

CHAPTER 11

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* **Editor's Note:** Chapter 11, "Housing," was repealed by Ordinance 96-162, section 21, and replaced with "Affordable Housing," pursuant to Ordinance 98-1.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 98-1, sec 2; am 2005, ord 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 98-1, sec 2; am 2005, ord 05-23, sec 2.)

Section 11-3. Definitions.

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

“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.

“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.

“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.

“Agency” shall be the same as is defined under chapter 2, article 13 of this Code, therein referred to as the “housing agency.”

“Eligible buyer” means a person who meets eligibility requirements, including income limitations, as established by this chapter or by rule.

“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.

“Homeownership counselor” means a nonprofit or government entity that provides homeownership readiness education within the County.

“Office of housing and community development (OHCD)” means the County entity responsible for the planning, administration and operation of all of the County’s housing programs with the goal of providing for the development of viable communities in Hawai‘i County by providing decent housing, suitable living environments and the expansion of economic opportunities, as provided in chapter 2, article 13 of this Code.

“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.

“Qualified resident” means a person who is a full-time resident of the County of Hawai‘i, consistent with residency as defined in HRS § 235-1 and HRS § 11-13, as demonstrated by evidence satisfactory to the housing administrator.

“Qualified returning student” means a person who was a qualified resident immediately prior to leaving the County of Hawai‘i to attend a university, college, or a trade school and who has not taken affirmative steps to relinquish their resident status within the County. A returning student may use the evidence of residency of a parent or guardian to demonstrate that the student was a qualified resident prior to their temporary departure from the County.

“Qualified worker” means a person who earns at least seventy-five percent of their income within a distance specified by the housing administrator of any affordable housing project, as demonstrated by evidence satisfactory to the housing administrator. (1998, ord 98-1, sec 2; am 2005, ord 05-23, sec 2; am 2005, ord 05-111, sec 1; am 2007, ord 07-109, sec 1; am 2011, ord 11-84, sec 1; am 2014, ord 14-8, sec 2; am 2023, ord 23-77, secs 1 and 2.)

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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.

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- (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 11-4(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 98-1, sec 2; am 2005, ord 05-23, sec 2; am 2005, ord 05-111, sec 2; am 2007, ord 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 and sell affordable for-sale units on-site;

- (2) Construct and sell affordable finished lots on-site, but only if the entire project consists of finished lots;
 - (3) Construct and sell affordable for-sale units off-site, but within a fifteen-mile radius of the project site;
 - (4) Construct and rent affordable rental units on-site, or off-site, within a fifteen-mile radius of the project site;
 - (5) Convey to the County or, at the County's direction to a non-profit entity, developable land within a fifteen-mile radius of the project site. The land to be conveyed shall be acceptable to and approved by the OHCD, with availability of road access, water, electricity, telephone service and without unusual site conditions that make it difficult to build a home, to accommodate the number of homes the developer would be required to provide if its required credits were earned by selling completed dwelling units to households with a family size of four earning 110% of median income per section 11-7(a); developers conveying finished lots with road access, drainage, water, electricity and sewer when sewer lines are available, shall be entitled to a 50% reduction of the affordable housing requirement.
 - (6) Convey to the County or, at the County's direction to a non-profit entity, infrastructure within a fifteen-mile radius of the project site. The value of the infrastructure to be conveyed shall be determined by appraisal and shall be not less than 100% of the sales price of the affordable homes that the developer would be required to provide level if its required credits were earned by selling completed dwelling units to households with a family size of four earning 110% of median income per section 11-7(a). Any infrastructure provided must be directly related to the future provision of affordable housing;
 - (7) Obtain excess credits from another developer pursuant to section 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 to qualified households earning 120-140% of median: 0.5 credit per unit;
 - (2) Sale of completed dwelling units affordable to qualified households earning 100-120% of median: 1.0 credit per unit;
 - (3) Sale of completed dwelling units affordable to qualified households earning 80-100% of median: 1.5 credits per unit;
 - (4) Sale of completed dwelling units affordable to qualified households earning less than 80% of median: 2.0 credits per unit;
 - (5) Construction and rental of rental units affordable to qualified households earning 100-120% of median: 0.5 credit per unit;
 - (6) Construction and rental of rental units affordable to qualified households earning 80-100% of median: 1.0 credit per unit;

- (7) Construction and rental of rental units affordable to qualified households earning 60-80% of median: 1.5 credits per unit;
 - (8) Construction and rental of rental units affordable to qualified households earning less than 60% of median: 2.0 credits per unit;
 - (9) Sale of finished lots affordable to qualified households earning no more than 100% of median: 0.5 credit per lot;
 - (10) Sale of finished lots affordable to qualified households earning no more than 80% of median: 1.0 credit per lot;
 - (11) Conveyance 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 conveyance 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.
- (d) Affordable housing percentage requirements.
- (1) If the developer will satisfy its affordable housing requirements by constructing completed dwelling units for sale or rental, the affordable prices at which the units are sold shall be such that:
 - (A) A minimum of 20% of the required affordable housing credits are earned at a 1 or greater credit per unit level;
 - (B) A minimum of 30% of the required affordable housing credits are earned at a 1.5 or greater credit per unit level; and
 - (C) A minimum of 40% of the required affordable housing credits are earned at the 2 per unit credit level.
 - (2) If the developer will satisfy its affordable housing requirements by offering finished lots, the lots shall be sold at a range of affordable prices, such that:
 - (A) A minimum of 20% of the required affordable housing credits are earned at a .5 or greater per unit credit level; and
 - (B) A minimum of 20% of the required affordable housing credits are earned at the 1.0 per unit credit level.
- (e) The units shall be constructed so that the unit size, the number of bedrooms, and the bedroom sizes of the affordable units are respectively consistent to the unit size, the number of bedrooms, and the bedroom sizes of the market units.
- (1998, ord 98-1, sec 2; am 2005, ord 05-23, sec 2; am 2005, ord 05-111, sec 3; am 2006, ord 06-119, sec 1; am 2007, ord 07-109, sec 2; am 2011, ord 11-38, sec 1; ord 11-84, sec 2; am 2012, ord 12-81, sec 1.)

Section 11-6. Repealed.

(1998, ord 98-1, sec 2; am 2005, ord 05-23, sec 2; am 2007, ord 07-10, sec 1; rep 2011, ord 11-84, sec 3.)

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 98-1, sec 2; am 2005, ord 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 or by donating finished lots with infrastructure 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 98-1, sec 2; am 2005, ord 05-23, sec 2; am 2014, ord 14-37, sec 1.)

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 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.
- (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, there shall be a second ninety-day period wherein the developer shall, in consultation with one or more OHCD-approved homeownership counselors, actively market the unsold units or lots to clients of those homeownership counselors, provided those clients either are or may be qualified to purchase the unsold units or lots. If a unit or lot is not under contract for sale by the end of the one hundred and eighty days, such unit or lot 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 is not under contract for sale after the two hundred ten-day period, the developer may sell the unit or lot to any person at the affordable sales price. Notwithstanding the foregoing, at any time after the initial ninety-day preferential marketing period, the housing administrator may authorize the County to purchase any unsold unit or lot at the affordable sales price.
- (f) For sale units shall be sold on a per unit basis using mortgages where the term is fixed for a minimum of at least fifteen years.

(2005, ord 05-23, sec 2; am 2011, ord 11-84, sec 4; am 2014, ord 14-8, sec 3.)

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 housing 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 County, or, at the election of the housing 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 05-23, sec 2; am 2014, ord 14-8, sec 4.)

Section 11-11. Rental units.

- (a) The housing administrator 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 05-23, sec 2; am 2014, ord 14-8, sec 5.)

Section 11-12. Repealed.

(2005, ord 05-23, sec 2; rep 2011, ord 11-84, sec 5.)

Section 11-13. Eligibility; preference.

- (a) Eligibility requirements.

- (1) The applicant, and the applicant's spouse or reciprocal beneficiary if applicable, may not independently or jointly, unless separated and living apart under a decree from a court of competent jurisdiction, own a majority interest of more than fifty percent in fee simple and/or leasehold of any real estate property that is suitable for dwelling purposes or lands under any trust agreement or other fiduciary arrangement in which another person holds legal title to such land.
- (2) The housing 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.
- (3) The housing administrator may establish additional eligibility criteria in administrative rules.

- (b) Unless otherwise prohibited by a grantor to the County for an affordable housing project, for any affordable housing project for which the office of housing and community development is responsible for receiving and evaluating applications, the housing administrator shall:

- (1) Define the distance from the affordable housing project to be used to identify qualified workers, if applicable;
- (2) Determine order of preferences and rank applicants based on the following preference categories:
 - (A) Income eligible qualified resident;
 - (B) Income eligible qualified worker; and
 - (C) Income eligible qualified returning student;
- (3) Select applicants based on application date within the pool of similarly ranked applicants; and
- (4) Validate the preference status of an applicant prior to occupancy of an affordable unit.

(2005, ord 05-23, sec 2; am 2023, ord 23-77, sec 3.)

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Section 11-14. Resale restrictions.

The housing administrator 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 housing administrator may be delegated the authority to select the resale restriction applicable to a particular project. Notwithstanding any provision or rule to the contrary, for a period of ten years from the first date of sale of any affordable unit created in satisfaction of the requirements of this chapter, said unit may only be sold to another eligible buyer in the same or lower median income level as the original purchaser of said unit. Organizations classified under Section 501 (c) of the United States Internal Revenue Code and those that utilize United States Department of Agriculture funding programs are exempt from resale restrictions applicable to eligible buyers in the same or lower median income level.

(2005, ord 05-23, sec 2; am 2011, ord 11-38, sec 2; am 2014, ord 14-8, sec 6.)

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. The developer shall obtain approval for the transfer of excess credits from the housing administrator before initiating any such transfer. The housing administrator shall validate any such transfer of excess credits upon completion of the transaction. Excess credits that are transferred in violation of this section are voidable at the discretion of the County.

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- (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 05-23, sec 2; am 2005, ord 05-111, sec 4; am 2024, ord 24-18, sec 1.)

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 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 05-23, sec 2.)

Section 11-18. Adoption of rules.

The housing administrator is authorized to adopt such rules pursuant to Chapter 91, Hawaii Revised Statutes, as are necessary to carry out this ordinance.

(2005, ord 05-23, sec 2.)

Section 11-19. Reports by housing administrator.

- (a) Affordable housing agreements. Within thirty calendar days following the date of execution of any affordable housing agreement executed in satisfaction of this chapter, the housing administrator shall submit a copy of the affordable housing agreement to the council.
- (b) Quarterly reporting. The housing administrator shall provide reports to the council relating to the activities of each quarter. Reports shall cover the following periods: January through March; April through June; July through September; and October through December and be submitted to the council within sixty calendar days following the end of each period. The first report shall be submitted to the council by March 1, 2023 and include information relating to the period October through December 2022. Each report shall include the following:
 - (1) A list of developers in possession of excess affordable housing credits and the number of affordable housing credits each developer has earned, transferred, redeemed, and remains in possession of as of the end of the quarterly reporting period;
 - (2) A summary of the current affordable housing inventory; and
 - (3) An accounting of significant actions taken under authority of this chapter including, but not limited to:
 - (A) For sale affordable housing units developed and sold;
 - (B) Finished affordable housing lots constructed and sold;
 - (C) Affordable housing rental units constructed and being rented;
 - (D) Developable land conveyed;
 - (E) Infrastructure conveyed;
 - (F) Affordable housing units resold; and
 - (G) Density bonuses granted.

(2005, ord 05-23, sec 2; am 2014, ord 14-8, sec 7; 2023, ord 23-20, sec 1.)

Article 2. Housing Production Funding.**Section 11-21. Appropriation of funds for housing production.**

At least \$5,000,000 per year shall be appropriated for the office of housing and community development to facilitate programs that support affordable housing production. Any remaining balance at the end of the fiscal year should be designated for this purpose.

(2022, ord 22-77, sec 1.)