

A BILL FOR AN ORDINANCE  
TO ESTABLISH A NEW CHAPTER, KAUA‘I COUNTY CODE 1987, AS AMENDED,  
RELATING TO THE HOUSING POLICY FOR THE COUNTY OF KAUA‘I

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BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA‘I, STATE OF HAWAII:

SECTION 1. Purpose and Findings. The purpose of this proposed ordinance is to establish by law a housing policy in furtherance of the goals and objectives identified for the Kaua‘i County Housing Agency in Section 2-1.16 of the Kaua‘i County Code 1987. The proposal includes workforce housing requirements for residential and resort developments, and codifies procedures used to administer housing development programs.

The Council of the County of Kaua‘i hereby finds and determines that the development and construction of residential properties and new resort facilities within the County creates a need and requirement to provide for a stable resident workforce in all fields of employment.

The Council further finds that residential and resort development contributes to the need for workforce housing because it reduces the available supply of residential land in the community, increases cost of surrounding land, and competes for limited natural resources of the island.

The Council further finds that public safety and general welfare of the resident workforce requires opportunities to secure reasonably priced, safe, sanitary, and decent homes located in suitable environments that serve the needs of residents in affordable and gap income groups.

The Council further finds that housing studies conducted for the County of Kaua‘i between 1990 and 2006 show that housing stock used by Kaua‘i households dropped from 92.5 to 77.2 percent, the highest rate of change within the state, and that high shelter cost-to-income ratios, overcrowded conditions, and excessive commuting time is detrimental to having a stable resident workforce.

The Council further finds that the workforce housing requirements under this Chapter will encourage private sector efforts in the provision of resident workforce housing for the future.

SECTION 2. The Kaua‘i County Code 1987, as amended, is hereby amended by adding a new Chapter, to be appropriately inserted and numbered, as follows:

“CHAPTER \_\_\_\_  
HOUSING POLICY FOR THE COUNTY OF KAUA‘I

## ARTICLE 1. GENERAL PROVISIONS

### Sec. \_\_\_-1.1 Title.

This Chapter shall be known as the Housing Policy for the County of Kaua'i.

### Sec. \_\_\_-1.2 Purpose.

(a) To establish that a portion of residential and resort developments shall provide workforce housing opportunities for Kaua'i residents that are affordable to households earning from eighty percent (80%) and below of the Kaua'i median household income to one hundred forty percent (140%) of the Kaua'i median household income. The term "workforce housing" shall hereinafter be used collectively in place of the housing terms "low income," "affordable," and "employee" housing formerly used to describe income groups related to housing requirements and housing programs established for residential and resort developments.

(b) To encourage that a range and variety of workforce housing types and occupancy are made available and to establish procedures for qualified residents to benefit from the sale or rental of workforce housing.

(c) To preserve the affordability of workforce housing for the future.

(d) To provide government assistance to expedite workforce housing development through the waiver of certain County fees, through the implementation of a fast track permitting, and exercising housing powers to exempt workforce developments from development standards that do not jeopardize health or safety.

### Sec. \_\_\_-1.3 Definitions.

The following definitions shall apply for the purposes of this chapter.

"Affordable Housing" means "workforce housing."

"Building Green" means the practice of designing, planning, and constructing buildings that are energy and water efficient, have natural ventilation and good indoor air quality, and use recyclable and sustainable materials.

"CZO" means the Comprehensive Zoning Ordinance of the County of Kaua'i as codified in Chapter 8 of the Kaua'i County Code, 1987, as amended.

"County" means the County of Kaua'i, a political subdivision of the State of Hawai'i.

"County fees" means fees payable to the County which arise out of the development and construction of the workforce housing units.

"County permits" means all permits and approvals required and issuable by the County for the development and construction of the workforce housing units.

"Developer" means a land owner or authorized agent of a land owner of real property (1) that seeks any County approval for development or subdivision of real property, or (2) that has applied to the County for a State Land Use district boundary amendment, a zoning district boundary amendment, or an amendment to the Visitor Destination Area, or (3) that has previously obtained from the County a State Land Use district boundary amendment or zoning district boundary amendment, but has not yet satisfied

an existing housing condition, or the County has not yet executed a written housing agreement specifying the means to satisfy all or any portion of an existing housing condition.

“Dwelling, Multiple Family” means a building or portion thereof consisting of two (2) or more dwelling units and designed for occupancy by two (2) or more families living independently of each other, where any one (1) of the constructed units is structurally dependent on any other unit.

“Dwelling, Single Family Attached” means a building consisting of two (2) or more dwelling units designed for occupancy by two (2) or more families living independently of each other where each unit is structurally independent although superficially attached or close enough to appear attached.

“Dwelling, Single Family Detached” means a building consisting of only one (1) dwelling unit designed for or occupied exclusively by one (1) family.

“Dwelling unit” means any building or any portion thereof which is designed or intended for occupancy by one (1) family or persons living together or by a person living alone and providing complete living facilities within the unit for sleeping, recreation, eating, and sanitary facilities, including installed equipment for only one (1) kitchen. Any building or portion thereof that contains more than one (1) kitchen shall constitute as many dwelling units as there are kitchens.

“Fast track” means the process adopted by the County to expedite the processing of County permits.

“Gap group” means households earning gross household incomes from one hundred forty (140) to one hundred eighty (180) percent of the Kaua‘i Median Household Income (KMHI).

“Government credit” means a workforce housing credit given to a state government entity in accordance with section XX-9.4.

“Household” means all persons living together in a dwelling unit, whether or not they are related by blood, marriage, or adoption.

“Housing Agency” means the Kaua‘i County Housing Agency of the County of Kaua‘i.

“Housing standards” means the standards mutually agreed upon by the developer and the Housing Agency which shall guide and determine the numbers and types of workforce housing units to be developed.

“HUD” means the United States Department of Housing and Urban Development.

“Immediate family member” means the parents, brothers, sisters, spouses or reciprocal beneficiaries, children, parents-in-law, grandparents, grandchildren of an individual, or a member of an immediate family member through the Hawaiian “hānai” custom. Reciprocal beneficiary means a relationship of two adults that have selected a life partner in lieu of a spouse pursuant Hawai‘i Revised Statutes Sections 572C-4 and 572C-5.

“Income-qualified buyer” means a qualified buyer whose income is within the limits of the workforce housing income group that is targeted for the purchase of workforce housing units intended as affordable for that workforce housing income group.

“Income qualified renter” means a qualified renter whose income is within the limits of the workforce housing income group that is targeted to rent the workforce housing units intended as affordable for that workforce housing income group.

“Kaua’i median household income” means the median household income for the County of Kaua’i as determined annually by HUD.

“Limited appreciation leasehold estate” means a leasehold estate administered through the Housing Agency or a Kaua’i community housing land trust where the lease term is ninety-nine (99) years, the sales price to the lessee is the appraised value of the buildings, appreciation is limited to fifty percent (50%) of the difference between the appraised value of the buildings at the time of sale to the lessee and at the time of sale back to the County, the lessee is required to occupy the property as their primary residence, the lease may be transferred to an immediate family member with the approval of the Housing Agency, sub-leasing is prohibited, and sale of the leasehold estate shall only be to the County.

“Limited equity housing cooperative” means a cooperative owned by a non-profit corporation or non-profit housing sponsor, in which the resident-owners own the cooperative as an undivided whole, rather than as individual units, with the exclusive right to occupy a specific unit within the cooperative, and, where the resident-owner must be bought out of their ownership to separate from the limited equity housing cooperative.

“Market unit” means a dwelling unit authorized to be developed by zoning designation and which is not subject to any buyer or price restrictions.

“Project” means the lots or parcels and any development thereon, included and approved in an application by a developer for zoning or building permit, subdivision or consolidation, State Land Use District Boundary Amendment, Zoning Amendment, or amendment into the Visitor Destination Area.

“Qualified buyer” means the County or a qualified resident who:

(a) Has a gross income and credit history sufficient to qualify for the loan to finance the purchase; and

(b) Is a person:

(1) Who either oneself or together with spouse or household member, does not own a direct or indirect majority interest in fee simple or leasehold lands suitable for dwelling purposes; and

(2) Whose spouse or household member does not own a direct or indirect majority interest in fee simple or leasehold lands suitable for dwelling purposes, except when husband and wife are living apart under a decree of separation from bed and board issued by the family court pursuant to Hawai’i Revised Statutes Section 580-71.

“Qualified renter” means a qualified resident who demonstrates an ability to pay rent and to be a responsible tenant in conformance to standards employed by the Housing Agency for prospective tenants in County owned rental projects, including, but not limited to, satisfactory reference from a prospective tenant’s previous landlords and a credit report reflecting responsible payment of rent or repayment of debt.

“Qualified resident” means a person who:

- (a) Is a citizen of the United States or a resident alien;
- (b) Is at least eighteen (18) years of age;
- (c) Is a full-time resident of Kaua'i County; and
- (d) Shall physically reside in the workforce housing unit purchased or rented.

"Rental notice" means a notice published in a newspaper of general circulation in the County of Kaua'i notifying income-qualified buyers of the developer's intent to offer workforce housing units for rent.

"Rental notice date" means the date of publication of the notice of intent to rent workforce housing units.

"Resort project" means a project that primarily provides accommodations for transient vacation rentals, including, but not limited to, hotel rooms, multiple-family dwellings, time share units or single-family dwellings, which project area also contains tourist-oriented commercial or recreational facilities, support services or amenities, including, but not limited to, restaurants, bars, shops, spas, golf courses, or other attractions or services, that may generate a need for workforce housing for employees.

"Restriction on sale or transfer, debt, and use" means the restriction document recorded on all fee-simple housing units sales to qualified buyers that (1) requires an owner to give the County the option to purchase the property at the original sales price, plus the cost of improvements and simple interest at the rate of one percent (1%) per year, (2) limits mortgage debt, and (3) requires owner occupancy for a term of twenty (20) years for sales to residents where income limits are imposed on the buyer, or for a term of ten (10) years for sales to residents without regard to buyer's income. See restriction on sale or transfer, debt, and use under Article 7.

"Sales notice" means a notice published in a newspaper of general circulation in the County of Kaua'i notifying income-qualified buyers of the developer's intent to offer workforce housing units for sale.

"Sales notice date" means the date of publication of the notice of intent to sell workforce housing units.

"Site Construction" means preparation work on the land of a project, or of a project area, including but not limited to clearing and grubbing, demolition, mass grading, installation of utilities, drainage improvements, roads, and subdivision improvements.

"State government entity" means the state department of Hawaiian home lands (DHHL).

"State government lands" means lands owned or leased by the state department of Hawaiian home lands (DHHL).

"Workforce for-sale housing price limits" means the price limits for fee simple or leasehold dwelling units established by the Housing Agency by household size and by dwelling unit size.

"Workforce housing" or "workforce unit" or "workforce housing unit" means a lot, single-family dwelling unit, or multiple-family dwelling unit that may be rented or sold at price levels that are affordable to households that earn from eighty percent (80%) and below of the Kaua'i median household income to one hundred forty percent (140%) of the Kaua'i median household income.

“Workforce housing income groups” means the four income groups earning from eighty percent (80%) and below of the Kaua‘i median household income to one hundred forty percent (140%) of the Kaua‘i median household income, as follows:

- (a) “80% and below” of the Kaua‘i median household income with for-sale price and rent limits at 80% of the Kaua‘i median household income;
- (b) “80% to 100%” of the Kaua‘i median household income with for-sale price and rent limits at 100% of the Kaua‘i median household income;
- (c) “100% to 120%” of the Kaua‘i median household income with for sale price and rent limits at 120% of the Kaua‘i median household income;
- (d) “120% to 140%” of the Kaua‘i median household income with for sale price and rent limits at 140% of the Kaua‘i median household income.

“Workforce housing income limits” means those household income levels that shall be published annually by the Housing Agency to establish the upper limits of workforce income groups by household size and by dwelling unit size.

“Workforce housing rent limits” means the rent price limits for workforce dwelling units established by the Housing Agency by household size and by dwelling unit size.

#### Sec. \_\_\_-1.4 Applicability.

All State Land Use District Boundary Amendments, Zoning District Boundary Amendments, amendments into the Visitor Destination Area, subdivision, zoning permits, and building permits to which this policy is applicable shall be subject to the provisions of this Chapter as it applies to residential and hotel development within the project area. Time share units shall be considered as residential units. The workforce housing requirements of this Chapter shall apply to the following:

(a) Ordinances enacted by the County Council pursuant to Chapters 7, 8, 10 and 11 of the Kaua‘i County Code, as amended, where the resultant overall project density would allow at least ten (10) dwelling units, including:

(1) New zoning district boundary amendments of lands from any zoning district into Residential, Resort or Open Districts, Project District, or amendment into the Visitor Destination Area;

(2) New State Land Use District Boundary Amendments involving lands fifteen (15) acres or less in size from any State Land Use District, except the Conservation District, to the State Land Use Agricultural, Rural, or Urban Districts;

(b) Previously approved zoning district boundary amendments and previously approved State Land Use District Boundary Amendments for lands fifteen (15) acres or less in size, the ordinance for which contains affordable housing conditions that have not been satisfied as of the effective date of this ordinance, or that the developer has not yet executed a housing agreement with the County specifying the means of satisfying the housing conditions, unless the existing ordinance would require the provision of more or a better mix of workforce housing than this Chapter, as determined by the Housing Agency; and

- (c) Other approvals granted by the County Administration:
  - (1) Subdivision or consolidation of land, zoning, and building permits for residential development in any Zoning District in which the overall project density would allow more than ten (10) residential dwelling units, and
  - (2) Zoning or building permits for the development or redevelopment of land or buildings on a lot of record in any Residential, Resort, or Commercial District for the construction of or conversion into more than ten (10) residential dwelling units or time share units, or more than twenty (20) hotel rooms.

Sec. \_\_\_-1.5 Determination of Workforce Housing Assessment.

(a) The workforce housing assessment for any project subject to this Chapter shall be resolved with the Housing Agency prior to final subdivision approval or zoning permit approval, whichever occurs first, or if neither is applicable to the project, prior to building permit application.

(b) The workforce housing assessment for any project subject to this Chapter shall be assessed once per project, except that an additional workforce housing assessment may be applicable to a project, after initial assessment, when increased residential or resort density is subsequently granted by the County.

(c) Land-in-lieu to satisfy the workforce housing assessment shall be resolved with the Housing Agency prior to or at time of zoning amendment approval, zoning permit approval, final subdivision approval, or building permit application, whichever occurs first.

Sec. \_\_\_-1.6 Delivery.

The delivery of workforce housing units shall be completed before or concurrent with the sale of market units.

Sec. \_\_\_-1.7 Administration

The Kaua'i County Housing Agency of the County of Kaua'i shall administer this Chapter. The Kaua'i County Housing Agency shall use a workforce housing agreement to incorporate the requirements for workforce housing pursuant to this Chapter, which shall be recorded on the deed for the project concurrent with final subdivision approval or prior to building permit approval, whichever occurs first.

Any credits earned under this Chapter shall be applied only upon approval by the Housing Agency. Such approval shall further be incorporated into the workforce housing agreement.

ARTICLE 2. RESIDENTIAL AND RESORT REQUIREMENTS

Sec. \_\_\_-2.1 General Requirements.

(a) Residential Developments. A thirty percent (30%) workforce housing requirement shall be assessed to any residential project subject to the Workforce Housing Policy. The housing assessment shall be satisfied

by fee-simple sale of workforce housing units at affordable housing prices, which shall be determined by the Housing Agency pursuant to Article 4 of this Chapter.

(1) For a residential development consisting of ten (10) to twenty-five (25) units, a developer shall be required to satisfy a workforce housing requirement based on project's total number of residential units. Workforce housing units shall be sold to households earning from eighty percent (80%) to one hundred forty percent (140%) of Kaua'i median household income, with the average sales price being affordable to households earning one-hundred percent (100%) of Kaua'i median household income.

(2) For a residential development consisting of twenty-six (26) units or more, a developer shall be required to satisfy a workforce housing requirement based on project's total number of residential units. Workforce housing units shall be sold to households earning from eighty percent (80%) to one hundred forty percent (140%) of Kaua'i median household income, in accordance with the following income group assessment:

(A) Twenty percent (20%) of total units priced to be affordable to households earning up to eighty percent (80%) of the Kaua'i median household income.

(B) Thirty percent (30%) of total units priced to be affordable to households earning up to one-hundred percent (100%) of the Kaua'i median household income.

(C) Thirty percent (30%) of total units priced to be affordable to households earning up to one-hundred twenty percent (120%) of the Kaua'i median household income.

(D) Twenty percent (20%) of total units priced to be affordable to households earning up to one-hundred forty percent (140%) of the Kaua'i median household income.

(b) Resort Developments. For resort projects in Visitor Destination Areas, for amendments into the Visitor Destination Area, and for Resort District zoning amendments which will generate a need for new employees to fill one hundred (100) or more full-time equivalent jobs, or have density for more than ten (10) residential dwelling units or twenty (20) hotel rooms, a workforce housing requirement shall be assessed. The number, type, size, income target groups to benefit, and the sales or rental prices of workforce housing units required shall be based on an analysis of the number of jobs to be generated, the availability of workers to fill those jobs, the resultant number and incomes of workers to be supported by those jobs, the estimated number of workers requiring housing assistance, and the amount of housing inventory available to those workers. Such analysis shall be conducted by an economist retained by, but independent of, the developer. The analysis shall be subject to approval by the County Council for all petitions for Visitor Destination Area or zoning district boundary amendments, or approval by the Housing Agency for subdivision, zoning, or building permit applications. The developer shall complete construction of the required workforce housing units before final building inspections or certificate of occupancy is issued for

any facility or accommodation of the resort development, except for temporary buildings for real estate sales offices.

Sec. \_\_\_-2.2 Incentives.

A developer subject to workforce housing requirements in Section 2.1 may request incentives set forth in this Section. The goal of incentives is to encourage developers to utilize incentives in a manner that addresses community needs and, to the extent applicable, offsets development cost in satisfying workforce housing requirements. The maximum cumulative incentive allowable under this Section shall not exceed fifty percent (50%) of the general workforce housing requirements in Section 2.1. The Housing Agency shall be responsible to make a determination on the applicability of incentives provided in this Section.

(a) Integration. The incentive is available to a developer that integrates all workforce units with market rate units. Integration means that on-site workforce housing units shall be interspersed together with the market units of a developer's project and provided in a configuration mutually agreed upon by the developer and the Housing Agency. If all workforce units are integrated with market units, the percentage workforce housing requirement shall be reduced by a factor of twenty-five percent (25%) from the workforce housing requirement in Section 2.1(a).

(b) Single-Family Units. The incentive for single-family units is available when required workforce housing units are provided as single-family detached or single-family attached units, and without Condominium Property Regime (CPR) ownership.

(1) Detached Units. If a developer provides all single-family detached units for sale, the workforce housing requirement shall be reduced by a factor of twenty-five percent (25%) from the workforce housing requirement in Section 2.1(a).

(2) Attached Units. If a developer provides all single-family attached units for sale, the workforce housing requirement shall be reduced by a factor of twenty percent (20%) from the workforce housing requirement in Section 2.1(a).

(c) Building "Green." The incentive is available when green principles are used for both workforce units and market units, including, but not limited to, energy efficient appliances, solar water heating, recycled or recyclable materials, or natural ventilation and cooling. Where building green principles are used, the workforce housing requirement may be reduced by a factor of one-half to five percent (0.5-5.0%). Prior to approving incentive for building green, the Housing Agency shall evaluate the added cost of building green features and its potential benefit to occupants of workforce housing units.

(d) Low-Income Rental Units. The incentive for low-income rental units is available when required workforce housing units are provided for low-income households at affordable rental rates, provided no County land or funds, or federal funds administered by the Housing Agency, are utilized to subsidize the project, and provided the period of affordability of the

low-income rental units is for a period of forty (40) years. State and Federal low-income housing tax credit programs are permitted subsidy.

(1) Sixty percent (60%) of Kaua'i Median Housing Income. If a developer provides workforce housing units affordable to households earning no more than sixty percent (60%) of the Kaua'i median household income, each rental unit provided shall be equal to two (2) workforce housing units required.

(2) Eighty percent (80%) of Kaua'i Median Housing Income. If a developer provides workforce housing units affordable to households earning no more than eighty percent (80%) of the Kaua'i median household income, each rental unit provided shall be equal to one and one-half (1.5) workforce housing units required.

#### Sec. \_\_\_-2.3 Density Bonus.

(a) Notwithstanding any other County ordinance to the contrary, the County shall make available a density bonus to developers that integrate all workforce units with market units. The density bonus shall increase the total number of residential units that may be constructed on the project site by ten percent (10%) and decrease the minimum lot size allowed by ten percent (10%), after evaluating the actual number of residential units and minimum lot sizes allowable pursuant to the Comprehensive Zoning Ordinance.

(b) This density bonus shall not be available in the State Land Use Agricultural District or Rural Districts.

#### Sec. \_\_\_-2.4 Workforce Housing Units.

(a) Unit Size. Workforce housing units shall accommodate diverse family sizes and include a mix of one-, two-, three-, and four bedroom units. Unit mix shall address the need and preference of residents and shall be approved by the Housing Agency.

(b) Quality of Units. Workforce housing units shall be visually compatible with market units. External building materials and finishes shall be the same type and quality. Interior materials and finishes may be more modest than market units as to flooring, counter tops, fixtures, appliances, and hardware, provided the quality is comparable to contemporary workforce housing and industry standards.

#### Sec. \_\_\_-2.5 Off-Site Workforce Housing.

(a) Location. Off-site workforce units for sale shall be within the same real property tax zone as a developer's project, or within five (5) miles by public road from the development project, and approved by the Housing Agency; provided further that the real property tax zone and five (5) mile radius restrictions shall not apply to State government workforce housing projects developed on State government lands as defined in Sec. XX-1.2 of this chapter if approved by the Housing Agency.

(b) Off-Site Preference. Special circumstances may exist, including but not limited to, proximity to economic job centers, buyer geographic preference, and infrastructure availability, to permit off-site workforce

housing beyond geographic limits provided in this Section. A developer may request consideration by the Housing Agency of incentives to workforce housing requirements provided in 2.2(b) and 2.2(c) to apply to off-site workforce housing if the Housing Agency determines that the off-site location is preferred or equal to the on-site location, and the County Council approves such determination, then the incentives shall apply.

(c) State Land Use or Zoning District Boundary Amendments Required. Workforce housing requirements produced off-site on land that requires State Land Use District or zoning district boundary amendment shall not incur additional workforce housing requirements for any portion of the site used to produce the required workforce housing units. Any portion of the land that is not used to satisfy the required workforce housing shall be subject to the workforce housing requirements of this Chapter.

Sec. \_\_\_-2.6 Residential Workforce Housing Credits.

(a) Housing Size Credit. Developer shall earn one (1) housing credit for each workforce unit provided that is comparable to the unit size of the market unit, based on number of bedrooms and baths. A decrease or increase to the housing credit earned shall be calculated according to the following Housing Size Credit Schedule:

		Market Units				
		Bed/Bath	1/1	2/1.5	3/2	4/2.5
Workforce Units	1/1		1.00	0.94	0.86	0.78
	2/1.5		1.06	1.00	0.92	0.83
	3/2		1.16	1.09	1.00	.90
	4/2.5		1.28	1.21	1.11	1.00

(b) Lot Size Credit. Developer shall earn one (1) lot credit for each workforce lot provided that is comparable to the lot size of the market lot. Any decrease or increase to the lot size credit earned shall be calculated according to the following Lot Size Credit Schedule:

		Lot Size Credit Schedule		
		Market Lots		
		Small Lots <4,500 SqFt	Standard Lot 4,500 - 9,999 SqFt	Large Lot >10,000 SqFt
Workforce Lots	Small Lots <4,500 SqFt	1.00	0.88	0.76
	Standard Lot 4,500 -9,999 SqFt	1.12	1.00	0.88
	Large Lot >10,000 SqFt	1.24	1.12	1.00

(c) Housing Size and Lot Size Credits, Combined. Any decrease or increase to the unit size and lot size credit earned shall be calculated by multiplying the applicable factor from each schedule to produce the combined credit amount.

(d) With approval by the Housing Agency, a developer may modify workforce units or workforce lots to sizes that differ from market units and market lots.

(e) Housing Size Variations. Unit sizes consisting of bedroom and bath combinations not shown on the Housing Size Credit Schedule are available upon request from the Housing Agency.

### ARTICLE 3. SATISFACTION ALTERNATIVES

#### Sec. \_\_\_-3.1 Satisfaction Alternatives.

A developer may request alternatives to satisfy all or a portion of the workforce housing requirements provided in Section 2.1.

(a) Payment of In-Lieu Fees. Subject to Housing Agency approval, in-lieu fees may be paid for all or a portion of the required number of workforce units per the In-Lieu Fee Schedule. In-lieu fees shall be allocated pursuant to Section 2.1(b) of this Chapter.

(1) Calculation of In-Lieu Fee. The calculation of in-lieu fees paid in-lieu of the required workforce units represents the developer subsidy to subsidize housing units at prices affordable to workforce income groups and shall be assessed according to the following In-Lieu Fee Schedule:

In-Lieu Fee Schedule

Income Group	Requirement	In-Lieu Fee
80%	Unit Sales	\$176,000
100%	Unit Sales	\$122,000
120%	Unit Sales	\$ 67,000
140%	Unit Sales	\$ 12,000

(2) In-lieu fees shall be subject to annual adjustment, based on the consumer price index for Honolulu for all urban consumers.

(3) In-lieu fees paid pursuant to this Section shall be made directly to the Director of Finance and shall be deposited in the Housing Revolving Fund established pursuant to Chapter 6, Article 9 of the Kaua'i County Code. All moneys received shall be used for planning, administering, and constructing government workforce housing projects.

(b) Dedication of Land. Subject to approval by the County Council, land in-lieu may be dedicated to the County for all or a portion of the required number of workforce units. Such land shall be transferred by fee-simple title and at no cost to the County. The value of land to be dedicated shall be equal to or greater than the comparable amount of assessed in-lieu fees. Land to be dedicated shall be suitable to satisfy workforce housing requirements, and suitability of dedicated land may include, but not be limited to, size, configuration, physical characteristics, environmental constraints, off-site infrastructure, zoning, access, location, and other relevant criteria as required by the Housing Agency.

(1) The location of off-site land dedication shall be within the same real property tax zone as a developer's project or within five (5) miles by public road from the development project.

(2) The value of land to be dedicated shall be determined by appraisal by a real estate appraiser licensed in the State of Hawai'i and mutually agreed upon by the developer and the Housing Agency. The cost of such appraisal shall be borne by the developer. The appraisal shall be subject to approval of the Housing Agency.

(c) Rental Units. Subject to approval by the Housing Agency, and provisions of Article 2, rental units may be substituted in place of for sale units provided the rental units are made available to the same workforce housing income groups, are restricted to rents consistent with the workforce housing guidelines, and remain affordable for a minimum period of forty (40) years.

#### ARTICLE 4. INCOME, SALES PRICE AND RENT LIMITS

##### Sec. \_\_\_-4.1 Income Limits.

(a) Kaua'i Median Household Income and HUD Low Income Limits. HUD provides the County with the Kaua'i median household income amount each year. In addition, HUD provides income limits, by household size, for extremely low income households that earn thirty percent (30%) of the median household income, very low income households that earn fifty percent (50%) of the median household income, households that earn sixty percent (60%) of the median household income, and low income households that earn eighty percent (80%) of the median household income.

(b) Workforce Housing Income Limits. The Housing Agency interpolates income limits for income groups above HUD's low income groups utilizing the Kaua'i median household income and HUD's methodology to calculate limits by household size. The Housing Agency rounds each income limit upwards to the nearest Fifty Dollars (\$50.00). Within thirty days from the date that HUD issues the Kaua'i median household income for the year, the Housing Agency will make available that year's workforce housing income limits by household size from a household of one (1) to a household of eight (8).

##### Sec. \_\_\_-4.2 For-Sale Price Limits.

(a) For-Sale Affordability Criteria. The Housing Agency calculates for-sale dwelling unit price limits by household size and by income group by formula including the following factors:

(1) Thirty percent (30%) of gross income is available for housing cost.

(2) The estimated amounts for real property tax and home owners insurance consistent with industry standards.

(3) If sale is a condominium or requires association or maintenance fees, the estimated cost for association or maintenance fees consistent with industry standards.

(4) A fully amortized thirty (30) year fixed interest rate mortgage loan.

(5) A loan interest rate consistent with prevailing mortgage interest rates for conventional owner-occupant first mortgage loans rounded upwards to the nearest quarter percent (0.25%).

(6) A down payment amount equal to five percent (5%) of the sale price.

(7) Sales prices are rounded to the nearest One Hundred Dollars (\$100.00).

(b) Workforce For-Sale Housing Price Limits. Within thirty days from the date that HUD issues the Kaua'i median household income for the year, the Housing Agency will have available that year's workforce for-sale housing price limits. The workforce for-sale housing price limits will include the prices for the applicable HUD low income groups and the affordable and gap-group income groups by household size from a household of one (1) to a household of eight (8). The Housing Agency may revise the workforce for-sale housing price limits throughout the year as the prevailing first mortgage interest rates change.

#### Sec. \_\_\_-4.3 Rental Limits.

(a) The Housing Agency calculates rental rate limits by household size and by income group by methodology utilized to administer HUD's rent subsidy program as follows:

(1) Thirty percent (30%) of gross income is available for housing cost.

(2) Reduce the amount available for housing cost by subtracting the applicable utility allowance, prepared annually by the Housing Agency.

(3) The net amount is the maximum rent allowable.

(4) The net rent amounts are not rounded.

(b) Workforce Housing Rent Limits. Within thirty (30) days from the date that HUD issues the Kaua'i median household income for the year, the Housing Agency will have available that year's workforce housing rent limits. The workforce housing rent limits will include the rent for the applicable HUD low income groups and the affordable and gap-group income groups by household size from a household of one (1) to a household of eight (8).

## ARTICLE 5: HOUSING ELIGIBILITY & SELECTION

#### Sec. \_\_\_-5.1 Kaua'i Resident Home-Buyer List.

(a) Purpose and Objectives. The Housing Agency shall establish a long term program, known as the Kaua'i Resident Home-Buyer List Program (Home-Buyer List), where Kaua'i residents may be placed on a list to be the first potential buyers of housing units or properties either developed directly by or for the County or privately developed to satisfy a County housing requirement. The Home-Buyer List is intended to:

(1) establish a permanent list of individuals who want to be resident buyers that keep their position on the list for buyer selection for all available applicable properties,

(2) prepare residents for the home buying process through home-ownership education,

(3) assist residents to become mortgage-ready so they will be able to buy a home, and

(4) to keep residents aware of upcoming projects and opportunities to buy a home.

(b) Eligibility. Any individual shall be added to the Home-Buyer List who:

(1) is either a citizen of the United States of America or a resident alien thereof who physically resides on the Island of Kaua'i, State of Hawai'i, and

(2) is at least eighteen (18) years old, and

(3) by oneself or together with a spouse does not own a majority interest in any real estate suitable for residential purposes, and

(4) has completed a course of home-ownership education, approved by the Kaua'i County Housing Agency, that must consist of at least eight (8) hours of classroom instruction, including consultation to determine mortgage-ready status.

(c) Home-Buyer Number.

(1) The number assigned to an eligible individual under the Home-Buyer List program shall be known as their "Home-Buyer Number."

(2) Once an individual provides the necessary documentation to establish current Kaua'i residency and documents completion of the home ownership education and mortgage-ready consultation requirement, that individual shall be given a Home-Buyer Number that is the next number on the Home-Buyer List on a first-come, first served basis, as determined by the Housing Agency's date and time stamp imprinted on a copy of the individual's home-ownership education certificate.

(3) Each individual that qualifies for the Home-Buyer List shall be assigned a Home-Buyer Number. For married couples where each spouse qualifies for the Home-Buyer List, the same Home-Buyer Number is assigned to each individual spouse.

(4) For individuals that have previously registered with the Housing Agency under the Home-Buyer Priority List program and have provided evidence of their home ownership education and counseling, a public lottery was held to establish the numerical sequence of the first names for the Home-Buyer List.

(5) A Home-Buyer Number is permanent and will not change.

(d) Removal from the Home-Buyer List. An eligible individual and their assigned Home-Buyer Number shall remain on the Home-Buyer List until one of the following three (3) events occur, wherein the individual's name and Home-Buyer Number are retired from the list:

(1) the individual becomes the majority owner, either by oneself or together with one's spouse, of real property suitable for residential purposes, or

(2) the individual no longer resides or is no longer domiciled on the Island of Kaua'i, or

(3) the individual is deceased.

(e) Reinstatement. For an individual that was formerly on the Home-Buyer List and was removed because the individual became a majority owner of residential property, or no longer resided on the Island of Kaua'i, that individual may become eligible for the Home-Buyer List program upon once again qualifying for eligibility pursuant to the criteria listed above under Eligibility. Upon re-qualification, the individual shall be assigned the next available Home-Buyer Number on the Home-Buyer List. The individual shall not be entitled for their former Home-Buyer Number.

(f) Dormant Home-Buyer List Individuals. It is the responsibility of each individual on the Home-Buyer List to keep the Kaua'i County Housing Agency informed of the individual's current mailing address and telephone numbers. If mail from the Housing Agency is returned undeliverable and the individual's phone numbers are no longer in service, the Housing Agency shall deem that individual "dormant" until such time that the individual re-establishes contact with the Housing Agency. When re-establishing contact with the Housing Agency, the individual shall be required to document that they continued to be a Kaua'i resident during the dormant period.

(g) Mortgage-Ready Eligibility. To be offered the opportunity to be the first potential buyer under the Home-Buyer List program, the eligible individual must be designated "Mortgage-Ready." To be designated Mortgage-Ready, the individual or the individual's household shall be determined capable to purchase a fee simple residential property selling for a minimum of Two Hundred Fifty Thousand Dollars (\$250,000.00) or a leasehold residential property selling for a minimum of One Hundred Seventy-Five Thousand Dollars (\$175,000.00), as determined by the Housing Agency, utilizing underwriting criteria for loans typically available for affordable housing, favorable credit history, and necessary cash requirements. All individuals added to the Home-Buyer List shall provide documentation of their income, debts, and credit to enable the Housing Agency to determine an individual or an individual's household ability to purchase a home before being placed on the Mortgage-Ready Home-Buyer List and, periodically thereafter, to remain on the Mortgage-Ready Home-Buyer List.

(1) Mortgage-Ready Home-Buyer List. An individual or individual's household deemed Mortgage-Ready shall be placed on the Mortgage-Ready Home-Buyer List in the order of their Home-Buyer Number.

(2) Not Mortgage-Ready Individuals. An individual deemed by the Housing Agency not Mortgage-Ready shall be encouraged by the Housing Agency to continue to obtain ongoing counseling by their home-ownership education provider to become Mortgage-Ready. An

individual may request that their name be moved to the Mortgage-Ready Home-Buyer List by the Housing Agency's reevaluation of their ability to purchase a home at any time, but not more often than every 90 days. An individual may formally make written appeal for reevaluation of their ability to purchase to the Housing Agency, in a form and manner as determined by the Housing Agency.

(h) Home-Buyer Policy Income Limits. There are no income limit restrictions for placement on the Home-Buyer List. However, income limits are utilized for the initial offerings of most housing units or properties sold by the County or privately sold by a developer satisfying a County housing requirement. Over income individuals on the Home-Buyer List would be eligible to purchase only after all income eligible potential buyers have had an opportunity to buy.

(i) Compliance to Project Requirements. The status of being an individual on the Home-Buyer List does not supersede buyer eligibility criteria for housing units or properties made available by the County or privately developed that require specific criteria for buyer eligibility. Home-Buyer List applicants must comply with any income restrictions relevant to any applicable dwelling unit or source of financing. During each stage of the workforce restricted marketing period, the order of purchase opportunity for individuals who are project qualified and on the Mortgage-Ready Home-Buyer List shall have the first opportunity to buy applicable housing units or properties before individuals who are not on the Mortgage Ready Home-Buyer List.

(j) Sales Selection. For any housing units or properties subject to this policy, the seller shall first make the offer to sell any dwelling units or land parcels then available for purchase to the individual on the Mortgage-Ready Home-Buyer List with the lowest Home-Buyer Number. Next, the seller must make the offer to the individual with the next to the lowest Mortgage-Ready Home-Buyer Number, then to the individual with the third lowest Mortgage-Ready Home-Buyer Number and continue this sequence until all dwelling units or land parcels are sold. If the seller has any properties available after offering them to all individuals on the Mortgage-Ready Home-Buyer List, then the seller shall make the properties available to eligible buyers not on the Home-Buyer List. This first opportunity to purchase shall conform to the Compliance to Project Requirements provision above.

(k) Multiple Opportunities to Buy. Any individual on the Home-Buyer List that declines an offer to buy an offered housing unit or property, or fails to complete the purchase after accepting an offer to buy, shall remain on the Mortgage-Ready Home-Buyer List and retain their Home-Buyer Number without penalty or restriction and be eligible for the next property or project subject to this policy.

Sec. \_\_\_-5.2 For-Sale Housing.

(a) General Provisions.

(1) Qualified Buyers. All County housing programs, including workforce housing developments required by this Chapter, which assist residents to become fee simple or leasehold homeowners, are restricted to qualified buyers, as defined herein, except where sales may become market sales pursuant to Section \_\_\_\_-6.1(j).

(2) Application. Each program or project shall establish interested households for that program or project by requiring the interested household to submit a written application provided or approved by the Housing Agency and any other documents required by the Housing Agency to establish eligibility.

(3) Eligibility. The Housing Agency shall review all purchase applications to determine eligibility pursuant to the specific program or project eligibility criteria established for that program or project.

(A) Income qualification shall be determined on gross annual income and based on documentation provided by the housing applicant, including the three (3) most current pay stubs and the two (2) most currently filed federal income tax returns from all employed adults in the applicant's household.

(B) Kaua'i residency shall be determined on documentation provided by the applicant that indicates the applicant has a residence address on the Island of Kaua'i.

(C) Not owning real estate suitable for residential purposes shall be determined primarily from documentation provided by the housing applicant and may be verified by the Housing Agency.

(b) Selection. The selection list or lists shall be utilized by the developer to determine the numerical order to offer to sell workforce housing units to qualified buyers. Selection lists shall be established as follows:

(1) All applicable housing units shall first be offered to individuals on the Mortgage-Ready Kaua'i Resident Home-Buyer List, in the order of their Home-Buyer Number and who otherwise qualify pursuant to any project-specific qualifying criteria, before any housing units are offered for sale to qualified buyers not on the Mortgage-Ready Home-Buyer List.

(2) After all individuals on the Mortgage-Ready Home-Buyer List have had an opportunity to purchase, a public lottery shall be conducted to establish a selection list for any project that anticipates more applicants than the number of housing units available. If the number of housing units available is equal to or greater than the number of anticipated applicants, selection may be established by a first-come, first-served basis or by lottery.

(A) The decision to utilize either the lottery or the first-come, first-served process shall be determined by the developer prior to the sales notice date.

(B) A lottery that has multiple preferences shall include all applicants in a single lottery. The selection list will be produced by applying applicant preferences and lottery numbers to sort all applicants into a selection list that has:

(i) The qualified buyer applicant with the lowest selection number (first) being a household that has the highest and the most preferences available and has the lowest lottery number, and

(ii) The qualified buyer applicant with the highest selection number (last) being a household that has no preferences and the highest lottery number.

(C) In a project that utilizes the first-come, first-served method, the developer shall utilize sorting method as utilized with a lottery, but substitute the date and time of receipt of a completed application in place of a lottery number to establish the numerical order.

(D) Projects that are developed in phases shall phase their respective restricted marketing periods and phase their respective application and selection processes.

(c) Priorities & Preferences for Sales by Lottery. After all applicable housing units in a project have been first offered for sale to all residents on Mortgage-Ready Home-Buyer List, a development using a lottery to determine sales sequence for other buyers shall sort the lottery list by giving applicants priority as follows:

(1) First Priority - Homeownership Education. The first opportunity to purchase a workforce for-sale housing unit after Home-Buyer List residents have had the opportunity to purchase shall be given to income qualified buyers that have completed a qualified homeownership education course, as determined by the Housing Agency, consisting of at least eight (8) hours of classroom education, plus credit and mortgage ready counseling. To receive the homeownership education priority, a qualified buyer shall register with the Housing Agency and provide the Housing Agency with a copy of their homeownership education class graduation certificate. The Housing Agency shall determine which providers of homeownership education have the curriculum that qualifies graduates for the homeownership priority.

(2) Second Priority - Project Employee Preferences. Fifty percent (50%) of the total workforce housing units built by the developer for projects that generate workforce housing requirements of twenty (20) housing units or more shall be sold with a preference to employees of the developer and employees within the development area of the project as determined by the Housing Agency.

(3) Third Priority - Geographical Preferences. At the discretion of the County Council, one or more geographical preference may be imposed on the required workforce housing units giving preference to qualified residents that live in a specified geographical area surrounding or adjacent to the project or that are employed within a specific geographical area surrounding or adjacent to the project.

(4) A project that is assisted with government financing may disregard any priority or preference provided by this Chapter that violates federal fair housing law.

Sec. \_\_\_ -5.3 Rental Housing.

(a) General Provisions.

(1) Qualified Renter. All County or workforce rental projects are restricted to qualified renters, as defined herein.

(2) Application. Each project shall establish interested households for that project by requiring the interested household to submit a written application provided by the project's management entity and any other documents required to establish eligibility.

(3) Eligibility. The project's management entity shall review all applications to determine eligibility pursuant to the specific project eligibility criteria established for that project. Eligibility records shall be maintained on-site for at least three (3) years and made available on-site to the County, or its representatives, to monitor upon request.

(4) Initial Occupancy Selection.

(A) A public lottery shall be conducted for any project that has more applicants than the number of housing units available in that project to establish the initial occupancy selection list. If the number of housing units available is equal to or greater than the number of applicants, selection may be established by a first-come, first-served basis or by lottery.

(B) The decision to utilize either the lottery or the first-come, first served process shall be determined by the developer prior to the sales notice date.

(C) A lottery that has multiple preferences shall include all applicants in a single lottery. The selection list will be produced by applying applicant preferences and lottery numbers to sort all applicants into a selection list that has:

(i) The qualified buyer applicant with the lowest selection number (first) being a household that has the highest and the most preferences available and has the lowest lottery number, and

(ii) The qualified buyer applicant with the highest selection number (last) being a household that has no preferences and the highest lottery number.

(D) In a project that utilizes the first-come, first-served method, the developer shall utilize the date and time of receipt of a completed application to establish the chronological order and establish a separate list for each preference available to produce multiple selection lists by preference type.

(E) Projects that are developed in phases shall phase their respective restricted marketing periods and phase their respective application and selection processes.

(5) Waiting List. All County and workforce rental projects shall maintain a waiting list or lists of interested tenants for

each bedroom size. The only preference applied after the initial occupancy of the project is the project employee preference. The project may decline to accept additional names to its bedroom size waiting list when the waiting list has an excess of twenty-five (25) prospective tenants.

(b) Priorities & Preferences.

(1) First Priority - Project Employee Preferences. Fifty percent (50%) of the total workforce housing units built by the developer for projects that generate workforce housing requirements of twenty (20) housing units or more shall be rented with a preference to employees of the developer and employees within the development area of the project as determined by the Housing Agency.

(2) Second Priority - Geographical Preferences. At the discretion of the County Council, at initial occupancy, one or more geographical preference may be imposed on the required workforce housing units giving preference to qualified residents that live in a specified geographical area surrounding or adjacent to the project or that are employed within a specific geographical area surrounding or adjacent to the project.

(3) A project that is assisted with government financing may disregard any priority or preference provided by this Chapter that violates federal fair housing law.

## ARTICLE 6. RESTRICTED MARKETING PERIODS

### Sec. \_\_\_-6.1 Restricted Sales Marketing Period.

The restricted sales marketing period provides the County the opportunity to purchase any workforce housing units at any time, residents of Kaua'i the first opportunity to buy, the developer with an opportunity for buyer solicitation before committing to construction of the project, and a multiple phased sales process giving residents of higher incomes an opportunity to buy after the targeted income group has the first priority to purchase workforce housing units.

(a) County Purchase. The County may purchase workforce housing units at any time that they are available for purchase, and before or after an eligible buyer has the opportunity to purchase, at the same price that the developer is required to sell the workforce unit to an intended income group. The County shall then resell the housing unit under the County's leasehold program or rent the housing unit.

(b) Potential Buyer's List. Approximately six (6) months before the start of site construction, the developer may notify by mail all residents on the County's Mortgage-Ready Home-Buyer List and notify by newspaper and radio all other Kaua'i residents of the intent to sell the workforce housing units, with a description of all workforce housing units to be offered for sale, and the specific income qualifying criteria and sales prices for each workforce housing unit in the project being offered, for the purpose of establishing a list

of potential buyers for the workforce housing units, without executing purchase documents or collecting any fee or deposit.

(c) Home-Buyer List Sales. Approximately twelve (12) months before construction of the workforce housing units is complete, but no earlier than the start of site construction, the developer shall offer the workforce housing units exclusively for sale to income-qualified buyers on the County's Mortgage-Ready Home-Buyer List in the sequential order of their Home-Buyer Number for a period of ninety (90) days.

(d) Public Notice of Workforce Unit Sales. Approximately ten (10) months before completion of the workforce housing units, the sales notice of the intent to sell the workforce housing units shall be published by the developer in a newspaper of general circulation in the County for a minimum of once per week for a minimum of three (3) weeks. The notice of intent to sell shall invite prospective buyers the opportunity to purchase units after those residents on the County's List have first had an opportunity to purchase.

(e) Target Income Group Sales. Approximately nine (9) months before construction of the workforce housing units is complete, the developer shall establish a developer's selection list for the sequence for sales to applicants not on the County's List, by either the public lottery or first-come, first-served methods, adjusted by preferences applicable to the project, notify prospective buyers of their selection number, and initiate sales exclusively to income-qualified buyers in order of the selection list for a period of ninety (90) days.

(f) Higher Income Group Sales. Approximately six (6) months before construction of the workforce housing units is complete, the developer shall offer remaining unsold units to income-qualified buyers whose incomes are up to the next higher workforce housing income group, first, to residents on the County's Mortgage-Ready Home-Buyer List and, second, to residents on the developer's selection list for a period of sixty (60) days. At the beginning of this sales period, another sales notice to sell any remaining unsold workforce housing units shall be published by the developer in a newspaper of general circulation in the County for a minimum of once per week for a minimum of three (3) weeks. The sale's notice shall invite prospective qualified buyers who are one (1) income group higher than the target income group an opportunity to purchase any unsold units.

(g) Developer Sales Status at Construction Completion. Five (5) months before completion of construction of the workforce housing units, the developer shall provide in writing a notice to the Housing Agency providing the number and prices of any unsold units. The County may elect to purchase any unsold units and enact appropriation legislation for the purchase funds.

(h) Resident Sales Without Income Restriction. Four (4) months before completion of construction of the workforce housing units, the developer shall offer remaining unsold units to qualified buyers without income restriction, first, to residents on the County's Mortgage-Ready Home-Buyer List, and second, to residents on the developer's selection list for a period of sixty (60) days. At the beginning of this sales period, another sales

notice to sell any remaining unsold workforce housing units shall be published by the developer in a newspaper of general circulation in the County for a minimum of once per week for a minimum of three (3) weeks. The sale's notice shall invite prospective buyers who are residents of any income an opportunity to purchase any unsold units.

(i) Resident Sales Without Income or Property Restrictions. Sixty-one (61) days before the completion of construction of the workforce housing units, the developer shall offer remaining unsold units to qualified residents without income restrictions and without other residential property ownership restriction, first, to residents on the County's Mortgage-Ready Home-Buyer List, and second, to residents on the developer's selection list for a period of sixty (60) days.

(j) Unrestricted Market Sales. Any workforce housing units that remain unsold after completion of construction of the workforce housing units, as evidenced by the issuance of final building inspection for single family dwellings or certificate of occupancy for multifamily dwellings, the developer may sell as market units at market prices without regard to the workforce housing unit restrictions (including price restrictions, income restrictions, and resale restrictions, mortgage debt restrictions, and owner-occupancy restrictions) contained herein, and in such case the developer shall receive credit for all units built to satisfy its workforce housing requirements.

(k) Award of Workforce Housing Credit. The developer shall receive the workforce housing credit at the time of recordation of a sale during the restricted sales period or recordation of a sale to the County. The developer shall receive workforce housing credit for workforce housing units that remained unsold during the restricted sales period one (1) day after the end of the restricted marketing period.

#### Sec. \_\_\_-6.2 Restricted Rental Marketing Period.

(a) The rental notice of the intent to rent the workforce housing units shall be published in a newspaper of general circulation in the County.

(b) For the sixty (60) days following the rental notice date, the workforce housing units shall be offered exclusively to income-qualified renters.

(c) Any workforce housing units that have not been rented after the sixty (60) day restricted rental period may be rented to qualified renters.

(d) The property manager of the workforce housing units shall maintain a list of potentially income-eligible rental applicants and shall fill any workforce housing unit upon its vacancy with the next income-qualified renter on the property manager's waiting list.

(e) The developer and the Housing Agency shall enter into a regulatory agreement for each project containing workforce housing unit rentals to establish which units are subject to restricted income qualified occupancy and workforce rental rates.

(f) The developer shall receive credit for each workforce housing unit upon initial occupancy during the restricted rental period. For any workforce housing unit that is not rented during the restricted rental period,

the developer shall receive the workforce housing unit credit at the time the restricted rental period expires.

## ARTICLE 7. RESTRICTION ON SALE OR TRANSFER, DEBT, AND USE

Notwithstanding any other County ordinance to the contrary, the County shall impose an anti-speculative buy-back provision to preserve the affordability of units during a specific period of restriction that shall be known as the "Restrictions on Sale or Transfer, Debt, and Use."

### Sec. \_\_\_-7.1 Applicability.

The County shall implement a buy-back, mortgage debt, and occupancy provision that shall be known as the "Restrictions on Sale or Transfer, Debt, and Use." These restrictions shall apply to the sale or transfer of any real property, apply to amount of mortgage indebtedness of any real property, and apply to the use of any real property acquired, financed, developed, constructed, or sold by the County pursuant to this Chapter or Section 2-1.16, Kaua'i County Code 1987, or to privately developed real property that is sold to satisfy a housing requirement and which are sold on the condition that the purchaser accepts the restrictions on the sale or transfer, debt, and use in the real property purchased.

### Sec. \_\_\_-7.2 Duration of Restrictions.

The restrictions on sale or transfer, debt, and use shall apply for a period of time and the period of time shall not be increased beyond the date of closing (date of recordation by the State of the title transfer) of the purchase without the mutual consent of the owner and the Housing Agency. The subsequent sale of any real property repurchased by the County pursuant to the restrictions on sale or transfer, debt, and use shall incorporate the restrictions on sale or transfer, debt, and use and the restriction shall apply for the same period of time. The periods of time that the restrictions on sale or transfer, debt, and use shall apply are as follows:

- (a) 20 years for all units sold during all sales periods that are restricted by the buyer's income, or
- (b) 10 years for units sold during the sales period that is not restricted by the buyer's income, or
- (c) Not applicable for units sold after the restricted sales period as open market sales.

### Sec. \_\_\_-7.3 Restrictions Constitute A Lien.

The County's interest created by the provisions of the restrictions on sale or transfer, debt, and use shall be recorded as a lien on the real property and shall be superior to any mortgage created after the purchase of a workforce unit without the prior written consent of the County and the subordination of the County's lien by the Director of Finance.

Sec.\_\_\_\_-7.4 County Repurchase Right.

For the term of the restrictions beginning from the purchase of a dwelling unit, or from the date of occupancy of a dwelling unit built on a vacant lot purchased as a vacant lot, whether ownership of the dwelling unit or vacant lot is from an original or subsequent purchase, and whether by lease, assignment of lease, deed, or agreement of sale, if the owner wishes to sell or to transfer title to the real property or the lease, the County shall have the first option to purchase the real property or lease at a price which shall not exceed the sum of:

- (a) The original cost to the owner;
- (b) The cost of any capital improvements added by the owner, provided that for a vacant lot owner, the cost of a dwelling unit constructed by an owner-builder, including a participant in a County sponsored self-help housing project, shall be the initial building assessment value determined by the County's Real Property Tax Division, Department of Finance, or the total documented cost of construction, whichever is greater; and
- (c) Simple interest on the original cost to the owner and the cost of capital improvements added to the property by the owner at the rate of one percent (1%) a year.

Sec.\_\_\_\_-7.5 Restriction on Additional Debt.

For the term of the restrictions beginning from the purchase of a dwelling unit, or from the date of occupancy of a dwelling unit built on a vacant lot purchased as a vacant lot, whether ownership of the dwelling unit or vacant lot is from an original or subsequent purchase, and whether by lease, assignment of lease, deed, or agreement of sale, if the owner wishes to make additional mortgage loans on the property during the term of the restrictions, such additional mortgage loans shall not be made without the prior written authorization of the Housing Agency. The only additional mortgage loans that may be approved during the restriction period are loans whose proceeds will be used for capital improvements to the dwelling unit, to build a dwelling unit, or to pay for catastrophic medical expenses incurred by a member of the owner's household. Additional mortgage loans shall only be authorized by the Housing Agency when the total of all mortgage debt to market value is a ratio that does not exceed eighty percent (80%).

Sec.\_\_\_\_-7.6 Occupancy Requirement.

Real property purchased from the County through the Housing Agency or real property privately developed and sold to satisfy a housing requirement shall be occupied by the owner at all times during the applicable restriction period, except in a hardship circumstance where a temporary occupancy waiver of no more than one (1) year may be provided by the Housing Agency, or occupancy is temporarily suspended as a result of a natural disaster that renders the dwelling unit non-habitable.

Sec. \_\_\_-7.7 Workforce Housing.

The restrictions on sale or transfer, debt, and use shall apply to all workforce housing sold in fee simple to income-qualified buyers, qualified buyers, and qualified residents.

ARTICLE 8. DEVELOPMENT, MANAGEMENT AND  
FINANCE OF HOUSING UNITS

Sec. \_\_\_-8.1 Kaua'i County Housing Agency.

(a) Production Methods. The County, through its Kaua'i County Housing Agency, may produce workforce housing units by:

(1) Develop Housing Units. Develop workforce housing units either alone or in partnership with other governmental agencies and with for-profit and non-profit organizations,

(2) Housing Project Sponsor or Lender. Sponsor the development or provide interim or permanent mortgage financing of workforce housing units, and

(3) Regulate Compliance. Regulate compliance from developments subject to this Chapter to satisfy workforce housing requirements.

(b) Production Types. The County may produce single family detached, single family attached, or multi-family workforce housing units as:

(1) Fee Simple Housing Sales. Sell workforce housing units to eligible residents at affordable prices, provided affordability is preserved through the County's "Restriction on Sale or Transfer, Debt, and Use;" or

(2) Limited Appreciation Leasehold Sales. Provide homeownership opportunities through the sale of limited appreciation leasehold estates with a term of ninety-nine (99) years; with the sales price to the lessee equal to the appraised market value of the property's building improvements; with appreciation limited to one-half of the difference between the original sales price to the lessee and the appraised market value of the building improvements at the time of sale back to the County; or

(3) Limited Equity Cooperative Housing. Assist with the development of limited equity cooperative housing projects, where the project limits equity ownership, limits equity appreciation, and maintains the affordability of its housing units, while providing some benefits to homeownership; or

(4) Rental Housing. Provide rental workforce housing units with emphasis on lower income affordability.

(c) Real Estate Purchase. The County may purchase real estate for the following purposes:

(1) Market Real Estate. Purchase unimproved land or existing dwelling units in the open market with documentation to the seller that the proposed purchase is not the action of eminent domain.

Unimproved land may be developed immediately as workforce housing or held for future workforce housing development;

(2) For-Sale Workforce Housing. Purchase any amount of workforce housing units in a project before, during, or at the end of the restricted marketing period at the same price as offered to income-qualified buyers and re-sell the housing units to income-qualified buyers as limited appreciation leasehold estates or rent to eligible tenants; or

(3) Buybacks. Purchase any housing unit subject to the County's buyback rights pursuant to the restrictions on sale or transfer, debt, and use, and re-sell the housing units as limited appreciation leasehold estates.

(d) Mortgage Lending. The County may provide low-cost mortgage loans with its federal resources to assist low-income individuals purchase a housing unit, rehabilitate an existing housing unit, or provide long term financing for limited equity housing cooperatives and rental projects.

(e) Property Management. The County may provide property management services for projects that it owns or controls, directly or indirectly through contract, for limited equity housing cooperatives and rental projects.

(f) Home-Buyer Education and Counseling. The County may provide homeownership education and counseling, directly or indirectly through contract, to Kaua'i residents who wish to become home owners.

(g) Home-Buyer List. The County may maintain a list of residents who wish to purchase a home on Kaua'i to keep them informed of upcoming projects and establish a preference for purchase.

#### Sec. \_\_\_-8.2 Kaua'i Community Housing Land Trust.

The County shall establish a Kaua'i community housing land trust that shall manage rental units and limited equity housing cooperatives, administer limited appreciation leasehold estate sales, and develop new rental, cooperative, and leasehold housing units. The community housing land trust shall be responsible to maintain the housing units under its control perpetually affordable for residents of Kaua'i. The fee simple title of County owned or required units that become part of the community housing land trust shall remain with the County with a lease in favor of the community housing land trust. Management of the community housing land trust shall be provided by the County government or a Hawai'i nonprofit corporation. Ownership or management of the community housing land trust shall not be transferred to a foundation or trust.

(a) Purchase. The community housing land trust may purchase any land or dwelling units to become part of the community housing land trust.

(b) Rental Units. Existing County-owned rental projects may become part of the community housing land trust. Additional rental projects may become part of the community housing land trust through donation or purchase.

(c) Limited Equity Cooperative Housing. Any cooperative housing project that limits equity accumulation and maintains the affordability of its housing units may become part of the community housing land trust.

(d) Limited Appreciation Leasehold Estate Sales. Homeownership opportunities shall be provided by the community housing land trust through the sale of limited appreciation leasehold estates.

(e) Administration.

(1) Housing Agency. The initial administration of the community housing land trust shall be performed by the Housing Agency.

(2) County Board. On or before the community housing land trust is responsible for two-hundred fifty (250) rental units and/or fifty (50) cooperative and leasehold sales, the administration of the community housing land trust shall become the responsibility of a seven (7) member board of directors composed of the following:

(1) Administrative head of the Housing Agency,

(2) County Planning Director or Deputy Planning Director,

(3) An appointed department head selected by the Mayor,

(4) A lending institution official selected by the Mayor,

(5) A real estate broker or escrow officer selected by the Mayor,

(6) A representative of a homeownership education organization or a representative of a nonprofit housing developer selected by the Mayor, and

(7) A community housing land trust resident selected by the Mayor. A community housing land trust resident shall be a renter, shareholder, or lessee residing in any community housing land trust rental project, limited equity cooperative, or leasehold estate.

(3) Nonprofit or Semi-Autonomous Organization. On or before the community housing land trust is responsible for five-hundred (500) rental units and/or one-hundred (100) cooperative and leasehold sales, and at such time that the community housing land trust becomes financially sustainable, a Kaua'i community housing land trust nonprofit corporation may be created or the County may establish the semi-autonomous community housing land trust as the organization to administer and manage the community housing land trust.

### Sec. \_\_\_-8.3 Housing Unit Financing.

The County shall create and the Housing Agency shall administer the following fund accounts:

(a) Development Funds.

(1) Unrestricted Account. There shall be an account for the purpose of providing equity for the development of

workforce housing that is unrestricted as to geographical location or low income qualification.

(2) Geographical Restricted Accounts. There shall be a separate account for each geographical area where in-lieu fees have been collected for the purpose of providing equity for the development of workforce housing.

(b) Buyback and Leasehold Accounts. There shall be an account for the purpose of providing the funds:

(1) For the County to exercise its repurchase option pursuant to the Restriction on Sale or Transfer, Debt, and Use (buyback), where funds will revolve or partially revolve.

(2) For the County to purchase buyback or workforce units that are then resold as leasehold estates for less than the cost to the County.

(c) HUD and Program Income Funds. The County shall have accounts to provide equity for rental projects, low cost mortgage loans, and project development interim construction loans from its annual funding from the Community Planning and Development Division of the United States Department of Housing and Urban Development and program income funds administered by the County.

## ARTICLE 9. GOVERNMENT ASSISTANCE FOR WORKFORCE HOUSING

### Sec. \_\_\_-9.1 Waiver of County Fees.

To the extent permitted by law, and pursuant to this Chapter, the County Council recommends to any County Department or Agency to waive the payment of some or all fees related to the development and construction of workforce housing units. The waiver for payment of some or all fees shall be in conjunction with a workforce housing program approved by the Housing Agency.

### Sec. \_\_\_-9.2 Fast Track Permitting.

Upon proclamation by the Mayor that a crisis in the availability of workforce housing could be best addressed by giving qualified workforce housing projects a priority in the County permitting process and upon adoption of a resolution by the County Council acknowledging the necessity to expedite permit processing for workforce housing projects, the County may institute a priority permitting policy for a specified period of time. The priority permitting policy for workforce housing projects may be extended as necessary upon proclamation by the Mayor and resolution by the County Council. Provided a project includes workforce housing units in a number equal to or greater than fifty-one percent (51%) of the total housing units within a project site and to the extent permitted by law, the County shall expedite the review and issuance of all County permits necessary for the development of the project site, including but not limited to: all subdivision applications, civil construction plan permits, and other plans and permits associated with the development of the project site. Building permits shall

only be expedited for workforce housing units. The County agrees to use its reasonable best efforts to avoid unnecessary processing delays for these developments and to assist the developer in expediting such processing. The County shall use its best efforts to initiate a fast track process and expedite administrative review for all of the County permits by requiring each County office, agency, department, or authority responsible for the review and approval of the County permits to review such permits as a first priority. The County, through its Mayor, shall authorize the applicable department heads to expedite the County permits pursuant to the County's fast track process. Provided, however, that any request for discretionary approvals, including Planning Commission or County Council approvals, that may be necessary shall be determined pursuant to the established procedures for such approvals. The Housing Agency shall develop administrative rules to administer this fast track permitting process.

Sec. \_\_\_-9.3 Section 201H Exemption Projects.

The County's exemption authority pursuant to Chapter 201H-38, Hawai'i Revised Statutes, may be utilized to expedite requests to amend zoning and for zoning permit application, subdivision application, and building permit application, as well as, to consider reduced development standards for any project that is at least fifty-one percent (51%) workforce housing.

Sec. XX-9.4 State government workforce housing projects.

The county, through the housing agency, may issue and accept government credits for the development of workforce housing units upon state government lands by qualified developers that may be applied to satisfy a portion of workforce housing requirements either: (i) imposed upon a developer by the county and/or (ii) imposed upon a developer by any state agency that are implemented by the county, provided that applicable income and residency requirements of this Chapter are complied with. Government credits shall be issued to the state government entity for each workforce housing unit developed on state government lands on a 'one-for-one' basis; one (1) workforce housing unit credit for each workforce housing unit developed. The state government entity is authorized to assign each government credit to the developer that constructed the workforce housing units. The government credit shall be used solely to satisfy the workforce housing requirements imposed upon a developer. A developer may use these government credits to satisfy up to twenty-five percent (25%) of the total workforce housing requirements either: (i) imposed by the county and/or (ii) imposed upon a developer by any state agency that are implemented by the county.

Sec. \_\_\_-9.5 Annual Progress Report.

The Housing Agency shall submit to the County Council written progress reports. Said reports shall be submitted at least annually to the County Clerk from the effective date of this ordinance. Annual reports shall contain a description and summary on the effectiveness of the Housing

Policy, including the number of workforce housing provided pursuant to the ordinance.

## ARTICLE 10. EFFECT ON DEVELOPMENTS AT PERMITTING AND ON EXISTING HOUSING REQUIREMENTS

### Sec. \_\_\_-10.1 Effect on Developments at Permitting.

Any project subject to workforce housing requirements pursuant to this Chapter, but not yet assessed a workforce housing requirement, and that does not have County permit or subdivision approval, shall comply with the applicable workforce housing requirements in this Chapter prior to obtaining permit or subdivision approval, with the exception of the following:

(a) A building permit application submitted prior to the effective date of this Chapter is exempt from workforce housing requirements for a period not to exceed one (1) year from the date of application, or

(b) A subdivision granted tentative subdivision approval submitted prior to the effective date of this Chapter is exempt from workforce housing requirements for a period not to exceed three (3) years from the date of tentative subdivision approval.

### Sec. \_\_\_-10.2 Effect on Existing Housing Conditions.

Any affordable housing condition or portion thereof in any ordinance for a prior zoning district boundary amendment, or for a State Land Use District Boundary Amendment involving lands fifteen (15) acres or less in size, which has not been fully satisfied as of the effective date of this Chapter shall be reassessed pursuant to this Chapter, unless:

(a) The County has previously agreed as to the specific means of satisfying the requirements through an executed affordable agreement, or

(b) The Housing Agency determines that the existing housing condition will provide more workforce housing than required by this Chapter.

### Sec. \_\_\_-10.3 Kīlauea Town Plan.

Nothing in this Chapter shall supersede housing requirements contained in the Kīlauea Town Plan (September 2006).

### Sec. \_\_\_-10.4 Affordable or Workforce Housing Developments.

Any affordable or workforce housing development developed by or for the County, either by itself or in partnership with another housing development organization, is exempt from the requirements of this Chapter.”

SECTION 3. If any provision of this Chapter is held invalid, such invalidity shall not affect other provisions or application of this Chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this Chapter are declared to be severable.

SECTION 4. The Clerk of the County of Kaua'i is directed to insert the effective date of this ordinance in any section of the Kaua'i County Code 1987 which requires reference to this date.

SECTION 5. This ordinance shall take effect six (6) months from its approval date.

Introduced By: /s/ SHAYLENE ISERI-CARVALHO  
(By Request)

DATE OF INTRODUCTION:

October 25, 2006  
Līhu'e, Kaua'i, Hawai'i

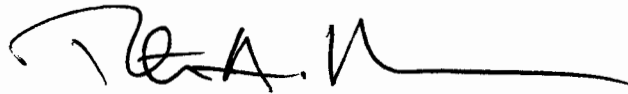
CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2202, Draft 2, which was passed on second and final reading by the Council of the County of Kaua'i at its meeting held on November 20, 2007, by the following vote:

FOR ADOPTION:	Bynum, Iseri-Carvalho, Kouchi, Rapozo, Yukimura, Asing	TOTAL - 6,
AGAINST ADOPTION:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	Furfaro	TOTAL - 1,

and pursuant to Section 4.03 of the Kaua'i County Charter, said bill is in effect as of December 10, 2007, as Ordinance No. 860 without the mayor's signature.

Lihu'e, Hawai'i  
December 13, 2007



Peter A. Nakamura  
County Clerk, County of Kaua'i