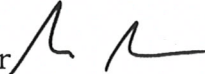


November 23, 2021

MEMO TO: AH-14(7) File

F R O M: Gabe Johnson, Chair 
Affordable Housing Committee

SUBJECT: **TRANSMITTAL OF INFORMATIONAL DOCUMENTS RELATING
TO EXPANDING AFFORDABLE HOUSING FUNDING** (AH-14(7))

The attached informational documents pertain to Item 14(7) on the Committee's agenda.

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Attachment

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COUNTY COUNCIL

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Chapter 3.32 HOUSING INTERIM FINANCING AND BUY-BACK REVOLVING FUND

3.32.010 Established.

There is created and established a fund to be known as the "Housing Interim Financing and Buy-back Revolving Fund."

(Ord. 934 § 1 (part), 1979: prior code § 5-10.1)

3.32.020 Purpose.

There shall be deposited into the housing interim financing and buy-back revolving fund all moneys received by the county from banking institutions for the purpose of providing interim financing for county housing projects pursuant to the authorization granted in this chapter to the director of finance, and for the purpose of purchasing housing units pursuant to repurchase options and other buy-back provisions granted to the county under agreements with homeowners under the county's housing program and projects or under any agreement granting such rights to the county.

(Ord. 934 § 1 (part), 1979: prior code § 5-10.2)

3.32.030 Authorization; interest rate.

- A. The director of finance is authorized to enter into agreements with any banking or lending institution on behalf of the county of Maui and/or Hale Mahaolu in an aggregate amount not to exceed thirty-five million dollars for the purpose of providing interim financing for the following housing projects:
1. Kahului Homeownership Project;
 2. Hana Housing Project;
 3. Honokowai Housing Project;
 4. Central Maui Homeownership Project;
 5. Kihei Housing Project;
 6. Paukukalo Housing Project;
 7. Luana Gardens I Housing Project;
 8. Luana Gardens II Rental Project;
 9. Luana Gardens III Rental Project;
 10. Upper Paia Homeownership Project;

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11. Lanai Rental Project;
 12. West Maui Homeownership Project;
 13. West Molokai Housing Project;
 14. Lahaina Housing Project;
 15. Lanai Housing Project;
 16. Waiale Road Housing Project.
- B. Funds from the housing interim financing and buy-back revolving fund may be used for the purpose of purchasing housing units pursuant to repurchase options and other buy-back provisions granted to the County under agreements with homeowners under the County's housing programs and projects, or under any agreement granting such rights to the County; further, the director of finance is authorized to deposit in the fund proceeds from the sale of housing units purchased pursuant to the repurchase options. Expenditures from the fund shall be through appropriations set forth in Appendix A.II. of the annual budget ordinance.
- C. Interest Rate. Pursuant to the authority granted to the council by chapter 47, Hawaii Revised Statutes, the interest rate for bonds issued under the provisions of said chapter for the housing interim financing and buy-back revolving fund shall not exceed an average of twelve percent per year.
- (Ord. No. 4447, § 2, 2017 ; Ord. 2290 § 1, 1993; Ord. 2249 § 1, 1993; Ord. 1295 § 1, 1983; Ord. 1229 § 1, 1982; Ord. 934 § 1 (part), 1979: prior code § 5-10.3)

3.32.040 Administration.

The director of finance shall be responsible for the administration of this fund. The fund shall be used to provide interim financing for the housing projects identified in this chapter and to purchase housing units pursuant to repurchase options and other buy-back provisions granted to the County under agreements with homeowners all in accordance with such procedures as the director may prescribe. Expenditures from the fund shall be through appropriations set forth in Appendix A.II. of the annual budget ordinance.

(Ord. No. 4447, § 3, 2017 ; Ord. 934 § 1 (part), 1979: prior code § 5-10.4)

Chapter 3.34 HOME ACQUISITION AND OWNERSHIP PROGRAMS REVOLVING FUND

3.34.010 Fund establishment.

A fund shall be established and created to be known as the "home acquisition and ownership programs revolving fund."

(Ord. No. 5086 , § 1, 2020)

3.34.020 Purpose.

The home acquisition and ownership programs revolving fund will enable the department of housing and human concerns to continue to maintain and expand existing programs and create new programs to meet the needs of Maui County residents qualified to participate in the first-time homebuyers down payment assistance program, the individual development account program, and similar future programs to be named in this paragraph upon establishment and approval by council.

(Ord. No. 5225 , § 1, 2021; Ord. No. 5086 , § 1, 2020)

3.34.030 Administration.

- A. The director of finance shall establish a separate account to record all revenues and expenses as a result of the home acquisition and ownership programs established in the County.
- B. There shall be deposited into the home ownership and acquisition revolving fund any council appropriations to the first-time homebuyers program, all moneys granted or donated to the County in the future for home acquisition and ownership programs, and all moneys repaid to the County by previous recipients of home acquisition and ownership programs. Funds deposited into the home acquisition and ownership programs revolving fund will not lapse at the end of the fiscal year.
- C. Any proposed appropriation from the fund shall be submitted to the council for approval as a budget appropriation in either the annual budget or a proposed amendment to the budget ordinance. In adopting each fiscal year's budget and capital program, the council may make appropriations to the fund.

(Ord. No. 5086 , § 1, 2020)

3.34.040 Use of fund.

Council appropriations from the home acquisition and ownership programs revolving fund shall be for the public purposes set forth in section 3.34.020.

(Ord. No. 5086 , § 1, 2020)

3.34.050 Term of fund.

The ordinance codified in this chapter shall automatically expire on June 30, 2031, unless reenacted by the council as provided by law.

(Ord. No. 5086 , § 1, 2020)

Chapter 3.35 AFFORDABLE HOUSING FUND

3.35.010 Purpose.

- A. There shall be deposited into the affordable housing fund all moneys paid to the County in lieu of providing residential workforce housing units, any council appropriations to the fund, and all moneys donated to the County for affordable housing projects. The revenues and unencumbered balance in the fund shall be used for the provision, protection, and expansion of affordable housing and suitable living environments for residents of very low to gap income, including the rehabilitation of existing structures, land purchase or other acquisition of land or property entitlements, planning, design, and construction.
- B. In adopting fiscal years 2008 through 2021 annual operating budgets and capital improvement programs, the council shall appropriate a minimum of two percent of the certified real property tax revenues to the affordable housing fund. Any appropriations to this fund shall not substitute, but shall be in addition to, those appropriations historically made for the purposes stated in this chapter.
- C. The revenues and unencumbered balance in this fund shall not be used for any purpose except those defined in this chapter.
- D. On an annual basis, no more than three percent of this fund shall be used for administrative expenses.

(Ord. 4323, § 2, 2016 ; Ord. No. 3817, § 1, 2011; Ord. 3481 § 1, 2007: Ord. 3418 § 2, 2006)

3.35.020 Fund established.

There is established and created a fund to be known as the "Affordable Housing Fund."
(Ord. 3418 § 2, 2006)

3.35.025 Definitions.

- A. Whenever used in this chapter, unless a different meaning clearly appears from the context, the definitions in section 2.96.020 of this code shall apply.
- B. "Gap income" shall refer to those households whose gross annual family income is more than one hundred forty percent, but not more than one hundred sixty percent, of the area median income as established by the United States Department of Housing and Urban Development or as adjusted by the department of housing and human concerns, for Hana, Lanai, and Molokai.

(Ord. 4323, § 3, 2016 ; Ord. 3481 § 2, 2007)

3.35.030 Administration.

- A. The director of finance shall establish a separate account to record revenues and supplemental transfers credited to, and expenditures made from, the fund.
- B. Any unencumbered balance in the fund at the end of each fiscal year shall not lapse, but shall remain in the fund, accumulating from year to year.
- C. The director of housing and human concerns shall administer the fund.
- D. The director of housing and human concerns and the director of finance may adopt administrative rules necessary to carry out the purposes of this chapter.
- E. Revenues received from a developer to partner with a nonprofit organization or community land trust are deemed appropriated upon receipt and are authorized to be expended for the purposes of the fund.

(Ord. No. 3817, § 2, 2011; Ord. 3418 § 2, 2006)

3.35.040 Use of fund.

The council may make appropriations from the affordable housing fund for the following:

- A. To increase the supply of affordable, rental, and owner-occupied housing;
- B. To acquire interests in real property for purposes set forth in this chapter;
- C. For planning, design, or construction of affordable rental or owner-occupied housing for residents within income-qualified groups;
- D. To provide housing for elderly, disabled, and homeless residents lacking a permanent home;
- E. To provide grants or loans to any nonprofit or community land trust that complies with Section 501(c) of the Internal Revenue Code and any other requirement under federal, state, and county law regulating the conduct of charitable or nonprofit organizations, provided that the purpose of any grant or loan shall be for the purposes set forth in section 3.35.010 of this chapter;
- F. To leverage funds provided by federal, state, nonprofit, or for-profit organizations and other non-County entities to further expand affordable housing opportunities;
- G. To acquire existing housing or cooperative units for rehabilitation as affordable rental or owner-occupied housing, or both; or
- H. To increase investment in public infrastructure in connection with related affordable housing projects.

(Ord. 3481 § 3 (part), 2007)

3.35.050 Term of affordability.

- A. 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.
- B. The restrictions imposed by this section shall run with and bind the housing units, and the department shall record such restrictions with the bureau of conveyances or the land court of the State.

(Ord. No. 5131 , § 1, 2020; Ord. No. 4323, § 4, 2016 ; Ord. No. 4177, § 12[13], 2014; Ord. 3481 § 3 (part), 2007)

3.35.060 Criteria for selection of grant or loan proposals.

- A. Grant or loan proposals 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.
 - 3. A description of all efforts to leverage or match funding from non-County sources for the project.
- B. Grant or loan proposals must meet the following criteria:
 - 1. Demonstrate the project is consistent with the requirements set forth in section 3.35.010.
 - 2. Demonstrate the project can be effectively managed and maintained as affordable and significantly contribute to the creation of affordable housing units.
 - 3. Demonstrate the 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.

(Ord. No. 5131 , § 2, 2020; Ord. 3481 § 3 (part), 2007)

3.35.070 Grant or loan requirements.

- A. A grant or loan agreement for distribution of funds must contain the following conditions and restrictions, unless otherwise approved by the council by resolution:
 - 1. Title to any real property must be held in perpetuity by the grantee or borrower unless conveyed to the County or to a qualified nonprofit or community land trust.
 - 2. The 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 project 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. If the grantee or borrower dissolves or is adjudicated bankrupt, title to any real property that has been funded or improved by a grant or loan issued from the fund must be conveyed to the County or to a qualified nonprofit or community land trust as approved by the council by resolution.
 - 5. The grantee or borrower must not distribute or redistribute grant or loan funds to other organizations.
- B. Unless otherwise approved by council by resolution, loans from the fund 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 percent per annum.
 - 5. Be recorded with the bureau of conveyances or the land court of the State.
- C. If a borrower defaults or the 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.
 - 2. Full repayment of the principal balance at an annual interest rate equal to two times the prime rate at the time of default.

(Ord. No. 5131 , § 3, 2020; Ord. 3481 § 3 (part), 2007)

3.35.080 Affordable housing fund annual plan.

The department shall propose an affordable housing fund annual plan for the use of affordable housing fund revenues, and transmit the affordable housing fund annual plan to the

council for its consideration, along with a budget amendment or a request that the projects in the annual plan be included in a fiscal year budget. The affordable housing fund annual plan shall include the following:

- A. A description of the projects to be funded, including grants and loans, with a completed grant or loan proposal for each project;
- B. The total proposed appropriations for the subject fiscal year;
- C. The number of housing units that will be created and residents to be served;
- D. If housing is not the immediate result from a proposed appropriation, such as land acquisition or infrastructure improvements, provide an explanation on how the appropriation will result in housing; and
- E. The total expenditure for administrative expenses, which shall be consistent with section 3.35.010(D) of this chapter.

(Ord. No. 3779, § 1, 2010; Ord. 3481 § 3 (part), 2007)

3.35.090 Annual report.

- A. The department shall prepare and submit an annual report to the council on the expenditures and accomplishments resulting from appropriations from the affordable housing fund. The annual report shall provide the following information:
 - 1. The number and types of units created or assisted.
 - 2. Any non-dwelling unit improvements, such as land acquisition or infrastructure improvements.
 - 3. The geographic distribution of units or funded projects.
 - 4. Statistical data relative to the incomes of the households assisted.
 - 5. The amount of state, federal, and private funds leveraged or matched.
 - 6. Sales or rental prices established.
- B. The report shall also include an overview of how the department has met affordable housing fund annual plan goals and objectives.

(Ord. 4323, § 5, 2016 ; Ord. 3481 § 3 (part), 2007)

3.35.100 Project expenses.

Funds are deemed appropriated by project and not by fiscal year.

(Ord. No. 4323, § 5, 2016 ; Ord. No. 3779, § 2, 2010; Ord. 3481 § 3 (part), 2007)