

COUNTY OF HAWAI'I
OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT

ADMINISTRATIVE RULES FOR
AFFORDABLE HOUSING PRODUCTION PROGRAM

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SUBCHAPTER 1

GENERAL PROVISIONS

§1-1 Purpose and Applicability. These rules establish administrative rules for an “Affordable Housing Production Program,” pursuant to Hawai‘i County Code §11-21, in order to support, increase and sustain affordable housing production.

§1-2 Definitions. Whenever used in this chapter, unless otherwise specifically defined:

“Administrator” means the Housing Administrator of the Office of Housing and Community Development of the County of Hawai‘i.

“Affordable Housing Unit” means a permanent single-family dwelling unit, or multiple-family dwelling unit for sale or rent as a primary residence for the respective buyer or renter and is affordable to qualified households earning no more than 140 percent of the area median income in the County of Hawai‘i.

“Affordability Period” means the length of time which dwelling units financed with program funds shall remain affordable to eligible households after the project or units are available for occupancy.

“Chapter 11” means Chapter 11 of the Hawai‘i County Code, as amended.

“Community Land Trust” means a non-profit organization approved by the OHCD or administrator that acquires land that is 1) held in perpetuity; 2) primarily for conveyance under a long-term ground lease for the creation of dwelling units that shall be sold or rented to applicants within the income-qualified groups established by this chapter; and 3) retains an option to purchase any dwelling unit at a price determined by formula that is designed to ensure that the dwelling unit remains affordable in perpetuity.

“Council” means the Hawai‘i County Council.

“County” means the County of Hawai‘i.

“Elderly” means a person that is at least 62 years of age.

“Grant” means funds awarded to an applicant for the purpose of financing an eligible activity as outlined in Rule §3-2, with no obligation to repay the monies.

“Grantee” means the recipient of Affordable Housing Production program funds.

“Homeless” means individuals and families who lack a fixed, regular, and adequate nighttime residence and those who will imminently lose their primary nighttime residence within 14 days. Also includes individuals who are existing an institution where he/she resided for 90 days or less.

“Non-profit organization” means an exempt organization as classified under of the Internal Revenue Code Section 501(c)(3) or Section 501(c)(4) and complies with all other requirements under federal, state and county law regulating the conduct of charitable or non-profit organizations.

“OHCD” means the County of Hawai‘i Office of Housing and Community Development.

“Program” means the Affordable Housing Production Program.

“Program funds” means funds which are distributed from the Affordable Housing Production Program.

“Permanent housing” means housing that is for sale or for rent for an initial term of at least one year that is renewable and is terminable for cause.

“Special housing needs” means persons for whom social problems, age, or physical or mental disabilities impair their ability to live independently, and for whom such ability can be improved by more suitable housing conditions. Person with special housing needs may include, but not limited to, persons with a physical or mental disability, substance abuse and addiction, foster youth or runaway, or a victim of human trafficking or domestic violence.

§1-3 Funding.

- (1) Funding provided by the County of Hawai‘i shall be in accordance with Section 11-21 of the Hawai‘i County Code.
- (2) Any remaining balance of program funds at the end of the fiscal year, shall be designated for further use in this program.
- (3) Any interest earned on the Affordable Housing Production Program account shall be designated for this program.
- (4) Any repayment or recovery of program funds, including any penalties paid, shall be designated for further use in this program.
- (5) On an annual basis, up to ten percent (10%) of the fund’s annual appropriation shall be used for administrative expenses by OHCD.
- (6) At the discretion of the administrator, with approval from the Mayor, the OHCD may set-aside no more than thirty percent (30%) of the fund’s annual appropriation for County administered projects in accordance with Rule §3-2.

§1-4 Program Administration.

The administrator shall be responsible for administering the program.

SUBCHAPTER 2

REPORTING AND OTHER REQUIREMENTS

§2-1 Annual Plan. The OHCD shall prepare an Affordable Housing Production Annual Plan for the use of the program funds and transmit this annual plan to the Council for reporting purposes. The annual plan shall include the following:

- (1) Total proposed appropriations for the fiscal year;
- (2) Description of the projects to be funded including the total amount funded and the total amount requested;

- (3) Number and types of housing units that will be created and/or rehabilitated, including the approximate number of residents to be served; and
- (4) Any non-dwelling program funded improvement or acquisition, such as infrastructure improvements or land acquisition, including an explanation on how the project will result in housing.

§2-2 Annual Report. The OHCD shall prepare and submit an annual report to the Council on the expenditures and accomplishments resulting from appropriations from the program funds. The annual report shall include the following:

- (1) Data on the number and types of housing units created or assisted;
- (2) Data on non-dwelling program funded improvements or acquisitions, such as infrastructure improvements or land acquisition;
- (3) Geographic distribution of funded projects;
- (4) Expenditure report;
- (5) Status of ongoing projects;
- (6) Total expenditure for administrative expenses by OHCD; and
- (7) And any other data or notable accomplishments as a result of the expenditure of program funds as determined by OHCD.

§2-3 Compliance Monitoring. The OHCD shall conduct physical inspections and program compliance monitoring during construction and on an annual basis of funded projects during the term of the affordability period.

SUBCHAPTER 3

PROGRAM SPECIFICATIONS

§3-1 Eligibility Criteria.

- (1) Eligible applicants include public agencies, approved non-profit organizations, for-profit organizations, or community land trusts.
- (2) Eligible applicants shall provide proof of compliance with all applicable laws governing entities doing business in the State of Hawai'i.

§3-2 Eligible Activities for Program Funds. Program funds shall be used for the following eligible activities:

- (1) Acquisition of real property for the development of affordable housing;
- (2) Acquisition of existing housing for rehabilitation as affordable rental and/or owner occupied housing;
- (3) Planning, design, or construction of affordable rental or owner-occupied housing;

- (4) Rehabilitation of housing to be utilized as affordable rental or owner-occupied housing;
- (5) To provide affordable housing for elderly, persons with special housing needs and homeless residents lacking a permanent home;
- (6) To invest in infrastructure in connection with the development of affordable housing projects;
- (7) Other activities to support, increase, and sustain affordable rental or owner-occupied housing production.

§3-3 Grant Application Process.

- (1) The OHCD will solicit eligible project proposals through a Request for Proposal (RFP) process via public notification, at a minimum electronically on the County's website or in the local newspapers.
- (2) The open application period shall not be less than thirty (30) consecutive calendar days in duration.
- (3) The OHCD shall hold at least two (2) public meetings on separate days, prior to the proposal deadline to receive testimony regarding the community's needs for affordable housing.
- (4) Eligible project proposals shall include a completed application and all required documentation as outlined in the application instructions.
- (5) Costs of preparing and submitting proposal applications will be the sole responsibility of the applicant.
- (6) Project proposals shall be received by the OHCD no later than the deadline specified in the notification and proposal packet.
- (7) Proposal applications submitted may be rejected if the application is incomplete, does not meet the program eligibility requirements, or failed to meet the submission deadline.
- (8) Grant proposal applications shall include, at a minimum:
 - (a) A detailed description of the proposed project, outline the marketing strategy, and income categories the project will serve;
 - (b) An overview of the long-term management plan for the proposed project;
 - (c) A description of all efforts to leverage or match funding from non-County sources for the proposed project;
 - (d) An anticipated project schedule with milestones and approximate dates of completion;
 - (e) Applicant's qualifications, experience, and capacity to carry out the proposed project;
 - (f) A detailed budget and operating pro forma statement; and
 - (g) Proof of compliance with the requirements of HRS §103D-310(c), tax clearance and compliance.

§3-4 Grant Selection Process.

- (1) A selection committee shall be comprised of a minimum of three (3) members from OHCD and/or other County departments with regulatory oversight over the planning, permitting, or financing of housing development.
- (2) The selection committee shall review each project application.
- (3) The selection committee may do the following:
 - (a) Request additional information or data from the applicant
 - (b) Independently verify any or all information supplied by the applicant
 - (c) Conduct any investigation deemed necessary by the selection committee to adequately evaluate the application.
- (4) The selection committee shall use a standard weighted scoring system that will consider the following objectives:
 - (a) Project Impact and Delivery
 - (b) Project Readiness
 - (c) Project Funding and Leverage
 - (d) Applicant Qualifications
- (5) The selection committee shall evaluate, rate and rank each project proposal and submit their recommendation for funding to the administrator.
- (6) The administrator shall prepare a recommendation for funding to the Mayor, for the Mayor's approval.
- (7) The OHCD may at its discretion re-solicit eligible project proposals through additional Request for Proposal (RFP) process if it's determined that none of the project proposals meet the goals and objectives of the program or if there is an insufficient amount of proposals received.

§3-5 Grant Requirements. Requirements outlined below shall be incorporated into the grant agreement between the County of Hawai'i and the grantee, unless otherwise approved by the administrator.

(1) General Requirements.

- (a) The real property that is to be acquired, rehabilitated, and/or developed for the purpose of affordable housing production, shall be held in perpetuity by the grantee and recorded at the State Bureau of Conveyance or State Land Court by the grantee, unless the real property is conveyed to the County or to a qualified non-profit or community land trust.
- (b) The project shall not be sold, exchanged, divested, or converted to other uses that are inconsistent with this program without the prior approval of the administrator.
- (c) The grantee shall comply with all applicable federal, state, and county laws and regulations, including but not limited to:
 - (i) Fair Housing and Equal Opportunity

- (ii) Equal Employment Opportunity
- (iii) Conflict of Interest
- (iv) Environmental Review
- (v) Labor Standards
- (vi) State and Local Building Codes
- (vii) State and Local Land Use and Zoning Requirements

(2) Use of Funds.

- (a) Program funds can only be used for the purposes and activities stipulated in the grant agreement and approved by the OHCD.
- (b) Program funds can be used to leverage funds provided by federal, state, non-profit or for-profit organizations and other non-government entities to further expand affordable housing opportunities;
- (c) Program funds shall not be used for any overhead or administrative costs in implementing the project.
- (d) The grantee shall not distribute or redistribute grant funds to other organizations.

(3) Payment of Program Funds. The grantee shall:

- (a) Submit payment requests on a cost-reimbursement basis to the OHCD with the necessary supporting documents and certifications.
- (b) Allow for site inspection by the County as a condition for payment.
- (c) Cover all costs in excess of the awarded program funds.
- (d) Agree that any cost underruns of program funds shall be returned to the Affordable Housing Production Fund.
- (e) Submit and comply with all required tax clearances and applicable program requirements to receive final payment.

(4) Time for Performance.

- (a) Activities funded to increase affordable housing units (e.g. design, acquisition, infrastructure, new construction) shall be obligated within one year, and result in occupancy of the affordable housing units within five years from the date the grant agreement is executed.
- (b) Activities funded to support or sustain affordable housing (e.g. rehabilitation of existing affordable housing, eligible loan programs) must be completed within two years from the date the grant agreement is executed.
- (c) Requests for time extensions shall be made in writing and approval will be at the discretion of the administrator.

(5) Term of Affordability Period.

- (a) The affordability period for resale and/or rental restrictions for affordable housing units created or rehabilitated with program funds shall be in accordance with Chapter 11.

- (b) The administrator has the authority to require an extended affordability period beyond the requirements of Chapter 11, depending on the term of the grant agreement.
 - (c) The term of the grant agreement shall extend for the term of affordability period.
- (6) **Affordable Housing Requirements.**
- (a) The number of affordable housing units required by the issuance of program funds will be determined by using the federal HOME Investment Partnerships Program maximum subsidy guidelines, pursuant to 24 CFR 92.250, issued annually by the United States Department of Housing and Urban Development (HUD).
 - (b) The affordable housing units required by receipt of program funds shall not be used to fulfill any other obligation for affordable housing units as required by law or other subsidy obligations.
 - (c) Affordable housing requirements imposed by this section shall be recorded against the property.
 - (d) The grantee shall maintain affordability for the required affordable housing units in accordance with Chapter 11.
 - (e) Maximum rent or sales price shall follow the appropriate income limit as determined by the County of Hawai'i Affordable Housing Guidelines as published annually by OHCD.
 - (f) The grantee shall abide by resale restrictions for affordable housing units created or rehabilitated with program funds in accordance with Chapter 11 or as determined by the administrator.
- (7) **Reporting Requirements.**
- (a) The grantee shall submit quarterly cumulative reports to OHCD documenting the progress of the project during the construction until occupancy.
 - (b) Upon project completion of affordable housing units for rent, the grantee shall submit annual reports documenting the projects compliance with affordability requirements set out in Section §3-5(6) of these rules throughout the duration of the affordability period.
 - (c) Upon project completion and sale of affordable housing units, the grantee shall submit a report documenting the projects compliance with the affordability housing requirements set out in Section §3-5(6) of these rules.
- (8) **Records.** The grantee shall do the following:
- (a) Establish, maintain, submit, and make available to the OHCD records to enable the OHCD to determine whether the grantee has met the requirements of the program.
 - (b) Make all of its records related to the project available to the County for inspection at any time during normal business hours.

- (c) Retain all records pertinent the issuance of grant funds and compliance with grant requirements for at least five (5) years after the end of the affordability period.
 - (d) Allow the County, upon request, to inspect, examine, and audit its financial records.
- (9) **Insurance Requirements.**
- (a) The grantee shall maintain throughout the term of agreement, insurance to cover the operations that may be required under the laws, ordinances, regulations, or policy of any governmental authority.
 - (b) The grantee will provide current certificates of insurance and/or insurance policies as requested by the County.

SUBCHAPTER 4

OTHER PROVISIONS

§4-1 Non-compliance penalties.

- (1) If the grantee is not in compliance with the requirements included in the grant agreement or is found to have violated the terms of the grant agreement, awarded grant funds may need to be returned to the County. Grantee may be further penalized as outlined within the terms of the grant agreement

§4-2 Recovery of funds.

- (1) Abandonment. Should the grantee cease to use the property purchased or constructed, rehabilitated and/or converted with program funds for the purposes described in the grant agreement, the grantee shall repay the County the total amount of program funds expended for the project.

§4-3 Resale Restrictions.

- (1) The grantee shall not sell or otherwise transfer any real property purchased or constructed with program funds, without prior written consent from the administrator.
- (2) The resale and transfer of affordable housing units is restricted during the affordability period that is in effect.
 - (a) This restriction gives the County the first option to purchase the property in the event of a sale or transfer during the affordability period. The owner that wishes to resell or transfer the owner-occupied unit shall inform OHCD of this intention.

- (b) The County's repurchase price shall be calculated as the Owner's original base purchase price, plus cost of capital improvements added by owner, plus simple interest of one (1) percent per year on the original sales price, and capital improvement costs. If the County opts not to purchase the property, the sale of the affordable unit shall be approved by OHCD and may only be sold to another eligible buyer in the same or lower median income level as the original purchaser at an affordable rate as determined by the current affordable sale price calculation as determined by the County of Hawai'i Affordable Housing Guidelines as published annually by OHCD.

ADMINISTRATIVE RULES FOR
AFFORDABLE HOUSING PRODUCTION PROGRAM

CERTIFICATION

I, Susan Kunz, Administrator of the Office of Housing and Community Development of the County of Hawaii, State of Hawai'i, do hereby certify:

1. That the foregoing is a full, true and correct copy of the Administrative Rules For Affordable Housing Production Program relating to Section 11-21, Hawai'i County Code, County of Hawai'i.
2. That notice of the public hearing on the foregoing rules was published on the Office of Housing and Community Development's website from January 13, 2023 under Public Notices, and was published in the Hawai'i Tribune Herald on January 13, 2023 and January 31, 2023, and in the West Hawai'i Today on January 13, 2023 and January 31, 2023.

By  _____
Susan Kunz
Housing Administrator

Date 3/20/23 _____

ADMINISTRATIVE RULES FOR
AFFORDABLE HOUSING PRODUCTION PROGRAM

APPROVED:



Mitch Roth
Mayor, County of Hawai'i

Date: 3/28/23

APPROVED AS TO FORM AND LEGALITY:



Sylvia Wan
Deputy Corporation Counsel

Date: 3/21/2023

I HEREBY CERTIFY that the foregoing rules were received and filed in the Office of the County Clerk, in the County of Hawaii, this 30th day of March, 2023.



COUNTY CLERK