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# A BILL FOR AN ACT

RELATING TO KAKAAKO.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The purpose of this Act is to increase the  
2 reserved housing requirement for a major development on a lot of  
3 at least one acre in the Kakaako community development district,  
4 mauka area. For such a major development, at least twenty-five  
5 per cent of the floor area shall be constructed and made  
6 available as reserved housing units for low- and moderate-income  
7 families. The floor area countable for establishing the  
8 percentage for reserved housing units is the total floor area of  
9 every building of the major development, except the floor area  
10 developed for community or special facility uses. The developer  
11 is required to divide the reserved housing floor area into the  
12 number, types, and sizes of reserved housing units set by the  
13 Hawaii community development authority. The legislature intends  
14 that the reserved housing requirement apply to every major  
15 development on a lot of at least one acre, even if the developer  
16 intends to construct only commercial, industrial, or resort uses  
17 on the lot.



1           This Act also establishes a reserved housing requirement  
2 for a planned development with multi-family dwelling units on a  
3 lot of at least twenty thousand square feet, but less than one  
4 acre. At least twenty per cent of the multi-family dwelling  
5 units to be constructed are required to be set aside for  
6 reserved housing. This requirement is the same for a planned  
7 development with multi-family dwelling units on a lot of at  
8 least twenty thousand square feet. This requirement is intended  
9 to apply only to a planned development and not any other type of  
10 major development.

11           This Act requires the Hawaii community development  
12 authority to adopt implementing rules without regard to the  
13 notice and public hearing requirements of chapter 91, Hawaii  
14 Revised Statutes. The provision is intended to facilitate the  
15 adoption of the rules.

16           To prevent a flurry of permit applications for major  
17 developments on lots of at least one acre before adoption of the  
18 rules, this Act prohibits the authority from accepting such  
19 applications until the rules take effect. The legislature finds  
20 that this action is necessary to ensure that the public receives  
21 the maximum benefit from this Act.



1 With respect to the eligibility requirements of a low- or  
2 moderate-income family to purchase or rent a reserved housing  
3 unit, the legislature does not intend that this Act cause any  
4 change from the requirements under existing statute or rule.  
5 The legislature intends that the present eligibility  
6 requirements remain the same until amended by statute or rule.

7 Finally, this Act repeals the provisions that had allowed a  
8 developer to fulfill the developer's reserved housing  
9 requirement by developing affordable housing outside the  
10 applicable community development district.

11 SECTION 2. Chapter 206E, Hawaii Revised Statutes, is  
12 amended by adding a new section to part II to be appropriately  
13 designated and to read as follows:

14 **"§206E- Reserved housing requirement for Kakaako mauka**  
15 **area.** (a) At least twenty-five per cent of the countable floor  
16 area of each major development on a lot of at least one acre in  
17 the Kakaako mauka area shall be developed as and made available  
18 for reserved housing units. The developer of the major  
19 development shall divide the floor area required for reserved  
20 housing into and construct the number, types, and sizes of  
21 reserved housing units set by the authority. The authority  
22 shall establish sale prices or rents to be charged that are



1 affordable to families intended to be served by the reserved  
2 housing units. The authority also shall set the number of  
3 parking stalls to be assigned to the reserved housing units.

4 The countable floor area upon which the reserved housing  
5 floor area requirement is calculated shall be based on:

6 (1) For a planned development, the countable floor area in  
7 the plan approved by the authority in the planned  
8 development permit for a planned development; or

9 (2) For a major development that conforms with the base  
10 zoning, the countable floor area in the plan submitted  
11 to the authority before any building permit  
12 application is submitted.

13 The reserved housing floor area requirement shall not be  
14 changed if, subsequent to the approval or submission of the plan  
15 to the authority, the countable floor area is decreased. If,  
16 however, the countable floor area is increased before the  
17 issuance of a building permit for a building on the lot, the  
18 reserved housing floor area requirement shall be appropriately  
19 increased.

20 (b) For a planned development with multi-family dwelling  
21 units on a lot of between twenty thousand and 43,559 square  
22 feet, at least twenty per cent of the units shall be reserved



1 housing units. The authority shall set the types and sizes of  
2 the reserved housing units and establish sale prices or rents to  
3 be charged that are affordable to families intended to be served  
4 by the reserved housing units. The authority also shall set the  
5 number of parking stalls to be assigned to the reserved housing  
6 units.

7 (c) The reserved housing floor area or units required for  
8 a major development under this section need not be developed on  
9 the same lot as the major development, but shall be developed  
10 within the Kakaako mauka area.

11 (d) The authority shall not allow the developer of a major  
12 development to make a cash payment to the authority in lieu of  
13 developing and making available the reserved housing floor area  
14 or units required by this section.

15 (e) The developer of a major development shall construct  
16 the reserved housing floor area or units required by this  
17 section prior to or concurrent with the construction of other  
18 uses of the development. The authority shall prohibit the  
19 issuance of any certificate of occupancy for any of the other  
20 uses before the issuance of the certificate of occupancy for all  
21 the required reserved housing floor area or units.



1       (f) A developer of a major development who develops and  
2 makes available more reserved housing floor area or units than  
3 required by this section shall be entitled to a credit for the  
4 excess and may transfer the credit to another of the developer's  
5 major development in the same community development district.  
6 The credit shall equal the amount of reserved housing floor area  
7 or units developed and made available in excess of the  
8 requirement of this section. Any transferred credit shall be  
9 deducted from the reserved housing floor area or units required  
10 of the developer's other major development.

11       Alternatively, a developer of a major development may sell  
12 a credit to another developer of a major development in the same  
13 community development district at a price mutually agreed upon.  
14 The developer who purchases the credit may deduct the credit  
15 from the reserved housing square footage or units required for  
16 the developer's major development.

17       (g) The authority shall adopt rules in accordance with  
18 chapter 91 and section 6 of this Act to implement this section.

19       (h) For the purpose of this section:

20       "Base zoning" means the use, lot area, building area,  
21 height, density, bulk, yard, setback, open space, on-site



1 parking and loading, and other zoning standards or other  
2 restrictions imposed upon a development on a particular lot.

3 "Community service use" means any of the following uses:

4 (1) Nursing or convalescent home, nursing facility,  
5 assisted living administration, or ancillary assisted  
6 living amenities for the elderly or persons with  
7 disabilities;

8 (2) Child care, day care, or senior citizen center;

9 (3) Nursery school or kindergarten;

10 (4) Church;

11 (5) Charitable institution or nonprofit organization;

12 (6) Public use; or

13 (7) Consulate.

14 "Countable floor area" of a major development means the  
15 total floor area of every building on the lot of a major  
16 development, except the floor area developed for the following:

17 (1) Community service use; or

18 (2) Special facility use.

19 "Floor area" means the area of the several floors of a  
20 building, including basement but not unroofed areas, measured  
21 from the exterior faces of the exterior walls or from the center  
22 line of party walls separating portions of a building. The



1 floor area of a building or portion thereof not provided with  
2 surrounding exterior walls shall be the usable area under the  
3 horizontal projection of the roof or floor above, including but  
4 not limited to elevator shafts, corridors, and stairways.

5 "Floor area" shall not include the area for parking facilities  
6 and loading spaces, driveways and access ways, lanais or  
7 balconies of dwelling or lodging units that do not exceed  
8 fifteen per cent of the total floor area of the units to which  
9 they are appurtenant, attic areas with head room less than seven  
10 feet, covered rooftop areas, and rooftop machinery equipment and  
11 elevator housings on the top of buildings.

12 "Floor area ratio" means the ratio of floor area to land of  
13 a development as expressed as a percentage or decimal. The  
14 ratio shall be calculated by dividing the total floor area on a  
15 development lot by the area of the development lot.

16 "Kakaako mauka area" means the area of the Kakaako  
17 community development district mauka of Ala Moana Boulevard.

18 "Major development" means:

- 19 (1) A planned development; or
- 20 (2) A development that conforms with the base zoning, but  
21 has a floor area ratio exceeding 1.5, or a structure  
22 height exceeding forty-five feet, or both.





1       "Median income" means the median annual income, adjusted  
2 for family size, for households in the city and county of  
3 Honolulu as most recently established by the United States  
4 Department of Housing and Urban Development for the section 8  
5 housing assistance payments program.

6       "Planned development" means a development for which the  
7 authority approves a greater density or any other difference  
8 from the base zoning applicable to the lot on which the  
9 development is situated in exchange for public facilities,  
10 amenities, and reserved housing units provided by the developer.

11       "Reserved housing unit" means a multi-family dwelling unit  
12 that is developed for the following:

13       (1) Purchase by a family that:

14           (A) Has an income of not more than one hundred forty  
15           per cent of the median income; and

16           (B) Complies with other eligibility requirements  
17           established by statute or rule; or

18       (2) Rent to a family that:

19           (A) Has an income of not more than one hundred per  
20           cent of the median income; and

21           (B) Complies with other eligibility requirements  
22           established by statute or rule.



1 A "reserved housing unit" shall be one of the following types of  
2 dwelling units: studio with one bathroom; one bedroom with one  
3 bathroom; two bedrooms with one bathroom; two bedrooms with one  
4 and one-half bathrooms; two bedrooms with two bathrooms; three  
5 bedrooms with one and one-half bathrooms; three bedrooms with  
6 two bathrooms; and four bedrooms with two bathrooms.

7 "Special facility use" means a use in a "special facility"  
8 as defined under section 206E-181."

9 SECTION 3. Section 206E-4, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 **"§206E-4 Powers; generally.** Except as otherwise limited  
12 by this chapter, the authority may:

- 13 (1) Sue and be sued;
- 14 (2) Have a seal and alter the same at pleasure;
- 15 (3) Make and execute contracts and all other instruments  
16 necessary or convenient for the exercise of its powers  
17 and functions under this chapter;
- 18 (4) Make and alter bylaws for its organization and  
19 internal management;
- 20 (5) Make rules with respect to its projects, operations,  
21 properties, and facilities, which rules shall be in  
22 conformance with chapter 91;



- 1 (6) Through its executive director appoint officers,  
2 agents, and employees, prescribe their duties and  
3 qualifications, and fix their salaries, without regard  
4 to chapter 76;
- 5 (7) Prepare or cause to be prepared a community  
6 development plan for all designated community  
7 development districts;
- 8 (8) Acquire, reacquire, or contract to acquire or  
9 reacquire by grant or purchase real, personal, or  
10 mixed property or any interest therein; to own, hold,  
11 clear, improve, and rehabilitate, and to sell, assign,  
12 exchange, transfer, convey, lease, or otherwise  
13 dispose of or encumber the same;
- 14 (9) Acquire or reacquire by condemnation real, personal,  
15 or mixed property or any interest therein for public  
16 facilities, including but not limited to streets,  
17 sidewalks, parks, schools, and other public  
18 improvements;
- 19 (10) By itself, or in partnership with qualified persons,  
20 acquire, reacquire, construct, reconstruct,  
21 rehabilitate, improve, alter, or repair or provide for  
22 the construction, reconstruction, improvement,



1 alteration, or repair of any project; own, hold, sell,  
2 assign, transfer, convey, exchange, lease, or  
3 otherwise dispose of or encumber any project, and in  
4 the case of the sale of any project, accept a purchase  
5 money mortgage in connection therewith; and repurchase  
6 or otherwise acquire any project [~~which~~] that the  
7 authority has [~~theretofore~~] sold or otherwise  
8 conveyed, transferred, or disposed of;

9 (11) Arrange or contract for the planning, replanning,  
10 opening, grading, or closing of streets, roads,  
11 roadways, alleys, or other places, or for the  
12 furnishing of facilities or for the acquisition of  
13 property or property rights or for the furnishing of  
14 property or services in connection with a project;

15 (12) Grant options to purchase any project or to renew any  
16 lease entered into by it in connection with any of its  
17 projects, on such terms and conditions as it deems  
18 advisable;

19 (13) Prepare or cause to be prepared plans, specifications,  
20 designs, and estimates of costs for the construction,  
21 reconstruction, rehabilitation, improvement,  
22 alteration, or repair of any project, and from time to



1 time to modify such plans, specifications, designs, or  
2 estimates;

3 (14) Provide advisory, consultative, training, and  
4 educational services, technical assistance, and advice  
5 to any person, partnership, or corporation, either  
6 public or private, in order to carry out the purposes  
7 of this chapter, and engage the services of  
8 consultants on a contractual basis for rendering  
9 professional and technical assistance and advice;

10 (15) Procure insurance against any loss in connection with  
11 its property and other assets and operations in [~~such~~]  
12 amounts and from [~~such~~] insurers as it deems  
13 desirable;

14 (16) Contract for and accept gifts or grants in any form  
15 from any public agency or from any other source;

16 (17) Do any and all things necessary to carry out its  
17 purposes and exercise the powers given and granted in  
18 this chapter; and

19 (18) Allow satisfaction of any affordable housing  
20 requirements imposed by law or the authority upon any  
21 proposed development project through the construction  
22 of reserved housing[~~7~~] units, as defined in section



1           ~~[206E-101,]~~ 206E-   , by a person on land located  
 2           outside the ~~[geographic boundaries of the authority's~~  
 3           ~~jurisdiction. Such substituted housing shall be~~  
 4           ~~located on the same island as the development project~~  
 5           ~~and shall be substantially equal in value to the~~  
 6           ~~required reserved housing units that were to be~~  
 7           ~~developed on site. The authority shall establish the~~  
 8           ~~following priority in the development of reserved~~  
 9           ~~housing:~~

- 10           ~~(A) Within the]~~ lot of the proposed project, but  
 11           within the same community development district;
- 12           ~~(B) Within areas immediately surrounding the~~  
 13           ~~community development district;~~
- 14           ~~(C) Areas within the central urban core;~~
- 15           ~~(D) In outlying areas within the same island as the~~  
 16           ~~development project.];~~ provided that the  
 17           prohibition of section 206E-31.5(2) shall apply.

18           The Hawaii community development authority shall  
 19           adopt rules relating to the approval of reserved  
 20           housing ~~[that are]~~ units to be developed outside ~~[of a~~  
 21           ~~community development district. The rules shall~~  
 22           ~~include, but are not limited to, the establishment of~~



1 ~~guidelines to ensure compliance with the above~~  
2 ~~priorities.] the lot of a proposed project in~~  
3 ~~accordance with this paragraph."~~

4 SECTION 4. Section 206E-33, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 **"§206E-33 Kakaako community development district;**  
7 **development guidance policies.** The following shall be the  
8 development guidance policies generally governing the  
9 authority's action in the Kakaako community development  
10 district:

- 11 (1) Development shall result in a community [~~which~~] that  
12 permits an appropriate land mixture of residential,  
13 commercial, industrial, and other uses. In view of  
14 the innovative nature of the mixed use approach, urban  
15 design policies should be established to provide  
16 guidelines for the public and private sectors in the  
17 proper development of this district; while the  
18 authority's development responsibilities apply only to  
19 the area within the district, the authority may engage  
20 in any studies or coordinative activities permitted in  
21 this chapter [~~which~~] that affect areas lying outside  
22 the district, where the authority in its discretion



1 decides that those activities are necessary to  
2 implement the intent of this chapter. The studies or  
3 coordinative activities shall be limited to facility  
4 systems, resident and industrial relocation, and other  
5 activities with the counties and appropriate state  
6 agencies. The authority may engage in construction  
7 activities outside of the district; provided that  
8 ~~such~~ the construction relates to infrastructure  
9 development or residential or business relocation  
10 activities; provided further, notwithstanding section  
11 206E-7, that such construction shall comply with the  
12 general plan, development plan, ordinances, and rules  
13 of the county in which the district is located;

14 (2) Existing and future industrial uses shall be permitted  
15 and encouraged in appropriate locations within the  
16 district. No plan or implementation strategy shall  
17 prevent continued activity or redevelopment of  
18 industrial and commercial uses ~~which~~ that meet  
19 reasonable performance standards;

20 (3) Activities shall be located ~~so as~~ to provide primary  
21 reliance on public transportation and pedestrian





- 1 facilities for internal circulation within the  
2 district or designated subareas;
- 3 (4) Major view planes, view corridors, and other  
4 environmental elements such as natural light and  
5 prevailing winds, shall be preserved through necessary  
6 regulation and design review;
- 7 (5) Redevelopment of the district shall be compatible with  
8 plans and special districts established for the Hawaii  
9 Capital District, and other areas surrounding the  
10 Kakaako district;
- 11 (6) Historic sites and culturally significant facilities,  
12 settings, or locations shall be preserved;
- 13 (7) Land use activities within the district, where  
14 compatible, shall to the greatest possible extent be  
15 mixed horizontally, that is, within blocks or other  
16 land areas, and vertically, as integral units of  
17 multi-purpose structures;
- 18 (8) Residential development may require a mixture of  
19 densities, building types, and configurations in  
20 accordance with appropriate urban design guidelines[+]  
21 and the integration both vertically and horizontally  
22 of residents of varying incomes, ages, and family



1 groups [~~and an increased supply of housing for~~  
 2 ~~residents of low or moderate income may be required as~~  
 3 ~~a condition of redevelopment in residential use.];~~  
 4 provided that the reserved housing requirements of  
 5 section 206E- shall be imposed upon a major  
 6 development when applicable. Residential development  
 7 shall provide necessary community facilities, such as  
 8 open space, parks, community meeting places, child  
 9 care centers, and other services, within and adjacent  
 10 to residential development; and

11 (9) Public facilities within the district shall be  
 12 planned, located, and developed [~~so as~~] to support the  
 13 redevelopment policies for the district established by  
 14 this chapter and plans and rules adopted pursuant to  
 15 it."

16 SECTION 5. Section 206E-101, Hawaii Revised Statutes, is  
 17 amended by amending the definition of "reserved housing" to read  
 18 as follows:

19 "'Reserved housing" means [~~housing designated for residents~~  
 20 ~~in the low or moderate income ranges who meet such]~~ a reserved  
 21 housing unit, as defined under section 206E- , developed and  
 22 made available for purchase by a family that has a household



1 income of not more than one hundred forty per cent of the area  
2 median income and that meets other eligibility requirements as  
3 the authority may adopt by rule."

4 SECTION 6. The Hawaii community development authority  
5 shall adopt new or amendatory rules to implement this Act  
6 without regard to the public notice and public hearing  
7 requirements of section 91-3, Hawaii Revised Statutes, or the  
8 small business impact review requirements of chapter 201M,  
9 Hawaii Revised Statutes. The authority shall adopt the rules  
10 before January 1, 2009. Any subsequent amendment of the rules  
11 adopted pursuant to this section shall be subject to all  
12 applicable provisions of chapter 91 and chapter 201M, Hawaii  
13 Revised Statutes.

14 SECTION 7. (a) From the effective date of this Act until  
15 the effective date of the new or amendatory rules adopted  
16 pursuant to section 6, the Hawaii community development  
17 authority shall not accept any planned development permit  
18 application for a planned development on a lot of at least one  
19 acre.

20 (b) From the effective date of the new or amendatory rules  
21 adopted pursuant to section 6, the Hawaii community development



1 authority may accept any planned development permit application  
2 for a planned development on a lot of at least one acre.

3 (c) From the effective date of this Act, the Hawaii  
4 community development authority may accept any planned  
5 development permit application for a planned development with  
6 multi-family dwelling units on a lot of between twenty thousand  
7 and 43,559 square feet. The reserved housing unit requirement  
8 for such a planned development shall be subject to the statutes  
9 and rules in effect on the date of the permit application.

10 (d) Any planned development permit application pending on  
11 the effective date of this Act, shall not be subject to this Act  
12 or rules adopted pursuant to section 6. The planned development  
13 shall be subject to the statutes and rules in effect on the date  
14 of the planned development permit application.

15 SECTION 8. (a) This section shall apply only to a major  
16 development on a lot of at least one acre that is not a planned  
17 development.

18 (b) From the effective date of this Act until the  
19 effective date of the new or amendatory rules adopted pursuant  
20 to section 6, the Hawaii community development authority shall  
21 prohibit the developer of a major development subject to



1 subsection (a) from submitting a building permit application to  
2 the city and county of Honolulu.

3 (c) From the effective date of the new or amendatory rules  
4 adopted pursuant to section 6, the Hawaii community development  
5 authority shall allow the developer of a major development  
6 subject to subsection (a) to submit a building permit  
7 application for the major development to the city and county of  
8 Honolulu.

9 (d) Any major development subject to this section, the  
10 building permit application for which is pending on the  
11 effective date of this Act, shall not be subject to this Act or  
12 rules adopted pursuant to section 6. Such a major development  
13 shall be subject to the statutes and rules in effect on the date  
14 of the building permit application.

15 SECTION 9. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17 SECTION 10. This Act shall take effect upon its approval.



**Report Title:**

Kakaako Community Development District, Mauka Area; Reserved Housing

**Description:**

Increases the reserved housing requirement for a major development on a lot of at least one acre in the Kakaako community development district, mauka area. (SB2294 HD1)

