

ORDINANCE NO. _____

BILL NO. 51 (2023)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.35, MAUI COUNTY
CODE, RELATING TO THE AFFORDABLE HOUSING FUND

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

SECTION 1. Chapter 3.35, Maui County Code, is amended to read as
follows:

“Chapter 3.35

[AFFORDABLE] ATTAINABLE HOUSING DEVELOPMENT FUND

Sections:

- 3.35.010 [Purpose.] Fund established.
- 3.35.020 [Fund established.] Purpose.
- 3.35.025 Definitions.
- 3.35.030 Administration.
- 3.35.035 Attainable housing development fund accounts.
- 3.35.040 Use of the affordable housing fund.
- 3.35.050 Affordable housing fund term of affordability.
- 3.35.060 [Criteria.] Affordable housing fund criteria for
selection of grant or loan proposals.
- 3.35.070 [Grant.] Affordable housing fund grant or loan
requirements.
- 3.35.080 Affordable housing fund annual plan[.] proposal.
- 3.35.090 [Annual] Affordable housing fund annual report.
- [3.35.100 Project expenses.]

3.35.010 [Purpose.] Fund established. [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.] There is established and created a fund to be known as the "attainable housing development fund."

3.35.020 [Fund established.] Purpose. [There is established and created a fund to be known as the "Affordable Housing Fund."] This fund's purpose is to provide a stable and continuing source of funding to be used for planning, administering, and constructing affordable and workforce housing projects and to provide a policy for the use of the funding. The revenues and unencumbered balance in the fund must 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 or redevelopment of existing structures and properties, land purchase, acquisition of land or property entitlements, planning, design, construction, council-approved subsidies for onsite and offsite infrastructure, and project exemption subsidies.

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] will apply.

B. "Gap income" [shall refer] refers to those households whose gross annual family income is more than [one hundred forty] 140 percent, but not more than [one hundred sixty] 160 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[.]; or as adjusted by the department that is assigned to oversee housing administrative functions, for Hana, Lanai, and Molokai.

3.35.030 Administration. A. The director of finance [shall] will establish a separate account to record revenues and

supplemental transfers credited to, and expenditures made from[,] the fund[,] and each account within the fund.

B. Any unencumbered balance in each account in the fund at the end of each fiscal year [shall] must not lapse, but [shall] will remain in each account 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.] Interfund transfers will be initiated by a proposed budget amendment. The administration may initiate interfund transfers by a proposed budget amendment for any account in the fund at any time during a fiscal year. The council may initiate interfund transfers between the department exemption subsidy account and the infrastructure subsidy account at any time during a fiscal year by a proposed budget amendment to the capital program.

3.35.035 Attainable housing development fund accounts.

The attainable housing development fund must contain the following separate accounts: A. Affordable housing fund account. The affordable housing fund account must be administered under sections 3.35.040 through 3.35.090 by the department of housing and human concerns or by the department that is assigned to oversee housing.

1. In adopting annual operating budgets and capital programs, the council must make appropriations to the affordable housing fund account as required by charter. In any fiscal year, the council may make appropriations to the fund in addition to the minimum required appropriations.

2. There will be deposited into the affordable housing fund all money paid to the County in lieu of providing residential workforce housing units, any council appropriations to the fund, and all money donated to the County for affordable housing projects.

3. 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.

4. Any unencumbered balance in this fund at the end of each fiscal year will not lapse, but must remain in the fund, accumulating from year to year. Any unencumbered balance in this fund may not be used for any purpose except those listed in this chapter or as provided by ordinance.

5. On an annual basis, no more than 3 percent of this fund may be used for administrative expenses.

6. The council may by ordinance establish procedures for the administration and expenditure of the revenues in this fund. Any appropriations to this fund may not substitute, but will be in addition to, those appropriations historically made for the purposes stated in this chapter.

B. Department exemption subsidy account. The department exemption subsidy account must be administered by the department of finance. The annual capital improvements program budget ordinance may contain expenditures from the affordable housing development fund's department exemption subsidy account. Housing projects with an affordable housing component, processed under chapter 2.97 of this code or chapter 201H, Hawaii Revised Statutes, are eligible for exemptions from the payment of fees or infrastructure improvements that result in departments having to bear their costs. Funding for exemption subsidies may be approved each year by the council in the annual capital improvements program budget or by ordinance at any time during a fiscal year using available funds in the department exemption subsidy account.

1. In adopting annual operating budgets and capital programs, the council may make appropriations to the department exemption subsidy account.

2. Funding for department exemption subsidies may be approved by ordinance in conjunction with council-approved exemptions using available funds in the department exemption subsidy account.

3. Upon enactment of any ordinances referenced in the preceding subsection, the director of finance will issue exemption subsidy payments to any affected department, as approved by the council.

4. Any unencumbered balance in this fund at the end of each fiscal year will not lapse, but must remain in the fund, accumulating from year to year.

5. The council will by ordinance establish procedures for the administration and expenditure of the revenues in this fund.

C. Infrastructure subsidy account. The infrastructure subsidy account will be administered by the department of finance. Infrastructure subsidies for offsite and onsite infrastructure of housing projects with an affordable housing component may be approved each year by the council in the annual capital improvements program budget, or by ordinance at any time during a fiscal year using available funds in the infrastructure subsidy account.

1. In adopting annual operating budgets and capital programs, the council may make appropriations to the infrastructure subsidy account.

2. The annual capital improvements program budget ordinance may contain expenditures from the attainable housing development fund -infrastructure subsidy account.

3. The council will, in making appropriations in the budget, identify affordable housing project infrastructure cost estimates for distribution within the proposed six-year capital program, appendix B, to be agreed upon by the County of Maui and the project developer.

4. Developer agreements must reflect the council-approved appropriation timeline and be signed by the developer, director of finance, council chair, and mayor.

5. The initial infrastructure subsidy payment will be issued by the department of finance to the developer upon execution of the developer agreement not more than forty-five days after the council approves the schedule.

6. Any unencumbered balance in this fund at the end of each fiscal year may not lapse, but will remain in the fund, accumulating from year to year.

7. The council will by ordinance establish procedures for the administration and expenditure of the revenues in this fund.

3.35.040 Use of the affordable housing 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] if the purpose of any grant or loan [shall be] is 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[.];

I. To provide comprehensive infrastructure assessments for priority affordable housing projects;

J. To provide long-term planning for affordable housing and houselessness solutions; or

K. To provide funds for payment of principal and interest on bonds issued.

3.35.050 [Term] Affordable housing fund 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.

3.35.060 [Criteria] Affordable housing fund 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.

3.35.070 [Grant] Affordable housing fund 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 or to the department that is assigned to oversee housing, 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.

3.35.080 Affordable housing fund proposed 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] must be consistent with section 3.35.010(D). [of this chapter.]

3.35.090 [Annual] Affordable housing fund annual report.

A. The department [shall] must 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] must 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] on 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] must also include an overview of how the department has met affordable housing fund annual plan goals and objectives.

[3.35.100 Project expenses. Funds are deemed appropriated by project and not by fiscal year.]

SECTION 2. 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 3. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

paf:rkk:23-128b

INTRODUCED BY:


