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DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
CITY AND COUNTY OF HONOLULU

Adoption of Rules for
the Terms of Unilateral Agreements
Requiring Affordable Housing

OCT 20 1994, 1994

SUMMARY

Rules are adopted for the Terms of Unilateral Agreements
Requiring Affordable Housing.

CITY AND COUNTY OF HONOLULU
CITY AND COUNTY OF HONOLULU
CITY HALL ANNEX, 558 S. KING STREET
HONOLULU, HAWAII 96813

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DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
CITY AND COUNTY OF HONOLULU
STATE OF HAWAII

RULES FOR UNILATERAL AGREEMENTS
REQUIRING AFFORDABLE HOUSING

TABLE OF CONTENTS

CHAPTER 1 RULES OF GENERAL APPLICATION

 §1-1 Applicability

 §1-2 Definitions

 §1-3 Severability; Prevailing
 Agreements

 §1-4 Authority of DHCD

 §1-5 Investigations

 §1-6 Collection of information

 §1-7 Dissemination of information

 §1-8 Contracts

 §1-9 Burden of proof; Oaths;
 Affidavits

 §1-10 Revolving Fund

CHAPTER 2 TERMS AND CONDITIONS

 §2-1 Unilateral Agreement

 §2-2 Implementation Plan:
 Preparation; Approval

 §2-3 Implementation Plan: Contents

 §2-4 Implementation Plan: Effect

 §2-5 Implementation Plan: Type
 Deviations

 §2-6 Total Unilateral Housing
 Requirement: Definition

§2-7 Total Unilateral Housing
Requirement: Satisfaction

§2-8 Delivery Options

§2-9 Documentation

§2-10 Construction Quality
Standards

§2-11 Pricing

§2-12 Chapter 201E HRS Exemptions

CHAPTER 3

APPLICANT QUALIFICATIONS

§3-1 Eligibility Requirements:
Application

§3-2 Eligibility Requirements:
Criteria

§3-3 Eligibility Requirements:
Sole Application

§3-4 Eligibility Requirements:
Falsification

§3-5 Occupancy Requirements

§3-6 Income Limits

§3-7 Income Verification

§3-8 Eligibility Determination by
DHCD

§3-9 Non-Discrimination

CHAPTER 4

SELECTION

§4-1 Excess Applicants

CHAPTER 5

RESTRICTIONS ON TRANSFER, SALE/
BUYBACK, AND USE

§5-1 Subject to Restrictions;
Encumbrances

§5-2 Principal Residence

§5-3 Term of Restrictions

§5-4 New Restriction Period

§5-5 Waiver

§5-6 Consent

CHAPTER 6 PERIODIC AND FINAL REPORTS

§6-1 Status Report

CHAPTER 7 PUBLIC INFORMATION

§7-1 Public Information

§7-2 Submittal or Requests for Information

CHAPTER 8 ADOPTION, AMENDMENT, AND REPEAL OF RULES

§8-1 Petition

§8-2 Submission

§8-3 Disposition of Petition

§8-4 Action by DHCD

§8-5 Filing

§8-6 Effective Date

CHAPTER 9 DECLARATORY RULINGS BY DHCD

§9-1 Petition

§9-2 Submission of Petition

§9-3 Rejection of Petition

§9-4 Refusal to Issue Declaratory Order

§9-5 Referral to Other Agencies

§9-6 Notification of Petitioner

§9-7 Status of Orders

CHAPTER 10

HEARINGS ON DISPUTES

§10-1 Informal Hearing

§10-2 Formal Hearing on Dispute;
Request for Hearing

§10-3 Form and Content of Request
for Hearing

§10-4 Hearing Officer

§10-5 Notice; Conduct of Hearing;
Judicial Review

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 §21-8.40, Revised Ordinances of Honolulu and are authorized by §4-105.4., 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 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 Housing and Community Development, 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 uniform implementation, administration, and enforcement of the terms of the Unilateral Agreement.
(Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§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: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

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

Applicant: Household applying for affordable housing.

Chapter 201E: Chapter 201E, 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.

Co-Mortgagor: A family member who may own other lands in fee simple or leasehold suitable for dwelling purposes, who may not own more than a one percent interest in the affordable housing unit to be purchased, and who certifies that the co-mortgagor does not intend to reside in the affordable housing unit. The income and assets of the co-mortgagor shall not be counted in determining the eligibility of the applicant.

DHCD: The Department of Housing and Community Development, City and County of Honolulu.

Director: The Director of the Department of Housing and Community Development, City and County of Honolulu.

Dwelling Unit: A single structure or a single unit in a multi-unit structure, designated for residential use by one household.

Elderly Person: A person 62 years of age or older.

Fair Market Rent: The maximum periodic rent, including utilities, established by HUD under particular 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.

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.
- (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, non-relative aide, defined below.

Handicapped: A person who has a mental or physical impairment which:

- (1) is expected to be of long, continued, and indefinite duration;
- (2) substantially impedes the person's ability to live independently; and
- (3) is of such a nature that the ability to live independently could be improved by more suitable housing conditions.

HRS: Hawaii Revised Statutes, as amended.

Household:

- (1) two or more persons regularly living together related by blood, marriage, or by operation of law; or
- (2) a single person; or
- (3) a live-in, non-relative aide living with an elderly, disabled, or handicapped person, who is determined to be essential to the care and well-being of that person, as certified by a doctor; or
- (4) two or more persons who have lived together for at least one year, who have executed an affidavit, and who have provided proof acceptable to DHCD 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 surface of the earth on which it is suitable to construct a dwelling unit, which real property may be improved or unimproved.

Low Income Household: A household whose income does not exceed eighty percent of the Median Income for the Honolulu Metropolitan Statistical Area most recently determined by HUD, adjusted for household size.

Median Income for the Area: The Median Income most recently determined by HUD for the Honolulu Metropolitan Statistical Area, adjusted for household size.

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 twenty percent of the Median Income for the Honolulu Metropolitan Statistical Area most recently determined by HUD, adjusted for household size.

Original Fair Market Value: The fair market value of the property as determined by an FHA appraisal or if such an appraisal is not available, a comparable appraisal obtained by the DHCD.

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 DHCD.

Real Property: 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 1975, 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 DHCD, from the total costs expended on 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 DHCD.

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

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: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§1-4 Authority of DHCD. DHCD 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: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§1-5 Investigations. The Director shall conduct an investigation of any written complaint or situation which indicates a possible violation of 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 bring a civil action in the name of the City in any court of competent jurisdiction for the enforcement of the orders.

(Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§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, other agreements made in conjunction with the Unilateral Agreement, or these rules.

(Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§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: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§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: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§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: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§1-10 Revolving Fund. All moneys received or collected by the City or DHCD shall be deposited in the Housing Assistance Fund.

(Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

CHAPTER 2TERMS AND CONDITIONS

§2-1 Unilateral Agreement. The terms and conditions imposed by the landowner on the use of real property shall be stated in the unilateral agreement. (Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§2-2 Implementation Plan: Preparation; Approval. The developer shall prepare an implementation plan acceptable to DHCD for the delivery of the affordable housing units. The developer will deliver the implementation plan to DHCD for its approval prior to the commencement of construction. (Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§2-3 Implementation Plan: Contents. The implementation plan shall contain the following information:

- (a) The location of the affordable housing units.
- (b) The type (e.g., number of bedrooms per unit, single- or multi-family unit) of affordable housing units and supporting information which justifies the types of bedroom mix of affordable housing units.
- (c) The price of the affordable housing units.
- (d) The delivery schedule of all market and affordable housing units for each phase of the project under the Unilateral Agreement. (Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§2-4 Implementation Plan: Effect. The implementation plan shall ensure that:

- (a) The number of affordable housing units sold or rented to low and moderate income households shall total a minimum of thirty percent of the total number of residential units planned to be constructed. Provided, however, that ten percent or more of the residential units planned to be constructed shall be sold or rented to households earning eighty percent or less of the median income for the Honolulu Metropolitan Statistical Area.
- (b) 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.

(c) 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 §2-5.

(d) To the maximum extent possible, the affordable housing units shall be constructed and delivered simultaneously with the market units.

(e) All members of the public have an equal opportunity to apply for the units.
 (Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§2-5 Implementation Plan: Type Deviations. Deviations to the type of affordable unit requirements may be permitted, provided that the total unilateral housing requirement is satisfied as stated in the Unilateral Agreement or in these rules.
 (Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§2-6 Total Unilateral Housing Requirement: Definition. The term "total unilateral housing requirement" is defined as the total number of housing units multiplied by 30 percent; or the total number of market housing units multiplied by 3/7.
 (Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§2-7 Total Unilateral Housing Requirement: Satisfaction. The total unilateral housing requirement is effectively satisfied only if:

(a) The sum of the products of the actual number of affordable housing units delivered, multiplied by its corresponding factor, stated in §2-7(c), equals or exceeds the total unilateral housing requirement; and

(b) At least one third of the unilateral housing requirement is satisfied through units intended for households earning eighty percent or less of the median income for the Honolulu Metropolitan Statistical Area.

(c) The unit types and corresponding factors 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, the Developer produces 700 market units.

(The total unilateral housing requirement is computed as follows:

700 X 3/7 = 300 affordable housing units.

(The developer may satisfy the total unilateral housing requirement by producing any acceptable combination of affordable housing units which will equal or exceed 300 credits.

(For example, 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>	
		<u>300.16</u>	or 300 credits

(In this example, the developer has satisfied the total unilateral housing requirement by earning 300 credits, provided that one-third or 100 of these credits are for units priced affordable to households earning eighty percent or less than the median income for the Honolulu Metropolitan Statistical Area.) (Eff: ~~OCT 31 1994~~) (Auth: RCH \$4-105.4.) (Imp: ROH \$21-8.40)

§2-8 Delivery Options. The developer may satisfy the affordable housing requirement by providing one or more of the following options determined to be acceptable to DHCD.

(a) Affordable housing units constructed on the rezoned project site for sale at prices determined by the method stated in §2-11.

(b) Affordable rental housing units constructed on the rezoned project site, the rental rates of which satisfy §2-11. The rental units must be rented for a minimum of ten 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 DHCD and the developer or subsequent owner, determines to be the fair market value. Affordable units rented to low-income households for more than twenty years may be eligible for enhancement credits as determined by DHCD.

(c) Conveyance to the City of improved or unimproved fee simple or leasehold real property within or without the project site, zoned and suitable for the construction of affordable housing units. The appraised value of the real property conveyed to the City must be equal to the in-lieu cash payment described in §2-8(e).

(d) Sale or rental of affordable housing units as stated in §2-8(a) and §2-8(b), but 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 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 DHCD and owner, determines to be the fair market value.

(e) A cash contribution ("in-lieu fee") to DHCD equal to the difference between the estimated cost of building the affordable housing units less the estimated sales price of the affordable housing units at the time the in-lieu payment is due.

(f) Finished house-lots for affordable housing owner-builder efforts, under guidelines to be formulated by DHCD. (Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§2-9 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 DHCD for its prior written approval. (Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§2-10 Construction Quality Standards. Prior to the commencement of construction, the developer shall submit to DHCD conceptual and schematic plans and outline specifications for the increment being developed. (Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§2-11 Pricing.

(a) The affordable housing units must be priced such that a purchaser who makes a maximum 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 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 interest rates of the thirty-year U.S. Treasury Bonds at the date of the submittal of the marketing plan and the interest rate one year preceding that date, then adding one half of one percent to that average.

(c) If the developer secures a lower mortgage interest rate, than the developer may adjust the prices accordingly.

(d) For 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 80% of the median income for Honolulu, the monthly rent shall be a maximum of 30% of the median income of the target group, adjusted according to the number of bedrooms and DHCD's Occupancy Requirements.

(e) The prices and rents stated in §2-11(a) and 2-11(d) shall meet the occupancy criteria stated in §3-5.
 (Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§2-12 Chapter 201E HRS Exemptions. If the Project has been granted any exemption by the City Council pursuant to the provisions stated in Chapter 201E, HRS, the Project will be subject to the provisions of Chapter 201E, HRS. Pursuant to those provisions, the developer shall offer affordable housing units for sale or rent subject to the requirements of Chapter 201E, HRS.
 (Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

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 DHCD.

(Eff: ~~OCT 31 1994~~) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

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

- (a) Be a citizen of the United States or a resident alien.
- (b) Be at least eighteen years of age.
- (c) Be domiciled in the State of Hawaii and have a bona-fide intent to reside in the affordable housing unit.
- (d) Have sufficient gross 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.
- (e) Not have sufficient income and assets to purchase or rent a dwelling unit without assistance under the Program.
- (f) Be a person who, either oneself or together with spouse, 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.
- (g) Be a person whose spouse 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.

(h) 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:

(1) A significant change in household size as stated in §3-5; or

(2) An extreme hardship, such as divorce, death in the family, change in place of employment to Oahu from any other island in the State of Hawaii; and

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

(i) 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.

(j) If renting a unit under the Program, be a person whose spouse 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.

(k) Be an owner-occupant of the affordable housing unit during the restriction period and cannot rent out the unit during that time.

(Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§3-3 Eligibility Requirements: Sole Application. The names of any individual applicant, co-applicant/spouse or members of the household may not appear on more than one application for the project. The appearance of any one name on more than one application will be sufficient reason for DHCD to disqualify all applications containing that name. Provided, however, if a large project is offered in several smaller phases, an applicant may apply separately for each phase of the project.

(Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§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 DHCD 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: ~~OCT 31 1994~~) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§3-5 Occupancy Requirements. For the purpose of maximizing the number of persons to be benefitted 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 "
2 "	2-5 "
3 "	3-7 "
4 "	4-9 "

DHCD may modify the occupancy requirements stated above in this Section if affordable housing units are unsold.
 (Eff: ~~OCT 31 1994~~) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§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: ~~OCT 31 1994~~) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§3-7 Income Verification.

(a) The Gross Household Income of an applicant for benefits under the Program shall be certified by DHCD prior to the transfer of title.

(b) DHCD will determine the applicant's Gross Household Income and compliance with certain other eligibility requirements by referring to the applicant's latest individual income tax return(s) and the income tax returns of any household members as required by DHCD.

(c) In the case of rental units, a copy of the verification shall be retained in the developer's file for future review by DHCD. Annual verification shall be made by reference to the households' latest tax return(s). The documentation shall be retained by the developer which shall provide access to the City at all reasonable times for later review.

(Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

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

(a) Application for benefits under the Program pertaining to the project.

(b) Income and Income Limit Summary Sheet.

(c) Owner-Occupant Affidavit.

(d) If required by DHCD, Real Property Disclosure Form and documents indicating applicant's interest.

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

DHCD's determination of an applicant's eligibility shall be made as expeditiously as possible.

(Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§3-9 Non-Discrimination. There shall be no discrimination against any applicant on the grounds of race, color, national origin, marital status, parental status, handicap, religion, sex, age, or HIV (human immune-deficiency virus) infection.

(Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

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, DHCD may determine that the selection of applicants shall be by one of the following means:

(a) By lottery; or

(b) First-come, first-served, on the advertised date that applications are taken.

(Eff: ~~OCT 31 1994~~) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

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 §§201E-221, 222, and 223, HRS, except as those restrictions are modified in §5-3. 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: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§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.

(Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§5-3 Term of Restrictions. The restrictions on transfer, use and sale of the affordable housing units shall be in effect for eight years for buyers earning eighty percent or less of the median income, for four years for buyers earning between eighty-one percent and one hundred and twenty percent of the median income, and for two years for buyers earning between one hundred and twenty-one percent or more of the median income.

(Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

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

(Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§5-5 Waiver. If an owner wishes to sell an affordable housing unit, DHCD may waive the transfer restriction. A waiver by DHCD will be determined on each separate request based on the following criteria:

(a) The purchaser wishes to transfer title to the real property by devise or through the laws of descent to a family member who would otherwise qualify under these rules.

(b) 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 DHCD repurchasing the real property; provided that, in this case, the purchaser shall sell the unit or lot and sell or assign the property to a person who is a "qualified resident" as defined in section 201E-2 HRS; or

(c) The fiscal considerations of DHCD will not allow the repurchase.

(Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§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: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

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 twice each year on dates determined by DHCD and a final report, in hard copy and on floppy disk, either 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:

- (a) Apartment or lot number and name of project.
- (b) Name of purchaser or renter.
- (c) Tax Map Key.
- (d) Street address of each affordable housing unit.
- (e) Date of purchase or rent for each affordable housing unit.
- (f) Sale price or monthly rent for each affordable housing unit.
- (g) The annual gross income of each household or renter.
- (h) Target group income limit.
- (i) Unit size by number of bedrooms in each affordable housing unit.
- (j) Household size of purchaser or lessee of each affordable housing unit.
- (k) A sample copy of the deed or lease document used to convey property to individual homeowners in the project.
- (l) If Shared Appreciation Equity is in effect, a copy of the document which establish 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.
- (m) Owner's Closing Statement for the sale of each affordable housing unit.
(Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

CHAPTER 7

PUBLIC INFORMATION

§7-1 Public Information. All rules, orders, or opinions of DHCD 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 DHCD to cover mailing and publication costs. The public may obtain information on matters within the jurisdiction of DHCD, by inquiring at:

(a) The Office of the City Clerk, Honolulu Hale, 530 South King Street, Honolulu, HI 96813; or

(b) The Department of Housing and Community Development, Fifth Floor, 650 South King Street, Honolulu, Hawaii 96813.
(Eff: ~~OCT 31 1994~~) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§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: ~~OCT 31 1994~~) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

CHAPTER 8

ADOPTION, AMENDMENT, AND REPEAL OF RULES

§8-1 Petition. Any interested person may petition DHCD for the adoption, amendment, or repeal of any rule, at any time. (Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

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

- (a) A statement of the nature of the petitioner's interest;
- (b) 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
- (c) An explicit statement of the reasons in support of the action proposed. (Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§8-3 Disposition of Petition. Within 30 days after the filing of the petition, DHCD 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: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§8-4 Action by DHCD. DHCD may initiate proceedings in accordance with Section 91-3, HRS for the adoption, amendment, or repeal of any rule, at any time. (Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§8-5 Filing. After its approval by the Mayor, DHCD 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: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§8-6 Effective Date. Each adopted, amended, or repealed rule shall be effective ten days after its filing with the City Clerk. (Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

CHAPTER 9

DECLARATORY RULINGS BY DHCD

§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 DHCD.
(Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

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

(a) The name, address, and telephone number of the petitioner.

(b) A designation of the specific Ordinance, rule, or order which is the subject of the petition.

(c) A complete statement of facts on which the petition is based.

(d) 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: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§9-3 Rejection of Petition. A petition which does not conform to the requirements stated in §9-2 may be rejected by DHCD, but it may be resubmitted when it complies with those requirements.
(Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§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:

(a) The issue presented by the petitioner is speculative or hypothetical and does not involve existing fact or facts which can reasonably be expected to exist in the near future.

(b) The interest of the petitioner is not the type which would give petitioner standing to maintain an action if judicial relief were sought.

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

(d) The issue or the factual basis of the petition is not within the jurisdiction of DHCD.

§9-5 Referral to Other Agencies. If a question of law is presented in the petition, DHCD shall refer the matter to the Corporation Counsel of the City. DHCD may also obtain the assistance of other City agencies, where necessary or desirable. (Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§9-6 Notification of Petitioner. The Director shall promptly notify the petitioner in writing of the disposition of the petition. (Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§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: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

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 DHCD and alleges that the action adversely affects that person's rights, duties, welfare, or status, may submit a written notice of the complaint to DHCD 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 DHCD 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: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§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 DHCD for a formal hearing within fifteen calendar days after receipt of the written summary of the informal discussion.

(Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

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

(a) The name, address, and telephone number of the petitioner.

(b) A designation of the pertinent Ordinance, rule, or order which is the subject of the request or the action taken by DHCD on which this request is based.

(c) A complete statement of facts on which the request is based.

(d) 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: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

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

(Eff: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

§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: OCT 31 1994) (Auth: RCH §4-105.4.) (Imp: ROH §21-8.40)

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
CITY AND COUNTY OF HONOLULU

The Rules for the Terms of Unilateral Agreements Requiring Affordable Housing on the Summary Page dated OCT 20 1994, 1994, were adopted on OCT 21 1994, 1994, following a public hearing held on September 7, 1994, after public notice was given in the Honolulu Advertiser and the Honolulu Star-Bulletin on August 1, 1994.

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

Gail Kaito

APPROVED AS TO FORM:

Gail Kaito, Acting
Director, Department of
Housing and Community
Development, City and
County of Honolulu

[Signature]
David C. Laxson
Deputy Corporation Counsel

APPROVED:

Dated: October 20, 1994

[Signature]
Jeremy Harris
Mayor, City and County
of Honolulu

FILED:

Dated: OCT 21 1994

[Signature]
Raymond K. Pua
City Clerk, City and
County of Honolulu

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
CITY AND COUNTY OF HONOLULU

AMENDMENT TO RULES FOR THE TERMS OF UNILATERAL AGREEMENTS
REQUIRING AFFORDABLE HOUSING

CHAPTER 5 RESTRICTIONS ON TRANSFER, SALE/BUYBACK, AND USE

§5-3 Term of Restrictions. If the purchaser wishes to transfer title to the real property, the DHCD 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 section 201E-2, HRS, at a price and upon terms that preserve the intent of section 201E-221, 222 and 223, HRS, and who is in the same income category as the original purchaser at the time of the original sale, approved by DHCD. The restrictions on transfer, use and sale of the affordable housing units shall be in effect for eight years for buyers earning eighty percent or less of the median income, for four years for buyers earning between eighty-one percent and one hundred and twenty percent of the median income, and for two years for buyers earning between one hundred and twenty-one percent or more of the median income.

§5-5 Waiver.

(b) 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 DHCD 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 201E-2, HRS, and who is in the same income category as the original purchaser at the time of the original sale, approved by DHCD.

[(c) The fiscal considerations of DHCD will not allow the repurchase.]

(Note: Material to be deleted is bracketed. New material is underscored.)

CERTIFICATION

I, Ronald S. Lim, Director of the Department of Housing and Community Development of the City and County of Honolulu, do hereby certify:

1) That the foregoing is a full, true and correct copy of the amendments to the Rules for Terms of Unilateral Agreements Requiring Affordable Housing of the Department of Housing and Community Development, City and County of Honolulu, which were adopted on April 13, 1995, following a public hearing held on April 12, 1995; and

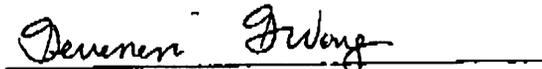
2) That the Notice of Public Hearing on the foregoing amendments to the Rules, included the substance of such amendments, was published in the Honolulu Advertiser and Honolulu Star-Bulletin on March 10, 1995.

APPROVED AS TO FORM
AND LEGALITY:


Deputy Corporation Counsel


RONALD S. LIM, Director
Department of Housing and Community
Development

Received this 20th day of
April, 1995


GENEVIEVE G. WONG, City Clerk

APPROVED THIS 19th day of
April, 1995


JEREMY HARRIS, Mayor
City and County of Honolulu

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City and County of Honolulu
City Hall Annex, 553 S. King Street
Honolulu, Hawaii 96813

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Honolulu. Dept. of Housing and Community Development.

Adoption of rules for the terms of unilateral
agreements requiring affordable housing.

Honolulu: October 1994. Amended 1995.

1 v.

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Honolulu. Dept. of Housing and Community Development.

Adoption of rules for the terms of unilateral
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Honolulu: October 1994. Amended 1995.

1 v.