

Chapter 2.96 - RESIDENTIAL WORKFORCE HOUSING POLICY

2.96.010 - Purpose.

The purpose of this chapter is to enhance the public welfare by ensuring that the housing needs of the County are addressed. The council finds that there is a critical shortage of affordable housing, making home acquisition by the majority of County resident workers extremely difficult, and creating a shortage of affordable rental units. The resident workforce is leaving the County in search of affordable housing, and new employees are being deterred by the high cost of living. To maintain a sufficient resident workforce in all fields of employment, and to ensure the public safety and general welfare of the residents of the County, resident workforce housing needs must be addressed. It is the intent of this chapter to encourage the provision and maintenance of residential workforce housing units, for both purchase and rental, to meet the needs of income-qualified households for the workforce, students, and special housing target groups.

(Ord. 3418 § 1 (part), 2006)

2.96.020 - Definitions.

Whenever used in this chapter, unless a different meaning clearly appears from the context:

"Community land trust" means a nonprofit organization that acquires land that:

1. Is held in perpetuity;
2. Is primarily for conveyance under a long-term ground lease for the creation of dwelling units that shall be sold or rented to applicants within the income-qualified groups established by this chapter; and
3. Retains an option to purchase any dwelling unit at a price determined by formula that is designed to ensure that the dwelling unit remains affordable in perpetuity.

"Council" means the Maui County council.

"Department" means the department of housing and human concerns.

"Director" means the director of housing and human concerns, County of Maui.

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"Disabled" means a person who is determined, by a medical doctor, to have a physical, mental, or emotional impairment that:

1. Is expected to be of long-continued and indefinite duration;
2. Substantially impedes his or her ability to live independently; and
3. Is of such a nature that the ability to live independently could be improved by more suitable housing conditions.

"Division" means the housing division of the department of housing and human concerns, County of Maui.

"Elderly" means a person who has attained the age of sixty-two years.

"Employed" means working for compensation in the County for any number of hours.

"Homeless" means:

1. An individual or family who lacks a fixed, regular, and adequate nighttime residence; or
2. An individual or family who has a primary nighttime residence that is:
 - a. A supervised shelter designed to provide temporary living accommodations; or
 - b. A place not designed for or ordinarily used as sleeping accommodations for human beings.

"HUD" means the United States Department of Housing and Urban Development.

"Improved land" means land that has necessary infrastructural improvements to support a public use project or a use density of at least a single-family or a two-family residential building per acre, in conformity with state and County zoning laws and building permit requirements.

"Lot" means any improved or unimproved land that has been subdivided.

"Median family income" means the middle income in a series of incomes ranked from smallest to largest as determined by HUD for the County, or as adjusted by the department, for Hana, Lanai, and Molokai.

"Prevailing interest rate" means the average interest rate of two mortgage lenders in the County, acceptable to the director, for a thirty year fixed loan with no discount points.

"Qualified housing provider" means a community land trust, nonprofit agency, or other private or public organization, agency, or entity authorized and designated by the department in accordance with section 2.96.150 to own, develop, construct, administer, operate or otherwise provide residential workforce housing required under this chapter.

"Resident" means a person who meets one of the following criteria:

1. Currently employed 30 hours a week in the County;
2. Retired from employment in the County, having worked in the County immediately prior to retirement;
3. A full-time student residing in the County;
4. A disabled person residing in the County who was employed in the County prior to becoming disabled;
5. The parent or guardian caretaker of a disabled person residing in the County;
6. A spouse or dependent of any such employee, retired person, student, or disabled person residing in the County; or
7. In the event of the death of the employee, retired person, student, or disabled person, the spouse or dependent of any such person residing in the County.

"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.~~

"Special housing target group" means a group of residents that can be demographically defined as having a special or unique housing need, including but not limited to, the elderly, homeless, and disabled.

"Unimproved land" means land not classified as "improved land."

"Wait list area" means Hana, Lanai, Maui (excluding Hana), or Molokai.

(Ord. No. 4177, §§ 1—4, 2014; Ord. No. 3719, § 1, 2010; Ord. 3512 § 1, 2007; Ord. 3418 § 1 (part), 2006)

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.

(Ord. No. 4236, § 1, 2015; Ord. No. 4177, § 5, 2014; Ord. 3546 § 1, 2008; Ord. 3418 § 1 (part), 2006)

2.96.040 - Residential workforce housing requirements.

- A. Developers shall be required to provide a number of residential workforce housing units equivalent to at least ~~twenty-five~~thirteen 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.~~

B. Prior to ~~final subdivision council~~ 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 agreement shall be reviewed by the council and 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 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.
3. ~~In lieu of directly selling or renting units pursuant to 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.~~

4.3 In lieu of providing residential workforce housing units, the residential workforce housing requirement may be satisfied ~~by payment of a fee,~~ by providing the county the equivalent of at least nineteen percent improved land, lots rounding up to the nearest whole number, of the total number of 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; or by providing the equivalent of at least twenty five percent unimproved land lots rounding up to the nearest whole number, of the total number of 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, in accordance with the following:

~~a. The in-lieu fee per residential workforce housing unit required by this chapter 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. 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 and shall provide council the opportunity to contract with the developer to install infrastructure on the in-lieu unimproved lots concurrently with the projects infrastructure, with the understanding that the county will subsidize the cost for their portion of the infrastructure installation on the dedicated lands.

~~5. Application of residential workforce housing credits issued pursuant to this code.~~

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~~very low-moderate income" residents.

b. ~~Fifty~~ Seventy percent of the ownership units shall be for "~~moderate-low~~ 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~~ Two-thirds of the rental units shall be for "~~below-moderate~~low income" residents.

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

([Ord. No. 4338, § 1, 2016](#) ; Ord. No. 4177, § 6, 2014; Ord. No. 3719, § 2, 2010; Ord. 3438 § 1, 2007; Ord. 3418 § 1 (part), 2006)

~~2.96.050—Residential workforce housing credits.~~

~~A.—Credits may be issued by the director, upon request by the developer, provided that:~~

- ~~1.—Each residential workforce housing unit constructed in the development shall be encumbered by a recorded deed restriction that meets the requirements of this chapter.~~
- ~~2.—Each residential workforce housing unit shall be sold or rented to an income eligible individual.~~
- ~~3.—Credits may only be issued for each residential workforce housing unit sold or rented to an income eligible individual in the appropriate income group, that is in excess of the residential workforce housing requirement set forth in section 2.96.040, provided that, for those developments comprised of one hundred percent residential workforce housing units, only seventy five percent of the residential workforce housing units sold or rented to income eligible individuals shall be eligible for credits. Further provided that, developments comprised of one hundred percent residential workforce housing units that are to be rented to households whose gross annual family income is sixty percent or less of the area median income as established by HUD, or as adjusted by the department for Hana, Lanai, and Molokai, shall be eligible for credits for each residential workforce housing unit constructed.~~
- ~~4.—Notwithstanding the foregoing, for those developments developed pursuant to chapter 201H, Hawaii Revised Statutes, only those developments comprised of one hundred percent residential workforce housing units shall be eligible to receive credits. Credits may only be issued for those residential workforce housing units sold or rented to income eligible individuals in the appropriate income groups, in excess of fifty percent of the total number of residential workforce housing units constructed.~~

~~B.—The credit may be used in any community plan area.~~

~~C. The credit may satisfy the requirement for any type of unit constructed.~~

~~D. The credit may satisfy the requirement for a unit in any income group.~~

~~E. 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.~~

~~F. The number of credits issued shall be set forth in the residential workforce housing agreement.~~

~~(Ord. No. 4780, § 1, 2017; Ord. No. 4235, § 1, 2015; Ord. No. 4177, § 7, 2014; Ord. 3418 § 1 (part), 2006)~~

2.96.060 - Residential workforce housing restrictions-ownership units.

A. Timing of 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.
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.

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:~~in perpetuity.
 - ~~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 ninety days from receipt of written notice from the owner.~~

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

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 military duty or short-term contracts for off-island employment.

f. Resale. The maximum resale price shall be established by the department using the following guidelines:

i. An appraisal of the property shall be required before occupancy.

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

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

g. 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.~~

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

i. The owner must notify the department upon inability to sell the unit and lot at the end of its life and inhabitability.

j. Upon the owner's inability to sell the unit at the end of its life and inhabitability, the County shall have the first option to purchase the unit and lot from the owner; said option shall be available to the County for a period of ninety days from receipt of written notice from the owner.

k. The restrictions contained in subparagraphs 2a through 2j above shall not apply in situations of foreclosure.