

JAN 23 2009

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 Kakaako community development district's reserved housing
3 requirement for a planned development with a height of more than
4 forty-five feet or a floor area that equals or exceeds one and
5 one-half times the lot area for the development in the mauka
6 area.

7 For planned developments greater than three acres, this Act
8 requires at least twenty-five per cent of the floor area to be
9 constructed and made available as reserved housing units for
10 low- and moderate-income families. This requirement shall be
11 increased to thirty-five per cent after December 31, 2017 unless
12 the legislature determines there is adequate reserved housing in
13 Kakaako.

14 Under this Act, the floor area applicable to the percentage
15 for reserved housing units is the total floor area of every
16 building of the planned development, except the floor area
17 developed for community or special facility uses. The developer



1 is required to divide the reserved housing floor area into the
2 number, types, and sizes of reserved housing units set by the
3 Hawaii community development authority.

4 The legislature intends that the reserved housing
5 requirement apply to every planned development with a height of
6 more than forty-five feet or a floor area that equals or exceeds
7 one and one-half times the lot area for the development, even if
8 the developer intends to construct only commercial, industrial,
9 or resort uses on the lot. It is not the intent of the
10 legislature, however, to place a disproportionate burden on
11 small businesses in the area, and this Act provides an exemption
12 for small lots that are not a part of a master planned area.

13 This Act also establishes a reserved housing requirement
14 for a planned development with multi-family dwelling units on a
15 lot of at least twenty thousand square feet, but less than three
16 acres, that are not a part of a master planned area. For a
17 planned development, at least twenty per cent of the multi-
18 family dwelling units to be constructed are required to be set
19 aside for reserved housing. This requirement is the same as the
20 existing rule for a planned development with multi-family
21 dwelling units on a lot of at least twenty thousand square feet.



1 This Act requires the Hawaii community development authority to
2 adopt and implement rules without regard to the notice and
3 public hearing requirements of chapter 91, Hawaii Revised
4 Statutes. The provision is intended to facilitate the adoption
5 of the rules.

6 To prevent a flurry of permit applications for planned
7 developments on lots of at least three acres before adoption of
8 the rules, this Act prohibits the Hawaii community development
9 authority from accepting these applications until the rules take
10 effect. This action is necessary to ensure that the public
11 receives the maximum benefit from this Act.

12 With respect to the eligibility requirements of a low- or
13 moderate-income family to purchase or rent a reserved housing
14 unit, it is not intended that this Act cause any change from the
15 requirements under existing statutes or rules, but is intended
16 that the present eligibility requirements remain the same until
17 amended by statute or rule.

18 The purpose of this Act is to increase the requirement for
19 reserved housing units within planned developments in the
20 Kakaako community development district, mauka area from twenty
21 percent of units to twenty-five percent of floor space. The
22 increased requirement would apply only to planned developments



1 that occur on lots of three acres or more, and which are part of
2 a master planned area. Planned developments that occur on lots
3 of less than three acres would continue to be required to comply
4 with the existing requirement that twenty percent of multi-
5 family dwelling units be set aside for reserved housing.

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

9 "§206E- Reserved housing requirement for Kakaako mauka
10 area. (a) For the purpose of this section:

11 "Base zoning" means the use, lot area, building area,
12 height, density, bulk, yard, setback, open space, on-site
13 parking and loading, and other zoning standards or other
14 restrictions imposed upon a development on a particular lot.

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

- 16 (1) Nursing or convalescent home, nursing facility,
17 assisted living administration, or ancillary assisted
18 living amenities for the elderly or persons with
19 disabilities;
- 20 (2) Child care, day care, or senior citizen center;
- 21 (3) Nursery school or kindergarten;
- 22 (4) Church;



1 (5) Charitable institution or nonprofit organization;

2 (6) Public use; or

3 (7) Consulate.

4 "Countable floor area" of a planned development means the
5 total floor area of every building on the lot of a planned
6 development, except the floor area developed for the following:

7 (1) Community service use; or

8 (2) Special facility use.

9 "Floor area" means the total area of the several floors of
10 a building, including basement but not unroofed areas, measured
11 from the exterior faces of the exterior walls or from the center
12 line of party walls separating portions of a building. The
13 floor area of a building or portion thereof not provided with
14 surrounding exterior walls shall be the usable area under the
15 horizontal projection of the roof or floor above, including but
16 not limited to elevator shafts, corridors, and stairways.

17 "Floor area" shall not include the area for parking facilities
18 and loading spaces, driveways and access ways, lanais or
19 balconies of dwelling or lodging units that do not exceed
20 fifteen per cent of the total floor area of the units to which
21 they are appurtenant, attic areas with head room less than seven



1 feet, covered rooftop areas, and rooftop machinery equipment and
2 elevator housings on the top of buildings.

3 "Master planned area" means any area for which the
4 authority has approved a master plan application under title 15,
5 chapter 22, of the Hawaii administrative rules.

6 "Median income" means the median annual income, adjusted
7 for family size, for households in the city and county of
8 Honolulu as most recently established by the United States
9 Department of Housing and Urban Development for the section 8
10 housing assistance payment program.

11 "Planned development" means a development for which the
12 authority approves a greater density or any other difference
13 from the base zoning applicable to the lot on which the
14 development is situated in exchange for public facilities,
15 amenities, and reserved housing units provided by the developer.

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

- 18 (1) Purchase by a family that:
19 (A) Has an income of not more than one hundred forty
20 per cent of the median income; and
21 (B) Complies with other eligibility requirements
22 established by statute or rule; or



1 (2) Rent to a family that:

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

4 (B) Complies with other eligibility requirements
5 established by statute or rule.

6 A "reserved housing unit" shall be one of the following types of
7 dwelling units: studio with one bathroom; one bedroom with one
8 bathroom; two bedrooms with one bathroom; two bedrooms with one
9 and one-half bathrooms; two bedrooms with two bathrooms; three
10 bedrooms with one and one-half bathrooms; three bedrooms with
11 two bathrooms; and four bedrooms with two bathrooms.

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

14 (b) At least twenty-five per cent (or thirty-five per cent
15 after December 31, 2017 unless the legislature determines there
16 is adequate reserved housing in Kakaako) of the countable floor
17 area of each planned development with a height of more than
18 forty-five feet or a floor area that equals or exceeds one and
19 one-half times the lot area for the development shall be
20 developed and made available for reserved housing units;
21 provided that this section shall not apply to a lot of less than
22 three acres in size that is not a part of a master planned area.



1 The developer of the planned development shall divide the floor
2 area required for reserved housing into, and construct the
3 number, types, and sizes of reserved housing units set by the
4 authority. The authority shall set the number, types, and sizes
5 of reserved housing units to establish sale prices or rents to
6 be charged that are affordable to families intended to be served
7 by the reserved housing units. The authority also shall set the
8 number of parking stalls to be assigned to the reserved housing
9 units.

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

20 (c) For a planned development with multi-family dwelling
21 units on a lot of between twenty thousand and 130,679 square
22 feet that is not a part of a master planned area, at least



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

7 (d) The reserved housing floor area or units required for
8 a planned development under this section need not be developed
9 on the same lot as the planned development, provided that
10 section 206E-4(18) shall apply.

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

15 (f) Subject to the rules of the authority, reserved
16 housing units shall be built prior to or concurrently with the
17 planned development. Any project that provides more reserved
18 housing units than required under this section may transfer
19 excess housing credits to another project in Kakaako toward
20 satisfaction of the reserved housing units requirement of that
21 project as follows:



- 1 (1) \$60,000 for a studio with one bathroom of at least
- 2 four hundred square feet;
- 3 (2) \$75,000 for a one bedroom with one bathroom of at
- 4 least five hundred square feet;
- 5 (3) \$105,000 for a two bedroom with one bathroom of at
- 6 least seven hundred square feet;
- 7 (4) \$112,500 for a two bedroom with one and a half
- 8 bathroom of at least seven hundred fifty square feet;
- 9 (5) \$120,000 for a two bedroom with two bathrooms of at
- 10 least eight hundred square feet;
- 11 (6) \$135,000 for a three bedroom with two bathrooms of at
- 12 least nine hundred square feet; and
- 13 (7) \$150,000 for a four bedroom with two bathrooms of at
- 14 least one thousand square feet.

15 Alternatively, the developer of a planned development may
16 sell a credit to another developer of a planned development in
17 Kakaako at a price mutually agreed upon. The developer who
18 purchases the credit may deduct the credit from the reserved
19 housing square footage or units required for the developer's
20 planned development.

21 The authority shall annually review the amount and price
22 for the transfer of the excess credits and is authorized to



1 increase the amount as deemed necessary. The terms of the
2 reserved housing credits transfer shall be approved by the
3 authority.

4 (g) After January 1, 2010, the authority shall adopt rules
5 in accordance with chapter 91 to effectuate the purposes of this
6 section; provided that prior to January 1, 2010, the authority
7 shall adopt rules to effectuate the purposes of this section
8 without regard to chapter 91."

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~~] the plans, specifications,
2 designs, or 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 the authority upon any
21 proposed development project through the construction
22 of reserved housing, as defined in section 206E-101,



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

- 9 (A) Within the community development district [~~+~~] but
10 not the area prohibited under section 206E-
11 31.5(2);
- 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.

17 The Hawaii community development authority shall
18 adopt rules relating to the approval of reserved
19 housing that are developed outside of a community
20 development district. The rules shall include, but
21 are not limited to, the establishment of guidelines to
22 ensure compliance with the above priorities."



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

3 **"§206E-33 Kakaako community development district;**
4 **development guidance policies.** The following shall be the
5 development guidance policies generally governing the
6 authority's action in the Kakaako community development
7 district:

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



1 systems, resident and industrial relocation, and other
2 activities with the counties and appropriate state
3 agencies. The authority may engage in construction
4 activities outside of the district; provided that
5 [~~such~~] the construction relates to infrastructure
6 development or residential or business relocation
7 activities; provided further, notwithstanding section
8 206E-7, that [~~such~~] the construction shall comply with
9 the general plan, development plan, ordinances, and
10 rules of the county in which the district is located;

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

17 (3) Activities shall be located [~~so as~~] to provide primary
18 reliance on public transportation and pedestrian
19 facilities for internal circulation within the
20 district or designated subareas;

21 (4) Major view planes, view corridors, and other
22 environmental elements, such as natural light and



1 prevailing winds, shall be preserved through necessary
2 regulation and design review;

3 (5) Redevelopment of the district shall be compatible with
4 plans and special districts established for the Hawaii
5 Capital District, and other areas surrounding the
6 Kakaako district;

7 (6) Historic sites and culturally significant facilities,
8 settings, or locations shall be preserved;

9 (7) Land use activities within the district, where
10 compatible, shall to the greatest possible extent be
11 mixed horizontally, that is, within blocks or other
12 land areas, and vertically, as integral units of
13 multi-purpose structures;

14 (8) Residential development may require a mixture of
15 densities, building types, and configurations in
16 accordance with appropriate urban design guidelines [✓]
17 and the integration both vertically and horizontally
18 of residents of varying incomes, ages, and family
19 groups; [and an increased supply of housing for
20 residents of low or moderate income may be required
21 as a condition of redevelopment in residential use.]
22 provided that the reserved housing requirements of



1 section 206E- shall be imposed upon a planned
2 development when applicable. Residential development
3 shall provide necessary community facilities, such as
4 open space, parks, community meeting places, child
5 care centers, and other services, within and adjacent
6 to residential development; and

7 (9) Public facilities within the district shall be
8 planned, located, and developed [~~se-as~~] to support the
9 redevelopment policies for the district established by
10 this chapter and plans and rules adopted pursuant to
11 it."

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

15 ""Reserved housing" means [~~housing designated for residents~~
16 ~~in the low or moderate income ranges who meet such~~] a reserved
17 housing unit, as defined under section 206E- , developed and
18 made available for purchase by a family that has a household
19 income of not more than one hundred forty per cent of the area
20 median income and that meets other eligibility requirements as
21 the authority may adopt by rule."



1 SECTION 6. The Hawaii community development authority
2 shall adopt new or amend adopted rules to implement this Act
3 without regard to the public notice and public hearing
4 requirements of section 91-3, Hawaii Revised Statutes, or the
5 small business impact review requirements of chapter 201M,
6 Hawaii Revised Statutes. The authority shall adopt the rules
7 before January 1, 2010. Any subsequent amendment of the rules
8 adopted pursuant to this section shall be subject to all
9 applicable provisions of chapter 91 and chapter 201M, Hawaii
10 Revised Statutes.

11 SECTION 7. (a) From the effective date of this Act until
12 the effective date of the new or amended rules adopted pursuant
13 to section 6 of this Act, the Hawaii community development
14 authority shall not accept any planned development permit
15 application for a planned development on a lot of at least three
16 acres.

17 (b) From the effective date of the new or amended rules
18 adopted pursuant to section 6 of this Act, the Hawaii community
19 development authority may accept any planned development permit
20 application for a planned development on a lot of at least three
21 acres.



1 SECTION 8. From the effective date of this Act until the
2 effective date of the new or amended rules adopted pursuant to
3 section 6 of this Act, the Hawaii community development
4 authority may accept any planned development permit application
5 for a planned development with multi-family dwelling units on a
6 lot of between twenty thousand and 130,679 square feet. The
7 reserved housing unit requirement for the planned development
8 shall be subject to the laws and rules in effect on the date of
9 the permit application.

10 SECTION 9. The planned development permit application for
11 any planned development, which is pending on the effective date
12 of this Act, shall not be subject to this Act or rules adopted
13 pursuant to section 6 of this Act. The planned development
14 shall be subject to the laws and rules in effect on the date of
15 the permit application.

16 SECTION 10. (a) From the effective date of this Act until
17 the effective date of the new or amended rules adopted pursuant
18 to section 6, the Hawaii community development authority shall
19 prohibit the developer of a planned development in Kakaako from
20 submitting a building permit application for the planned
21 development to the city and county of Honolulu.



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1 (b) From the effective date of the new or amended rules
2 adopted pursuant to section 6, the Hawaii community development
3 authority shall allow the developer of a planned development in
4 Kakaako to submit a building permit application for the planned
5 development to the city and county of Honolulu.

6 SECTION 11. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 12. This Act shall take effect on July 1, 2009.

9

INTRODUCED BY:

By request



Report Title:

Kakaako Community Development District, Mauka Area; Reserved Housing

Description:

Increases the reserved housing requirement for a planned development to twenty-five per cent of floor space in the Kakaako community development district, mauka area for lots three acres or more in size.

