

REQUEST FOR LEGAL SERVICES

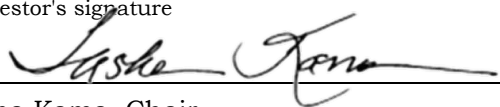
Date: September 26, 2025
From: Tasha Kama, Chair
Housing and Land Use Committee

TRANSMITTAL
Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Kristina Toshikiyo, Esq. or Nāhulu Nunokawa, Esq.

Subject: BILL 40 (2025), AMENDING CHAPTERS 2.96, 2.97, AND 3.44, MAUI COUNTY CODE, ON RESIDENTIAL WORKFORCE HOUSING UNITS (HLU-6)

Background Data: Please see attached Bill 40, CD1 (2025). Please submit your response to hlu.committee@mauicounty.us with a reference to HLU-6.

Work Requested: ☒ FOR APPROVAL AS TO FORM AND LEGALITY
☐ OTHER:

Requestor's signature  Tasha Kama, Chair	Contact Person <u>James Krueger</u> (Telephone Extension: <u>7761</u>)
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☐ ROUTINE (WITHIN 15 WORKING DAYS) ☐ RUSH (WITHIN 5 WORKING DAYS)
☐ PRIORITY (WITHIN 10 WORKING DAYS) ☐ URGENT (WITHIN 3 WORKING DAYS)

☒ SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): October 1, 2025
REASON: For posting on the October 10, 2025, Council meeting agenda.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO: CNN	ASSIGNMENT NO. 2025-0171	BY: jap
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TO REQUESTOR: ☒ APPROVED ☐ DISAPPROVED ☐ OTHER (SEE COMMENTS BELOW)
☐ RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE):

DEPARTMENT OF THE CORPORATION COUNSEL

Date 10/2/25

By  (Rev. 7/03)

hlu:ltr:006acc03:jgk

Attachment

ORDINANCE NO. _____

BILL NO. 40, CD1 (2025)

A BILL FOR AN ORDINANCE AMENDING CHAPTERS 2.96, 2.97, AND 3.44,
MAUI COUNTY CODE, ON RESIDENTIAL WORKFORCE HOUSING UNITS

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

SECTION 1. The Council finds that the Residential Workforce Housing Policy is not meeting the needs of Maui County residents. Therefore, this Ordinance's purposes are to:

1. Adjust the policy to promote retention of units available for owner occupancy.
2. Expedite the County's acquisition of Residential Workforce Housing units by exempting their purchase from the requirement of Council approval.
3. Increase the deed-restriction period for ownership units to preserve their benefit to the community.
4. Make other refinements to foster the production and protection of the County's residential workforce housing units.

SECTION 2. Section 2.96.040, Maui County Code, is amended by amending Subsection C to read as follows:

“C. Income group distribution.

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

a. Thirty percent of the ownership units [shall be] for “below-moderate income” residents[.], which are

those households whose gross annual family income is more than 80 percent, but not more than 100 percent of the area median income as established by HUD, or as adjusted by the department, for Hāna, Lāna‘i, and Molokai.

b. Fifty percent of the ownership units [shall be] for “moderate income” residents[.], which are those households whose gross annual family income is more than 100 percent, but not more than 120 percent of the area median income as established by HUD, or as adjusted by the department, for Hāna, Lāna‘i, and Molokai.

c. Twenty percent of the ownership units [shall be] for “above-moderate income” residents[.], which are those households whose gross annual family income is more than 120 percent, but not more than 140 percent of the area median income as established by HUD, or as adjusted by the department, for Hāna, Lāna‘i, and Molokai.

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

a. One-third of the rental units [shall be] for “very low income” and “low income” residents[.], which collectively are those households whose gross annual family income is 80 percent or less of the area median income as established by HUD, or as adjusted by the department, for Hāna, Lāna‘i, and Molokai.

b. One-third of the rental units [shall be] for “below-moderate income” residents[.], which are those households whose gross annual family income is more than 80 percent, but not more than 100 percent of the area median income as established by HUD, or as adjusted by the department, for Hāna, Lāna‘i, and Molokai.

c. One-third of the rental units [shall be] for “moderate income” residents[.], which are those households whose gross annual family income is more than 100 percent, but not more than 120 percent of the area median income as established by HUD, or as adjusted by the department, for Hāna, Lāna‘i, and Molokai.”

SECTION 3. Section 2.96.050, Maui County Code, is amended to read as follows:

“2.96.050 Residential workforce housing credits. A.

Credits may be issued by the director, upon request by the developer, [provided that:] subject to the following:

1. Each residential workforce housing unit constructed in the development [shall] must be encumbered by a recorded deed restriction that meets the requirements of this chapter.

2. Each residential workforce housing unit [shall] must be sold or rented to an [income eligible] income-eligible individual.

3. Credits may only be issued for each residential workforce housing unit sold or rented to an [income eligible] income-eligible individual in the appropriate income group, [that] which is in excess of the residential workforce housing requirement [set forth] in section 2.96.040[, provided]; except that[, for those developments [comprised] composed of [one hundred] 100 percent residential workforce housing units, only [seventy-five] 75 percent of the residential workforce housing units sold or rented to [income eligible] income-eligible individuals [shall] will be eligible for credits[. Further provided that,]; and developments [comprised] composed of [one hundred] 100 percent residential workforce housing units that are to be rented to households whose gross annual family income is [sixty] 60 percent or less of the area median income as established by HUD, or as adjusted by the department for [Hana, Lanai,] Hāna, Lāna‘i, and Molokai, [shall] will be eligible for credits for each residential workforce housing unit constructed.

4. [Notwithstanding the foregoing, for] For those developments developed [pursuant to] under chapter 201H, [Hawaii] Hawai‘i Revised Statutes, only those developments [comprised] composed of [one hundred] 100 percent residential workforce housing units [shall] will be eligible to receive credits. Credits may only be issued for those residential workforce housing units sold or rented to [income eligible] income-eligible individuals in the appropriate income groups, in excess of [fifty] 50 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] must be [set forth] in the residential workforce housing agreement.”

SECTION 4. Section 2.96.060, Maui County Code, is amended to read as follows:

“2.96.060 Residential workforce housing restrictions - ownership units. A. Timing of completion.

1. Residential workforce housing units [shall] must 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] may not be issued [and/or] and final inspections [shall] may not be passed for the market rate units unless certificates of occupancy are issued [and/or] and final inspections are passed for the residential workforce housing units concurrently or sooner.

B. Deed restrictions.

1. [The] Multifamily or two-family ownership units within each income group [shall be] are subject to the deed restrictions contained in this section for the following periods:

a. “Below-moderate income,” [ten] which are those households whose gross annual family income is more than 80 percent, but not more than 100 percent of the area median income as established by HUD, or as adjusted by the department, for Hāna, Lāna‘i, and Molokai: 12 years.

b. “Moderate income,” [eight] which are those households whose gross annual family income is more than 100 percent, but not more than 120 percent of the area median income as established by HUD, or as adjusted by the department, for Hāna, Lāna‘i, and Molokai: 10 years.

c. “Above-moderate income,” [five] which are those households whose gross annual family income is more than 120 percent, but not more than 140 percent of the area median income as established by HUD, or as adjusted by the department, for Hāna, Lāna‘i, and Molokai: eight years.

2. Single-family ownership units within each income group are subject to the deed restrictions contained in this section for the following periods:

a. “Below-moderate income,” which are those households whose gross annual family income is more

than 80 percent, but not more than 100 percent of the area median income as established by HUD, or as adjusted by the department, for Hāna, Lānaʻi, and Molokai: 15 years.

b. “Moderate income,” which are those households whose gross annual family income is more than 100 percent, but not more than 120 percent of the area median income as established by HUD, or as adjusted by the department, for Hāna, Lānaʻi, and Molokai: 12 years.

c. “Above-moderate income,” which are those households whose gross annual family income is more than 120 percent, but not more than 140 percent of the area median income as established by HUD, or as adjusted by the department, for Hāna, Lānaʻi, and Molokai: 10 years.

3. Ownership units on County-owned land will be subject to the deed restrictions contained in this section in perpetuity.

[2.] 4. For the deed-restricted period, the following [shall] apply:

[a. The unit must be owner-occupied.

b.] a. The owner must notify the department upon a decision to sell.

[c.] b. Upon the owner's decision to sell, the County [shall have] has the first option to purchase the unit from the owner; [said] the option [shall] will be available to the County for a period of [ninety] 60 days from receipt of written notice from the owner.

[d.] c. 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] began 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 military duty or short-term contracts for off-island employment.

f. Resale. The] d. The department must set the maximum resale price [shall be established by the department] using the following guidelines:

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

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

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

~~[g.]~~ e. 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]~~ must approve the sales price.

~~[h. The]~~ f. In situations of foreclosure, the County has the first option to purchase the residential workforce housing unit from the mortgage holder. The mortgage holder must provide written notice to the director of the County's opportunity to purchase the unit. The director must notify the mortgage holder of the County's intent to purchase the unit in writing within 90 days of receiving notice. If the County declines to purchase the unit, the restrictions [contained] in subparagraphs [2a] 4a through [2g above shall] 4e do not apply [in situations of foreclosure].

C. Ownership units must be occupied by the owner in perpetuity or used in perpetuity as a long-term rental under section 3.48.466, with rent no more than HUD's current affordable rent guidelines by unit size for a family of four at 100 percent of the area median income, not including utilities and without income restrictions, unless the director finds the requirement would cause undue hardship, including one or more of the following:

1. The owner is assigned to active military duty.
2. The owner has medical needs requiring relocation.
3. The owner is temporarily employed outside of the County.

The director must submit an annual report to the council of the waivers to the requirement granted for undue hardship under this subsection and the reasons for granting the waivers.

[C.] D. Sales price - dwelling units.

1. The sales price of a new dwelling unit must be established by the department using the current HUD area median income for Maui County and adjusted for very low, low, below moderate, moderate, above moderate, and gap income ranges. The sales price must be calculated using estimated total housing costs capped at 31 percent of gross annual income within each range when a developer receives direct County subsidies in accordance with section 3.35.040. Total housing costs include principal, interest, real property taxes, homeowner's insurance, mortgage insurance, and homeowner's association dues.

2. The sales price must be calculated using only principal and interest capped at 28 percent of gross annual income within each range when a developer does not receive direct County subsidies.

3. The department must create a program within the homeowner programs revolving fund to ensure affordability of units for buyers of workforce housing in projects that have been priced according to [section 2.96.060(C)(2).] paragraph (D)(2). Subsidies from this program must be used to subsidize qualified buyers in an amount necessary [such] so that a recipient's final estimated total housing cost does not exceed 31 percent of their household income. Subsidies from this program may be in the form of loans, grants, deferred mortgage payments, or any other mechanism the council finds appropriate. Any proposed subsidy to a homebuyer from this program must be administered in accordance with chapter 3.34.

4. The council may authorize a waiver of any provision of this chapter by resolution approved by two-thirds of its members.”

SECTION 5. Section 2.96.080, Maui County Code, is amended by amending Subsection A to read as follows:

“A. Before final subdivision approval or issuance of a building permit, the developer [shall enter into] must execute a residential workforce housing agreement that [sets forth] details the [detailed] terms and conditions of compliance with the residential workforce housing policy, including [but not limited to]:

1. Sales or rental periods for the residential workforce housing units, which specify procedures for the release of units from the residential workforce housing requirements should units not be sold or rented following the expiration of the sales or rental periods[;].

2. Identification of the number, type, and location of units[;].

3. Designation of units for specific income [and/or] or special housing target groups[;].

4. Marketing process for the residential workforce housing units[;].

5. Eligibility of income-qualified households[;].

6. Provision for residential workforce housing credits, as applicable[;].

7. Payment of in-lieu fees or provision of in-lieu land[; and].

8. Resale restrictions, which may include buy-back provisions, shared equity, and encumbrances.”

SECTION 6. Section 2.96.090, Maui County Code, is amended as follows:

1. By amending subsection B to read:

“B. Eligibility criteria. [In order to] To be eligible for a residential workforce housing unit[,] and be placed on the wait list for a unit, an applicant must meet the following criteria[.], as verified by the developer or its representative unless otherwise stated:

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

2. Be [eighteen] 18 years of age or older.

3. Have a gross annual family income (not to include the income of minors) [which] that does not exceed [one hundred forty] 140 percent of the County's area median income as established by HUD, or as adjusted by the department, for [Hana, Lanai,] Hāna, Lāna‘i, and Molokai. Initial determination for compliance with the maximum gross annual family income provision [shall] must be made by the developer[, its partner, or its management company] or its representative for the initial sale of residential workforce housing units[,] based on [the basis of] the information [provided on] in 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] will 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 forty] 140 percent of the County's area median income as established by HUD, or as adjusted by the department, for [Hana, Lanai,] Hāna, Lāna‘i, and Molokai. Assets [shall] include all cash, securities, stocks, bonds, and real property, with the understanding that assets being used for the down payment or closing costs [shall] are not [be] included in the asset calculation. Real property [shall be] is valued at fair market value less liabilities on [such real] the property. The director may waive the asset limitation in this paragraph. The director must submit an annual report to the council of the waivers granted under this paragraph and the reasons for granting the waivers.

5. For [a period of] three years before the submittal of the ownership application, have not had an interest of [fifty] 50 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[.] or the director approves a waiver of this requirement.

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

[7. Developer, its partner, or its management company shall verify that each applicant meets the requirements of eligibility set forth herein.]”

2. By amending Subsection D to read:

“D. Selection priority.

1. Residents on the wait list [shall] will 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] or its representative may do a mass mailing of housing applications to applicants on the project 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] To the extent permitted by law, the resident applicants selected by lottery must be ranked by the total length of time each has been a resident of the County, and the workforce housing units must be offered in the order of the rankings. Once the wait list has been exhausted of all residents, nonresidents will be offered residential workforce housing units in the order in which their names were drawn in the lottery.

4. [In the event that] If units are not sold within the first [ninety] 90 days after they are offered for sale, and the developer has made a [good faith] good-faith effort, as determined by the director, to contact and qualify applicants on the wait list, the sale of remaining units [shall] must be conducted as follows:

a. For the next [ninety-day] 90-day period, units [shall] must be offered for sale to the [next-higher] next higher income preference group[.] at the original sales price. For example, units targeted for families earning up to [one hundred twenty] 120 percent of the median income may be sold to families earning up to [one hundred forty] 140 percent of the median income. All other eligibility criteria [shall] apply.

b. Units [shall] must be offered to the next higher income group every [ninety] 90 days until the units are sold or there are no more income groups available.

c. Units [shall] must then be offered for sale to the County for 90 days.

d. If the County does not provide written notification to the developer of its intent to purchase all units offered to the County within 90 days, the remaining units must 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] 90-day period, [provided that as long as] if the applicant's income is within the residential workforce housing income groups.

[d.] e. Any units that remain unsold may be offered at market rate without deed restrictions. Upon the sale of the unit, the County [shall] must receive [fifty] 50 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] will have satisfied the requirement for producing a residential workforce housing unit.”

SECTION 7. Section 2.97.090, Maui County Code, is amended to read as follows:

“2.97.090 [Deed restrictions] Restrictions for projects with fee simple units. Units sold in fee simple [shall be] are subject to deed restrictions [set forth] in subsection [2.96.060(B)(2) of this title] 2.96.060(B)(4) for [ten] 12 years [commencing upon] from the closing of the sale. Units sold in fee simple are also subject to the owner-occupancy requirement in subsection 2.96.060(C).”

SECTION 8. Section 2.97.110, Maui County Code, is amended to read as follows:

“2.97.110 Residential workforce housing credits. Credits for residential workforce housing may be issued for eligible projects under section 2.96.050 [of this title].”

SECTION 9. Section 3.44.015, Maui County Code, is amended by amending Subsection C to read as follows:

“C. The director may acquire property[; except that in]. In the case of real property with a purchase price that exceeds \$250,000, the council [may] must authorize the acquisition by resolution[; except that]. The requirement of council approval [is not required for] does not apply to the purchase of [housing]:

1. Residential workforce housing units; or
2. Housing units for \$500,000 or less in accordance with repurchase options and other buy-back provisions granted to the County [as follows:] under either:

[1.] a. Deed [restriction] restrictions in a County housing project that secured final subdivision approval or certificate of occupancy [prior to] before January 1, 1999[.]; or

[2. Agreement] b. An agreement that was executed by and between the County and the developer of a housing project [prior to] before January 1, 1999, under a County housing program.”

SECTION 10. 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 11. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:

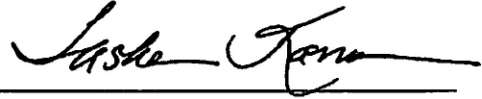


KRISTINA C. TOSHIKIYO

Department of the Corporation Counsel
County of Maui

hlu:misc:006abill03:jgk

INTRODUCED BY:

A handwritten signature in black ink, appearing to read 'Tasha Kama', written over a horizontal line.

TASHA KAMA

HLU Committee

From: Kristina C. Toshikiyo <Kristina.C.Toshikiyo@co.maui.hi.us>
Sent: Thursday, October 2, 2025 2:03 PM
To: HLU Committee
Cc: James G. Krueger; Alice L. Hale
Subject: Transmitting HLU-6 Bill 40, CD1 (2025)
Attachments: HLU-6 2025-10-02 RAFL Bill 40 CD1 (2025) Amd Chapters 2.96 2.97 and 3.44.pdf

Aloha,

Please see the attached signed bill.

Thank you!

Kristina

***Department of the Corporation Counsel emails may contain attorney-client privilege information and should not be forwarded without approval.

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