-3, HRS, for the adoption, amendment, or repeal of the rule.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

§8-4 Action by DPP. DPP may initiate proceedings in accordance with Section 91-3, HRS, for the adoption, amendment, or repeal of any rule, at any time.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

§8-5 Filing. After its approval by the Mayor, DPP shall file a certified copy of the adopted, amended, or repealed rule with the City Clerk and the City Clerk shall file a certified copy of the same with the Lieutenant Governor.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

§8-6 Effective Date. Each adopted, amended, or repealed rule shall be effective ten days after its filing with the City Clerk.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

CHAPTER 9

DECLARATORY RULINGS BY DPP

§9-1 Petition. Any interested person may petition the Director for a declaratory order as to the applicability of any City Ordinance, any rule, or any order of DPP.

(Eff: FEB 28 2010 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

§9-2 Submission of Petition. The petitioner shall submit five copies of the petition to DPP, which shall include:

- (1) The name, address, and telephone number of the petitioner.
- (2) A designation of the specific Ordinance, rule, or order which is the subject of the petition.
- (3) A complete statement of facts on which the petition is based.
- (4) A complete statement of the position of the petitioner, a complete statement of the reasons in support of petitioner's position, and a memorandum of points and authority, including any legal authorities.

(Eff: FEB 28 2010 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

§9-3 Rejection of Petition. A petition which does not conform to the requirements stated in §9-2 may be rejected by DPP, but it may be resubmitted when it complies with those requirements.

(Eff: FEB 28 2010 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

§9-4 Refusal to Issue Declaratory Order. The Director may refuse to issue a Declaratory Order for good cause. Good cause includes, but is not limited to:

- (1) The issue presented by the petitioner is speculative or hypothetical and does not involve existing fact or facts that can reasonably be expected to exist in the near future.
- (2) The interest of the petitioner is not the type which would give petitioner standing to maintain an action if judicial relief were sought.

(3) The issuance of the Declaratory Order may adversely affect the interest of the City, DPP, or any of their officers or employees in any litigation which is pending or may reasonably be expected to be initiated.

(4) The issue or the factual basis of the petition is not within the jurisdiction of DPP.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

§9-5 Referral to Other Agencies. If a question of law is presented in the petition, DPP shall refer the matter to the Corporation Counsel of the City. DPP may also obtain the assistance of other City agencies, where necessary or desirable.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

§9-6 Notification of Petitioner. The Director shall promptly notify the petitioner in writing of the disposition of the petition.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

§9-7 Status of Orders. An order disposing of a petition shall have the same status as other agency orders. An order shall be applicable only to the fact situation alleged in the petition or set forth in the order. It shall not be applicable to different fact situation or where additional facts not considered in the order exist.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

CHAPTER 10

HEARING ON DISPUTES

§10-1 Informal Hearing. No later than fifteen calendar days after the action giving rise to a dispute, a person who disputes action taken by DPP and alleges that the action adversely affects that person's rights, duties, welfare, or status, may submit a written notice of the complaint to DPP which initially will be discussed informally and an attempt will be made to settle the dispute without a hearing. A written summary of the informal discussion shall be prepared by DPP within ten calendar days after the date of the informal discussion and delivered to the complaining person. The summary shall specify the names of the participants, the dates of meetings, the proposed disposition of the dispute, and the specific reasons for the disposition. It shall specify the procedures to obtain a hearing if the complaining person is not satisfied.

(Eff: FEB 28 2010 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

§10-2 Formal Hearing on Dispute; Request for a Hearing. If a complaining person is not satisfied with the disposition of a dispute by the informal discussion stated in §10-1, that person may submit a written request to DPP for a formal hearing within fifteen calendar days after receipt of the written summary of the informal discussion.

(Eff: FEB 28 2010 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

§10-3 Form and Content of Written Request for Hearing. The written request shall contain the following:

- (1) The name, address, and telephone number of the petitioner.
- (2) A designation of the pertinent Ordinance, rule, or order which is the subject of the request or the action taken by DPP on which this request is based.
- (3) A complete statement of facts on which the request is based.
- (4) A complete statement of the position of the petitioner, a complete statement of the reasons in support of petitioner's position, and a memorandum of points and authority, including any legal authorities.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

§10-4 Hearing Officer. The Director or his authorized representative shall conduct the hearing.

(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

§10-5 Notice; Conduct of Hearing; Judicial Review. The notice, conduct of hearing, and the procedure for judicial review shall be made pursuant to the provisions of Chapter 91, HRS.

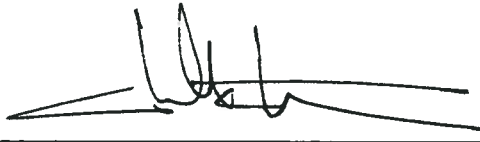
(Eff: 2010) (Auth: RCH §6-1504) (Imp: ROH §21-2.80)

FEB 28 2010

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

The Rules for the Terms of Unilateral Agreements Requiring Affordable Housing were adopted on February 12, 2010, following a public hearing held on August 17, 2009, after public notice was given in the Honolulu Star Bulletin on July 17, 2009.

The adoption of these Rules shall take effect ten days after filing with the Office of the City Clerk of the City and County of Honolulu.



David K. Tanoue, Director
Department of Planning and
Permitting, City and County
of Honolulu



Felix Maurer III, Director
Department of Budget and
Fiscal Services, City and
County of Honolulu

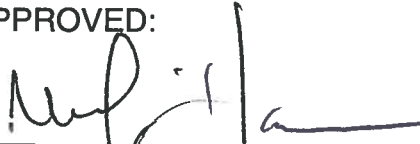
APPROVED AS TO FORM:



Deputy Corporation Counsel
City and County of Honolulu

Date: FEB 12 2010

APPROVED:



Mufi Hannemann
Mayor
City and County of Honolulu

Dated: FEB 18 2010

FILED:



Bernice K.N. Mau
City Clerk
City and County of Honolulu