

"Clean" version

ORDINANCE NO. _____

BILL NO. _____ (2014)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 2.96, MAUI COUNTY CODE, RELATING TO THE RESIDENTIAL WORKFORCE HOUSING POLICY, AND AMENDING CHAPTER 3.35, MAUI COUNTY CODE, RELATING TO THE AFFORDABLE HOUSING FUND

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Section 2.96.020, Maui County Code, is amended by deleting the definition "density bonus".

[“Density bonus” means a density increase over the otherwise allowed residential density under the applicable zoning and land use designation, without the need for further council approval, subject to enabling legislation.”]

SECTION 2. Section 2.96.020, Maui County Code, is amended by deleting the definition "off-site".

[“Off-site” means any area outside the boundaries of the development within the community plan area.”]

SECTION 3. Section 2.96.020, Maui County Code, is amended by deleting the definition "on-site".

[“On-site” means the area on, or within the boundaries of, the approved development within the community plan area.”]

SECTION 4. Section 2.96.030, Maui County Code, is amended to read as follows:

"2.96.030 Applicability. A. Any development, including the subdivision of land and/or the construction of single-family dwelling units, two-family dwelling units, [multifamily] multi-family dwelling units, or hotels, as defined in section 19.04.040 of this code, whether constructed at one time or over several years, shall be subject to this chapter upon final subdivision or building permit approval, whichever is applicable and occurs first, if it will result in the creation of the following:

- 1. [Five or more dwelling units, excluding farm labor dwellings or a second farm dwelling, as defined in section 19.04.040 of this code; provided that, such farm labor dwelling or farm dwelling is in full

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from Committee Chair Crivello

compliance with chapter 205, Hawaii Revised Statutes, and is not part of a condominium property regime, as set forth in chapter 514A, Hawaii Revised Statutes;

2. Five or more new lots;
3. A combination of dwelling units and new lots totaling five or more;
4. Three or more lodging, dwelling, or time share units in a hotel;] Ten or more lots, lodging units, time share units, or dwelling units, excluding farm labor dwellings or a second farm dwelling, as defined in section 19.04.040 of this code; provided that, such farm labor dwelling or farm dwelling is in full compliance with chapter 205, Hawaii Revised Statutes, and is not part of a condominium property regime, as set forth in chapter 514A, Hawaii Revised Statutes;

[5.]2. A conversion of one or more hotel units to dwelling units or time share units; or

[6.]3. Any hotel redevelopment or renovation project that increases the number of lodging or dwelling units in a hotel.

B. Exemptions. This chapter shall not apply to any development that falls into one or more of the following categories:

1. A development subject to an affordable housing requirement, evidenced by an executed affordable housing agreement with the County, currently in effect and approved prior to the effective date of this chapter;

2. A development subject to a change in zoning condition that requires affordable or residential workforce housing, unless the condition expressly allows for the application of the affordable housing or residential workforce housing policy set forth herein;

3. A subdivision granted preliminary subdivision approval prior to the effective date of this chapter;

4. A building permit application submitted prior to the effective date of this chapter;

5. A family subdivision, for immediate family members, as described in [sections] subsections 18.20.280.B.1 and B.2 of this code; [or]

6. A development by a government entity[; a project pursuant to section 201H-H, Hawaii Revised Statutes;] or a community land trust[; or an affordable housing project with more than the residential workforce housing units, in-lieu fees, or in-lieu land required by section 2.96.040 of this chapter], as approved by the director[.]; or

7. A development within the boundaries of the Wailuku redevelopment area as defined by the Maui redevelopment agency pursuant to chapter 53, Hawaii Revised Statutes.

C. Adjustment[.] by developer.

1. A developer of any development subject to this chapter may appeal to the council for a reduction, adjustment, or waiver of the requirements based upon the absence of any reasonable relationship or nexus between the impact of the development and the number of residential workforce housing units or in-lieu fees/land required.

2. Any such appeal shall be made in writing and filed with the [County] county clerk prior to final subdivision approval or issuance of a building permit for the development, whichever is applicable. Any such appeal shall administratively stay the processing of the development's subdivision or building permit, whichever is applicable, until a decision on the appeal is rendered. The appeal shall set forth in detail the factual and legal basis for the claim of reduction, adjustment, or waiver, and the developer shall bear the burden of presenting substantial evidence to support the appeal, including comparable and relevant technical information.

3. The council, or if the appeal is assigned to a council committee, the council committee, shall convene a meeting within forty-five days of the [County] county clerk's receipt of the appeal, to consider the appeal. The council shall approve or disapprove the appeal by resolution within forty-five days from the date the developer has concluded its presentation of evidence supporting the appeal in a council or committee meeting.

4. If the council or a council committee has not convened a meeting within forty-five days of the [County] county clerk's receipt of the appeal, or if the council does not approve or disapprove the appeal by resolution within forty-five days from the date the developer has concluded its presentation of evidence at the council or council committee meeting, the appeal, as submitted by the developer, shall be deemed approved by the council.

5. If a reduction, adjustment, or waiver is granted by the council, any subsequent substantive change or modification in use within the development, as determined by the director, shall invalidate the reduction, adjustment, or waiver previously granted.

D. Adjustment by director. The director may, subject to council approval by resolution, authorize a reduction, adjustment, or waiver of any provision of this chapter."

SECTION 5. Section 2.96.040, Maui County Code, is amended to read as follows:

"2.96.040 Residential workforce housing requirements. A. [Prior to final subdivision approval or issuance of a building permit for a development subject to this chapter, the department shall require the developer to enter into a residential workforce housing agreement that requires the following:] Developers shall be required to provide a number of residential workforce housing units equivalent to at least twenty-five percent, rounding up to the nearest whole number, of the total number of market rate lots, lodging units, time share units, or dwelling units, excluding farm labor dwellings or a second farm dwelling, as defined in section 19.04.040 of this code, created. If a developer satisfies the requirements of this chapter through subsection B.3 of this section and the units shall remain available only to income-qualified groups in perpetuity, the developer shall provide at least twenty percent, rounding up to the nearest whole number, of the total number of market rate lots, lodging units, time share units, or dwelling units,

excluding farm labor dwellings or a second farm dwelling, as defined in section 19.04.040 of this code, created.

1. Where the residential workforce housing requirement is satisfied exclusively through the provision of on-site units:

a. When more than fifty percent of the dwelling units and/or new lots in the development are offered for sale for less than \$600,000, at least twenty-five percent of the total number of units and/or lots shall be sold or rented to residents within the income-qualified groups established by this ordinance; or

b. When fifty percent or more of the dwelling units and/or new lots in the development are offered for sale for \$600,000 or more, at least fifty percent of the total number of units and/or lots shall be sold or rented to residents within the income-qualified groups established by this ordinance.

2. Where the residential workforce housing requirement is satisfied through the provision of off-site units:

a. When more than fifty percent of the dwelling units and/or new lots in the development are offered for sale for less than \$600,000, then the number of off-site residential workforce housing units due shall be equal to fifty percent of the total number of on-site market rate units; or

b. When fifty percent or more of the dwelling units and/or new lots in the development are offered for sale for \$600,000 or more, then the number of off-site residential workforce housing units due shall be equal to fifty percent of the total number of on-site market rate units.

3. When three more new lodging, dwelling, or time share units in a hotel are created, or when there is a conversion of one or more hotel units to dwelling units or time share units, or when any hotel redevelopment or renovation project increases the number of lodging or dwelling units in the hotel, or when five or more new dwelling units for rental purposes are created, then forty percent of the total number of new, additional and/or converted units shall be sold or rented to residents within the income-qualified groups established by this ordinance.]

B. Prior to final subdivision approval or issuance of a building permit for a development subject to this chapter, the department shall require the developer to enter into a residential workforce housing agreement. The [requirement] agreement shall set forth the method by which the developer satisfies the requirements of this chapter. The requirements may be satisfied by one or a combination of the following, which shall be determined by the director and stated in the [residential workforce housing] agreement:

1. Offer for sale, single-family dwelling units, two-family dwelling units, or multi-family dwelling units as residential workforce housing within the community plan area;

2. Offer for rent, multi-family dwelling units as residential workforce housing units within the community plan area]. A developer may partner with a non-profit organization or community land trust on a specific affordable project to either construct new multi-family dwelling

units or renovate existing non-habitable multi-family dwelling units, paying an amount that represents the difference in unit costs for a family of four at one hundred percent and one hundred forty percent of median income pursuant to HUD affordable sales price guidelines as adjusted by the department by wait list area. The developer=s requirement shall be deemed satisfied upon receipt of payment. Moneys shall be deposited into the affordable housing fund];

3. In lieu of directly selling or renting units pursuant to subsection B.1 or B.2, the developer may convey such units to a qualified housing provider subject to department approval pursuant to section 2.96.150; or

4. In lieu of providing residential workforce housing units, the residential workforce housing requirement may be satisfied by payment of a fee, by providing improved land, or by providing unimproved land[.] in accordance with the following: [Any fee must be approved by council resolution. Any donation of land must be approved by the council pursuant to section 3.44.015 of this code.]

a. The in-lieu fee per residential workforce housing unit required by this chapter [for sale/ownership units shall be equal to thirty percent of the average projected sales price of the market rate dwelling units and/or new lots in the development. The in-lieu fee per unit for hotel, time share, converted or rental units shall be an amount that represents the difference in unit costs for a family of four at one hundred percent and one hundred sixty percent of median income pursuant to HUD affordable sales price guidelines, or as adjusted by the department, for Hana, Lanai, and Molokai. The in-lieu fee shall be designated in the residential workforce housing agreement, and be secured by a lien on the units if not paid before the units are constructed or converted. The in-lieu fee shall accrue to the affordable housing fund, which shall be established in the County budget for the purpose of enhancing and supporting housing needs and programs of income-qualified households and special housing target groups; and] shall be equal to the difference in unit costs for a three bedroom, single family, dwelling unit, at one hundred percent and a three bedroom, single family, dwelling unit at one hundred sixty percent of median income, for a family of four, pursuant to HUD affordable sales price guidelines, or as adjusted by the department for Hana, Lanai, and Molokai; and

b. [The value of the improved land shall not be less than the in-lieu fee that would otherwise have been required under this chapter. The value of the unimproved land shall be at least equal to twice the value of the improved land. The in-lieu land shall be used to address the housing needs of income-qualified households and special housing target groups. Such land shall have a minimum lot size of six thousand square feet or the minimum lot size allowed by the applicable zoning, whichever is greater. Such land must be acceptable to the department and may be used by the County or

others approved by the County to develop residential workforce housing, resource centers for the homeless, day care centers for seniors, or other public use projects that address the housing needs of income-qualified households and special housing target groups; and] Any dedication of improved or unimproved land in-lieu of residential workforce housing units shall be subject to the approval of the director and the council by resolution.

SECTION 6. Section 2.96.050, Maui County Code, is amended to read as follows:

"2.96.050 Residential workforce housing credits.

A. Credits may be given under the following circumstances:

1. One residential workforce housing credit shall be given for every single-family dwelling unit, two-family dwelling unit, or [multifamily] multi-family dwelling unit constructed and sold at affordable rates, in excess of the residential workforce housing required by section 2.96.040 [of this chapter]; and

2. [One residential workforce housing credit shall be given for every ten market rate units that contain a deed restriction requiring an owner to occupy the unit for a minimum of three years, and share with the County fifty percent of any profits realized from a sale of that unit within the three-year owner-occupancy period.] Credits may be issued for a one hundred percent affordable project developed pursuant to section 201H-38, Hawaii Revised Statutes, provided that one residential workforce housing credit shall be given, upon request by the developer, for every single-family dwelling unit, two-family dwelling unit, or multi-family dwelling unit constructed and sold at affordable rates, in excess of fifty percent of the total number of units constructed and sold at affordable rates in the project. Credits shall not be issued for projects developed pursuant to section 201H-38, Hawaii Revised Statutes, that are not one hundred percent affordable.

B. The credit must be used in the same community plan area in which the unit was constructed[.], provided however, that this restriction may be waived by the Council by resolution.

C. The credit must be applied toward the same type of unit constructed.

D. The credit must be used for the same income group in which the credit was earned, when the credit is earned by constructing more residential workforce housing units than required.

E. [The credit must be used for the "gap income" group when the credit is earned by creating a deed restriction.

F.] The credit may be used for a future development, but may not be used for an affordable housing or residential workforce housing unit owed at the time the credit is given.

[G.]F. The number of credits issued shall be set forth in the residential workforce housing agreement."

SECTION 7. Section 2.96.060, Maui County Code, is amended to read as follows:

"2.96.060 Residential workforce housing [restrictions-Ownership units.] restrictions-ownership units. A. Ownership units shall be subject to this chapter for [twenty-five] ten years from the initial sale of the unit.

B. Unless an exemption is granted by the director, the percentage of ownership units within each income group shall be as follows:

1. Thirty percent of the ownership units shall be for "below-moderate income" residents;

2. Thirty percent of the ownership units shall be for "moderate income" residents;

3. Twenty percent of the ownership units shall be for "above-moderate income" residents; and

4. Twenty percent of the ownership units shall be for "gap income" residents.

C. Timing of [Completion.] completion.

1. Residential workforce housing units shall be made[,] available for occupancy either before or concurrently with market rate units at the same ratio required of the development; and

2. Certificates of occupancy shall not be issued and/or final inspections shall not be passed for the market rate units unless certificates of occupancy are issued and/or final inspections are passed for the residential workforce housing units concurrently or sooner.

D. Deed [Restrictions.] restrictions.

1. The ownership unit must remain affordable for ten years from the initial sale.

2. For the ten-year affordability period, the following shall apply:

[1.]a. The unit must be owner-occupied;

[2.]b. [The unit must remain affordable for twenty-five years from the initial sale, with the] The owner [notifying] must notify the department upon a decision to sell; [and]

c. Upon the owner's decision to sell, the County shall have the first option to purchase the unit from the owner; said option shall be subject to a time limitation determined by the director and shall not apply to sales by reason of foreclosure;

d. Upon sale of the unit, the deed restrictions shall remain in full force and effect for the remainder of the ten-year period that commenced at the time of the initial sale; and

[3.]e. Under special circumstances an owner of a residential workforce housing unit may appeal to the department for a waiver of the owner-occupancy deed restriction; these circumstances would include, but are not limited to, assignment to active duty military or short-term contracts for off-island employment.

E. Sales [Price - Single-Family Dwelling Units.] price - dwelling units.
The sales price of a new [single-family] dwelling unit shall be [set by the

department, at the time the developer is ready to market the unit, using the following guidelines:

1. A down payment of five percent shall be assumed;
2. The prevailing interest rate shall be used;
3. The price of a one-bedroom unit shall be based upon seventy percent of the median income of the wait list area, adjusted to the respective target income group;
4. The price of a two-bedroom unit shall be based upon eighty-five percent of the median income of the wait list area, adjusted to the respective target income group;
5. The price of a three-bedroom unit shall be based upon one hundred percent of the median income of the wait list area, adjusted to the respective target income group;
6. The price of a four-bedroom unit shall be based upon one hundred fifteen percent of the median income of the wait list area, adjusted to the respective target income group; and
7. Applicants in each income group shall be assumed to pay no more than thirty percent of the gross annual income of the highest percentage in the applicant's group.] established by the department based on current HUD price guidelines.

F. [Sales price - Two-Family or Multifamily Multi-family Dwelling Units. price - two-family or multi-family dwelling units. The sales price of a new two-family or multifamily dwelling unit shall be ninety percent of the price of a single-family dwelling unit, as established in subsection E of this section.

G.] Resale [Price.] price. The maximum resale price shall be established by the department using the following guidelines:

1. An appraisal of the property shall be required before occupancy;
2. A second appraisal shall be required upon a decision to sell the unit; and
3. Twenty-five percent of the difference between the two appraisals shall be added to the owner's purchase price.

[H. Foreclosures.

1. The County shall have the first option to purchase the unit; and
2. If the County does not exercise its right to purchase, the units may be offered at an affordable price, set by the director, with the same deed restrictions.]"

SECTION 8. Section 2.96.070, Maui County Code, is amended to read as follows:

"2.96.070 Residential workforce housing [restrictions - Rental units.] restrictions-rental units. A. [Rental units shall be subject to this chapter for the life of the unit, as determined by a building inspector with the development services administration of the department of public works and environmental management.

B.] Unless an exemption is granted by the director, the percentage of rental units within each income group shall be as follows:

1. One-third of the rental units shall be for "very low income" and "low income" residents;
2. One-third of the rental units shall be for "below-moderate income" residents; and
3. One-third of the rental units shall be for "moderate income" residents.

[C.]B. Timing of [Completion.] completion.

1. Except when the developer is partnering with a nonprofit organization or community land trust as allowed in section 2.96.040.B.2 of this chapter, residential] Residential workforce housing units shall be made available for occupancy either prior to or concurrently with market rate units at the same ratio required of the development. Certificates of occupancy shall not be issued and/or final inspections shall not be passed for the market rate units unless certificates of occupancy are issued and/or final inspections are passed for the residential workforce housing units concurrently or sooner[; and

2. When the developer is partnering with a nonprofit organization or community land trust, the payment to the nonprofit organization or community land trust must be made prior to final subdivision approval or issuance of a building permit for the market rate units. The residential workforce housing units must be constructed within three years of the date the certificates of occupancy are issued and/or the final inspections are passed for the market rate units].

[D.]C. Vacancies. Any rental unit vacancy must be filled by an applicant in the appropriate income group to better maintain an equal distribution of rentals across the "very low income" and "low income," "below-moderate income," and "moderate income" groups.

[E.]D. Deed [Restrictions.] restrictions.

1. The rental unit must remain affordable for [the life of the unit;] thirty years from the initial occupancy.

2. For the thirty-year affordability period, the following shall apply:

[2.] a. The owner must notify the department upon a decision to sell the rental development and County shall have the first option to purchase the rental development from the owner; said option shall be subject to a time limitation determined by the director and shall not apply to sales by reason of foreclosure; and

[3.] b. Any new owner must comply with the deed restrictions.

[F.]E. Rental [Rates.] rates. The monthly rental rates shall be set by the department based on HUD income limits.

[G. Foreclosures.

1. The County will have the first option to purchase the rental development; and

2. If the County does not exercise its right to purchase, the rental development may be sold with the same deed restrictions.]"

SECTION 9. Section 2.96.140, Maui County Code, is amended to read as follows:

"2.96.140 Incentives. A. For developments subject to this chapter, and under the jurisdiction of the development services administration of the department of public works [and environmental management], decisions on permits will be made by all departments within sixty days of the date the permit application is deemed complete by the development services administration. Decisions on permits that require review by any outside agency will be made within thirty days of receipt by the development services administration of the last approval from an outside agency; provided, that decisions on applications that require special management area permit review, or environmental review pursuant to chapter 343, Hawaii Revised Statutes, shall be issued within ninety days of completion of the applicable review.

B. For developments subject to this chapter, and if applicable, the council will schedule the initial meeting for such application within six months of the referral to the appropriate committee. The council will vote to approve or deny the application within one year of the referral to committee.

[C. Developments that include on-site residential workforce housing units may be entitled to a density bonus, subject to enactment of enabling legislation.]

SECTION 10. Section 2.96.150, Maui County Code, is amended to read as follows:

"2.96.150 Qualified housing providers. Where the department determines that such an agreement will further the purposes of this chapter, the department shall enter into an agreement, on a project-by-project basis, with a qualified housing provider. Such an agreement may provide, without limitation, that the qualified housing provider shall:

A. Receive, own, manage, rent, operate and sell residential workforce housing units provided by developers pursuant to section 2.96.040 of this chapter;

B. [Enter into agreements with developers pursuant to section 2.96.040.B.2 of this chapter, subject to the department's approval, pursuant to which residential workforce housing units are developed, constructed, renovated, or otherwise made available to satisfy the purposes of this chapter;

C.] Receive land and in-lieu fees provided by developers pursuant to section 2.96.040.B.4 of this chapter;

[D.]C. Receive disbursements from the affordable housing fund and other funds provided for the purposes of this chapter; and/or

[E.]D. Administer the selection processes under sections 2.96.090 and 2.96.100 of this chapter, subject to the department's oversight.

1. Where a qualified housing provider receives, owns, develops, rents, operates or sells residential workforce housing units, such units shall be rented or sold to applicants qualified under this chapter, as set forth in the qualified housing provider's agreement with the department;

2. Selection of purchasers or renters for a qualified housing provider's units shall be made in accordance with sections 2.96.090 and 2.96.100 of this chapter or with other selection processes permitted under the qualified housing provider's agreement with the department;

3. All qualified housing provider rentals or sales shall be on terms, conditions and restrictions set forth in the agreement, which shall be at least as restrictive as the terms, conditions and restrictions applicable to developer rentals or sales under this chapter, and may be more restrictive; and

4. All qualified housing provider agreements shall require detailed reports to the department, on no less than an annual basis, of the qualified housing provider's implementation of, and compliance with, the agreement. This report shall include an annual financial audit.

SECTION 11. Section 3.35.050, Maui County Code, is amended to read as follows:

"3.35.050 Term of affordability. A. Ownership housing units financed by the affordable housing fund shall be subject to the restrictions of sections 2.96.060(D) through [(H)] (F) of this code. Rental housing units financed by the affordable housing fund shall be subject to the restrictions of sections 2.96.070[(E)] (D) through [(G)] (E) of this code.

B. The restrictions imposed by this section shall run with and bind the housing units, and the department shall record such restrictions with the bureau of conveyances or the land court of the state."

SECTION 12. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 13. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:

JEFFREY UEOKA
Deputy Corporation Counsel
County of Maui

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