

KAUA‘I COUNTY HOUSING AGENCY

Pursuant to the authority granted to the Director of the Kaua‘i County Housing Agency under Kaua‘i County Code section 2-1.16(e)(2)(L) and section 8-30.1(g), the Director proposes to adopt Rules and Regulations, as set out below, governing the certification of Additional Rental Units as affordable for the purpose of qualifying for various fee waivers and subsidies. A public hearing on proposed Rules will be held on Monday, November 30 at the at 9:00 a.m., or soon thereafter, via the Microsoft Teams audio conferencing platform.

KAUA‘I COUNTY HOUSING AGENCY

Under and by virtue of the authority conferred upon him by Chapter 91, Hawai‘i Revised Statutes (HRS); Chapter 2, Article 1, section 1-1.6 and Chapter 8, Article 30 of the Kaua‘i County Code (KCC) 1987, as amended; and every other enabling power, the Kaua‘i County Housing Director does hereby prescribe the following:

RULES AND REGULATIONS GOVERNING THE CERTIFICATION OF AFFORDABLE ADDITIONAL RENTAL UNITS

1. PURPOSE

The purpose of these rules is to establish the requirements and procedures for Owners to certify Additional Rental Units as affordable, in order to qualify for various fee waivers and subsidies, including the payment of the Department of Water Facility Reserve Charge from the Housing Development Fund.

2. DEFINITIONS

“Additional Rental Unit,” or “ARU,” has the same meaning as in Kaua‘i County Code (“KCC”) Section 8-1.5 and is subject to the same requirements as in KCC Section 8-30.1.

“Affidavit of Affordability” means the form in which an Owner pledges to lease an Additional Rental Unit at an affordable price for the Period of Affordability.

“Affordable Additional Rental Unit,” or “Affordable ARU,” means an Additional Rental Unit subject to a written lease agreement with a term of (1) year or more at a monthly rent not to exceed the maximum housing cost based on 90% of the Kauai Median Household Income, as set forth in the Kaua‘i County Housing Agency Affordable Rental Housing Guidelines for the year in which the Owner files an Affidavit of Affordability.

“ARU Subsidy” means payment on behalf of the Owner by the Housing Agency, from the Housing Development Fund, of the Department of Water Facility Reserve Charge incurred by the Owner when building an Affordable Additional Rental Unit.

“ARU Subsidy Repayment” means the amount, set forth in Kauai County Code Section 8-30.1(g), that an Owner must repay to the Housing Agency’s Housing Development Fund if

the Owner fails to satisfy the Affordable Additional Rental Unit requirements for all or part of the Period of Affordability.

“Certified Affidavit of Affordability” means an Owner’s completed Affidavit of Affordability certified by the Director as affordable housing.

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

“Facility Reserve Charge,” or “FRC,” has the same meaning as in the Department of Water Rules and Regulations, Part 2, Section I.

“Owner” has the same meaning as in Kauai County Code Section 8-1.5.

“Period of Affordability” means five years starting from the date that an Additional Rental Unit is first occupied by a long-term tenant as evidenced by the effective date of a written lease agreement with a term of (1) year or more.

“Subject Property” means the existing dwelling unit to which a proposed Additional Rental Unit will be an accessory structure, as defined in Kauai County Code Section 8-1.5 and in conformance with Kauai County Code Section 8-30.1, and the parcel of land on which the existing dwelling unit is built.

3. INITIAL CERTIFICATION OF AFFORDABILITY

- a. The Director shall make an Affidavit of Affordability form available to the public, which specifies the maximum rent that may be charged for a proposed Affordable ARU based on number of bedrooms.
- b. By completing, signing, and submitting an Affidavit of Affordability to the Director, an Owner pledges and acknowledges that:
 1. The Owner will rent the proposed ARU at or below the rental limits specified in the Affidavit of Affordability for a five-year Period of Affordability.
 2. Failure to adhere to the rental limits specified in the Affidavit of Affordability for the Period of Affordability shall require an ARU Subsidy Repayment as provided for in KCC § 8-30.1(g).
 3. Failure to annually renew the Certified Affidavit of Affordability shall require an ARU Subsidy Repayment as provided for in KCC § 8-30.1(g).
 4. Any ARU Subsidy Repayment shall constitute a lien on the property in which the ARU is situated, which may be recorded with the Bureau of Conveyances.
 5. The lien may be enforced by any legal action, including foreclosure proceedings. If legal action is instituted for collection, the County shall be reimbursed for all costs of collection, including reasonable attorneys’ fees.
- c. The Director shall review all submitted Affidavits of Affordability, ensure affidavits are complete, verify the information contained therein, and certify valid affidavits.

4. USE OF A CERTIFIED AFFIDAVIT OF AFFORDABILITY TO QUALIFY FOR FEE WAIVERS

Following the certification of an Owner's Affidavit of Affordability, the Director shall provide the Building Division of the Department of Public Works with a completed Fee Exemption Form (Exhibit A to the Building Division's Policy and Standard Operating Procedure BU-11). The Fee Exemption Form shall qualify an Owner for the exemptions from permitting and usage fees set forth in the Kauai County Code.

5. USE OF A CERTIFIED AFFIDAVIT OF AFFORDABILITY TO APPLY FOR AN ARU SUBSIDY

- a. A Certified Affidavit of Affordability may qualify an Owner to receive an ARU subsidy from the Housing Agency in the amount of the Department of Water Facility Reserve Charge (FRC) due in connection with the Owner's proposed Affordable ARU.
- b. To apply for an ARU Subsidy, an Owner with a Certified Affidavit of Affordability must provide the Housing Agency with: (1) a Letter of Conditional Approval from the Department of Water stating the amount of the FRC due; and (2) a copy of the Building Permit Receipt for the proposed ARU.
- c. When the Housing Agency receives a Letter of Conditional Approval and a copy of the Building Permit for a proposed ARU for which a current Certified Affidavit of Affordability is on file, if funds are available, the Housing Agency shall grant the request and pay the FRC due directly to the Department of Water on behalf of the Owner.
- d. Once the annual limit for ARU Subsidy payments has been reached, as provided for in KCC 8-30.1(g), the Housing Agency will cease issuing ARU subsidies for the remainder of the fiscal year.
- e. ARU Subsidy requests submitted but not granted due to lack of funding may, if the Owner so requests, be placed on a waiting list for consideration in the next fiscal year.

6. BEGINNING THE PERIOD OF AFFORDABILITY

- a. Because a Certified Affidavit of Affordability only affirms an Owner's intent to rent a proposed ARU at a specified rent in the future, the Period of Affordability shall not begin until the proposed ARU is completed and occupied by a tenant.
- b. To trigger the start of the Period of Affordability, an Owner must submit to the Housing Agency an executed written lease agreement with a term of (1) year or more at a monthly rent not to exceed the maximum specified in the Certified Affidavit of Affordability.
- c. The Period of Affordability shall begin on the effective date of the submitted written lease agreement, or the date on which the Owner files the written lease agreement with the Housing Agency, whichever occurs later.

7. ANNUAL RENEWAL OF CERTIFIED AFFIDAVIT OF AFFORDABILITY

- a. A Certified Affidavit of Affordability must be renewed annually to ensure that the ARU is continuing to be rented at an affordable price. The annual renewal date shall be the date on which the Period of Affordability began.
- b. To renew a Certified Affidavit of Affordability, an Owner must submit to the Housing Agency a new executed written lease agreement with a term of (1) year or more at a monthly rent not to exceed the maximum housing cost based on 90% of the Kauai Median Household Income as set forth in the Kaua'i County Housing Agency Affordable Rental Housing Guidelines for the year in which the Owner files the renewal.
- c. At the conclusion of the Period of Affordability, the Owner's obligations under the Certified Affidavit of Affordability shall be deemed satisfied.

8. FAILURE TO RENEW CERTIFIED AFFIDAVIT OF AFFORDABILITY

- a. Failure to renew a Certified Affidavit of Affordability by the annual renewal date shall toll the running of the five-year Period of Affordability until the Owner submits valid renewal information as provided in Rule 7.
- b. If an Owner does not renew their Certified Affidavit of Affordability within thirty (30) days of the annual renewal deadline, the Director shall issue a fifteen (15)-day written demand for the repayment of the ARU Subsidy, in the amount set forth in KCC § 8-30.1(g).
- c. If repayment of the ARU Subsidy is not received within fifteen (15) calendar days of the date of service of the written demand for payment, or the Owner has not renewed their Certified Affidavit of Affordability, the Director may file a lien on the subject property, and may institute judicial proceedings to enforce the lien to collect any monies owed, as well as costs and reasonable attorneys' fees accrued in any enforcement action.

9. FAILURE TO COMPLY WITH AFFORDABILITY REQUIREMENTS FOR THE PERIOD OF AFFORDABILITY.

- a. If the Director determines that an Owner is not in compliance with the terms of their Certified Affidavit of Affordability, the Director may issue a fifteen (15)-day written demand for the repayment of the ARU Subsidy, in the amount set forth in KCC § 8-30.1(g).
- b. If repayment of the ARU Subsidy is not received within fifteen (15) calendar days of the date of service of the written demand for payment, or the Owner has not provided evidence of compliance with the terms of their Certified Affidavit of Affordability, the Director may file a lien on the subject property, and may institute judicial proceedings to enforce the lien to collect any monies owed, as well as costs and reasonable attorneys' fees accrued in any enforcement action.

ADOPTION

COUNTY OF KAUAI

RECOMMENDED BY:

ADAM P. ROVERSI
Housing Director

DATE

APPROVED AS TO FORM AND LEGALITY:

MATHEW M. BRACKEN
County Attorney

DATE

APPROVED BY:

DEREK S.K. KAWAKAMI
Mayor

DATE

CERTIFICATION

It is hereby certified that the foregoing Administrative Rules for the Administration of Chapter 8, Kaua'i County Code, relating to affordable rental units were adopted on _____, by the Kaua'i County Housing Agency pursuant to the provisions of the Hawai'i Administrative Procedures Act, Chapter 91, Hawai'i Revised Statutes, as amended, and that notice of public hearing on the foregoing document was published in *The Garden Island Newspaper* on _____.

Dated in Lihue, Kaua'i, Hawai'i, this _____ day of _____, 2020.

KAUA'I COUNTY HOUSING AGENCY

ADAM P. ROVERSI
Housing Director