

June 25, 2019

MEMO TO: Members of the Affordable Housing Committee

F R O M: Tasha Kama, Chair  
Affordable Housing Committee

SUBJECT: **AFFORDABLE HOUSING PROJECTS (HRS CHAPTER 201H)**  
(AH-1)

Several questions have arisen regarding the following:

- The difference between requirements in:
  - Hawaii Revised Statutes (“HRS”) Chapter 201H and related Hawaii Administrative Rules (“HAR”); and
  - Maui County Code (“MCC”) Chapter 2.96, the Residential Workforce Housing Policy.
- The Council’s authority to request restrictions and parameters that are different from those included in a proposed 201H resolution or different from those set forth as minimum requirements in the applicable regulatory documents.

Following is a summary of guidelines pertaining to the most common requirements and restrictions.

### **1. Percentage of affordable units**

HRS Section 201H-41(a) requires that “the project is primarily designed for lower income housing.” HAR Section 15-307-26 requires that “more than 50 per cent of the total dwelling units be for very low, low, low-moderate and moderate-income households.”

MCC Section 2.96.040(A) only requires “at least twenty percent” of the total units be affordable to various income groups.

The Council may ask a developer to provide more than 51 percent of affordable units.

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## **2. Percentage of units within income groups**

HRS Chapter 201H does not require any particular percentage of units in each income group.

HAR Section 15-307-26(a)(3)(C) requires that 50 percent of the total dwelling units be for the very low (50 percent of median income or lower), low (50-80 percent), low-moderate (80-120 percent), and moderate (120-140 percent) income groups. It does not specify the particular percentage of units for each income group.

MCC Chapter 2.96 only requires units affordable to the 80-140 percent income groups, and specifies particular percentages of units for each income group. It does require units for the income groups below 80 percent.

The MCC Chapter 2.96 uses different standards for income groups: very low (50 percent of median income or lower); low (51-80 percent); below moderate (81-100 percent); moderate (101-120 percent), and above-moderate (121-140 percent).

Although a 201H project may also qualify as a Residential Workforce Housing Policy project, when considering a 201H project the Council does not have to follow the MCC Chapter 2.96 percentages for each income group.

The Council may ask a developer to provide whatever percentages or number of units the council thinks are appropriate for each income group referenced in HAR Section 15-307-26(a)(3)(C).

MCC Chapter 2.96 credits are only available to 201H projects in which 100 percent of the units are affordable, and the credits are only available for 50 percent of the units.

## **3. Duration of affordability restrictions**

HRS Section 201H-47(a)(1) requires that the affordable units be subject to affordability restrictions for at least 10 years.

The Council may ask the developer to impose the restrictions for longer than 10 years.

#### **4. Restrictions on market lots and units**

The Council may ask the developer to impose restrictions on the market-priced lots and units, such as restrictions to prevent their sale as investment properties (which drives up housing prices); for example: that they must be owner-occupied by a person who owns no other real property or that they be long-term rented at affordable rents.

#### **5. Planning considerations**

HRS Section 201H-41(b)(3) requires that the affordable project be “properly located for occupancy by the group for which the project was primarily designed, properly districted for the use intended prior to the agreement and appropriately zoned within an urban land use district or appropriate in its situation and surroundings for more intensive or denser zoning.” (Emphases added.)

HAR Section 15-307-27(1) requires that the project be “suitable for development at the proposed location.” HAR Section 15-307-27(4) requires that the project “meets minimum standards of good planning, zoning, design, pleasant amenities, and a coordinated development.”

#### **6. Financial information**

HAR Section 15-307-26(a)(5) requires that the 201H application include financial information about the project, including budgets and cashflow requirements:

(5) Proposed financing of the project, including:

(A) The manner in which the project will be financed during the development and construction of the project and upon completion of the project;

(B) The sources of repayment of such financing;

(C) Estimated start-up expenses and the sources of funds to meet these expenses;

(D) The net equity, if any, which the developer intends to contribute to the proposed project; and

(E) Budgets and cashflow requirements;

This allows the Council to understand whether and why the developer needs the requested exemptions; total percentage of affordable units; number of units within the income ranges, any other factor affecting the finances of the project; and the finances of the project overall.

The Council can ask the developer for whatever financial information it needs to analyze and decide whether to approve the project or any aspect of the project.

## **7. Wastewater**

HAR Section 11-62-31.1(a)(1)(B) requires a wastewater treatment plant if the “total development of an area”—not the development of a specific project—includes more than 50 units or lots, but not including “developments consisting of one dwelling unit per acre or greater.”

In determining whether a proposed wastewater treatment plan is adequate, the Council should assess whether the total development of an area includes more than 50 units or lots, not whether the proposed project includes more than 50 units or lots (except for lots with housing density of one unit per acre or larger area.)

I hope this is helpful. Should you have any questions, please contact me or Legislative Attorney John Rapacz at ext. 7886.

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