

COUNCIL OF THE COUNTY OF MAUI
HOUSING, HUMAN SERVICES, AND
TRANSPORTATION COMMITTEE

July 7, 2015

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 June 18, 2015, makes reference to the following:

1. County Communication 15-93, from the Director of Housing and Human Concerns, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 2.96, MAUI COUNTY CODE, RELATING TO THE RESIDENTIAL WORKFORCE HOUSING POLICY CREDITS AND FORECLOSURES".

The purpose of the proposed bill is to amend the Residential Workforce Housing Policy ("Policy"), specific to Sections 2.96.050 and 2.96.060, Maui County Code ("MCC"), relating to credits and foreclosures ("credits and foreclosures bill").

2. Correspondence dated June 2, 2015, from the Director of Housing and Human Concerns, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 2.96, MAUI COUNTY CODE, RELATING TO THE RESIDENTIAL WORKFORCE HOUSING POLICY AND CHAPTER 201H HAWAII REVISED STATUTES PROJECTS".

The purpose of the proposed bill is to clarify provisions in the Policy, specific to Section 2.96.030, MCC, to state in the event the terms in Chapter 201H, Hawaii Revised Statutes ("HRS"), and the Policy are in conflict, the terms contained in Chapter 201H, HRS, shall control ("201H provisions bill").

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Your Committee notes the Policy was written to require developers to build a percentage of their projects to accommodate the income levels of working families. The Policy is intended to encourage development of housing for working families including those of hotel workers, teachers, police officers, and firefighters, for example, and special housing target groups.

Your Committee further notes the Policy was enacted in 2006. A comprehensive review of the effectiveness of the Policy was conducted in 2014, and resulted in revisions as set forth in Ordinance 4177.

The Director of Housing and Human Concerns informed your Committee the proposed bills clarify the revisions included in Ordinance 4177.

The Director said the proposed revision to Section 2.96.050, MCC, in the credits and foreclosures bill is to clarify that no more than 75 per cent of the total number of residential workforce housing units constructed within a development shall be eligible for credits, including projects that are 100 per cent affordable.

A Deputy Corporation Counsel explained the proposed revision to Section 2.96.060, MCC, in the credits and foreclosures bill, relating to deed restrictions, is to clarify the deed restrictions shall not apply in situations of foreclosure. He explained this is requested because mortgage lenders are not in favor of permanent deed restrictions and such restrictions on a property may negatively affect a purchaser's ability to obtain a home mortgage for the deed-restricted property.

The Deputy further explained the proposed provision will not affect deed restrictions in place while the owner is the occupant of a housing unit. Once a unit enters foreclosure, however, the County-placed deed restrictions shall be lifted.

Your Committee questioned whether a housing unit would remain affordable once it enters the foreclosure process. The Deputy informed

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your Committee a financial institution may take a foreclosed unit out of the County's affordable category and sell it at fair market value.

The Director stated the proposed revision to Section 2.96.030, MCC, in the 201H provisions bill, relates to Chapter 201H, HRS, on housing projects. Prior to Ordinance 4177, 201H projects were exempt from the Policy. This revision clarifies that in the event of a conflict, the provisions in 201H supersede the Policy. For instance, 201H projects require a 15-year owner occupancy; the Policy requires up to 10 years.

Your Committee voted 5-0 to recommend passage of the proposed bills on first reading and filing of the communication. Committee Chair Crivello, Vice-Chair Baisa, and members Carroll, Couch, and Guzman voted "aye". Committee members Hokama and Victorino were excused.

Your Committee is in receipt of a revised proposed credits and foreclosures bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating nonsubstantive revisions.

Your Committee is in receipt of a revised proposed 201H provisions bill, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 2.96, MAUI COUNTY CODE, RELATING TO THE RESIDENTIAL WORKFORCE HOUSING POLICY AND CHAPTER 201H, HAWAII REVISED STATUTES, PROJECTS", approved as to form and legality by the Department of the Corporation Counsel, incorporating nonsubstantive revisions.

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

1. That Bill _____ (2015), 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 CREDITS AND FORECLOSURES", be **PASSED ON FIRST READING** and be **ORDERED TO PRINT**;

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2. That Bill _____ (2015), attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 2.96, MAUI COUNTY CODE, RELATING TO THE RESIDENTIAL WORKFORCE HOUSING POLICY AND CHAPTER 201H, HAWAII REVISED STATUTES, PROJECTS", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
3. That County Communication 15-93 be FILED.

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



STACY CRIVELLO, Chair

hht:cr:15006aa:mmy

ORDINANCE NO. _____

BILL NO. _____ (2015)

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

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

SECTION 1. Section 2.96.050, Maui County Code, is amended by
amending subsection A to read as follows:

“A. Credits may be given under the following
circumstances:

1. [One residential workforce housing credit shall]
Upon developer’s request, credits may be given for every
single-family dwelling unit, two-family dwelling unit, or multi-
family dwelling unit constructed and sold at affordable rates,
in excess of the residential workforce housing units required
by section 2.96.040[; and], provided that developments
comprised of one hundred percent residential workforce
housing units shall be eligible for credits totalling no more
than seventy-five percent of the total number of residential
workforce housing units constructed.

2. 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.”

SECTION 2. Section 2.96.060, Maui County Code, is amended by amending subsection B to read as follows:

“B. Deed 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:

- a. The unit must be owner-occupied.
- b. The owner must notify the department upon a decision to sell.

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] deed restrictions shall remain in full force and effect for the remainder of the deed restriction period that commenced at the time of the initial sale.

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.]i. An appraisal of the property shall be required before occupancy (“the owner’s purchase price”).

[2.]ii. A second appraisal shall be required upon a decision to sell the unit.


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

g. The restrictions contained in subparagraphs 2a through 2f above shall not apply in situations of foreclosure.”

SECTION 3. 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 4. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:



JEFFREY GEOKA
Deputy Corporation Counsel
County of Maui
2.96 Credits and Foreclosures
LF 2015-3823

ORDINANCE NO. _____

BILL NO. _____ (2015)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 2.96,
MAUI COUNTY CODE, RELATING TO THE RESIDENTIAL
WORKFORCE HOUSING POLICY AND CHAPTER 201H,
HAWAII REVISED STATUTES, PROJECTS

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

SECTION 1. 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, 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. 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;

2. A conversion of ten or more hotel units to dwelling units or time share units; or

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 subsections 18.20.280.B.1 and B.2, of this code;

6. A development by a government entity or a community land trust, 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 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 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 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.

E. Projects pursuant to chapter 201H, Hawaii Revised Statutes, shall be subject to the requirements of this chapter,

provided that where the terms of this chapter and chapter 201H are in conflict, the terms contained in chapter 201H shall control.”

SECTION 2. New material is underscored. In printing this bill, the County Clerk need not include the underscoring.

SECTION 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:



JEFFREY UEOKA
Deputy Corporation Counsel
County of Maui
2.96_201H Language
LF 2015-4383