

REQUEST FOR LEGAL SERVICES

RECEIVED
CORPORATION COUNSEL

Date: September 28, 2018

From: Stacy Crivello, Chair

2018 SEP 28 AM 10: 06

Housing, Human Services, and Transportation Committee

TRANSMITTAL

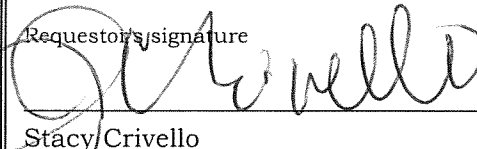
Memo to: DEPARTMENT OF THE CORPORATION COUNSEL

Subject: AMENDMENTS TO THE RESIDENTIAL WORKFORCE HOUSING POLICY
(HHT-2(3))

Background Data: Please approve the attached proposed bill, relating to incentives and exemptions for one hundred percent residential workforce housing projects, as to form and legality. Please include a signed hard copy in your response.

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

RECEIVED
2018 OCT 24 PM 3:23
OFFICE OF THE
COUNTY COUNCIL

Requestor's signature  Stacy Crivello	Contact Person Saumalu Mataafa (Telephone Extension: 7665)
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- ROUTINE (WITHIN 15 WORKING DAYS)
- PRIORITY (WITHIN 10 WORKING DAYS)
- RUSH (WITHIN 5 WORKING DAYS)
- URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): October 2, 2018
REASON: For discussion at October 4, 2018 HHT Committee meeting.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO: <u>J Tu</u>	ASSIGNMENT NO. <u>2017-0097</u>	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):
revised version 10/23/18

DEPARTMENT OF THE CORPORATION COUNSEL

Date 10/24/18

By 

(Rev. 7/03)

hht:ltr:002(3)acc01:ssm

Attachment

ORDINANCE NO. _____

BILL NO. _____ (2018)

A BILL FOR AN ORDINANCE AMENDING THE
MAUI COUNTY CODE RELATING TO INCENTIVES AND EXEMPTIONS FOR
WORKFORCE HOUSING

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

SECTION 1. Chapter 2.96, Maui County Code, is amended by adding a
new section to be appropriately designated and to read as follows:

“2.96.160 Incentives and exemptions. A. Purpose. The purpose of this chapter is to set forth a process in which developers of 100 percent residential workforce housing projects may seek to fast track development of their projects by applying for county exemptions from this code.

B. 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.

C. Environmental assessment. Fast track projects developed under this section shall complete an environmental assessment that meets the requirements of chapter 343, Hawaii Revised Statutes.

D. Community meetings. Prior to submitting its application for fast track housing to the director, 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 give a true reflection of the matters discussed and the views of the participants.

E. Application. Developer shall submit its application for fast track housing to the director. If the director supports the project and deems the application complete, the director may submit the application with accompanying resolutions to the

council for its review. 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 developer.
4. Description of property.
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. Current state land use district, zoning district, and community plan designation.

F. Application fee. At the time of submission of an application for fast track housing to the director, developer shall deposit a refundable application fee of \$50,000 or an amount equal to 10 percent of the project development cost, whichever is less. The application fee shall be refunded to developer upon completion of the project within the timeframe set forth by the resolution. Director shall have the discretion to refund the application fee for those projects that are completed outside of the timeframe set forth by resolution.

G. Income group distribution. Projects developed under this section shall comply with section 2.96.040(C) in regards to income group distribution.

H. Deed restricted period.

1. For sale units shall be subject to deed restrictions for ten years commencing upon closing of the sale.

2. Rental projects shall be subject to deed restrictions for thirty years commencing upon issuance of a certificate of occupancy.

I. Deed restrictions.

1. For sale units shall be subject to the deed restrictions set forth in section 2.96.060(B).

2. Rental projects shall be subject to the deed restrictions set forth in section 2.96.070(B).

J. Credits. Credits may be issued for fast track housing projects under section 2.96.050.

K. Exemptions. Notwithstanding any law to the contrary, a developer may include in its application for fast track housing 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 exempts 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 title pertaining to general plan and community plans.

4. Chapter 19.68 of this code as it relates to district boundary amendments for projects less than fifteen acres in the agricultural, rural, and urban districts.

L. Real property tax treatment. Rental projects developed under this section, during the deed restricted period, 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, developer may dedicate the property for real property tax purposes during the construction period pursuant to Section 3.48.366 of this code.

M. Water availability exemption. Projects developed under this section 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.

N. Fee Waiver. Units constructed under this section shall be considered residential workforce housing units and shall be eligible for 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 assessment fees, section 18.16.320(I)(5) of this code.

O. Timing of completion. Construction of the project shall be initiated within two years of the adoption of the resolution and be completed within three 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, developer shall work with the department of public works on a form of bonding to ensure that construction is completed within the designated timeframe.

P. 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.

Q. Annual report. Until every proposed unit in the development is sold or rented, as applicable, 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 anniversary of the fast track housing approval by the council. Failure to timely submit the annual report may result in forfeiture of the application fee. The council shall have the authority to determine whether the application fee shall be forfeited with the decision to forfeit made by resolution.

R. 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. Applicant and developer shall be required to carry insurance with terms and in an amount deemed acceptable by the County.

S. County not a party. This section shall not be interpreted or construed in a manner to find the County to be the 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 Lands dedicated for fast track housing. A. A special land reserve is established to enable the owner of land that 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.

B. If the owner desires to dedicate the project site for fast track housing, the owner shall petition the director of finance and declare in the petition that if the petition is approved, 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 receipt of any such petition, the director of finance shall confirm that council approved developer's application for fast track housing. Once confirmed, the owner and 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 use shall constitute a forfeiture on the part of the owner of any right to change the use of the project site for the period of construction 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 amounts of 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)abil01:ssm