

COUNCIL OF THE COUNTY OF MAUI

HOUSING, HUMAN SERVICES, AND TRANSPORTATION COMMITTEE

December 5, 2014

**Committee
Report No.** _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Housing, Human Services, and Transportation Committee, having met on August 13, 2013, September 23, 2013, December 19, 2013, February 20, 2014, March 13, 2014, March 20, 2014, March 24, 2014 (reconvened), June 19, 2014, September 18, 2014, and November 20, 2014, makes reference to County Communication 13-221, from the Chair of your Committee, requesting a review of the Residential Workforce Housing Policy, Chapter 2.96, Maui County Code ("MCC").

Your Committee notes that Chapter 2.96, MCC, requires the Council to review the Residential Workforce Housing Policy ("Policy") every two years in order to assess its impact.

By correspondence dated December 12, 2013, the Director of Housing and Human Concerns transmitted a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 2.96, MAUI COUNTY CODE, RELATING TO RESIDENTIAL WORKFORCE HOUSING POLICY". The purpose of the proposed bill is to amend Chapter 2.96, MCC, relating to the Policy.

By correspondence dated March 6, 2014, the Department of the Corporation Counsel transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 2.96, MAUI COUNTY CODE, RELATING TO RESIDENTIAL WORKFORCE HOUSING POLICY AND AMENDING CHAPTER 3.35, MAUI COUNTY CODE, RELATING TO AFFORDABLE HOUSING FUND". The purpose of the revised proposed bill is to incorporate housekeeping amendments to Section 3.35.050, MCC, for consistency with Chapter 2.96, MCC.

The Chair of your Committee transmitted a further revised proposed bill at your Committee's meeting of September 18, 2014. The further revised proposed bill recommended additional amendments to the Policy. Your Committee felt that an independent group of experts should review the proposed bill and make

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recommendations to your Committee. Your Committee suggested a task force be formed to review proposed revisions to the Policy, including the merits and weaknesses of each proposed change.

The Department of Housing and Human Concerns (“DHHC”) convened a task force composed of representatives from the nonprofit, construction, and development sectors of the community. The task force invited resource people from the lending industry and other developers to provide feedback on issues under the existing Policy.

By correspondence dated November 12, 2014, the Department of the Corporation Counsel transmitted a further revised proposed bill, entitled “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”, incorporating the recommendations made by the task force.

The Director of Housing and Human Concerns informed your Committee since the enactment of the Policy in 2006, there has been only one project with a signed residential workforce housing agreement. The agreement called for 17 affordable single-family units. Fourteen units were constructed, but only three were able to be sold at affordable rates, with the balance sold at market rates.

Your Committee notes the Policy was written with clear and noble intentions, requiring developers to build a percentage of their projects to accommodate the income levels of working families. The Policy is intended to provide housing for working families, hotel workers, teachers, police officers, firefighters, and special housing target groups.

Your Committee received testimony from the community requesting revisions to the Policy in order to increase the availability of affordable homes. Developers have found the requirements of the Policy to provide 50 per cent of the project units as affordable, or in-lieu fees instead of constructed units, to be a hindrance that actually discourages home construction. Your Committee also heard from those who believe the policy was enacted during an unfortunate downturn of the economy; therefore, no changes should be made at this time to give the Policy a chance in a better economic environment.

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Your Committee diligently reviewed the current requirements of the Policy. Your Committee agreed the Policy as written, has not produced the number of affordable homes needed to meet the needs of the residents.

Following extensive deliberations, your Committee recommended the requirements for developers to build affordable workforce housing be reduced from 50 per cent of the total units in the project to 25 per cent of the fair market units, with the affordable homes allowed to be built either on or off the project site. Your Committee further recommended this requirement be reviewed within the two-year period.

Your Committee recommended to exempt developments within the boundaries of the Wailuku Redevelopment Area from the Policy, noting that this exemption may encourage businesses to develop and revitalize the Wailuku area.

Your Committee recommended that residential workforce housing credits may be issued for 100 per cent affordable projects developed pursuant to Section 201H-38, Hawaii Revised Statutes. Projects that are not 100 per cent affordable shall not be issued any credits.

Your Committee discussed the use of the residential workforce housing credits and agreed to allow the credits to be used in any community plan area.

Your Committee agreed with the task force to delete the "gap income" group. Your Committee determined that those in the income level above 140 per cent median income were at the affordability level of homes being offered at market rates.

Your Committee reviewed deed restrictions for both ownership and rental units. For ownership units, your Committee accepted the recommendation from the task force to reduce the deed restriction period. The task force created a matrix establishing the period of time an ownership unit must be subject to the Policy, based on the owner's income. Deed restrictions for rental units were reduced from the life of the unit to 30 years.

Your Committee was informed that mortgage lenders would not be inclined to provide financing for units with a provision that requires the County to have the first right

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of refusal to acquire the property when in foreclosure. Therefore, your Committee recommended to delete the restriction.

Your Committee recommended to allow the Director of Housing and Human Concerns, with Council approval, to authorize a reduction, adjustment, or waiver of provisions of the Policy.

Your Committee notes according to the Maui Island Plan, 30,000 new homes will need to be built in the next 15 years to keep up with the predicted population growth on Maui.

Your Committee expressed the importance of the Policy to provide workforce housing for working families, and to ensure that future generations have the opportunity to be homeowners in Maui County.

Your Committee was informed that the task force convened by DHHC will continue its review focusing on incentives for the development of affordable housing.

Your Committee voted 7-0 to recommend passage of the revised proposed bill on first reading and filing of the communication. Committee Chair Crivello, Vice-Chair Cochran, and members Baisa, Carroll, Couch, Guzman, and Victorino voted "aye".

Your Committee is in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions, and technical and nonsubstantive revisions.

Your Housing, Human Services, and Transportation Committee RECOMMENDS the following:

1. That Bill _____ (2014), as revised herein and attached hereto, entitled "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 PASSED ON FIRST READING and be ORDERED TO PRINT; and

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2. That County Communication 13-221 be FILED.

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This report is submitted in accordance with Rule 8 of the Rules of the Council.



STACY CRIVELLO, Chair

hht:cr:14011aa:mmy

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 repealing 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 repealing 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 repealing 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 2.96.020, Maui County Code, is amended by amending the definition of "Residential workforce housing units" by deleting the definition of "Gap income".

"Residential workforce housing unit" means a unit or lot to be sold or rented to residents within one of the following income groups as established by the department:

1. "Very low income," which are those households whose gross annual family income is fifty percent or less of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai[;].

2. "Low income," which are those households whose gross annual family income is more than fifty percent, but not more than eighty percent of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai[;].

3. "Below-moderate income," which are those households whose gross annual family income is more than eighty percent, but not more than one hundred percent of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai[;].

4. "Moderate income," which are those households whose gross annual family income is more than one hundred percent, but not more than one hundred twenty percent of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai[;].

5. "Above-moderate income," which are those households whose gross annual family income is more than one hundred twenty percent, but not more than one hundred forty percent of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai[; and

6. "Gap income," which are those households whose gross annual family income is more than one hundred forty percent, but not more than one hundred sixty percent of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai.]

SECTION 5. 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 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] ten 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 by ten or more.

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 6. 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) 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 or 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 nonprofit organization or community land trust on a specific affordable project to either construct new multi-family dwelling units or renovate existing nonhabitable 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,] subsections (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[. 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.] in accordance with the following:

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.

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.] 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.

C. Income group distribution.

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

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

b. Fifty percent of the ownership units shall be for "moderate income" residents.

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

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

a. One-third of the rental units shall be for "very low income" and "low income" residents.

b. One-third of the rental units shall be for "below-moderate income" residents.

c. One-third of the rental units shall be for "moderate income" residents."

SECTION 7. 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] may be used in [the same] any community plan area [in which the unit was constructed].

C. The credit [must be applied toward the same] may satisfy the requirement for any type of unit constructed.

D. The credit [must be used for the same] may satisfy the requirement for a unit in any 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 8. 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 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]B. Deed [Restrictions.] restrictions.

1. The ownership units within each income group shall be subject to the deed restrictions contained in this section for the following periods:

a. "Below-moderate income," ten years.

b. "Moderate income," eight years.

c. "Above-moderate income," five years.

2. For the deed-restricted 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] 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 available to the County for a period of one hundred and twenty days from receipt of written notice from the owner and shall not apply to sales by reason of foreclosure.

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

[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.

f. Resale. 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.

3. Twenty-five percent of the difference between the two appraisals shall be added to the owner's purchase price.

[E]C. 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. 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. 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 9. 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.] 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.]B. 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.]C. 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:

a. The owner must notify the department upon a decision to sell the rental development[;] and the County shall have the first option to purchase the rental development from the owner; said option shall be available to the County for a period of one hundred and twenty days from receipt of written notice from the owner and shall not apply to sales by reason of foreclosure.

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

3. Within 90 days of the expiration of the thirty-year affordability period, the owner shall offer the County the right to purchase the property at market value as determined by the owner.

[F.]D. 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 10. Section 2.96.090, Maui County Code, is amended to read as follows:

"2.96.090 Applicant selection process – ownership units. A. Wait List Procedure.

1. The developer, its partner, or its management company shall establish wait lists of interested applicants by development[;].

2. Prior to initiating the wait list, the developer, its partner, or its management company shall publish in at least five issues of a newspaper of general circulation within the County, a public notice that shall contain all information that is relevant to the establishment of the wait list. The public shall also be informed in a like manner, of any decision that would substantially affect the maintenance and use of the wait list[; and].

3. Selection for purchase shall be made by a lottery administered by the developer, its partner, or its management company and overseen by the

department, subject to the applicant meeting the eligibility criteria established in subsection [B of this section.] (B).

B. Eligibility [Criteria.] criteria. In order to be eligible for a residential workforce housing unit, an applicant must meet the following criteria:

1. Be a citizen of the United States or a permanent resident alien who is a resident of the County[;].

2. Be eighteen years of age or older[;].

3. Have a gross annual family income (not to include the income of minors) which does not exceed one hundred [sixty] forty [per cent] percent of the County's area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai. Initial determination for compliance with the maximum gross annual family income provision shall be made by the developer, its partner, or its management company for the initial sale of residential workforce housing units, on the basis of the information provided on the ownership application. The ownership application will be completed when a specific unit is being considered. Final determination for compliance with the maximum gross annual family income provision shall be made by the prospective lender at the time the applicant's income verification data is received[;].

4. Have assets that do not exceed one hundred [sixty] forty [per cent] percent of the County's area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai. Assets shall include all cash, securities, stocks, bonds and real property. Real property shall be valued at fair market value less liabilities on such real property[;].

5. For a period of three years before the submittal of the ownership application, have not had an interest of fifty [per cent] percent or more in real property in fee or leasehold in the United States, where the unit or land is deemed suitable for dwelling purposes, unless the applicant is selling an affordable unit and purchasing a different affordable unit that is more appropriate for the applicant's family size[; and].

6. Pre-qualify for a loan with the applicant's choice of lender.

C. Notification of Change. Each applicant shall be responsible for notifying the developer, its partner, or its management company in writing of any changes in mailing address, telephone number, fax number, and/or e-mail address. If an applicant fails to properly notify the developer, its partner, or its management company of such changes and the developer, its partner, or its management company is unable to contact the applicant, the developer, its partner, or its management company shall remove the applicant's name from the wait list.

D. Selection [Priority.] priority.

1. Residents on the wait list shall receive first priority for the available units. Nonresidents on the wait list may purchase a residential workforce housing unit once the wait list has been exhausted of all residents[;].

2. The developer, its partner, or its management company may do a mass mailing of housing applications to applicants on the wait list[;].

3. The residential workforce housing units must be offered to residents in the order in which their names were drawn in the lottery, provided that there is a unit available in the income group for which they qualify. Nonresidents will be offered residential workforce housing units in the order in which their names were drawn in the lottery[; and].

4. In the event that units are not sold within the first ninety days after they are offered for sale, and the developer has made a good faith effort, as determined by the director, to contact and qualify applicants on the wait list, the sale of remaining units shall be conducted as follows:

a. For the next ninety-day period, units shall be offered for sale to the next-higher income preference group, at the original sales price. For example, units targeted for families earning up to one hundred twenty [per cent] percent of the median income may be sold to families earning up to one hundred forty [per cent] percent of the median income. All other eligibility criteria shall apply[;].

b. Units shall be offered to the next higher income group every ninety days until the units are sold or there are no more income groups available[;].

c. Units shall then be offered to nonresidents on the wait list in the order in which their names were drawn in the lottery, for the next ninety-day period, provided that the applicant's income is within the residential workforce housing income groups[; and].

d. Any units that remain unsold may be offered at market rate without deed restrictions. Upon the sale of the unit, the County shall receive fifty [per cent] percent of the difference between the original sales price of the unit and the actual market rate sales price, for deposit into the affordable housing fund. In this event, the developer shall still be deemed to have satisfied the requirement for producing a residential workforce housing unit.

5. The developer shall submit copies of the following information to the department to verify the sale of residential workforce housing units to eligible buyers:

- a. Applicant's completed ownership application[;].
- b. Executed sales contract[;].
- c. Pre-qualification notice from lender[;].
- d. All signed federal and state tax returns used to determine eligibility, or any other documents used to determine eligibility by the lender[; and].
- e. Escrow company's settlement statement.

6. An owner of a residential workforce housing unit that is being resold must sell the unit to an income-qualified household and notify the department of the sale. The department shall verify the sales price.

SECTION 11. 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;] subsection 2.96.040(B)(4).

[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 12. 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)] subsections 2.96.060(B) and (C) of this code. Rental housing units financed by the affordable housing fund shall be subject to the restrictions of [sections 2.96.070(E) through (G)] subsections 2.96.070(C) through (D) 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.] State."

SECTION 13. 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 14. 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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