ORDINANCE NO. 740 BILL NO. 1909, Draft 1

A BILL FOR AN ORDINANCE CREATING THE OFFICES OF COMMUNITY ASSISTANCE BY ADDING A NEW SECTION 2-1.19 TO, AND AMENDING SECTIONS 2-1.6, 2-1.16, 2-1.18, AND 3-2.1 OF, THE KAUAI COUNTY CODE 1987

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. Chapter 2, Article 1, of the Kauai County Code 1987, is amended by adding a new section to be appropriately designated and to read as follows:

"**Sec. 2-1.19 Offices of Community Assistance.**

(a) Organization and Administration. There shall be an administrative office called the "Offices of Community Assistance" under the Mayor's Office. The office shall be headed by a director of community assistance who shall be appointed by the Mayor and approved by the Council and who may be removed by the Mayor. The director shall be under the direct supervision and control of the Mayor. The director may establish staff positions that are funded either by the County Council or federal or state government.

There shall be an Agency on Elderly Affairs, a Kauai County Housing Agency, and a Transportation Agency under the supervision and control of the Offices of Community Assistance. Each agency shall be headed by an executive who shall be under the direct supervision and control of the director of community assistance.

The annual budgets furnished to the director of community assistance by the Agency on Elderly Affairs, the Kauai County Housing Agency, and the Transportation Agency shall be reviewed by the director and, subject to any changes made by the director, submitted to the Director of Finance and the Mayor, who shall include the budget or budgets as part of the annual County budget ordinance that is submitted to the Council.

(b) Powers and Duties of the director of the Offices of Community Assistance. The director shall:

(1) Administer matters of the Agency on Elderly Affairs, the Housing Agency, and the Transportation Agency.

(2) Plan, develop and manage the operations of the Agency on Elderly Affairs, the Housing Agency, and the Transportation Agency.

(3) Develop and establish policies and plans for the Agency on Elderly Affairs, the Housing Agency, and the Transportation Agency.

(c) All rights, powers, functions, and duties of the Office of Elderly Affairs, Transportation Agency, and Kauai County Housing Agency which existed prior to the effective date of this Ordinance, are hereby transferred to the Offices of Community Assistance."

SECTION 2. Chapter 2, Article 1, Section 2-1.6 of the Kauai County Code 1987, is hereby amended to read as follows:

"**Sec. 2-1.6 [Office of] <u>Agency on</u> Elderly Affairs.**

(a) Declaration of Purpose. This Section shall provide a more permanent status to the present organization titled "Kauai County Committee on

Aging" established by Resolution No. 38 (1964) of the then Board of Supervisors and to separate the advisory committee and the administrative agency involved in the program for the elderly. The declaration of purpose set forth in Chapter 349, Hawaii Revised Statutes, shall be adopted by the County as its purpose in establishing the County's program for the elderly.

(b) Organization and Administration. [There shall be an administrative agency titled "Office of Elderly Affairs" under the Mayor's office to perform the administrative duties in performing all programs relating to the elderly. The office shall be headed by a director appointed by the Mayor with the advice and consent of the Advisory Council, whose position shall be subject to the provisions of Chapter 76 and 77, H.R.S.] There shall be an administrative agency called the "Agency on Elderly Affairs" under the Offices of Community Assistance. The agency shall be headed by an executive on aging, whose position shall be subject to the provisions of chapters 76 and 77, Haw. Rev. Stat. The executive on aging shall be under the direct supervision and control of the director of community assistance. The [director] executive on aging may establish staff positions as may be funded by the County Council and as may be within the funds available for staffing from Federal, State or County funds. To the extent that funding is non-County, positions based on that funding may be made without County Council action.

(c) Annual Budget. The executive on aging shall prepare an annual budget for the Agency on Elderly Affairs commencing with the annual budget for fiscal year 2000-2001. The annual budget shall include an accounting of all funds to be received from all sources, including County, State and Federal funds, and for all expenditures to be made from such funds. This annual budget shall be furnished to the director of community assistance, who shall in turn furnish this budget to the Director of Finance and the Mayor, who shall submit it as part of the annual budget ordinance of the County to the Council, as provided in the Kauai County Charter. No funds shall be expended from any accounts unless authorized by the County pursuant to the budgetary process. The use of all Federal funds proposed in the Agency on Elderly Affairs' budget shall be subject to all applicable Federal regulations, laws and restrictions.

(d) All agreements, contracts, documents and other written instruments relating to the operations of the Agency on Elderly Affairs shall be prepared by the executive on aging and approved by the director of community assistance, and thereafter signed by the Mayor or the Director of Finance, as provided in the Kauai County Charter. When so required by the Kauai County Charter, or as a condition for any grant, Council approval shall also be obtained.

[(c)] (e) Advisory Council. An advisory council titled "Elderly Affairs Advisory Council" shall be established to advise the [Mayor] director of community assistance and the [director of the office of elderly affairs] executive on aging on matters relating to the programs, interests and needs of the elderly. The advisory council shall consist of not less than fifteen (15) members who shall be appointed by the Mayor. The composition of the advisory council and its regulations shall be as set forth in Chapter 349, Hawaii Revised Statutes."

SECTION 3. Chapter 2, Article 1, Section 2-1.16 of the Kauai County Code 1987, is hereby amended to read as follows:

"**Sec. 2-1.16 Kauai County Housing Agency.**

(a) Purpose. A Kauai County Housing Agency is hereby established for the purpose of:

(1) Providing housing opportunities for eligible persons and families, including, but not limited to, lower and moderate income persons and families, elderly persons, and handicapped persons;

(2) Providing housing opportunities for eligible persons and families by assisting them to obtain low cost housing;

(3) Acting as the local Public Housing Agency for the County of Kauai for the purposes of participating in and implementing federally-aided housing, urban renewal, and community development programs, including, but not limited to, the Federal Housing Assistance Payments Programs;

(4) Acting as the local agency for the County of Kauai for the purposes of participating in and implementing the Community Development Block Grant Program; and

(5) Acting as the agency responsible for coordinating the exercise of powers delegated to the counties pursuant to Sections 46-15, 15.1 and 15.2, and Chapter 53 of the Hawaii Revised Statutes, as amended, and for administering and supervising the programs and projects implemented as a result of the exercise by the County of Kauai of such powers.

(b) Definitions. When used in this Section the following words and phrases shall have the following meaning unless it shall be apparent from the context that a different meaning is intended:

(1) "Administrative Fee" means all monies and fees received by the Section 8 Program from the State of Hawaii, HUD, or any other federal sources, including the "Hard to House" fees and other such payments, for the administrative operation of the Section 8 Program.

(2) "CDBG" means the Community Development Block Grant created pursuant to the Housing and Community Development Acts of 1974 and 1980, and the amendments thereto.

(3) "Council" means the Council of the County of Kauai.

(4) "County" means the County of Kauai.

(5) "Federal Housing Assistance Payments Program" means the program created by Section 8 of the Housing and Community Development Acts of 1974 and 1980, and the amendments thereto.

(6) "Fiscal Year" means the fiscal year utilized by the County for its budgetary purposes.

(7) "HUD" means the United States Department of Housing and Urban Development.

(8) "KCHA" means the Kauai County Housing Agency.

(9) "Operating Reserve Account" means the account to which all Surplus Funds shall be credited. Upon adoption of this Ordinance, all funds previously received, retained, earned or generated by the Section 8 Program, wherever situated, which meet the definition of Surplus Funds as defined herein, shall be transferred into and shall become part of the Operating Reserve Account.

(10) "Operating Reserve Funds" means all of the funds maintained in the Operating Reserve Account.

(11) "Public Housing Agency" is the term used by HUD to identify local entities eligible to receive HUD housing funds and, as used in regard to the County means the KCHA.

(12) "Rental Payment Assistance Funds" means the funds received by the Section 8 Program to be used for the rental payments of eligible participants in the Section 8 Program's Rental Assistance Program.

(13) "Restrictions on Sale or Transfer, and Use" is the term used to identify the anti-speculative repurchase provision that applies to all real property purchased from the County that has been acquired, financed, developed, constructed, or sold pursuant to this Section.

(14) "Section 8 Administrative Account" means the account containing the Section 8 Program's administrative fees.

(15) "Section 8 Program" means the division of the KCHA which administers the funds received pursuant to, and supervises the programs resulting from, the Federal Housing Assistance Payments Program.

(16) "Surplus Funds" means the amount by which the Section 8 Program's project receipts from the Administrative Fee payments, together with any remaining carry-over surplus funds from prior fiscal years, exceed the total expenditures for the administration of the Section 8 Program for the just concluded fiscal year.

(c) Kauai County Housing Agency. [An agency to be known as the Kauai "County Housing Agency" is created to provide adequate low cost housing in the County of Kauai as it deems necessary. The agency shall consist of all of the members of the County Council and its role is limited to public housing policy formulation and not the duties of administering housing programs.] <u>There shall be an agency called the "Kauai County Housing Agency" to provide adequate low-cost housing and assist in community development in the County of Kauai, as the agency may deem necessary and appropriate. The agency shall be under the Offices of Community Assistance.</u>

(d) [Housing Administrator. There shall be a Housing Administrator who shall be appointed by the Mayor and approved by the Council. The Housing Administrator shall be under the direct supervision and control of the Mayor. The Housing Administrator shall have the following duties and responsibilities:] <u>Executive on Housing. There shall be an Executive on Housing who shall be under the direct supervision and control of the director of community assistance. The Executive on Housing shall have the following duties and responsibilities:</u>

(1) To administer the operations of the KCHA and its programs and projects;

(2) To staff the KCHA with necessary personnel to carry out the purposes of the KCHA;

(3) To coordinate the operations and programs of the KCHA with the applicable housing plans and programs of the County, State and Federal governments;

(4) To prepare all programs and contracts with the State and Federal governments to carry out the purposes of the KCHA, and to transmit them to the appropriate County persons or bodies for approval;

(e) Powers, Duties and Responsibilities of the Kauai County Housing Agency.

(1) The KCHA shall be responsible for coordinating the exercise by the County of the powers provided in Sections 46-15, 15.1 and 15.2, and Chapter 53 of the Hawaii Revised Statutes and for

administering and supervising the programs and projects implemented as a result of the exercise by the County of such powers.

(2) In order to implement and provide the programs, projects or services resulting from the exercise by the County of the powers enumerated in paragraph (1), the KCHA may, subject to applicable County, State, and Federal laws, regulations, and guidelines, do any of the following:

(A) Develop and construct dwelling units, alone or in partnership with developers;

(B) Provide assistance and aid to a public agency or persons in developing and constructing new housing and rehabilitating old housing for the elderly of low income, other persons of low income, persons displaced by any government action, by making long-term mortgage or interim construction loans available;

(C) Contract with any eligible bidders to provide for construction of urgently needed housing;

(D) Enter into agreements with appropriate officials of any agency or instrumentality of the United States in order to induce such official to make, insure, or guarantee mortgage loans under the provisions of the National Housing Act, as amended, with the approval of the KCHA;

(E) Make a direct loan to any qualified buyer for the down payment required by a private lender to be made by the borrower as a condition of obtaining a loan from the private lender in the purchase of residential property;

(F) Sell or lease completed dwelling units;

(G) Assist in the leasing of private and public dwellings;

(H) Acquire and utilize public and private lands for the purposes of this Section;

(I) Provide interim construction loans to partnerships of which it is a partner and to developers whose projects qualify for federally assisted project mortgage insurance, or other similar programs of federal assistance for persons of low income;

(J) Apply for and utilize Federal and State rental payment assistance funds;

(K) Provide County funds for rental payment assistance for private and public dwellings; and

(L) Adopt such rules pursuant to Chapter 91 of the Hawaii Revised Statutes as are necessary to carry out the purposes of this Section.

(3) When so required by the conditions of a State or Federal grant of funds, the KCHA shall establish a separate account for such funds and no commingling of such funds with other funds shall take place.

(4) All agreements, contracts, documents and other written instruments relating to the operations of the KCHA shall be [approved by the Housing Administrator] <u>prepared by the Executive on Housing and</u>

approved by the director of community assistance, and thereafter signed by the Mayor or the Director of Finance, as provided in the Kauai County Charter. When so required by the Kauai County Charter, or as a condition for any grant, Council approval shall also be obtained.

(5) The KCHA shall be responsible for administering, supervising and implementing a Section 8 Program which shall participate in and implement the Federal Housing Assistance Payments Program.

(6) The KCHA shall be responsible for administering, supervising and implementing a CDBG Program for the purposes of obtaining, distributing and utilizing CDBG funds.

(f) Real Property; General Provisions of Restrictions on Sale or Transfer, and Use.

(1) Title and Purpose. The County shall implement an anti-speculative buy-back provision that shall be known as the "Restrictions on Sale or Transfer, and Use." These restrictions shall apply to the sale or transfer 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 Section and which are sold on the condition that the purchaser accepts the restrictions on the sale or transfer, and use in the real property purchased. The restrictions shall also apply to privately developed real property that is sold to satisfy an affordable housing requirement and which, by mutual agreement between the County and the private developer, requires that such sales be subject to the County's Restrictions on Sale or Transfer, and Use.

(2) Relevance to State Law. The restrictions on sale or transfer, and use are in a form substantially equivalent to the provisions of Sections 201E-221, 222, and 223, Hawaii Revised Statutes. These restrictions on sale or transfer, and use clarify the intent of various provisions of State law and utilize provisions that are in some cases more stringent.

(3) Severalty. If any part of this Subsection is declared by the Court to be invalid, the same shall not affect the validity of the Subsection as a whole, or any part thereof other than the part so declared invalid.

(4) Duration of Restrictions. Where the restrictions on sale or transfer, and use of property apply for a period of time, the period of time shall not be increased beyond the date calculated from the date of original purchase without the mutual consent of the owner and the Kauai County Housing Agency (KCHA). The subsequent sale of any real property repurchased by the County pursuant to Subsection (g), shall incorporate the restrictions on sale or transfer, and use and shall apply for the same period of time as an original purchase. The period of time that the restrictions on sale or transfer, and use shall apply is as follows:

(A) For real property acquired, financed, developed, constructed, or sold by the County through the KCHA, the restrictions shall apply for a period of ten (10) years during which the dwelling unit is occupied by the owner, and

(B) For real property sold by a private developer satisfying an affordable housing requirement that by mutual agreement between the County and the private developer is subject to these restrictions, the restrictions may apply for a period of less than the ten (10) year occupancy period, with the time period of the restriction established either pursuant to adopted policy

guidelines or written agreement between the developer and the County.

(5) Modification of Restrictions. No real property owner shall be entitled to modify the restrictions on sale or transfer, and use of the real property, without the written permission of the holder of a duly-recorded first mortgage on the real property and the owner of the fee simple or leasehold interest in the land, unless the holder of the first mortgage or the owner is the County.

(6) Uniformity of Restrictions. Restrictions on sale or transfer, and use of real property shall be made as uniform as possible in application and restrictions shall be conformed with agreement of the owner to reflect change or repeal made by any subsequent ordinance, rule or regulation. Real property owners shall be permitted at their election to sell or transfer real property subject to restrictions in effect at the time of their sale or transfer.

(7) Public Notice of Amendment to Restrictions. The KCHA shall notify owners of any substantial change in restrictions made by ordinance, rule or regulation not more than one hundred eighty days after a change in restrictions, and such notice shall clearly state the enacted or proposed new provisions, the date or dates upon which they are to be effective, and offer to each owner of real property sold prior to such effective date an opportunity to modify the existing contract or other instrument to incorporate the most recent provisions. The notice shall be published at least three times in a newspaper of general circulation in a County newspaper.

(8) Market-Oriented Real Property. The restrictions on sale or transfer, and use shall not apply to market-priced real property in an economically integrated housing project.

(9) Waiver to Comply to Federal Law Or Regulation. The KCHA shall be authorized to waive any of the restrictions on sale or transfer, and use in order to comply with or conform to requirements set forth in federal laws or regulations governing mortgage insurance or guarantee programs or requirements set forth by federally chartered secondary mortgage market participants. For the purposes of these restrictions, the United States Department of Housing and Urban Development shall be defined as and considered a mortgage holder.

(10) Release of Repurchase Right and Occupancy Requirement. If the real property is financed under a federally subsidized mortgage program and these restrictions would jeopardize the federal government's ability to recapture any interest credit subsidies that were provided to the owner; or if the real property is in poor condition and the resale of the property, with or without repairs and rehabilitation to correct deficiencies, may be construed to expose the County to an unacceptable amount of economic or liability risk; or if the calculated repurchase price of the real property is comparable to or above the unrestricted market value of the property, the County may decline its first option to purchase the real property subject to the restrictions on sale or transfer, and use; and the owner may then transfer the real property to any subsequent owner or transferee, without buyer, price, or occupancy restriction, and the restrictions on sale or transfer, and use, shall be automatically extinguished and shall not attach in subsequent transfers of title, provided that:

(A) The County will decline its first option to purchase for a period of time not to exceed one (1) year, during which time

of the release, the real property owner must sell or transfer title; and

(B) Upon the sale or transfer of the real property, the owner shall be required to pay any amount owing the County, including any mortgage note or other loan, any subsidy or deferred sales price, interest on any amount owing, and the County's share of any net appreciation pursuant to the County's Shared Appreciation Program, if applicable.

(11) Mortgage Consents. The [Housing Administrator] Executive on Housing shall consent to mortgages and liens on the property for the purpose of financing, re-financing, purchase of the fee simple title, repayment of a subsidy or deferred sales price, payment of the County's share of appreciation for real property subject to the County's Shared Appreciation Program, construction of essential or modest capital improvements, or catastrophic household medical expenditures of an emergency or life-threatening nature, provided the total principal balance of all mortgages and liens does not exceed the amount prescribed by Subsection (g)(1)(A). However, in the case of re-financing a federally subsidized mortgage, the [Housing Administrator] Executive on Housing shall consent to the re-finance of a loan in excess to the amount prescribed by Subsection (g)(1)(A) and up to a total amount that does not exceed the principal balance of all mortgages and liens that have obtained the County's prior consent and accrued interest credit subsidy. In addition, the [Housing Administrator] Executive on Housing may consent to mortgages or liens in excess of the amount prescribed by Subsection (g)(1)(A) that are created solely for the purpose of enabling the owner to add capital improvements to the real property that are essential or modest and which shall proportionately increase the amount prescribed in Subsection (g)(1)(A) when completed.

(12) The County's interest created by the provisions of these restrictions shall constitute a lien on the real property and shall be superior to any other mortgage or lien, except those mortgages or liens:

(A) Created solely for the purchase of the real property;

(B) Insured or held by a federal housing agency; or

(C) Created with the written consent of the County.

(13) Subsidy or Deferred Sales Price. In any sale by the County of real property for which a subsidy or deferred sales price was made by the County, as described in Subsection (g)(1)(C)(ii), the amount, a description of the cost items, and the conditions of the subsidy or deferred sales price shall be clearly stated at the beginning of the contract document issued by the County.

(14) Application of Restrictions. The provisions of Subsections 2-1.16(f), (g) and (h), herein shall be incorporated in any deed, lease, agreement of sale, or other instrument of conveyance, rule or regulation relating to restrictions on sale or transfer, and use of real property purchased from the County through its KCHA or real property privately developed and sold to satisfy an affordable housing requirement and, by mutual agreement between the County and the private developer, is subject to these restrictions.

(g) Real Property; Restrictions on Sale or Transfer, Waiver of Restrictions.

(1) Restrictions on Sale or Transfer. The following restrictions shall apply to the sale or transfer of any real property purchased through the KCHA from the County or real property privately developed and sold to satisfy an affordable housing requirement and, by mutual agreement between the County and the private developer, is subject to these restrictions whether on fee simple or leasehold property.

(A) For a period of ten years after the purchase of a dwelling unit, during the five-year construction period after the purchase of a vacant lot, and for a period of ten years from the occupancy of a dwelling unit constructed by or for the owner on 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:

(i) The original cost to the owner;

(ii) 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

(iii) 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 a year.

(B) The County may purchase the unit either free and clear of all mortgages and liens or subject to existing mortgages and liens.

(i) If the real property is conveyed free and clear of all mortgages and liens, it shall be conveyed to the County only after all mortgages and liens are released.

(ii) If the real property is conveyed subject to existing mortgages and liens, the County shall assume the seller's obligation on any first mortgage created for the sole purpose of purchasing the real property and for any other mortgage or lien that the County has consented to in writing. The amount paid by the County to the seller shall be the difference, if any, between the purchase price determined by the provisions in Subsection (g)(1)(A) and the total of the outstanding principal balances of the mortgages and liens assumed by the County.

(iii) If the real property is financed under a federally subsidized mortgage program, in lieu of the release of these restrictions pursuant to Subsection (f)(10), the County, at its sole option, may purchase the property for a sum in excess of the amounts prescribed in Subsection (g)(1)(A) and equal to the sum of mortgagee's principal balance plus accrued interest credit subsidy.

(C) After the end of the tenth year from the date of purchase, or execution of an agreement of sale, the owner may sell

the real property or assign the property to any person or firm free from any price restrictions; provided that the owner shall be required to pay to the County the sum of:

(i) The balance of any mortgage note, agreement of sale, or other amount owing to the County, including the County's share of any net appreciation on real property subject to the County's Shared Appreciation Program, if applicable;

(ii) Any subsidy or deferred sales price made by the County in the acquisition, financing, development, construction, and sale of real property, and any other amount expended by the County not counted as cost in the original sales price but charged to the real property by good accounting practice as determined by the KCHA whose books shall be prima facie evidence of the correctness of the costs; and

(iii) Interest on the subsidy and any other amount expended at the rate of seven percent a year computed as to the subsidy or deferred sales price, from the date of purchase, or execution of the agreement of sale, and as to any amount expended, from the date of expenditure; provided that the computed interest shall not extend beyond thirty years from the date of purchase, or execution of agreement of sale, of the property; and provided that if any proposed sale or transfer will not generate an amount sufficient to pay the County the sum computed under this paragraph the County shall have the first option to purchase the real property at a price which shall not exceed the sum as computed under Subsection (g)(1)(A).

(D) Notwithstanding any provision above to the contrary, pursuant to rules adopted by the KCHA, the subsidy or deferred sales price described in Subsections (g)(1)(C)(ii) and any interest accrued pursuant to Subsection (g)(1)(C)(iii) may be paid at any time.

(2) Waiver of Restrictions. The restrictions prescribed in Subsection (g)(1) may be waived by the [Housing Administrator] Executive on Housing if:

(A) The owner wishes to transfer title to the real property or lease by devise or through the laws of descent to an immediate family member who would otherwise qualify under rules established by the KCHA and who accept the restrictions on sale or transfer, and use, which shall be reinstated with the effective date of the original purchase, and provided that the immediate family member accept reinstatement of the County's Shared Appreciation Program, if applicable; or

(B) The sale or transfer of the real property would be at a price and upon terms that preserve the anti-speculative intent of these restrictions without the necessity of the County to repurchase the real property and that the sale or transfer is to a subsequent owner or transferee determined eligible by the KCHA, provided that the subsequent owner or transferee accept the restrictions on sale or transfer, and use, which shall be reinstated as of the new effective date of the subsequent purchase, and further provided that the subsequent owner or transferee accept reinstatement of the County's Shared Appreciation Program, if applicable.

(3) Foreclosure of Real Property.

(A) The restrictions on sale or transfer, and use shall be automatically extinguished and shall not attach in subsequent transfers of title when a mortgagee or other party becomes the owner of the real property or leasehold interest pursuant to a mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure after a foreclosure action is commenced or when a mortgage is assigned to a federal housing agency. Any law to the contrary notwithstanding, a mortgagee under a mortgage covering title or leasehold interest of real property encumbered by the first option to purchase in favor of the County, prior to commencing mortgage foreclosure proceedings, shall notify the County in writing of:

(i) Any default of the mortgagor under the mortgage within ninety days after the occurrence of the default, and

(ii) Any intention of the mortgagee to foreclose the mortgage under Chapter 667, Hawaii Revised Statutes, provided that the mortgagee's failure to provide such written notice to the KCHA shall not affect such holder's rights under the mortgage.

(B) The County shall be a party to any foreclosure action, and shall be entitled to all proceeds remaining in excess of all customary and actual costs and expenses of transfer pursuant to default, including liens and encumbrances of record; provided that the person in default shall be entitled to an amount which shall not exceed the sum of amounts determined pursuant to Subsection (g)(1)(A) less any amounts determined to be customary and actual costs and expenses of transfer pursuant to default.

(h) Real Property; Restrictions on Use.

(1) Occupancy Requirements. Real property purchased from the County through its KCHA or real property privately developed and sold to satisfy an affordable housing requirement and, by mutual agreement between the County and the private developer, is subject to these restrictions requires that the dwelling unit shall be occupied by the owner at all times during the applicable restriction period, except in a hardship circumstance where a temporary occupancy waiver is provided by the [Housing Administrator] Executive on Housing or occupancy is temporarily suspended as a result of a natural disaster that renders the dwelling unit non-habitable.

(A) Dwelling units purchased from the County begin the ten-year restriction period from the date of purchase; and

(B) Vacant lots purchased from the County require the owner to build or have built a dwelling unit on the vacant lot and that the dwelling unit shall be completed and shall be occupied by the owner within five years from the date of purchase of the vacant lot. Upon occupancy of the completed dwelling unit, the ten-year restrictions on sale or transfer, Subsection (g), and the applicable ten-year restrictions on use, Subsection (h), shall begin.

(2) Verification of Occupancy. From time to time the KCHA may submit a verification of owner-occupancy form to the owner during the restriction period. Failure to respond to the verification in a timely manner or violation of Subsection (h)(1) shall be sufficient reason for the

County, at its option, to purchase the real property as provided by Subsection (g)(1)(A).

(3) Release of Repurchase Right or Foreclosure of Real Property. The restrictions prescribed in Subsection (h)(1) shall be automatically extinguished and shall not attach in subsequent transfers of title as prescribed in Subsection (g)(3) or Subsection (g)(4).

(4) Waiver of Restrictions. The restrictions prescribed in Subsection (h)(1) may be temporarily waived by the [Housing Administrator] Executive on Housing for a period of time up to one (1) year for a hardship circumstance, during which time the dwelling unit may be rented or leased, provided that:

(A) The hardship circumstance is an unforeseeable job or military transfer, a temporary educational sabbatical, a serious illness of the owner or a member of the owner's household, or such other hardship circumstance as determined by the KCHA on a case by case basis;

(B) The waiver may be granted only to qualified residents who have paid resident State income taxes during all years in which they occupied the dwelling and who shall continue to pay resident State income taxes during the waiver period;

(C) The term of the Restriction on Sale or Transfer, and Use shall be extended by one day for each day that the owner occupancy requirement is waived;

(D) The term of the waiver may be extended or other waivers may be approved at other time periods provided the total occupancy waiver period may not exceed ten (10) years.

(E) The County may recover all relevant administrative expenses and attorney's fees from the owner; and

(F) Failure to re-occupy the dwelling unit by the owner at the end of the temporary waiver period shall be sufficient reason for the County, at its option, to purchase the real property as provided in Subsection (g)(1)(A).

(i) Use of Surplus and Operating Reserve Funds.

(1) Within thirty (30) days after the conclusion of each fiscal year, the [Housing Administrator] Executive on Housing shall determine the amount of surplus funds resulting from the operation of the Section 8 Program from the just concluded fiscal year and shall credit all such funds to the Operating Reserve Account.

(2) The Operating Reserve Funds may be used for any of the following purposes pursuant to the provisions of Subsection (g):

(A) For the administration of the Section 8 Program;

(B) For the administration of any other County housing program or project;

(C) For the hiring of additional staff, the purchase of equipment, or the construction of capital improvements for the Section 8 Program or for any other County housing program or project;

(D) For the promotion or implementation of any of the purposes, programs, or projects provided for in this Section;

(E) For the promotion or implementation of any of the powers granted to the County pursuant to Sections 46-15, 15.1 and 15.2 and Chapter 53 of the Hawaii Revised Statutes; and

(F) For any other housing related purposes, services or activities determined by the Council to be consistent with this Section.

(j) Annual Budget. The [Housing Administrator] Executive on Housing shall prepare an annual budget for the KCHA in the same manner as any other County department. This budget shall include an accounting of all funds to be received from all sources, including County, State and Federal funds, and for all expenditures to be made from such funds. This annual budget shall be furnished to the director of community assistance, who shall in turn furnish this annual budget to the Director of Finance and the Mayor, who shall submit it as part of the annual budget ordinance of the County to the Council, as provided in the Kauai County Charter. Included in the KCHA annual budget shall be all proposed expenditures from all special fund accounts, including but not limited to, the Operating Reserve Account, the Housing Revolving Fund, and the Housing and Community Development Revolving Fund. No funds shall be expended from such [accounts unless authorized by the County pursuant to this budgetary process] special fund accounts unless authorized by the Council. The use of all Federal funds proposed in the KCHA annual budget shall be subject to all applicable Federal regulations, laws, and restrictions.

(k) Waiver of Provisions. If any of the provisions of this Section jeopardizes the receipt by the County or the KCHA of any Federal or State grant-in-aids or any other Federal or State allotment of money, such provision may, insofar as such fund is jeopardized, be waived by the Council upon the recommendation of the Mayor."

SECTION 4. Chapter 2, Article 1, Section 2-1.18 of the Kauai County Code 1987, is hereby amended to read as follows:

"Sec. 2-1.18 **Transportation Agency.**

(a) Purpose. The Transportation Agency shall be responsible for the formulation and implementation of policies and objectives, administration and operation of the mass transit systems.

(b) Definitions. When used in this section, the following words and phrases shall have the following meaning unless it shall be apparent from the context that a different meaning was intended:

(1) "Mass transit" means transportation by bus, rail, or other conveyance, either publicly or privately owned, provided to the public general or special service (but not including school buses or charter or sightseeing service) on a regular and continuing basis.

(2) "County bus system" means the public mass transit service provided by the County through the use of buses regularly scheduled and operating over fixed routes or periodic or specially scheduled public mass transit service for special events through the use of buses.

(3) "Bus" means a motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons. The term shall not include a vehicle designed for operation on a fixed guide.

(c) Organization and Administration. [There shall be an administrative agency titled "Transportation Agency" under the Mayor's Office. The Agency shall be headed by a Transportation Director who shall be appointed by the Mayor. The Transportation Director shall be under the direct supervision and control of the Mayor.] There shall be an administrative agency called the "Transportation Agency" under the Offices of Community Assistance. The agency shall be headed by an executive on transportation. The executive on transportation shall be under the direct supervision and control of the director of community assistance.

All agreements, contracts, documents and other written instruments relating to the operations of the Transportation Agency shall be prepared by the executive on transportation and approved by the director of community assistance, and thereafter signed by the Mayor or the Director of Finance, as provided in the Kauai County Charter. When so required by the Kauai County Charter, or as a condition of any grant, Council approval shall also be obtained.

(d) Powers and duties of the [Transportation Director] executive on transportation. The [Transportation Director] executive on transportation shall:

(1) Administer the affairs of the Transportation Agency.

(2) Plan, develop and manage the operation of the mass transit systems in conjunction with the State and Federal government to carry out the purposes of the Transportation Agency, establish routes, schedules and levels of service.

(3) [Transmit] Subject to applicable requirements of this section 2-1.18, transmit any contracts to the appropriate County persons or bodies for approval.

(e) Annual Budget. The [Transportation Director] executive on transportation shall prepare an annual budget for the Transportation Agency commencing with the annual budget for fiscal year [1995-1996] 2000-2001. The annual budget shall include an accounting of all funds to be received from all sources, including County, State and Federal funds, and for all expenditures to be made from such funds. This annual budget shall be furnished to the director of community assistance, who shall in turn furnish this budget to the Director of Finance and the Mayor, who shall submit it as part of the annual budget ordinance of the County to the Council, as provided in the Kauai County Charter. No funds shall be expended from any accounts unless authorized by the County pursuant to the budgetary process. The use of all Federal funds proposed in the Transportation Agency budget shall be subject to all applicable Federal regulations, laws and restrictions.

[(f) All rights, powers, functions, and duties of the Office of Elderly Affairs Transportation Office are transferred to the Transportation Agency. All officers and employees whose functions are transferred by this ordinance shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this ordinance. No County officer or employee transferred to the Transportation Agency shall suffer any loss of salary, vacation, sick leave, or other employee benefit or privilege as a consequence of this ordinance.

(g) All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property made, used, acquired, or held by the Office of Elderly Affairs Transportation Office relating to the functions transferred to the Transportation Agency shall be transferred with the functions to which they relate.]

[(h)] (f) The [Transportation Director] executive on transportation may adopt rules pursuant to Chapter 91, Hawaii Revised Statutes, necessary to effectuate the purposes of this ordinance.

[(i)] (g) If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of the ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared to be severable."

SECTION 5. Chapter 3, Article 2, Section 3-2.1 of the Kauai County Code 1987, is hereby amended to read as follows:

"**Sec. 3-2.1 Salaries of Certain Officers.**

(a) Effective upon approval and as further provided herein, the annual salaries, payable semi-monthly, of certain county officers and employees shall be as follows:

POSITION	Effective Upon Approval
Mayor	$73,118
Administrative Assistant	$70,193
County Engineer	$69,371
Deputy County Engineer	$41,622 to $64,168
Director of Finance	$69,371
Deputy Director of Finance	$41,622 to $64,168
County Attorney	$69,371
Deputy County Attorney	$41,622 to $64,168
Prosecuting Attorney	$69,371
Deputy Prosecuting Attorney	$41,622 to $64,168
Chief of Police	$66,073
Deputy Chief of Police	$36,671 to $61,118
Planning Director	$69,371
Deputy Planning Director	$41,622 to $64,168
Director of Personnel	$66,073
Manager and Chief Engineer, Department of Water	$69,371
Deputy Manager-Engineer, Department of Water	$41,622 to $64,168
Fire Chief	$66,073
County Clerk	$66,073
Deputy County Clerk	$36,671 to $61,118
Director of Economic Development	$64,731
[Housing Administrator	$64,731]
Director of Liquor Control	$55,000
[Director of Transportation	$55,000]
Director of Community Assistance	$66,073

(b) The starting salary and increases in salary of any deputy shall be established at any figure within the range set forth above as recommended by the respective department head and approved by the Mayor with the exception of the Deputy County Clerk whose salary shall be recommended by the County Clerk and approved by the County Council.

The above recommendation by department heads shall take into consideration and be supported by documentation which shall include the following:

New Hires: education, years of experience and qualifications coming into the position.

Current and future incumbents: years of service and performance. Performance shall be quantified and documented on an appropriate evaluation

form which shall be developed and/or approved by the Director of Personnel Services.

(c) Upon approval by the Mayor, the respective administrative department head evaluations and recommendations for starting salary and increases in salary for any deputy shall be submitted to the Council and Salary Commission for information."

SECTION 6. References in this section 6 to the Office of Elderly Affairs, the Kauai County Housing Agency, and the Transportation Agency shall mean those offices and agencies as they existed prior to the effective date of this Ordinance.

All rights, powers, functions, and duties of the officers and employees of the Office of Elderly Affairs, the Kauai County Housing Agency, and the Transportation Agency, are transferred to the officers and employees of the Offices of Community Assistance.

The transfer of any civil service personnel or non civil service personnel from the Office of Elderly Affairs, the Kauai County Housing Agency, and the Transportation Agency to the Offices of Community Assistance shall be without change in the position to which the officer or employee is transferred or appointed pursuant to Haw. Rev. Stat. §§46-30 and 46-31 and applicable personnel rules and regulations.

SECTION 7. References in this section 7 to the Office of Elderly Affairs, the Kauai County Housing Agency, and the Transportation Agency shall mean those offices and agencies as they existed prior to the effective date of this Ordinance. References in this section to the director of the Office of Elderly Affairs, the Housing Administrator, and the Transportation Director shall mean those officers as they existed prior to the effective date of this Ordinance.

All rules, policies, procedures, guidelines, and other material adopted or developed by the Office of Elderly Affairs, the Kauai County Housing Agency, and the Transportation Agency to implement provisions of the Kauai County Code which are reenacted or made applicable to the Offices of Community Assistance by this Ordinance, shall remain in full force and effect until amended or repealed by the Offices of Community Assistance pursuant to chapter 91, Hawaii Revised Statutes. In the interim, every reference to the Office of Elderly Affairs or director of the Office of Elderly Affairs, the Kauai County Housing Agency or the Housing Administrator, and the Transportation Agency or the Transportation Director in these agencies and offices, rules, policies, procedures, guidelines, and other material is amended to refer to the Offices of Community Assistance or director of community assistance, as the case may be.

SECTION 8. References in this section 8 to the Office of Elderly Affairs, the Kauai County Housing Agency, and the Transportation Agency shall mean those offices and agencies as they existed prior to the effective date of this Ordinance. References in this section to the director of the Office of Elderly Affairs, the Housing Administrator, and the Transportation Director shall mean those officers as they existed prior to the effective date of this Ordinance.

All deeds, leases, contracts, loans, agreements, permits, or other documents executed or entered into by or on behalf of the Office of Elderly Affairs, the Kauai County Housing Agency, and the Transportation Agency pursuant to the provisions of the Kauai County Code, which are reenacted or made applicable to the Offices of Community Assistance by this Ordinance, shall remain in full force and effect. Upon the effective date of this Ordinance, every reference to the Office of Elderly Affairs or director of the Office of Elderly Affairs, the Kauai County Housing Agency or the Housing Administrator, and the Transportation Agency or the Transportation Director in such deeds, leases, contracts, loans, agreements, permits, or other documents shall be construed as a reference to the Offices of Community Assistance or the director of community assistance, as the case may be.

SECTION 9. References in this section 9 to the Office of Elderly Affairs, the Kauai County Housing Agency, and the Transportation Agency shall mean those offices and agencies as they existed prior to the effective date of this Ordinance.

All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held

by the Office of Elderly Affairs, the Kauai County Housing Agency, and the Transportation Agency relating to the functions transferred to the Offices of Community Assistance shall be transferred to the functions to which they relate.

SECTION 10. If any provision of this Ordinance, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

SECTION 11. Ordinance material to be repealed is bracketed. New Ordinance material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Kauai County Code 1987, the brackets, bracketed material and underscoring need not be included.

SECTION 12. This Ordinance shall take effect upon its approval.

Introduced by: /s/ **BILLY KEALAMAIKAHIKI SWAIN**
(By Request)

DATE OF INTRODUCTION:
May 27, 1999
Lihue, Kauai, Hawaii

O4:1909d1/ca:ao

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 1909, Draft 1, which was passed on second and final reading by the Council of the County of Kauai at its meeting held on June 30, 1999, by the following vote:

FOR ADOPTION:	Baptiste, Hooser, Kaneshiro, Swain, Tokioka, Valenciano, Kouchi	TOTAL - 7,
AGAINST ADOPTION:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	None	TOTAL - 0.

Lihue, Hawaii
July 1, 1999

Peter A. Nakamura
County Clerk, County of Kauai

ATTEST:

Ron Kouchi
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

July 2, 1999

Approved this 6 day of July 1999.

Maryanne W. Kusaka
Mayor
County of Kauai