

Chapter 11

HOUSING

Article 1. Affordable Housing.

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* **Editor's Note:** Chapter 11, "Housing," was repealed by Ordinance 96-162, section 21, and replaced with "Affordable Housing," pursuant to Ordinance 98-1.

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Chapter 11**HOUSING****Article 1. Affordable Housing.****Section 11-1. Title.**

This article shall be referred to as the County of Hawai‘i affordable housing policy.
(1998, Ord. No. 98-1, sec. 2; Am. 2005, Ord. No. 05-23, sec. 2.)

Section 11-2. Objectives.

The objectives of this affordable housing policy are to:

- (1) Implement goals and policies of the general plan;
- (2) Promote and assist private development of housing for senior citizens, persons with disabilities and qualified households;
- (3) Use available governmental grants and funds in the development of affordable housing and increase the capabilities of qualified households to obtain affordable housing;
- (4) Support innovative, lower-cost approaches which may be used in the development of affordable housing;
- (5) Require large resort and industrial enterprises to address related affordable housing needs as a condition of rezoning approvals, based upon current economic and housing conditions;
- (6) Require residential developers to include affordable housing in their projects or contribute to affordable housing off-site.

(1998, Ord. No. 98-1, sec. 2; Am. 2005, Ord. No. 05-23, sec. 2.)

Section 11-3. Definitions.

The following words and phrases, unless the context otherwise requires, are defined as follows:

- (1) “Affordable housing” means dwelling units which may be rented or purchased at cost levels which can be afforded by persons or families who are within the definition of “qualified households,” as provided herein;
- (2) “Affordable housing income guidelines” means those household income levels which shall be published annually by the Office of Housing and Community Development and as described further herein;
- (3) “Fifteen mile radius” means the distance from the site in question as measured in a straight line from the boundary of the parcel being rezoned;
- (4) “Qualified households” mean an individual or two or more related by blood, state-sanctioned adoption, foster parentage, guardianship, or marriage, occupying a dwelling unit and whose total household income is within the affordable housing income guidelines or who would otherwise qualify in a state or federal affordable housing program;
- (5) “Affordable unit” or “affordable housing unit” means a lot or dwelling unit for sale or lease which serves as the primary residence for the respective buyer or renter and is affordable to qualified households earning no more than the percentages of the median income in the County of Hawai‘i as stated in this chapter;
- (6) “Eligible buyer” means a person who meets eligibility requirements, including income limitations, as established by rule.

(1998, Ord. No. 98-1, sec. 2; Am. 2005, Ord. No. 05-23, sec. 2; Am. 2005, Ord. No. 05-111, sec. 1; Am. 2007, Ord. No. 07-109, sec. 1.)

Section 11-4. Affordable housing requirements.

- (a) The affordable housing requirements shall apply to:
- (1) All new rezonings that may create additional residential uses, including rezonings, to RS, RD, RM, RCX, RA and FA districts, and APD rezonings where lot sizes are less than five acres, and CG, CV, CN and PD districts when residential uses are established in those districts;
 - (2) All new rezonings to resort, including hotels established in V, CV, CG, CDH or PD districts;
 - (3) All new rezonings to ML, MG, and MCX districts;
 - (4) All prior rezoning actions which contain affordable housing conditions that have not been satisfied as of the effective date of this ordinance, or to which the County has not agreed previously as to the specific means of satisfying the requirements.
- (b) Requirements for residential uses.
- (1) Four or fewer residential units or lots: no requirement;
 - (2) Five or more residential units or lots: the applicant must earn affordable housing credits equal to twenty percent of the number of units or lots (rounded to the nearest .5);
 - (3) Time share units shall be considered as residential units.
- (c) Requirement for resort and hotel uses.
Resort and hotel uses generating more than one hundred employees on a full-time equivalent basis must earn one affordable housing credit for every four full-time equivalent jobs created.
- (d) Requirements for industrial uses.
- (1) The industrial uses that must fulfill the affordable housing requirements are any uses allowed as of right in an ML or MG district, except for home improvement centers, and any uses that are also allowed as of right in a CG district.
 - (2) Credits required.
 - (A) Individual industrial enterprises generating more than one hundred employees on a full-time equivalent basis must earn one affordable housing credit for every four full-time equivalent jobs created.
 - (B) Rezoning to ML, MG, or MCX, approved after August 22, 2007 with a potential to generate more than one hundred employees on a full-time equivalent basis must earn one affordable housing credit for every four full-time equivalent jobs created.
 - (i) At the time of rezoning, the potential job generation shall be assumed to be ten full-time equivalent jobs per acre to determine whether subsequent development within the rezoned area must satisfy an affordable housing requirement.
 - (ii) At the time of plan approval, pursuant to section 11-9(b), the affordable housing requirement shall be based upon ten full-time equivalent jobs per acre, or one per 1,000 square feet of gross floor area, whichever is greater, provided that the administrator, after consultation with the planning director, shall adjust the number of jobs based on proof that the actual number of jobs created will deviate from this standard, and provided that in that case, the affordable housing requirement shall be reassessed if the use is changed.
 - (iii) The applicant may also satisfy the affordable housing requirement at the time of final subdivision approval for all or a portion of the lots created within the rezoned area, provided that in that case, the applicant shall be required to earn one affordable housing credit for every ten full-time equivalent jobs created, based on ten full-time equivalent jobs per acre.

- (iv) Hawai'i County Council districts 2, 3, 4, and 5 would be exempt from inclusion in chapter 11, article 1, section 1-4(d), until such time that either the Hawai'i County Council or the Hawai'i County planning director deem their inclusion necessary and a resolution stating such is passed by the County Council.

(1998, Ord. No. 98-1, sec. 2; Am. 2005, Ord. No. 05-23, sec. 2; Am. 2005, Ord. No. 05-111, sec. 2; Am. 2007, Ord. No. 07-110, sec. 2.)

Section 11-5. Satisfaction of affordable housing requirements.

- (a) The developer may satisfy the affordable housing requirements by doing any of the following:
- (1) Construct affordable for-sale units on-site;
 - (2) Construct affordable finished lots on-site, but only if the entire project consists of finished lots;
 - (3) Construct affordable for-sale units off-site, but within a fifteen-mile radius of the project site;
 - (4) Construct affordable rental units on-site, or off-site, within a fifteen-mile radius of the project site;
 - (5) Pay in-lieu fees to the Agency;
 - (6) Provide developable land, within a fifteen-mile radius of the project site, with a value determined by appraisal, that shall be credited against the in-lieu fee;
 - (7) Provide infrastructure, within a fifteen-mile radius of the project site, that shall be credited against the in-lieu fee. Any infrastructure provided must be directly related to the future provision of affordable housing;
 - (8) With the approval of the administrator, construct housing on-site or off-site, that addresses a critical regional housing need, at least equivalent to satisfying the requirements of any sub-sections (1)-(4) above, provided that the project must be located within the allowable areas for in-lieu fees under sec. 11-12;
 - (9) Obtain excess credits from another developer pursuant to sec. 11-15.
- (b) The affordable unit or finished lot shall be completed with road access, drainage, water, electricity, sewer lines, if required, and telephone, and, in the case of finished lots, shall not have unusual site conditions that make it difficult to build a home.
- (c) Affordable housing credits.
The developer shall earn affordable housing credits as follows:
- (1) Sale of completed dwelling units affordable for qualified households earning 120-140% of median: 0.5 credit per unit;
 - (2) Sale of completed dwelling units affordable for qualified households earning 100-120% of median: 1.0 credit per unit;
 - (3) Sale of completed dwelling units affordable for qualified households earning 80-100% of median: 1.5 credits per unit;
 - (4) Sale of completed dwelling units affordable for qualified households earning less than 80% of median: 2.0 credits per unit;
 - (5) Construction of rental units affordable for qualified households earning 100-120% of median: 0.5 credit per unit;
 - (6) Construction of rental units affordable for qualified households earning 80-100% of median: 1.0 credit per unit;
 - (7) Construction of rental units affordable for qualified households earning 60-80% of median: 1.5 credits per unit;
 - (8) Construction of rental units affordable for qualified households earning less than 60% of median: 2.0 credits per unit;
 - (9) Sale of finished lots affordable for qualified households earning no more than 100% of median: 0.5 credit per lot;
 - (10) Sale of finished lots affordable for qualified households earning no more than 80% of median: 1.0 credit per lot;

- (11) Donation of land to a nonprofit corporation or governmental agency for construction of for-sale housing units affordable for qualified households earning no more than 80% of the median, or construction of for-rent housing units affordable for qualified households earning no more than 60% of the median, subject to the approval of the administrator of the feasibility, location, and type of project. After the approval of the administrator, the credits are earned upon the donation of the land: 1.0 credit per unit;
- (12) A developer shall ensure that each affordable housing unit for which credit was earned or awarded shall comply with resale restrictions established by section 11-14.

(1998, Ord. No. 98-1, sec. 2; Am. 2005, Ord. No. 05-23, sec. 2; Am. 2005, Ord. No. 05-111, sec. 3; Am. 2006, Ord. No. 06-119, sec. 1; Am. 2007, Ord. No. 07-109, sec. 2.)

Section 11-6. Calculation of in-lieu fee.

- (a) The in-lieu fee for a completed dwelling unit shall be twenty-five percent of: the actual sales price of the unit minus the affordable price for households earning one hundred twenty percent of the median. The in-lieu fee shall be applied against all dwelling units, affordable and market.
- (b) The in-lieu fee for a finished lot shall be twenty-five percent of: the actual sales price of the lot minus the affordable price for households earning one hundred percent of the median. The in-lieu fee shall be applied against all dwelling units, affordable and market.
- (c) The in-lieu fee for each required affordable dwelling unit for resort, hotel, and industrial uses shall be twenty-five percent of: the median sales price for a single-family home in the tax map zone containing the project, in the previous calendar year, minus the affordable price for households earning one hundred twenty percent of the median.
- (d) The in-lieu fee for each completed dwelling unit not offered for sale (such as units offered for rent) shall be twenty-five percent of: the median sales price for a single-family home in the tax map zone containing the project in the previous calendar year, minus the affordable price for households earning one hundred twenty percent of the median. The in-lieu fee shall be applied against all dwelling units not offered for sale.

(1998, Ord. No. 98-1, sec. 2; Am. 2005, Ord. No. 05-23, sec. 2; Am. 2007, Ord. No. 07-10, sec. 1.)

Section 11-7. Calculation of affordable sales price.

- (a) The OHCD shall calculate the affordable sales price for various household sizes annually. The affordable sales price for completed units shall be the price that is affordable to households earning the stated percentages of the median income for the County of Hawai'i, using the Housing and Community Development Corporation of Hawai'i guidelines, and the most current annual average interest rate for a thirty-year conventional fixed mortgage, not seasonally adjusted, for the twelve months ending in the previous year, as published by the Federal Home Loan Mortgage Corp. For 2005, the affordable sales price for a household of four persons earning one hundred percent of median shall be \$203,400 less any adjustments due to association fees or similar fees.
- (b) The affordable sales price for finished lots shall be the affordable sales price for a completed unit for a household of four persons, earning one hundred percent of the median income in the County of Hawai'i, less the cost to build a single-family home of 1,100 square feet in the general area, as estimated by OHCD. In 2005, the affordable sales price for a finished lot shall be \$95,000.

(1998, Ord. No. 98-1, sec. 2; Am. 2005, Ord. No. 05-23, sec. 2.)

Section 11-8. Density bonus.

- (a) Any project subject to an affordable housing requirement under this chapter that fulfills its housing requirement by constructing affordable dwelling units for sale or rent shall be entitled to a density bonus increasing the total number of residential units that may be constructed on the site by ten percent, and decreasing the minimum lot size by ten percent, compared to the number of units otherwise allowable and the minimum lot size as established by the zoning code.
 - (b) If a project fulfills its affordable housing requirement off-site, the density bonus can be used on the non-affordable site, or the affordable housing site, or divided between the two sites.
 - (c) The density bonus may not be used in the State Land Use Agricultural District or Rural Districts to create lots less than the minimum lot sizes required in those districts.
- (1998, Ord. No. 98-1, sec. 2; Am. 2005, Ord. No. 05-23, sec. 2.)

Section 11-9. Sale of lots and units.

- (a) Before obtaining final subdivision approval or plan approval for any for-sale residential project subject to the affordable housing requirements, the applicant shall enter into an agreement with the County that the required number of homes or lots will be sold at the required affordable sales price, or that the required number of rental units will be offered for rent at the affordable rental price, or that the in-lieu fee will be paid upon the sale of each for-sale dwelling unit or lot, or that the applicant will obtain excess credits sufficient to satisfy its requirements.
 - (b) Before obtaining final plan approval for any resort, hotel, or industrial project, or not-for-sale residential project subject to the affordable housing requirements, the applicant shall enter into an agreement with the County that the affordable housing requirements will be met before the issuance of a certificate of occupancy for the project.
 - (c) All agreements shall be recorded against the property, and that the in-lieu fee, if applicable, shall be a lien payable upon the closing of sale of each unit or lot or prior to the issuance of a certificate of occupancy under subsection (b).
 - (d) All for-sale affordable units and lots shall be sold only to eligible buyers during a ninety-day preferential marketing period.
 - (e) If the developer cannot sell the units or lots to eligible buyers during the ninety-day preferential marketing period, the units shall be offered for sale to persons who are otherwise eligible, but have previously owned a residence, for an additional period of thirty days. If a unit or lot cannot be sold after the one hundred twenty-day period, the developer may sell the unit or lot to any person at the affordable sales price. The Agency may also purchase the unit or lot after the ninety-day preferential marketing period at the affordable sales price.
- (2005, Ord. No. 05-23, sec. 2.)

Section 11-10. Buyer of finished lots.

The purchaser of a finished lot that is used to fulfill an affordable housing requirement, and that is sold during the preferential marketing period, shall enter into a binding contract for the construction of a residence on the lot within two years of the date of sale, and complete construction within three years of the date of sale, or, if the purchaser is an owner-builder, shall commence construction within two years and complete construction within three years of the date of sale. During this three-year period, the purchaser may sell only to eligible buyers, as determined by the administrator, and the sales price shall not exceed the original purchase price, plus an inflation factor based on the increase in the Consumer Price Index for Honolulu, and reasonable compensation for improvements, if any, made by the purchaser. If the purchaser does not meet these time limits, the purchaser shall offer to sell the lot to the Agency, or, at the election of the administrator, to eligible buyers, at a price that does not exceed the original purchase price, plus an inflation factor based on the Consumer Price Index for Honolulu, plus reasonable compensation for improvements, if any, made by the purchaser.

(2005, Ord. No. 05-23, sec. 2.)

Section 11-11. Rental units.

- (a) The Agency shall determine the affordable rental price for units of various sizes annually.
- (b) The developer shall enter into an agreement with the County that the rental prices on the units shall be controlled for no less than twenty years after initial occupancy.

(2005, Ord. No. 05-23, sec. 2.)

Section 11-12. Use of in-lieu fees.

The in-lieu fee shall be used to support affordable housing located no more than twenty-five miles, as measured on a straight line, from the project that generated the in-lieu fee provided that the Agency can authorize use outside of this distance restriction if it determines that the project is necessary to satisfy a critical housing need.

(2005, Ord. No. 05-23, sec. 2.)

Section 11-13. Eligibility.

The administrator shall establish eligibility criteria by rule. Eligibility criteria shall include residency requirements to the extent permitted by law. The administrator may allow households with incomes up to twenty percent greater than the income on which the maximum sales price was based to be qualified to purchase a unit.

(2005, Ord. No. 05-23, sec. 2.)

Section 11-14. Resale restrictions.

The Agency shall establish resale restrictions by rule to ensure that units created under this policy remain affordable. Such rules may include, but not be limited to, buy-back, shared appreciation, and other restrictions. The administrator may be delegated the authority to select the resale restriction applicable to a particular project.

(2005, Ord. No. 05-23, sec. 2.)

Section 11-15. Transfer of excess credits.

- (a) Developers who construct new affordable housing units in excess of any requirements imposed under this chapter or any other requirement may earn "excess credits" which they may transfer to other developers.
- (b) The developer shall earn the excess credits pursuant to section 11-5(c).
- (c) To qualify for excess credits, units must be sold or rented to qualified households. The developer shall apply to the administrator for approval of the excess credits.
- (d) After approval of the excess credits, the developer may transfer the excess credits to any other project that is within the distance established in section 11-5(a)(3), to fulfill part or all of the affordable housing requirements of the other project.
- (e) If the project applying for the excess credits was developed with a direct subsidy from the federal, state, or county governments, the administrator shall either (1) discount the excess credits earned by the value of the subsidy, or (2) require that the Agency or other public entity subsidizing the project share equitably in the proceeds from the transfer of the excess credits. If the project was developed by a nonprofit corporation and sold to qualified households earning not more than 80% of the median, or rented to qualified households earning not more than 60% of the median, the discount shall not exceed 50% of the credits. The administrator may waive these requirements if the project earning the excess credits addresses a critical housing need and the excess credits, in addition to the direct subsidy, are or were a necessary inducement to the construction of the project, or if the excess credits are earned by a nonprofit entity that will use the proceeds for the construction of more affordable housing.
- (f) For the purposes of this section, a "direct financial subsidy" includes the provision of land at below market value, or governmental construction of infrastructure necessary for a housing project, but does not include density bonuses, zoning or other permitting exemptions under section 201G-118, Hawai'i Revised Statutes, or federal or state tax credits for the construction of rental housing.

(2005, Ord. No. 05-23, sec. 2; Am. 2005, Ord. No. 05-111, sec. 4.)

Section 11-16. Section 201G projects.

The County's exemption authority, as contained in chapter 201G, Hawai'i Revised Statutes, may be utilized to expedite change of zone requests, subdivision applications, and plan review as well as the consideration of reduced development standards.

(2005, Ord. No. 05-23, sec. 2.)

Section 11-17. Effect on existing requirements.

This policy supersedes all previous affordable housing requirements and Hawai'i County Housing Agency Resolution 65 dated May 2, 1990 and Ordinance 98-1. Any affordable housing condition or portion thereof in any prior rezoning ordinance which has not been fully satisfied as of the effective date of this policy shall be reassessed pursuant to this policy unless the County has previously agreed as to the specific means of satisfying the requirements, in which case, this amended policy shall apply only to the extent it is not inconsistent with the agreement. In no event shall the County of Hawai'i reimburse or be obligated to reimburse any person or entity for the partial or full satisfaction of an affordable housing condition in any ordinance which became effective prior to the effective date of this policy.

(2005, Ord. No. 05-23, sec. 2.)

Section 11-18. Adoption of rules.

The Housing Administrator is authorized to adopt such rules pursuant to Chapter 91, Hawai'i Revised Statutes, as are necessary to carry out this ordinance.

(2005, Ord. No. 05-23, sec. 2.)

Section 11-19. Reports by administrator.

The administrator shall make timely periodic reports to the Agency of all significant actions taken under authority of this chapter, including but not limited to the approval of excess credits, the acceptance of transferred credits, and the choice of resale restrictions.

(2005, Ord. No. 05-23, sec. 2.)