

# REQUEST FOR LEGAL SERVICES

**Date:** September 25, 2020  
**From:** Tasha Kama, Chair  
Affordable Housing Committee

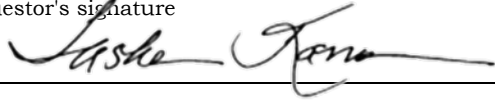
TRANSMITTAL

**Memo to:** DEPARTMENT OF THE CORPORATION COUNSEL  
Attention: Mimi DesJardins, Esq.

**Subject:** A BILL FOR AN ORDINANCE AMENDING SECTION 3.35, MAUI COUNTY CODE, RELATING TO GRANT OR LOAN REQUIREMENTS (AH-11)

**Background Data:** Please review revised proposed bill, and if appropriate, approve as to form and legality.

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

Requestor's signature 	Contact Person <u>Alison Stewart</u> (Telephone Extension: <u>7661</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): Due by 09/30/2020  
REASON: For posting on the October 9 Council agenda

## 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 September 30, 2020

By /s/ Mimi Desjardins

(Rev. 7/03)

ah:ltr:011acc01:ans

Attachment

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2020)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.35, MAUI COUNTY CODE, RELATING TO GRANT OR LOAN REQUIREMENTS

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

SECTION 1. Section 3.35.050, Maui County Code, is amended by amending subsection A to read as follows:

“A. [Ownership housing units financed by the affordable housing fund shall be subject to the restrictions of subsection 2.96.060(B) of this code. Rental housing units financed by the affordable housing fund shall be subject to the restrictions of subsection 2.96.070(C) of this code.] Unless otherwise approved by the council by resolution:

1. Ownership housing units financed by the affordable housing fund must be subject to the restrictions of subsection 2.96.060(B) of this code.

2. Rental housing units financed by the affordable housing fund must be subject to the restrictions of subsection 2.96.070(B) of this code.”

SECTION 2. Section 3.35.060, Maui County Code, is amended to read as follows:

**“3.35.060 Criteria for selection of grant or loan proposals.**

A. Grant or loan proposals [submitted shall] must 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] must 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[.]; however, a request for exemption from this provision may be approved by the council by resolution if:

a. All of the dwelling units are offered as affordable, with the exception of any managers' units.

b. The dwelling units remain affordable for not less than thirty years."

SECTION 3. Section 3.35.070, Maui County Code, is amended to

read as follows:

**"3.35.070 Grant or loan requirements.** A. A grant or loan agreement for distribution of funds [shall] must contain the following conditions and restrictions[:], unless otherwise approved by the council by resolution:

1. Title to any real property [shall] must be held in perpetuity by [grantee/borrower] the grantee or borrower unless conveyed to the County[,], or to a qualified nonprofit or community land trust[;].

2. The [grantee/borrower shall] grantee or borrower must submit annual reports to the department of housing and human concerns documenting the progress toward implementing long-term management of the affordable housing project[;].

3. The [subject] project [shall] must 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] If the grantee or borrower dissolves or is adjudicated bankrupt [pursuant to any applicable federal statute], title to any real property [which] that has been funded or improved by a grant or loan issued from the fund [shall] must be conveyed to the County[,], or to a qualified nonprofit or community land trust as approved by the council[;and] by resolution.

5. The [grantee/borrower shall] grantee or borrower must not distribute or redistribute grant or loan funds to other [third-party] organizations [without the prior approval of the council].

B. [Loans] Unless otherwise approved by council by resolution, loans from the fund [shall:] must:

1. Be secured by a first mortgage lien in favor of the County[,], or, subject to council approval[,], by resolution, be secured by a second mortgage lien in favor of the County[;].

2. Have a term set by the director[;] of housing and human concerns.

3. Require the borrower to execute a promissory note in favor of the County[;].

4. Include an interest rate set at [three per cent] 3 percent per annum[; and].

5. Be recorded with the bureau of conveyances or the land court of the [state.] State.”

C. [In the event of a loan default,] If a borrower defaults or 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 the principal balance at an annual interest rate equal to two times the prime rate at the time of default.”

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 takes effect upon its approval.

APPROVED AS TO FORM AND  
LEGALITY:

/s/ Mimi Desjardins

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MIMI DESJARDINS  
Deputy Corporation Counsel

LF 2020-1280 2020-09-30 revised