

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

August 21, 2007

Committee
Report No.

_____ 07-86

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

Chair and Members:

Your Policy Committee, having met on March 13, 2007 and July 31, 2007, makes reference to County Communication No. 07-76, from Councilmember Michael J. Molina, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.35, MAUI COUNTY CODE, PERTAINING TO THE AFFORDABLE HOUSING FUND".

The purpose of the proposed bill is to amend Chapter 3.35, Maui County Code (MCC), to establish the procedures to implement the Affordable Housing Fund consistent with the requirements set forth in Section 9-20 of the Revised Charter of the County of Maui (1983), as amended (Charter), approved in the November 7, 2006 General Election.

Your Committee notes that on November 3, 2006, the Council passed on second and final reading, Bill No. 57, Draft 1, which established the Residential Workforce Housing Policy and the Affordable Housing Fund. In the General Election on November 7, 2006, an amendment to the Charter was passed to require the Council to appropriate 2 percent of the certified real property tax revenues to an affordable housing fund when adopting the fiscal years 2008 through 2011 annual budgets and capital improvement program, to be used for affordable housing for persons of very low to moderate income. Since Bill No. 57, Draft 1, was passed prior to the Charter amendment, Chapter 3.35, MCC, (the Affordable Housing Fund) needs to be amended to be consistent with the requirements set forth in Section 9-20, Charter.

By correspondence dated February 26, 2007, Councilmember Molina transmitted separate correspondence, both dated February 15, 2007, from Tiana U'ilani Cordero and Renee Cordero, in support of the proposed bill.

By correspondence dated February 27, 2007, Councilmember Molina transmitted correspondence dated February 22, 2007, from the Department of the Corporation Counsel, advising that the proposed bill's reference to "residents" is not contrary to Section 9-20, Charter, which references "persons".

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At its meeting of March 13, 2007, your Committee met with the Director of Finance, the Director of Housing and Human Concerns, the Director of Parks and Recreation, and a Deputy Corporation Counsel.

Your Committee received public testimony from one individual in support of the proposed bill.

Your Committee received written testimony dated March 12, 2007, from Pamela Tumpap, President, Maui Chamber of Commerce, in support of the proposed bill.

The Director of Housing and Human Concerns stated that the requirement in the proposed bill that an affordable housing fund annual plan be provided prior to the commencement of Fiscal Year 2008 would be difficult. She explained that the Department requires more time to provide a quality annual plan with options for the Council to consider. Your Committee agreed that the annual plan should be provided prior to Fiscal Year 2009 instead.

Your Committee suggested that consideration be given in the future to combine the funds from the existing Housing Interim Financing and Buy-Back Revolving Fund and the Rental Housing Development Revolving Fund with the Affordable Housing Fund. The Director of Finance explained that the existing revolving funds have specific purposes and identify specific projects by ordinance. Combining these funds with funds from the Affordable Housing Fund would require that the Affordable Housing Fund ordinance be amended to also identify specific housing projects, among other revisions.

Your Committee noted that the definitions in Section 3.35.025 of the proposed bill are the same as the definitions in the Residential Workforce Housing Policy (Chapter 2.96, MCC). Therefore, your Committee decided to delete the definitions in Section 3.35.025 of the proposed bill, and instead insert a reference to the definitions in Chapter 2.96, MCC.

Your Committee discussed whether the Affordable Housing Fund should be dedicated to fund the entire cost of a project and allow the Department of Housing and Human Concerns to appropriate funds, as needed, up to the total cost, or follow the traditional route of funding projects on a fiscal-year basis. Your Committee agreed that funds should be committed to an entire project, regardless of how long it takes for the project to be completed.

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The Deputy Corporation Counsel noted that Section 9-20, Charter, mandates the appropriation of revenue into the Affordable Housing Fund, but your Committee should address how the funds will be distributed before an annual plan is approved by Council resolution. Your Committee agreed that the Department of Housing and Human Concerns could propose projects, by resolution, prior to the adoption of an annual plan.

Your Committee deferred consideration of the matter pending further discussion.

By correspondence dated March 22, 2007, the Director of Housing and Human Concerns provided comments on the proposed bill.

By correspondence dated July 24, 2007, your Committee's Chair transmitted a draft bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.35, MAUI COUNTY CODE, PERTAINING TO THE AFFORDABLE HOUSING FUND". The draft bill revises the definitions, changes the reporting date for an annual report to Fiscal Year 2009, and adds a new Section 3.35.100 relating to project expenses.

At its meeting of July 31, 2007, your Committee met with the Director of Housing and Human Concerns and a Deputy Corporation Counsel.

Your Committee received public testimony from one individual in support of the draft bill.

Your Committee confirmed that the definitions in Section 2.96.020, MCC, would prevent residents within the above-moderate or gap groups (120 to 160 percent of the median income) from being eligible for the Affordable Housing Fund. Section 3.35.010, MCC, clearly states that the funds shall be used for residents with very low to moderate income only (0 to 120 percent of the median income).

Your Committee also confirmed that restricting administrative expenses to 3 percent of the Affordable Housing Fund, per fiscal year, is mandated by Section 9-20, Charter, and that there are no guidelines on how the Administration can use the funds.

The Deputy Corporation Counsel noted that the draft bill amends the Affordable Housing Fund to conform with the requirements set forth in Section 9-20, Charter, and provide guidance on how the funds should be expended and tracked.

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Your Committee discussed the pros and cons of committing to fund the entire cost of a project versus expending funds on a fiscal-year basis. Your Committee noted that committing to fund the entire cost of a project could commit funds for several years, and projecting the total cost of a project with the current construction climate on Maui is extremely difficult. Your Committee further noted that more projects could be started if funds were expended each fiscal-year, but recognized that funding projects by fiscal-year could exhaust the funds before projects are completed.

Your Committee discussed whether Council approval of projects from the Affordable Housing Fund should be made by resolution or by ordinance. Your Committee noted that approval by ordinance would allow for the codification of a complete list of projects that are eligible for funding, whereas, approval by resolution whenever a project is proposed would not maintain a comprehensive list of projects, but would allow for greater flexibility when modifications to the list of projects are needed. The Director noted that the annual plan and annual report would provide a list of projects and their status.

Your Committee also decided to change the first word in Section 3.35.100(B) of the draft bill from “projects” to “funds.” Your Committee made no further revisions to the draft bill.

The Director stated that her Department does not see any administrative problems with the draft bill, as revised, and is ready to implement the bill, provided that administrative rules are not required before implementation. Your Committee confirmed that Section 3.35.030(D) of the draft bill states that administrative rules may be adopted by the Director of Finance and the Director of Housing and Human Concerns, but are not required.

Your Committee voted to recommend passage of the draft bill, as revised, and filing of the communication.

Your Committee is in receipt of a revised proposed bill, approved as to form and legality, incorporating your Committee’s suggested revisions.

Your Policy Committee **RECOMMENDS** the following:

1. That Bill No. _____ (2007), as revised herein and attached hereto, entitled “A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.35,

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MAUI COUNTY CODE, PERTAINING TO THE AFFORDABLE
HOUSING FUND”, be PASSED ON FIRST READING and be
ORDERED TO PRINT; and

2. That County Communication No. 07-76 be FILED.

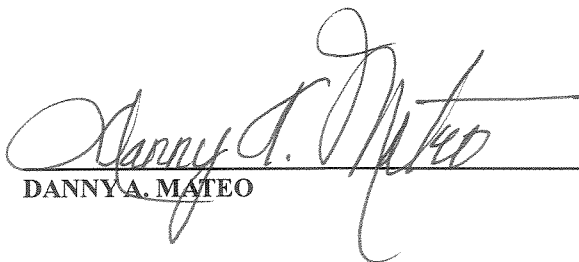
Adoption of this report is respectfully requested.

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DANNYA. MATEO Chair

BILL KAUAKEA MEDEIROS Member

G. RIKI HOKAMA Vice-Chair

MICHAEL J. MOLINA Member

MICHELLE ANDERSON Member

JOSEPH PONTANILLA Member

GLADYS C. BAISA Member

MICHAEL P. VICTORINO Member

JO ANNE JOHNSON Member

ORDINANCE NO. _____

BILL NO. _____ (2007)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.35, MAUI COUNTY CODE,
PERTAINING TO THE AFFORDABLE HOUSING FUND

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

SECTION 1. Section 3.35.010, Maui County Code, is amended to read as follows:

“3.35.010 Purpose. A. There shall be deposited into the affordable housing fund all moneys paid to the County in lieu of providing residential workforce housing units, any council appropriations to the fund, and all moneys donated to the County for affordable housing projects. Revenues in the fund shall be used for the [creation] provision and expansion of affordable housing and suitable living environments for [persons] residents of very low [income] to [gap] moderate income, including the rehabilitation of existing structures, land [acquisition] purchase or other acquisition of land or property entitlements, planning, design, and construction. [Disbursements from the fund may be made to nonprofit organizations and community land trusts by grant agreement.]

B. In adopting fiscal years 2008 through 2011 annual operating budgets and capital improvement programs, the council shall appropriate a minimum of two percent of the certified real property tax revenues to the affordable housing fund. The appropriations to this fund shall not substitute, but shall be in addition to, those appropriations historically made for the purposes stated in this chapter.

C. The revenues in this fund shall not be used for any purpose except those defined in this chapter.

D. On an annual basis, no more than three percent of this fund shall be used for administrative expenses.”

SECTION 2. Section 3.35.025, Maui County Code, is amended by adding a new section

to be appropriately designated to read as follows:

“3.35.025 Definitions. Whenever used in this chapter, unless a different meaning clearly appears from the context, the definitions in section 2.96.020 of this code shall apply.”

SECTION 3. Chapter 3.35, Maui County Code, is amended by adding new sections to be appropriately designated to read as follows:

“3.35.040 Use of fund. The council may make appropriations from the affordable housing fund for the following:

1. To increase the supply of affordable, rental, and owner-occupied housing;
2. To acquire interests in real property for purposes set forth in this chapter;
3. For planning, design, or construction of affordable rental or owner-occupied housing for residents within income-qualified groups;
4. To provide housing for elderly, disabled, and homeless residents lacking a permanent home;
5. To provide grants or loans to any nonprofit or community land trust that complies with section 501(c) of the Internal Revenue Code and any other requirement under federal, state, and county law regulating the conduct of charitable or nonprofit organizations, provided that the purpose of any grant or loan shall be for the purposes set forth in section 3.35.010 of this chapter;
6. To leverage funds provided by federal, state, nonprofit, or for-profit organizations and other non-county entities to further expand affordable housing opportunities;
7. To acquire existing housing or cooperative units for rehabilitation as affordable rental or owner-occupied housing, or both; or
8. To increase investment in public infrastructure in connection with related affordable housing projects.

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) 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) 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.

3.35.060 Criteria for selection of grant or loan proposals. A. Grant or loan proposals submitted shall include:

1. A detailed description of the proposed project and an outline of the income categories the project will serve;
2. A brief overview of a long-term management plan for the proposed project; and
3. A description of all efforts to leverage or match funding from non-county sources for the subject project.

B. Grant or loan proposals shall meet the following criteria for approval:

1. Demonstrate that the subject project is consistent with the requirements set forth in section 3.35.010 of this chapter;
2. Demonstrate that the subject project can be effectively managed and maintained as affordable and significantly contribute to the creation of affordable housing units; and
3. Demonstrate that the subject project directly advances the objective of providing affordable housing in perpetuity.

3.35.070 Grant or loan requirements. A. A grant or loan agreement for distribution of funds shall contain the following conditions and restrictions:

1. Title to any real property shall be held in perpetuity by grantee/borrower unless conveyed to the County, or to a qualified nonprofit or community land trust;
2. The grantee/borrower shall submit annual reports to the department documenting the progress toward implementing long-term management of the affordable housing project;
3. The subject project shall not be sold, exchanged, divested, or converted to other uses that are inconsistent with the purposes set forth in this chapter without the prior approval of the council by resolution;
4. In the event that the grantee/borrower dissolves or is adjudicated bankrupt pursuant to any applicable federal statute, title to any real property which has been funded or improved by a grant or loan issued from the fund shall be conveyed to the County, or to a qualified nonprofit or community land trust as approved by the council; and
5. The grantee/borrower shall not distribute or redistribute grant or loan funds to other third-party organizations without the prior approval of the council.

B. Loans from the fund shall:

1. Be secured by a first mortgage lien in favor of the County, or, subject to council approval, be secured by a second mortgage lien in favor of the County;
2. Have a term set by the director;
3. Require the borrower to execute a promissory note in favor of the County;
4. Include an interest rate set at three percent per annum; and
5. Be recorded with the bureau of conveyances or the land court of the State.

C. In the event of a loan default, or if the subject project is not serving the affordable housing needs as set forth in this chapter, the following may be required of the borrower:

1. Forfeit the land or property to the County; and
2. Full repayment of principal balance at an annual interest rate equal to two times the prime rate at the time of default.

3.35.080 Affordable housing fund annual plan. Prior to the commencement of fiscal year 2009 and annually thereafter, the department shall propose an affordable housing fund annual plan for the use of affordable housing fund revenues, and transmit the affordable housing fund annual plan to the council for its consideration. The affordable housing fund annual plan shall identify proposed appropriations for the following fiscal year and shall include:

1. A description of the projects to be funded, including grants and loans;
2. The total proposed appropriations for the subject fiscal year;
3. The number of housing units that will be created and residents to be served;
4. If housing is not the immediate result from a proposed appropriation, such as land acquisition or infrastructure improvements, provide an explanation on how the appropriation will result in housing; and
5. The total expenditure for administrative expenses, which shall be consistent with section 3.35.010(D) of this chapter.

3.35.090 Annual report. A. The department shall prepare and submit within ninety days following the end of fiscal year 2009 and annually thereafter, an annual report to the council on the expenditures and accomplishments resulting from appropriations from the affordable housing fund. The annual report shall provide the following information:

1. The number and types of units created or assisted;
2. Any non-dwelling unit improvements, such as land acquisition or infrastructure improvements;
3. The geographic distribution of units or funded projects;
4. Statistical data relative to the incomes of the households assisted;
5. The amount of state, federal, and private funds leveraged and/or matched; and
6. Sales or rental prices established.

B. The report shall also include an overview of how the department has met affordable housing fund annual plan goals and objectives.

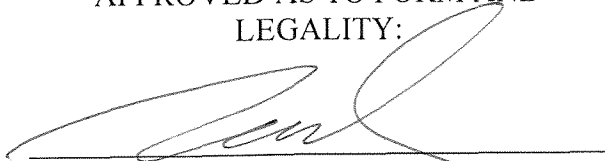
3.35.100 Project expenses. A. The department shall not expend moneys from the fund on projects that are not in the council-approved affordable housing annual plan, unless the project is approved separately by council resolution.

B. Funds are deemed appropriated by project and not by fiscal year.”

SECTION 4. 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 5. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND
LEGALITY:

A handwritten signature in black ink, appearing to read "Edward S. Kushi, Jr.", is written over a horizontal line.

EDWARD S. KUSHI, JR.
Deputy Corporation Counsel
County of Maui

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