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**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.MauiCounty.us](http://www.MauiCounty.us)

October 16, 2017

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OFFICE OF THE  
COUNTY CLERK

The Honorable Mike White  
Council Chair  
County of Maui  
Wailuku, Hawaii 96793

Dear Chair White:

**SUBJECT: RESIDENTIAL WORKFORCE HOUSING POLICY AND  
AFFORDABLE HOUSING FUND (PAF 16-183)**

May I request the matter relating to the Residential Workforce Housing Policy and Affordable Housing Fund be placed on the next Council meeting agenda.

Sincerely,

A handwritten signature in cursive script that reads "Elle Cochran".

ELLE COCHRAN  
Councilmember

paf:tntf:16-183c

Enclosure

COUNTY COMMUNICATION NO. 17-434

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

BILL NO. \_\_\_\_\_ (2017)

A BILL FOR AN ORDINANCE AMENDING CHAPTERS 2.96 AND 3.35,  
MAUI COUNTY CODE, RELATING TO THE RESIDENTIAL WORKFORCE  
HOUSING POLICY AND AFFORDABLE HOUSING FUND

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

SECTION 1. The purpose of this ordinance is to require that housing provided pursuant to the Workforce Housing Policy or with Affordable Housing Fund money is kept affordable in perpetuity through deed restrictions.

SECTION 2. Section 2.96.020, Maui County Code, is amended by adding new definitions to be appropriately inserted and to read as follows:

“Beneficiary” shall have the same meaning as defined in the Uniform Probate Code, section 560:1-201, Hawaii Revised Statutes.

“Heirs” shall have the same meaning as defined in the Uniform Probate Code, section 560:1-201, Hawaii Revised Statutes.

“Successors” shall have the same meaning as defined in the Uniform Probate Code, section 560:1-201, Hawaii Revised Statutes.”

SECTION 3. Section 2.96.040, Maui County Code, is amended by amending subsection A to read as follows:

“A. Developers shall be required to provide [a number of] residential workforce housing units equivalent to at least twenty-five percent, rounding up to the nearest whole number, of the total number of market rate lots, lodging units, time share units, or dwelling units, excluding farm labor dwellings or a second farm dwelling, as defined in section 19.04.040 of this code, created. [If a developer satisfies the requirements of this chapter through subsection (B)(3) and the units shall remain available only to income-qualified groups in perpetuity, the developer shall provide at least twenty percent, rounding up to the nearest whole number, of the total number of market rate lots, lodging units, time share units,

or dwelling units, excluding farm labor dwellings or a second farm dwelling, as defined in section 19.04.040 of this code, created.]"

SECTION 4. Section 2.96.060, Maui County Code, is amended by amending subsection B to read as follows:

"B. Deed restrictions.

1. The ownership units within each income group shall be subject to the deed restrictions contained in this section [for the following periods:] in perpetuity.

[a. "Below-moderate income," ten years.

b. "Moderate income," eight years.

c. "Above-moderate income," five years.]

2. For the deed-restricted period, the following shall apply:

a. The unit [must] shall be owner-occupied.

b. The owner [must] shall notify the department upon a decision to sell.

c. Upon the owner's decision to sell, the County shall have the first option to purchase the unit from the owner; said option shall be available to the County for a period of ninety days from receipt of written notice from the owner.

d. Upon sale of the unit, the deed restrictions shall remain in full force and effect [for the remainder of the deed-restricted period that commenced at the time of the initial sale.] in perpetuity.

e. Under special circumstances an owner of a residential workforce housing unit may appeal to the department for a waiver of the owner-occupancy deed restriction; these circumstances would include, but are not limited to, assignment to active duty military or short-term contracts for off-island employment.

f. Resale. The maximum resale price preserves the affordability of the property for future income-qualified people and takes into account the investment by the property owner. The maximum resale price shall be established by the department using the following [guidelines:] formula:

[i. An appraisal of the property shall be required before occupancy ("the owner's purchase price").

ii. A second appraisal shall be required upon a decision to sell the unit.

iii. Twenty-five percent of the difference between the two appraisals shall be added to the owner's purchase price.]

<u>Line 1</u>	<u>Initial purchase price.</u>
<u>Line 2</u>	<u>Independent, third-party appraisal of the property, required before occupancy.</u>
<u>Line 3</u>	<u>A subsidy ratio shall be created by dividing line 1 by line 2.</u>
<u>Line 4</u>	<u>A second independent, third-party appraisal, required upon a decision to sell the property.</u>
<u>Line 5</u>	<u>The difference between line 2 and line 4 (the appreciation or depreciation).</u>
<u>Line 6</u>	<u>Multiply line 3 by line 5.</u>
<u>Line 7</u>	<u>Multiply the applicable percentage (based upon years from date of acquisition) by line 6 to calculate the homeowner's share of the appreciation:</u> <u>Five years or less - 25 percent.</u> <u>More than five years but less than or equal to six years - 27.5 percent.</u> <u>More than six years but less than or equal to seven years - 30 percent.</u> <u>More than seven years but less than or equal to eight years - 32.5 percent.</u> <u>More than eight years but less than or equal to nine years - 35 percent.</u> <u>More than nine years but less than or equal to 10 years - 37.5 percent.</u> <u>More than 10 years but less than or equal to 11 years - 40 percent.</u> <u>More than 11 years but less than or equal to 12 years - 42.5 percent.</u> <u>More than 12 years but less than or equal to 13 years - 45 percent.</u> <u>More than 13 years but less than or equal to 14 years - 47.5 percent.</u> <u>More than 14 years - 50 percent.</u>
<u>Line 8</u>	<u>Add line 1 to line 7 to calculate the sales price paid to the deed restricted owner.</u>

To determine the maximum resale price in accordance with this section, the owner may add to line 8 the cost of permitted capital improvements. Permitted capital improvements shall only include the following:

i. Improvements or fixtures erected, installed, or attached as permanent, functional, non-decorative improvements to real property, excluding repair, replacement, and maintenance improvements.

ii. Improvements for energy and water conservation.

iii. Improvements for the benefit of seniors and handicapped persons.

iv. Improvements for health and safety protection devices.

v. Improvements to add or furnish permanent/fixed storage space.

vi. Improvements to finish unfinished space.

vii. Landscaping.

viii. The cost of adding decks and balconies, and any extension thereto.

ix. Improvements associated with health and safety, energy efficiency, water conservation, and green building products. Permitted capital improvements shall not exceed ten percent of line one. All permitted capital improvements shall be depreciated in accordance with the Marshall Swift Residential Handbook. The owner shall provide documentation verifying actual costs of the permitted capital improvements and copies of any building permits or certificates of occupancy. Only the owner's actual out-of-pocket approved costs and expenses shall be included. Such amount shall not include any "sweat equity" or any appreciation in the value of the property.

g. [The restrictions contained in subparagraphs 2a through 2f above shall not apply in situations of foreclosure.] A property owner may transfer the property only to the property owner's beneficiary, heirs, or successors, the County, the County's assignee, or to an income-qualified person.

i. The property owner shall notify the County in writing of its intent to sell the property. Transfer of the property to the owner's

beneficiary, heirs, or successors shall not require notice to the County.

ii. Within thirty days of delivery of notice of intent to sell, the property owner shall obtain, at property owner's expense, and deliver to the County a current termite inspection report by a licensed pest control company.

iii. The property owner shall allow the County or its designee to inspect the property, including any improvements, to determine its physical condition.

iv. Within thirty days of delivery of notice of intent to sell, the property owner shall obtain, at the property owner's expense, and deliver to the County a current home inspection report prepared by a professional home inspector.

v. The County shall have the first option to purchase the property at the resale price pursuant to section 2.96.060(B)(2)(f).

vi. If the County elects to exercise its option to purchase the property, it shall notify the property owner in writing within forty-five days of receipt of the appraisal or the option to purchase shall expire.

vii. If the County's option to purchase the property expires, the property owner may sell the property to an income-qualified person for not more than the resale price pursuant to section 2.96.060(B)(2)(f).

viii. If the property owner is unable to secure an income-qualified buyer after six months after the expiration of the County's option to purchase, the property owner may sell the property to any party for not more than the resale price pursuant to section 2.96.060(B)(2)(f). The deed restrictions set forth in this section shall run with the land and apply to future parties purchasing the property.

h. If the property is foreclosed, the deed restrictions set forth in this section shall not apply to the foreclosed property."

SECTION 5. Section 2.96.070, Maui County Code, is amended by amending subsection C to read as follows:

“C. Deed restrictions.

1. The rental unit [must] shall remain affordable [for thirty years from the initial occupancy.] in perpetuity.

2. [For the thirty-year affordability period, the] The following shall apply:

a. The owner [must] shall notify the department upon a decision to sell the rental development and the County shall have the first option to purchase the rental development from the owner; said option shall be available to the County for a period of one hundred and twenty days from receipt of written notice from the owner and shall not apply to sales by reason of foreclosure.

b. Any new owner [must] shall comply with the deed restrictions.

[3. Within 90 days of the expiration of the thirty-year affordability period, the owner shall offer the County the right to purchase the property at market value as determined by the owner.]”

SECTION 6. Section 3.35.060, Maui County Code, is amended by amending subsection B to read as follows:

“B. Grant or loan proposals shall 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 property [directly advances the objective of providing affordable housing] shall remain affordable in perpetuity[.], in accordance with sections 2.96.060(B) and (C) of this code.”

SECTION 7. 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 8. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

  
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JEFF UEOKA  
Department of the Corporation Counsel  
County of Maui  
2017-0241  
2017-10-09 Ordinance