

Rules Relating to
Construction of Homeless Dwelling Units

- §1 Purpose and Authority
- §2 Definitions
- §3 Applicability of Proclamation and Rules
- §4 Project Eligibility
- §5 Project Agreements

§1 Purpose and Authority.

These rules are intended to expedite construction and occupancy of temporary or permanent housing for people experiencing homelessness. Quickly creating such spaces is key to reducing unsheltered homelessness.

Only projects that propose to exclusively house or serve people experiencing homelessness or who are at risk of homelessness are eligible for coverage under the Fourth Emergency Proclamation Relating to Homelessness issued on May 19, 2023 ("Proclamation") and these rules. These rules are intended to clarify the application of the Proclamation to specific projects.

These rules are adopted pursuant to sections 127A-11, 12, 13, and 25 Hawaii Revised Statutes ("HRS"), to respond to the homelessness emergency declared by the Governor and have the force and effect of law.

§2 Definitions.

"At risk of homelessness" is defined as:

- (a) An individual who is exiting an institutional facility where he or she resided and who resided in an Emergency Shelter or place not meant for human habitation immediately before entering that institution, provided that no subsequent residence has been identified; and the individual or family lacks the resources or support networks, e.g. family, friends, faith-based or other social networks, needed to obtain other Permanent Housing.
- (b) An individual or family who will imminently lose their primary nighttime residence, provided that: (i) The primary nighttime residence will be lost within 14 days of the date of application for Homeless assistance; (ii) No subsequent residence has been identified; and (iii) The individual or family lacks the resources or support networks, e.g. family, friends, faith-based or other social networks, needed to obtain other Permanent Housing.; or
- (c) Any individual or family who: (i) is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-

threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence; (ii) has no other residence; and (iii) lacks the resources or support networks, e.g. family, friends, faith-based or other social networks, needed to obtain other Permanent Housing.

“Dwelling”, “dwelling unit”, or “unit” means any structure or room, for sale, lease, or rent, that provides shelter. § 356D-1, HRS.

“Emergency Shelter” means a homeless facility designed to provide temporary shelter and appropriate and available services to homeless families or individuals for a specified period of time who are not able to stay in a transitional shelter or reside in a dwelling unit. § 346-361, HRS.

“Homeless” means:

- (1) An individual or family who lacks a fixed, regular, and adequate night-time residence; or
- (2) An individual or family who has a primary night-time residence that is:
 - (A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations;
 - (B) An institution that provides temporary residence for individuals intended to be institutionalized; or
 - (C) A public or private place not designed for or ordinarily used as sleeping accommodations for human beings.

This term does not include any individual imprisoned or otherwise detained under an act of Congress or a state law. § 346-361, HRS.

“Homeless facility” means a development designed to provide shelter for homeless families or individuals pursuant to this part, or to facilitate any other homeless program authorized by this part and may include emergency or transitional shelters. § 346-361, HRS.

“Institutional facility” means a:

- (1) Hospital;
- (2) Convalescent home;
- (3) Nursing home;
- (4) Extended care facility;
- (5) Mental institution;
- (6) Rehabilitation center;

- (7) Health maintenance organization;
- (8) Psychiatric center;
- (9) Intellectual disability center;
- (10) Penal institution; or
- (11) Any other organization whose primary purpose is to provide a physical environment for patients to obtain health care services or at-home care services, except those places where physicians, dentists, veterinarians, osteopaths, podiatrists, or other prescribers who are duly licensed, engage in private practice. HRS § 328C-1.

“Permanent housing” means community-based housing without a designated length of stay. Examples of permanent housing include, but are not limited to, a house or apartment with a month-to-month or annual lease term or home ownership.

“Transitional shelter” means a homeless facility designed to provide temporary shelter and appropriate and available services for a maximum of twenty-four months to homeless families or individuals qualified by the pertinent provider agency or department to stay in the transitional shelter. § 346-361, HRS.

§ 3 Applicability of Proclamation and Rules

The suspension of laws set forth in the Proclamation shall apply only to those projects which are certified by the Governor’s Coordinator on Homelessness (“Coordinator”) as having met the requirements for eligibility set forth in these rules (“Certified Projects”).

Certified Projects do not require further state approvals to proceed with the project. Certified Projects will not be subject to the state regulations suspended under the Proclamation.

Certified Projects are still required to seek county approval in the appropriate county where the project is located. The counties may adopt an expedited approval process to support the provision of housing for homeless individuals and families while still ensuring that improvements constructed pursuant to the Proclamation meet life safety standards as defined by the Counties.

§ 4 Determination of Project Eligibility.

(a) Project proponents seeking to have the terms of the Proclamation apply to their project shall submit to the Coordinator the following documentation:

- (1) Name, address, email address and telephone number of the project proponent and each member of the project team. If the project proponent is a corporation or other legal entity, evidence of the project proponent’s status and registration with the Department of Commerce and Consumer Affairs, and the names, address, email address and telephone number of each officer and director of the entity. The name, address, email address,

and telephone number of the main point of contact should be identified;

- (2) Proof that the project proponent has site control such as a deed, agreement of sale, long term lease, or other disposition;
- (3) A description of the project proponent's experience or involvement, if any, in the development of housing or projects of similar scope, size, and complexity;
- (4) A description of the project proponent's past or current experience or involvement, if any, in any programs or its provision of services, including other than housing, that would give evidence of the project proponent's ability to manage a project of this type and scope;
- (5) A conceptual site plan showing the general development of the project site including the locations and descriptions of proposed and existing buildings, parking areas, unusual site features, proposed and existing major drainage facilities;
- (6) A development plan including the number of units, maximum occupancy, construction method, and infrastructure needs. The infrastructure needs should include a description of methods of sewage and solid waste disposal and sources of water and other utilities as well as depth and location of any trenches required;
- (7) The proposed funding for the project, including the manner in which the project will be funded during the development and construction of the project, and upon completion of the project and sources of repayment of financing, if applicable. This should include any proposed grants, donations, loans, bonds, tax credits, or other sources of financial resources;
- (8) The project's method of homeless verification (e.g., homeless verification letter or Homeless Management Information System database); and
- (9) The project proponent's plan for obtaining community input (e.g., via Neighborhood Board meeting, neighborhood survey, or community meeting).

(b) Expedited reviews in the following areas shall be completed, as set forth herein, to determine whether the project is likely to have an adverse impact on resources and to define any mitigation and monitoring of impacts needed. Once the reviews are complete, the Coordinator may certify the project and the project may proceed to be developed under the Proclamation. The project proponent shall provide the following information to the Coordinator:

- (1) Historical review (DLNR SHPD)
 - a. TMK of property
 - b. preliminary site plan
 - c. proposed construction methodology
 - d. proposed underground infrastructure
 - e. any grading or trenching plans
 - f. information of historic properties on the project site
 - g. any prior historical or archaeological studies or reports done
 - h. photos of the property

- (2) Environmental issues (DOH HEER)
 - a. TMK of property
 - b. whether the dwelling units or restroom facilities will be serviced through a sewer connection or whether an individual wastewater system will be installed
 - c. whether an NPDES permit will be required. An NPDES permit is required if:
 - i. 1 acre or more of land will be disturbed (e.g. by grading), either on its own or as part of a larger common plan of development that will disturb 1 or more acres of land; or
 - ii. if there will be any construction-related discharge to state waters (e.g., hydrotesting, dewatering)
 - d. whether an U.S. Army Corps of Engineers Regulatory Program permit is required because there is anticipated to be the discharge of dredged or fill material into waters of the United States.

- (3) Endangered species impacts (DLNR DOFAW)
 - a. TMK of property
 - b. any on-site or nearby streams, waterways, or wetlands
 - c. any native vegetation on site
 - d. any known native fauna on site
 - e. vegetation control anticipated to occur as part of construction, including but not limited to tree trimming or cutting, mowing of grassy areas, or removal of native vegetation
 - f. any night time construction anticipated, if yes, months during which night time construction will be used
 - g. lighting plans
 - h. whether the property is covered by a habitat conservation plan

- (4) Flood plain management (DLNR Engineering)
 - a. TMK of property
 - b. floodplain management zone

If potential adverse impacts are identified, the project will be required to address these impacts in accordance with standard State processes for development projects. These processes include, but are not limited to, the review processes set forth in

HRS chapters 6E, 322, 342D, 342E, 343, and Hawai‘i Administrative Rules chapters 11-53, 11-55, 11-56, 11-62, 13-275, and 13-284.

Notwithstanding the Proclamation, counties may establish their own process or rules for ensuring that a Certified Project meets life safety standards.

§ 5 Project Development Agreements

If, after reviews under section 4 of these rules are complete and the Coordinator finds that the project proponent has submitted the required project information under Section 4(a) the Coordinator may accept the project as qualified under the Proclamation. Upon acceptance, the Coordinator shall enter into a development agreement with the project proponent.

The terms and conditions of the development agreement shall include:

- (a) The purpose of the agreement, which shall include the development of dwelling units for homeless individuals or families;
- (b) A description of the role and responsibilities of the project proponent and other parties to the agreement;
- (c) Any measures required to mitigate any anticipated adverse effects of the project;
- (d) A restrictive covenant requiring the property to be used for dwelling units for homeless individuals or families for a minimum of twenty years;
- (e) Standard clauses that the Coordinator determines to be required, including, but not limited to, the following:
 - 1. Indemnity
 - 2. Severability
 - 3. Termination; and
 - 4. Assignability.

The development agreement will be recorded as a deed restriction or as restrictive covenant on the property.

Once an agreement is executed and filed, a project is “certified” under the Proclamation. An annual review of every project is required to verify compliance with the conditions under the Project Agreement.

- (f) The fully executed development agreements will be posted on the Homeless Coordinator’s or other government website.