

REQUEST FOR LEGAL SERVICES

Date: October 24, 2018
From: Stacy Crivello, Chair
Housing, Human Services, and Transportation Committee

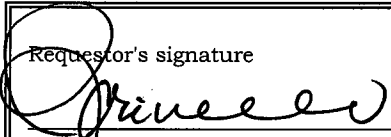
TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Jeffrey Ueoka, Esq.

Subject: RESIDENTIAL WORKFORCE HOUSING POLICY INCENTIVES AND EXEMPTIONS
(HHT-2(3))

Background Data: Please review the attached proposed bill and, if appropriate, approve as to form and legality. A signed hard copy is requested.

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

Requestor's signature  Stacy Crivello	Contact Person <u>Saumalu Mataafa</u> (Telephone Extension: 7665)
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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 25, 2018
REASON: For discussion at November 1, 2018 HHT Committee meeting.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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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 _____

By _____

(Rev. 7/03)

hht:ltr:002(3)acc02:ssm

Attachment

ORDINANCE NO. _____

BILL NO. _____ (2018)

A BILL FOR AN ORDINANCE AMENDING TITLE 2,
MAUI COUNTY CODE, RELATING TO RESIDENTIAL WORKFORCE HOUSING
POLICY INCENTIVES AND EXEMPTIONS

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

SECTION 1. Title 2, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER 2.97

**RESIDENTIAL WORKFORCE HOUSING POLICY
INCENTIVES AND EXEMPTIONS**

Sections:

- 2.97.010 Purpose
- 2.97.020 Definitions
- 2.97.030 Project eligibility
- 2.97.040 Environmental assessment
- 2.97.050 Community meetings
- 2.97.060 Application
- 2.97.070 Application fee
- 2.97.080 Income group distribution
- 2.97.090 Deed restrictions for projects with fee simple units
- 2.97.100 Deed restrictions for projects in which units are leased
- 2.97.110 Credits
- 2.97.120 Exemptions
- 2.97.130 Real property tax treatment
- 2.97.140 Water availability exemption
- 2.97.150 Fee waiver
- 2.97.160 Timing of completion
- 2.97.170 Council approval
- 2.97.180 Annual report

- 2.97.190 Indemnification
- 2.97.200 County not a party

2.97.010 Purpose. The purpose of this chapter is to establish a process by which developers of 100 percent residential workforce housing projects may seek fast track development of their projects by applying for county exemptions from this code.

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

“Applicant” means the individual, entity, developer, or consultant who submits an application for residential workforce housing policy exemptions and incentives to the department.

“Department” means the department of housing and human concerns.

“Developer” means the individual or entity proposing to build or construct a 100 percent residential workforce housing project.

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

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

2.97.030 Project eligibility. All units in the project shall be residential workforce housing units as defined in this chapter and shall be sold or rented to families or individuals whose gross annual income is less than 140 percent of area median income as established by HUD, or as adjusted by the department for Hana, Lanai, and Molokai.

2.97.040 Environmental assessment. In the event that an environmental assessment pursuant to chapter 343, Hawaii Revised Statutes is not required, fast track projects developed under this chapter shall complete an environmental assessment that meets the following requirements:

1. Identification of the applicant and developer.
2. For applicant actions, identification of the department as the approving agency.
3. List of all required permits and approvals (state, federal, and county) and, for applicants, identification of which approval necessitates chapter 343, Hawaii Revised Statutes, environmental review.

4. Identification of agencies, citizen groups, and individuals consulted in preparing the environmental assessment.

5. General description of the action's technical, economic, social, cultural, and environmental characteristics.

6. Summary description of the affected environment, including suitable and adequate regional, location and site maps such as Flood Insurance Rate Maps, Floodway Boundary Maps, or United States Geological Survey topographic maps.

7. Identification and analysis of impacts and alternatives considered.

8. Proposed mitigation measures.

9. The department's anticipated determination, including findings and reasons supporting the anticipated FONSI, if applicable.

10. Written comments, if any, and responses to the comments received, if any, and made pursuant to any consultation.

2.97.050 Community meetings. Prior to submitting its application for a fast track housing project to the director, the developer shall hold informational meetings where the public has the opportunity to provide testimony regarding the project. These community meetings shall be used to gauge community reaction to the project. Developer shall keep minutes for the meeting that provide a true reflection of the matters discussed and the views of the participants.

2.97.060 Application. Applicant shall submit its application for a fast track housing project to the director. The director may request additional information with the understanding that the application shall contain, at a minimum, the following:

1. Name of project.
2. Name of property owner.
3. Name of applicant and developer.
4. Description of property, including tax map key number.
5. Project description.
 - a. Number of units.
 - b. Number of bedrooms in the units.

- c. Income group distribution of units.
 - d. Proposed sales prices or monthly rental fees.
 - e. Preliminary plans and specifications for the units.
 - f. Square footage of units.
 - g. Amenities in project, if any, (parks, community center, meetings rooms, etc.).
 - h. Project phases, if applicable.
 - i. Total area of project.
- 6. Site plan.
 - 7. Infrastructure description.
 - 8. Project financing, including any governmental involvement.
 - 9. Summary of comments from community groups.
 - 10. Minutes of all community meetings held.
 - 11. Current state land use district, zoning district, and community plan designation. If the director supports the project and deems the application complete, the director may submit the application with accompanying resolution to the council for its review and approval.

2.97.070 Application fee. At the time of submission of an application for fast track housing to the director, applicant shall deposit a refundable application fee as set forth in the annual budget ordinance. The application fee shall be refunded to applicant upon completion of the project within the timeframe set forth by the resolution.

2.97.080 Income group distribution. Projects developed under this chapter shall comply with section 2.96.040(C), income group distribution.

2.97.090 Deed restrictions for projects with fee simple units. Units sold in fee simple shall be subject to deed restrictions set forth in section 2.96.060(B)(2) for ten years commencing upon closing of the sale.

2.97.100 Deed restrictions for projects in which units are leased. Projects in which units are leased shall be subject to deed restrictions set forth in sections 2.96.070(B)(2), 2.96.070(B)(3), and

2.96.070(B)(4) for thirty years commencing upon issuance of a certificate of occupancy.

2.97.110 Residential workforce housing credits. Credits for residential workforce housing may be issued for eligible projects under section 2.96.050.

2.97.120 Exemptions. Notwithstanding any law to the contrary, an applicant may include in its application a request for exemption or modification of any section of this code, provided that the project still meets the minimum requirements for health and safety. Exemptions or modification may include, but shall not be limited to the following:

1. Title 19 of this code relating to zoning, with the understanding that if the application requests exemption of the project from any development standards, the application shall set forth alternative development standards.

2. Title 18 of this code relating to subdivision requirements.

3. Chapter 2.80B of this code relating to general plan and community plans.

4. Chapter 19.68 of this code relating to state land use district boundary amendments for projects less than fifteen acres in the agricultural, rural, and urban districts.

2.97.130 Real property tax treatment. During the deed restricted period, rental projects developed under this chapter shall be considered low and moderate income housing for the purposes of section 3.48.545 of this code. Upon approval of the fast track housing project, the developer may dedicate the property for real property tax purposes during the construction period pursuant to Section 3.48.366 of this code.

2.97.140 Water availability exemption. Projects developed in accordance with this chapter and located in the department of water supply's central or west Maui water systems shall qualify for the exemption set forth in section 14.12.030(F) of this code.

2.97.150 Fee Waiver. Projects developed in accordance with this chapter shall be eligible for the following waivers or partial waivers of fees as set forth in the following sections of this code:

1. Driveway permit fee, section 12.08.050 of this code.
2. Wastewater assessment fees for facility expansion for the Kihei regional wastewater treatment system, section 14.34.080 of this code.
3. Wastewater assessment fees for facility expansion for the Wailuku-Kahului regional wastewater treatment system, section 14.35.080 of this code.
4. Impact fees for traffic and roadway improvements in West Maui, Hawaii, section 14.62.120 of this code.
5. Impact fees for traffic and roadway improvements in Kihei and Makena, Maui, Hawaii, section 14.68.120 of this code.
6. Impact fees for traffic and roadway improvements in Hana, Maui, Hawaii, section 14.70.120 of this code.
7. Impact fees for traffic and roadway improvements in Makawao-Pukalani-Kula, Maui, Hawaii, section 14.74.120 of this code.
8. Impact fees for traffic and roadway improvements in Wailuku-Kahului, Maui, Hawaii, section 14.76.120 of this code.
9. Impact fees for traffic and roadway improvements in Paia-Haiku, Maui, Hawaii, section 14.78.120 of this code.
10. Grubbing and grading permit fees, section 20.08.090 of this code.
11. Plumbing permit fees, section 16.20B.103.4 of this code.
12. Electrical permit fees, section 16.18B.107 of this code.
13. Building permit fees, section 16.26B.108 of this code.
14. Park dedication and assessment fees, section 18.16.320(I)(5) of this code.

2.97.160 Timing of completion. Construction of the project shall be initiated within two years of the adoption of the resolution and shall be completed within five years of the adoption of the resolution. For purposes of this section, construction of the project shall be considered initiated when a building permit is

issued and construction of a building has begun. A one-time extension may be allowed by council by resolution. Upon commencement of construction, the developer shall work with the department of public works on a form of bonding to ensure that construction is completed within the designated timeframe.

2.97.170 Council approval. Upon receipt of the application for fast track housing from the director, council may approve, approve with modifications, or disapprove the application via resolution. In the event that the council fails to approve, approve with modifications, or disapprove the resolution within sixty days of receipt of the application, the director may approve, approve with modifications, or disapprove the application. If the director does not approve, approve with modifications, or disapprove the application within fourteen days the application shall be deemed approved.

2.97.180 Annual report. Until every proposed unit in the development is sold or initially rented, as applicable, the developer shall submit an annual report to the council. The annual report shall contain information relating to the progress of the development and shall be due to the council within thirty days of the annual anniversary of the fast track housing resolution approved by council. Failure to submit the annual report in a timely manner may result in forfeiture of the application fee. The council shall determine whether the application fee shall be forfeited with the decision to forfeit made by resolution.

2.97.190 Indemnification. Each applicant and developer shall be required to indemnify, defend, and hold harmless the County from and against any claim, liability, loss, cost, expense, or cause of action arising out of or resulting from any approvals granted or agreements entered into relating to the fast track housing process established in this chapter. Applicant and developer shall be required to carry insurance with terms and limits deemed acceptable by the Corporation Counsel.

2.97.200 County not a party. This chapter shall not be interpreted or construed in any manner to determine the County to be the applicant, developer or a party to the development.”

SECTION 2. Chapter 3, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:

“3.48.366 Land dedicated for fast track housing. A. A special land reserve is established to enable an owner of land on which a residential workforce housing project has been approved for fast track housing by the council pursuant to section 2.96.160 of this code to dedicate the project site for fast track housing and be exempt from real property taxes until the project is complete.

B. If the owner desires to dedicate the project site for fast track housing, the owner shall petition the director of finance and affirm the owner shall complete the fast track housing pursuant to the application approved by the council in accordance with section 2.96.160 of this code.

C. Upon confirmation of council’s application approval for fast track housing, the director of finance shall approve the petition and declare the property to be dedicated to fast track housing.

D. The approval of the petition by the director of finance to dedicate a property for fast track housing shall constitute a forfeiture on the part of the owner of any right to change the use of the project site as set forth by section 2.96.160 of this code.

E. Failure of the owner to commence construction within the time period set forth by section 2.96.160 of this code shall forfeit the special tax assessment privilege retroactive to the date of the dedication and all real property taxes that would have been due from assessment shall be payable with a 10 percent penalty from the respective dates that these payments would have been due. Nothing in this subsection shall preclude the County from pursuing any other remedy to enforce the covenant on the use of the land.

F. The taxes and penalties, due and owing as a result of failure of the owner to commence construction within the time period set forth by section 2.96.160 of this code, shall be a paramount lien upon the property as provided for by ordinance.

G. The director of finance shall prescribe the form of the petition. The petition shall be filed with the director of finance by September first of any calendar year and shall be approved or disapproved by December fifteenth. If approved, the assessment based upon the use requested in the dedication shall be effective on January first of the next calendar year.”

SECTION 3. Section 14.62.120, Maui County Code, is amended by amending subsection A to read as follows:

“A. The following shall be exempted from payment of the impact fee:

1. Alterations or expansion of an existing dwelling unit where no additional units are created and the use is not changed;
2. The construction of accessory buildings or structures, as defined in [Chapter] chapter 19.04[,] of this code, which will not increase the traffic counts;
3. The replacement of an existing building or structure with a new building or structure of the same size and use which will not increase the traffic counts;
4. The construction of publicly owned governmental buildings; [or]
5. The construction of government-sponsored affordable housing projects[.]; or
6. Developments comprised of 100 percent residential workforce housing units, as defined in section 2.96.020 of this code.”

SECTION 4. Section 14.68.120, Maui County Code, is amended by amending subsection A to read as follows:

“A. The following shall be exempted from payment of the impact fee:

1. Alterations or expansion of an existing dwelling unit where no additional units are created and the use is not changed;
2. The construction of accessory buildings or structures, as defined in [Chapter] chapter 19.04[,] of this code, which will not increase the traffic counts;
3. The replacement of an existing building or structure with a new building or structure of the same size and use which will not increase the traffic counts;
4. The construction of publicly owned governmental buildings; [or]
5. The construction of government-sponsored affordable housing projects[.]; or

6. Developments comprised of 100 percent residential workforce housing units, as defined in section 2.96.020 of this code.

SECTION 5. Section 14.70.120, Maui County Code, is amended by amending subsection A to read as follows:

“A. The following shall be exempted from payment of the impact fee:

1. Alterations or expansion of an existing dwelling [unlit] unit where no additional units are created and the use is not changed;

2. The construction of accessory buildings or structures, as defined in chapter 19.04 of this code, which will not increase the traffic counts;

3. The replacement of an existing building or structure with a new building or structure of the same size and use which will not increase the traffic counts;

4. The construction of publicly owned governmental buildings; [or]

5. The construction of government-sponsored affordable housing projects[.]; or

6. Developments comprised of 100 percent residential workforce housing units, as defined in section 2.96.020 of this code.”

SECTION 6. Section 14.74.120, Maui County Code, is amended by amending subsection A to read as follows:

“A. The following shall be exempted from payment of the impact fee:

1. Alterations or expansion of an existing dwelling unit where no additional units are created and the use is not changed;

2. The construction of accessory buildings or structures, as defined in chapter 19.04 of this code, which will not increase the traffic counts;

3. The replacement of an existing building or structure with a new building or structure of the same size and use which will not increase the traffic counts;

4. The construction of publicly owned governmental buildings; [or]

5. The construction of government-sponsored affordable housing projects[.]; or

6. Developments comprised of 100 percent residential workforce housing units, as defined in section 2.96.020 of this code.”

SECTION 7. Section 14.76.120, Maui County Code, is amended by amending subsection A to read as follows:

“A. The following shall be exempted from payment of the impact fee:

1. Alterations or expansion of an existing dwelling unit where no additional units are created and the use is not changed;

2. The construction of accessory buildings or structures, as defined in chapter 19.04 of this code, which will not increase the traffic counts;

3. The replacement of an existing building or structure with a new building or structure of the same size and use which will not increase the traffic counts;

4. The construction of publicly owned governmental buildings; [or]

5. The construction of government-sponsored affordable housing projects[.]; or

6. Developments comprised of 100 percent residential workforce housing units, as defined in section 2.96.020 of this code.”

SECTION 8. Section 14.78.120, Maui County Code, is amended by amending subsection A to read as follows:

“A. The following shall be exempted from payment of the impact fee:

1. Alterations or expansion of an existing dwelling unit where no additional units are created and the use is not changed;

2. The construction of accessory buildings or structures, as defined in chapter 19.04 of this code, which will not increase the traffic counts;

3. The replacement of an existing building or structure with a new building or structure of the same size and use which will not increase the traffic counts;

4. The construction of publicly owned governmental buildings; [or]

5. The construction of government-sponsored affordable housing projects[.]; or

6. Developments comprised of 100 percent residential workforce housing units, as defined in section 2.96.020 of this code.”

SECTION 9. 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 10. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND
LEGALITY:

Department of the Corporation
Counsel
County of Maui
hht:misc:002(3)abil02:ssm