

PART 5
FACILITIES RESERVE CHARGE

*within the County of Kauai
and Providing Penalties for the Violations Thereof*

SECTION I – GENERAL PROVISIONS

1. Purpose and Authority
 - a. Capital water facilities expansion is needed in order to accommodate increased demands on existing source, storage, and transmission pipeline capacity due to new development and/or additional demand of existing users. New development and/or additional demand shall be assessed a Facilities Reserve Charge in proportion to its impact and demand on capital water facilities. The Facilities Reserve Charge shall be expended for public capital water facilities projects. These rules were enacted pursuant to Hawaii Revised Statutes (H.R.S.) §46-141 *et seq.* and other applicable State law.

2. Findings
 - a. In the review of the impact of growth relative to the existing and planned capital water system facilities capacity available to the water system, the Board hereby finds that the recent and anticipated population growth rates and corresponding water demands would place additional burdens on the existing water system. The Board further finds that such growth and increased demand would necessitate increased expenditures of public funds in order to create adequate facilities and to promote and protect the public health, safety, and welfare. The Board also finds that it is fair and reasonable to impose additional fees to accommodate such development. *Finally, the Board finds that establishing benefit zones as identified in Hawaii Revised Statutes (H.R.S.) §46-14* is not necessary as a reasonable benefit can otherwise be derived.*

 - b. The following rules shall govern the assessment of impact fees for the Board of Water Supply, County of Kauai capital water facilities expansion. New development and/or additional demand shall be assessed impact fees in proportion to its demand on capital water facilities and the impact fees assess shall be expended for public capital water facilities projects. The Facilities Reserve Charge (FRC) was adopted in accordance with the report prepared by an independent consultant retained by the County of Kauai, Board of Water Supply (Board) to

assess and study water facilities. The report calculated the proportionate costs associated with the water development needs as laid out in the Board approved Department facilities needs assessment study entitled “Water Plan 2020”, as amended.

SECTION II – DEFINITIONS

“Affordable or Workforce Housing Project” shall mean any project confirmed or sponsored by the County Housing Agency as a residential development where the majority of housing lots, single family dwelling units, or multiple-family dwelling units are affordable housing or workforce housing as defined in Chapter 7A of the Kauai County Code 1987, as amended.

“Applicant” means any person, individual, subdivider, corporation, partnership, business, organization, association, or other entity whatsoever that applies for water service from the Department.

“Consumer” has the meaning ascribed to it under Section I of Part 2 of the Department’s Rules and Regulations.

“Facilities Reserve Charge” (FRC) means the fee to be paid by an Applicant as their proportionate share in required improvements to capital water facilities.

“Grant Funds” shall mean a contribution, gift, or subsidy bestowed to the Board for specific water facilities improvement associated with a specific project that necessitates such water facilities improvements.

“Grantor” means the person or entity that makes a grant of funds.

“Offset” means a reduction in Facilities Reserve Charge designed to fairly reflect the value of non-site related capital water facilities improvements provided by an Applicant pursuant to Department of Water requirements.

“Recoupment” shall be defined as in H.R.S. 46-141, as amended, and refers to the proportionate share of the water facility capital improvement costs of excess capacity in existing water capital facilities where excess capacity has been provided in anticipation of the needs of development.

“Subdivider” has the meaning ascribed to it under section I of Part 3 of the Department’s Rules and Regulations.

“Subdivision” has the meaning ascribed to it under section I of Part 3 of the Department’s Rules and Regulations.

“Water transmission main” or “main” means a main extension under Paragraph 2.d [2.a.(4)] of Section II of Part 2 of the Department’s Rules and Regulations.

As used in this Section, the following rules of construction shall apply:

Number. Words in the singular or plural number signify both the singular and plural number.

“Or”, “and”. Each of the terms “or” and “and”, has the meaning of the other or of both.

SECTION III – APPLICABILITY

1. The Facilities Reserve Charge shall be assessed against all new developments and subdivisions requiring supply of water from the County of Kauai, Department of Water, and existing developments requiring new or additional supply of water from the Department’s system. The Facilities Reserve Charge must be paid before water services are made available to the new or existing development.
2. The Facilities Reserve Charge shall be paid by all Applicants for new or additional water service, including but not limited to the following:
 - a. All irrigation services and/or meters.
 - b. Additional buildings to be connected to existing services where additional demands are indicated. The charges shall be based on the meter sizes required if the buildings were metered separately.
 - c. Additional dwellings connected to existing services and meters under the categories of single family and multi-family residential units. The charges will be based on the established schedule of charges for the respective categories.
 - d. Changes in service that require an increase in meter size.
 - e. Where an FRC was paid but a water meter was never installed to serve the subject property, the applicant shall pay the Facilities Reserve Charge in accordance with Part 5, Section IV (4) of these Rules.

3. The Facilities Reserve Charge shall apply to all Applicants for water service as follows:
 - a. For each parcel created by subdivision, including the first lot created; and for every new single family residential dwelling unit not yet metered and a Facilities Reserve Charge has not yet been paid, the applicable Facilities Reserve Charge shall be \$14,115.00.
 - b. The Facilities Reserve Charge for multi-family and/or resort development will be the cost of the approved meter size or the cost of \$9,880.00 per unit or hotel room, whichever number is larger.
 - c. For all other uses, the Facilities Reserve Charge shall be determined by the size of the meter, as shown below. Meter sizes shall be determined by the Department and not by the Developer or Applicant.

Meter Size	Amount
5/8"	\$ 14,115.00
3/4"	\$ 21,170.00
1"	\$ 35,290.00
1 1/2"	\$ 70,580.00
2"	\$ 112,920.00
3"	\$ 225,840.00
4"	\$ 352,880.00
6"	\$ 705,750.00
8"	\$ 1,129,200.00

Facilities Reserve Charges are periodically adjusted by the Department. These adjustments may increase or decrease existing Facilities Reserve Charge amounts. Where adjustments to Facilities Reserve Charges result in decreases of such charges, no refund will be made of the difference between the higher, pre-existing charges and the lower, adjusted charges.

SECTION IV – COLLECTION AND REFUND OF FRC

1. Upon collection of the Facilities Reserve Charge, the Facilities Reserve Charge shall be deposited in a special trust fund or interest-bearing account. The portion that constitutes recoupment may be transferred to any appropriate fund.

2. If the Facilities Reserve Charge is not expended or encumbered within six years from the date of collection, it shall be refunded to the property owner or the property owner's successor in title, together with accrued interest (if any).
 - a. An application for a refund shall be submitted to the Board within one year of the date upon which the refund right arises;
 - b. Amounts unclaimed within one year of the date the right to refund arises shall be retained in a special trust fund or interest bearing account and shall be expended for capital facilities improvement projects.
3. If the Board terminates the Facilities Reserve Charge (or analogous) requirement, all unexpended or unencumbered funds shall be refunded to the property owner or the property owner's successor in title, together with accrued interest (if any).
 - a. Public notices of termination and availability of refunds shall be given by the Board at least two times in a manner approved by the Board. All funds available for refund shall be retained for a period of one year and at the end of said one year period, any remaining funds may be transferred to the Board's general fund and expended for any public purposes involving water supply or service as determined by the Board.
4. No FRC refund shall be made for existing meters requiring a decrease in water demand, decrease in meter size, or decrease in existing water supply fixture units; or requests to change service categories.
5. Recoupment shall be exempt from subsections (2) and (3).
6. Facilities Reserve Charge Paid Prior to Enactment of Part 5 Rules
 - a. This Section applies to those Applicants that have paid a Facilities Reserve Charge prior to enactment of these Part 5 Rules and have failed to install a water meter on the subject property for which the Facilities Reserve Charge was paid, hereinafter referred to as "Prior Applicants".
 - b. Prior Applicants shall have three (3) years from the date of enactment of these Part 5 Rules, hereinafter referred to as the "Grace Period", to install a water meter, at no additional Facilities Reserve Charge cost.

- c. After expiration of the Grace Period, Prior Applicants must pay the difference of the original Facilities Reserve Charge paid and the Facilities Reserve Charge in effect at the time the meter is installed.
- d. The Manager may grant exceptions to item 6c if the Manager finds all of the following:
 - i. Strict application of the rule would cause an absurd, unfair, or unreasonably harsh result; and
 - ii. The Prior Applicant's circumstance or condition is unique or exceptional and the Manager would grant the same request if made by ever similarly situated Prior Applicant; and
 - iii. Such exception thereof is as reasonably necessary or expedient and not contrary to law or the intent and purposes of these rules.

7. Facilities Reserve Charge Paid After Enactment of Part 5 Rules

- a. The Department may issue conditional approval for water service requests.
- b. A conditional approval shall be valid for a period of one year and shall expire unless installation of the meter occurs within that period or an extension of the conditional approval is granted.
 - i. An extension of the conditional approval may be granted for a single additional one-year period.
- c. Upon expiration, the conditional approval shall become null and void and the Applicant will be required to re-apply to the Department of Water for water service. Any request for water service will be dependent on the adequacy of the source, storage, and transmission facilities existing at that time.
- d. A Water Meter Application and FRC payment can only be made upon completing the requirements set forth in the conditional approval.

8. Facilities Reserve Charges for Affordable and Work Force Facilities Housing Projects

- a. The Manager may defer collection of Facility Reserve Charges for Affordable or Workforce Housing Projects, provided, however that applicable Reserve Charges shall be collected before building permit approval or installation of applicable meters, whichever occurs first.
- b. Administrative fees related to the Facility Reserve Charge shall be waived for Affordable or Workforce Housing Projects.

SECTION V - FRC OFFSETS

When an Applicant, is required to construct and dedicate water source or water storage facilities, or water transmission mains, to the Department, the following rules shall apply:

1. The applicable FRC liability of such Applicant, shall be offset by up to 22% where water source improvements are constructed, up to 41% where water storage improvements are constructed, and up to 37% where water transmission mains are constructed; provided that the total amount of all offsets that an Applicant, receives shall not exceed 100% of the Applicant's, FRC liability.
 - a. An Applicant who provides 100% of the necessary source or storage or transmission requirements shall be entitled to an offset for the entire amount per category of source, storage, or transmission improvements as shown above.
2. The Department, and not the Applicant, shall calculate and determine the total amount of an Applicant's, FRC offset in any given case. The Department may require the Applicant to submit documentation verifying the actual cost of a source or storage improvement or transmission main.
3. The offsets described in this Section V "FRC Offsets" shall not apply to water transmission mains constructed by an Applicant which are within or adjacent to a subdivision or lands either 1) owned by the Applicant, or 2) developed by the Applicant. Where water transmission mains are constructed within, adjacent to, or outside of such subdivisions or lands, the offsets shall apply only to mains constructed outside of and off-site from such subdivisions or lands.
4. Grant Funds. Grant funds, specifically allocated to projects by the Grantor, may be used by the Manager to offset the FRC assessed to said projects on a dollar for dollar basis as it relates to source development, storage development and/or transmission main development.

- a. Applicants shall be offset by up to 22% where water source improvements are constructed; up to 41% where water storage improvements are constructed; and up to 37% where water transmission mains are constructed; provided that the total amount of all offsets that an Applicant receives shall not exceed 100% of the Applicant's FRC liability.
- b. The Manager shall determine which improvements are eligible for FRC offsets.
- c. FRC offsets shall be afforded only to those Applicants that are beneficiaries of the Grantor and identified as such at the time the Grant fund is made.
- d. FRC offsets for Grant Funds shall be a one-time event.

SECTION VI – APPEAL OF FACILITIES RESERVE CHARGE

1. Any person assessed a Facilities Reserve Charge under these rules may contest the amount of the Facilities Reserve Charge assessed by following the requirements in Part 1 of these Rules and Regulations.