

## Chapter 2.96 - RESIDENTIAL WORKFORCE HOUSING POLICY

## 2.96.010 - Purpose.

The purpose of this chapter is to enhance the public welfare by ensuring that the housing needs of the County are addressed. The council finds that there is a critical shortage of affordable housing, making home acquisition by the majority of County resident workers extremely difficult, and creating a shortage of affordable rental units. The resident workforce is leaving the County in search of affordable housing, and new employees are being deterred by the high cost of living. To maintain a sufficient resident workforce in all fields of employment, and to ensure the public safety and general welfare of the residents of the County, resident workforce housing needs must be addressed. It is the intent of this chapter to encourage the provision and maintenance of residential workforce housing units, for both purchase and rental, to meet the needs of income-qualified households for the workforce, students, and special housing target groups.

(Ord. 3418 § 1 (part), 2006)

## 2.96.020 - Definitions.

Whenever used in this chapter, unless a different meaning clearly appears from the context:

"Community land trust" means a nonprofit organization that acquires land that:

1. Is held in perpetuity;
2. Is primarily for conveyance under a long-term ground lease for the creation of dwelling units that shall be sold or rented to applicants within the income-qualified groups established by this chapter; and
3. Retains an option to purchase any dwelling unit at a price determined by formula that is designed to ensure that the dwelling unit remains affordable in perpetuity.

"Council" means the Maui County council.

"Department" means the department of housing and human concerns.

"Director" means the director of housing and human concerns, County of Maui.

"Disabled" means a person who is determined, by a medical doctor, to have a physical, mental, or emotional impairment that:

1. Is expected to be of long-continued and indefinite duration;
2. Substantially impedes his or her ability to live independently; and
3. Is of such a nature that the ability to live independently could be improved by more suitable housing conditions.

"Division" means the housing division of the department of housing and human concerns, County of Maui.

"Elderly" means a person who has attained the age of sixty-two years.

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"Employed" means working for compensation in the County for any number of hours.

"Homeless" means:

1. An individual or family who lacks a fixed, regular, and adequate nighttime residence; or
2. An individual or family who has a primary nighttime residence that is:
  - a. A supervised shelter designed to provide temporary living accommodations; or
  - b. A place not designed for or ordinarily used as sleeping accommodations for human beings.

"HUD" means the United States Department of Housing and Urban Development.

"Improved land" means land that has necessary infrastructural improvements to support a public use project or a use density of at least a single-family or a two-family residential building per acre, in conformity with state and County zoning laws and building permit requirements.

"Lot" means any improved or unimproved land that has been subdivided.

"Median family income" means the middle income in a series of incomes ranked from smallest to largest as determined by HUD for the County, or as adjusted by the department, for Hana, Lanai, and Molokai.

"Prevailing interest rate" means the average interest rate of two mortgage lenders in the County, acceptable to the director, for a thirty year fixed loan with no discount points.

"Qualified housing provider" means a community land trust, nonprofit agency, or other private or public organization, agency, or entity authorized and designated by the department in accordance with section 2.96.150 to own, develop, construct, administer, operate or otherwise provide residential workforce housing required under this chapter.

"Resident" means a person who meets one of the following criteria:

1. Currently employed in the County;
2. Retired from employment in the County, having worked in the County immediately prior to retirement;
3. A full-time student residing in the County;
4. A disabled person residing in the County who was employed in the County prior to becoming disabled;
5. The parent or guardian of a disabled person residing in the County;
6. A spouse or dependent of any such employee, retired person, student, or disabled person residing in the County; or
7. In the event of the death of the employee, retired person, student, or disabled person, the spouse or dependent of any such person residing in the County.

"Residential workforce housing unit" means a unit or lot to be sold or rented to residents within one of the following income groups as established by the department:

1. "Very low income," which are those households whose gross annual family income is fifty percent or less of the area median income as established by HUD, or as adjusted by the department, for Hana,

Lanai, and Molokai.

2. "Low income," which are those households whose gross annual family income is more than fifty percent, but not more than eighty percent of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai.
3. "Below-moderate income," which are those households whose gross annual family income is more than eighty percent, but not more than one hundred percent of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai.
4. "Moderate income," which are those households whose gross annual family income is more than one hundred percent, but not more than one hundred twenty percent of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai.
5. "Above-moderate income," which are those households whose gross annual family income is more than one hundred twenty percent, but not more than one hundred forty percent of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai.

"Special housing target group" means a group of residents that can be demographically defined as having a special or unique housing need, including but not limited to, the elderly, homeless, and disabled.

"Unimproved land" means land not classified as "improved land."

"Wait list area" means Hana, Lanai, Maui (excluding Hana), or Molokai.

(Ord. No. 4177, §§ 1—4, 2014; Ord. No. 3719, § 1, 2010; Ord. 3512 § 1, 2007; Ord. 3418 § 1 (part), 2006)

#### 2.96.030 - Applicability.

- A. Any development, including the subdivision of land and/or the construction of single-family dwelling units, two-family dwelling units, multi-family dwelling units, or hotels, as defined in section 19.04.040 of this code, whether constructed at one time or over several years, shall be subject to this chapter upon final subdivision or building permit approval, whichever is applicable and occurs first, if it will result in the creation of the following:
  1. Ten or more 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; provided that, such farm labor dwelling or farm dwelling is in full compliance with chapter 205, Hawaii Revised Statutes, and is not part of a condominium property regime, as set forth in chapter 514A, Hawaii Revised Statutes;
  2. A conversion of ten or more hotel units to dwelling units or time share units; or
  3. Any hotel redevelopment or renovation project that increases the number of lodging or dwelling units in a hotel by ten or more.
- B. Exemptions. This chapter shall not apply to any development that falls into one or more of the following categories:
  1. A development subject to an affordable housing requirement, evidenced by an executed affordable housing agreement with the County, currently in effect and approved prior to the effective date of this chapter;
  2. A development subject to a change in zoning condition that requires affordable or residential workforce housing, unless the condition expressly allows for the application of the affordable

housing or residential workforce housing policy set forth herein;

3. A subdivision granted preliminary subdivision approval prior to the effective date of this chapter;
4. A building permit application submitted prior to the effective date of this chapter;
5. A family subdivision, for immediate family members, as described in subsections 18.20.280.B.1 and B.2 of this code;
6. A development by a government entity or a community land trust, as approved by the director; or
7. A development within the boundaries of the Wailuku redevelopment area as defined by the Maui redevelopment agency pursuant to chapter 53, Hawaii Revised Statutes.

C. Adjustment by developer.

1. A developer of any development subject to this chapter may appeal to the council for a reduction, adjustment, or waiver of the requirements based upon the absence of any reasonable relationship or nexus between the impact of the development and the number of residential workforce housing units or in-lieu fees/land required.
2. Any such appeal shall be made in writing and filed with the county clerk prior to final subdivision approval or issuance of a building permit for the development, whichever is applicable. Any such appeal shall administratively stay the processing of the development's subdivision or building permit, whichever is applicable, until a decision on the appeal is rendered. The appeal shall set forth in detail the factual and legal basis for the claim of reduction, adjustment, or waiver, and the developer shall bear the burden of presenting substantial evidence to support the appeal, including comparable and relevant technical information.
3. The council, or if the appeal is assigned to a council committee, the council committee shall convene a meeting within forty-five days of the county clerk's receipt of the appeal, to consider the appeal. The council shall approve or disapprove the appeal by resolution within forty-five days from the date the developer has concluded its presentation of evidence supporting the appeal in a council or committee meeting.
4. If the council or a council committee has not convened a meeting within forty-five days of the county clerk's receipt of the appeal, or if the council does not approve or disapprove the appeal by resolution within forty-five days from the date the developer has concluded its presentation of evidence at the council or council committee meeting, the appeal, as submitted by the developer, shall be deemed approved by the council.
5. If a reduction, adjustment, or waiver is granted by the council, any subsequent substantive change or modification in use within the development, as determined by the director, shall invalidate the reduction, adjustment, or waiver previously granted.

D. Adjustment by Director. The director may, subject to council approval by resolution, authorize a reduction, adjustment, or waiver of any provision of this chapter.

E. Projects pursuant to chapter 201H, Hawaii Revised Statutes, shall be subject to the requirements of this chapter, provided that where the terms of this chapter and chapter 201H are in conflict, the terms contained in chapter 201H shall control.

(Ord. No. 4236, § 1, 2015; Ord. No. 4177, § 5, 2014; Ord. 3546 § 1, 2008; Ord. 3418 § 1 (part), 2006)

- 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.
- B. Prior to final subdivision approval or issuance of a building permit for a development subject to this chapter, the department shall require the developer to enter into a residential workforce housing agreement. The agreement shall set forth the method by which the developer satisfies the requirements of this chapter. The requirements may be satisfied by one or a combination of the following, which shall be determined by the director and stated in the agreement:
1. Offer for sale, single-family dwelling units, two-family dwelling units, or multi-family dwelling units as residential workforce housing within the community plan area.
  2. Offer for rent, multi-family dwelling units as residential workforce housing units within the community plan area.
  3. In lieu of directly selling or renting units pursuant to subsections (B)(1) or (B)(2) the developer may convey such units to a qualified housing provider subject to department approval pursuant to section 2.96.150.
  4. In lieu of providing residential workforce housing units, the residential workforce housing requirement may be satisfied by payment of a fee, by providing improved land, or by providing unimproved land in accordance with the following:
    - a. The in-lieu fee per residential workforce housing unit required by this chapter shall be equal to the difference in unit costs for a three bedroom, single-family dwelling unit, at one hundred percent and a three bedroom, single-family dwelling unit at one hundred sixty percent of median income, for a family of four, pursuant to HUD affordable sales price guidelines, or as adjusted by the department for Hana, Lanai, and Molokai.
    - b. Any dedication of improved or unimproved land in-lieu of residential workforce housing units shall be subject to the approval of the director and the council by resolution.
  5. Application of residential workforce housing credits issued pursuant to this code.
- C. Income group distribution.
1. Unless an exemption is granted by the director, the percentage of ownership units within each income group shall be as follows:
    - a. Thirty percent of the ownership units shall be for "below-moderate income" residents.
    - b. Fifty percent of the ownership units shall be for "moderate income" residents.
    - c. Twenty percent of the ownership units shall be for "above-moderate income" residents.
  2. Unless an exemption is granted by the director, the percentage of rental units within each income group shall be as follows:

- a. One-third of the rental units shall be for "very low income" and "low income" residents.
- b. One-third of the rental units shall be for "below-moderate income" residents.
- c. One-third of the rental units shall be for "moderate income" residents.

( Ord. No. 4338, § 1, 2016; Ord. No. 4177, § 6, 2014; Ord. No. 3719, § 2, 2010; Ord. 3438 § 1, 2007; Ord. 3418 § 1 (part), 2006)

#### 2.96.050 - Residential workforce housing credits.

- A. Credits may be issued by the director, upon request by the developer, provided that:
  1. Each residential workforce housing unit constructed in the development shall be encumbered by a recorded deed restriction that meets the requirements of this chapter.
  2. Each residential workforce housing unit shall be sold or rented to an income eligible individual.
  3. Credits may only be issued for each residential workforce housing unit sold or rented to an income eligible individual in the appropriate income group, that is in excess of the residential workforce housing requirement set forth in section 2.96.040, provided that, for those developments comprised of one hundred percent residential workforce housing units, only seventy-five percent of the residential workforce housing units sold or rented to income eligible individuals shall be eligible for credits. Further provided that, developments comprised of one hundred percent residential workforce housing units that are to be rented to households whose gross annual family income is sixty percent or less of the area median income as established by HUD, or as adjusted by the department for Hana, Lanai, and Molokai, shall be eligible for credits for each residential workforce housing unit constructed.
  4. Notwithstanding the foregoing, for those developments developed pursuant to chapter 201H, Hawaii Revised Statutes, only those developments comprised of one hundred percent residential workforce housing units shall be eligible to receive credits. Credits may only be issued for those residential workforce housing units sold or rented to income eligible individuals in the appropriate income groups, in excess of fifty percent of the total number of residential workforce housing units constructed.
- B. The credit may be used in any community plan area.
- C. The credit may satisfy the requirement for any type of unit constructed.
- D. The credit may satisfy the requirement for a unit in any income group.
- E. The credit may be used for a future development, but may not be used for an affordable housing or residential workforce housing unit owed at the time the credit is given.
- F. The number of credits issued shall be set forth in the residential workforce housing agreement.

( Ord. No. 4780, § 1, 2017; Ord. No. 4235, § 1, 2015; Ord. No. 4177, § 7, 2014; Ord. 3418 § 1 (part), 2006)

#### 2.96.060 - Residential workforce housing restrictions-ownership units.

- A. Timing of completion.
  1. Residential workforce housing units shall be made available for occupancy either before or concurrently with market rate units at the same ratio required of the development.
  2. Certificates of occupancy shall not be issued and/or final inspections shall not be passed for the

market rate units unless certificates of occupancy are issued and/or final inspections are passed for the residential workforce housing units concurrently or sooner.

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:
  - 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 be owner-occupied.
  - b. The owner must 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.
  - 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 military duty or short-term contracts for off-island employment.
  - f. Resale. The maximum resale price shall be established by the department using the following guidelines:
    - i. An appraisal of the property shall be required before occupancy.
    - 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.
  - g. An owner of a residential workforce housing unit that is being resold must sell the unit to an income-qualified household and notify the department of the sale. The department shall verify the sales price.
  - h. The restrictions contained in subparagraphs 2a through 2g above shall not apply in situations of foreclosure.

C. Sales price - dwelling units. The sales price of a new dwelling unit shall be established by the department based on current HUD price guidelines.

( Ord. No. 4782, § 1, 2017; Ord. No. 4338, § 2, 2016; Ord. No. 4235, § 2, 2015; Ord. No. 4177, § 8, 2014; Ord. 3418 § 1 (part), 2006)

2.96.070 - Residential workforce housing restrictions - rental units.

- A. Timing of completion. Residential workforce housing units shall be made available for occupancy either prior to or concurrently with market rate units at the same ratio required of the development. Certificates of occupancy shall not be issued and/or final inspections shall not be passed for the market rate units

unless certificates of occupancy are issued and/or final inspections are passed for the residential workforce housing units concurrently or sooner.

B. Deed restrictions.

1. The rental residential workforce housing unit shall be subject to the requirements of this chapter for thirty years, commencing on the date of initial occupancy.
2. For the thirty-year deed-restricted period, the following shall apply:
  - a. The owner must 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 comply with the deed restrictions.
  - c. Owner or owner's representative shall submit proof of compliance with income guidelines for rentals quarterly.
3. Within ninety days of the expiration of the thirty-year deed-restricted period, the owner shall offer the County the right to purchase the property at market value as determined by the owner.
4. The deed restriction shall set forth the number of units in the development that shall be designated as residential workforce housing units along with the relative income group of those units. The deed restriction may, but shall not be required to, identify specific units as residential workforce housing units.

- C. Rental rates. The monthly rental rates set forth in the lease shall be based on HUD income limits subject to approval by the department or as otherwise provided in this chapter.
- D. Failure to rent within income groups. In the event owner or owner's representative does not maintain the required distribution of rentals among the appropriate income groups or rents outside of the appropriate income groups, owner or owner's representative shall pay to County, for deposit into the affordable housing fund, the difference between the actual rent paid and the rent for the appropriate income group as required under the deed restriction.
- E. Annual recertification. Owner or owner's representative shall complete an annual recertification of tenants that are occupying the residential workforce housing units to verify that the tenants meet income guidelines.
- F. Graduated income tenants. For those tenants who have graduated to a higher income group during the term of the lease but still remain within an appropriate income group, if owner or owner's representative elects to continue to lease to tenant, the monthly rental rate shall be the rate for the income group which tenant is within. For those tenants who during the term of the lease have graduated to an income level that is in excess of the income groups for rental units, if owner or owner's representative elects to continue to lease to tenant, the annual rental rate shall be equivalent to thirty percent of tenant's gross income. Owner or owner's representative shall be responsible for paying County in accordance with section D, above. Owner or owner's representative shall make its reasonable best efforts to maintain the proper distribution of rentals across the "very low income" and "low income," "below-moderate income," and "moderate income" groups.

( Ord. No. 4780, § 2, 2017; Ord. No. 4177, § 9, 2014; Ord. 3418 § 1 (part), 2006)



## 2.96.080 - Residential workforce housing agreement.

- A. Before final subdivision approval or issuance of a building permit, the developer shall enter into a residential workforce housing agreement that sets forth the detailed terms and conditions of compliance with the residential workforce housing policy, including but not limited to:
  - 1. Sales or rental periods for the residential workforce housing units, which specify procedures for the release of units from the residential workforce housing requirements should units not be sold or rented following the expiration of the sales or rental periods;
  - 2. Identification of the number, type, and location of units;
  - 3. Designation of units for specific income and/or special housing target groups;
  - 4. Marketing process for the residential workforce housing units;
  - 5. Eligibility of income-qualified households;
  - 6. Provision for residential workforce housing credits, as applicable;
  - 7. Payment of in-lieu fees or provision of in-lieu land; and
  - 8. Resale restrictions, which may include buy-back provisions, shared equity, and encumbrances.
- B. The residential workforce housing agreement shall be recorded with the bureau of conveyances of the State of Hawaii or the land court of the State as the case may be, so that the terms and conditions of the agreement run with the land and bind and constitute notice to all subsequent grantees, assignees, mortgagees, lienors, and any other persons who claim an interest in such property. The agreement shall be enforceable by the County by appropriate action at law or suit in equity, against the developer, its successors, and assignees.

(Ord. 3418 § 1 (part), 2006)

## 2.96.090 - Applicant selection process—Ownership units.

- A. Wait List Procedure.
  - 1. The developer, its partner, or its management company shall establish wait lists of interested applicants by development.
  - 2. Prior to initiating the wait list, the developer, its partner, or its management company shall publish in at least five issues of a newspaper of general circulation within the County, a public notice that shall contain all information that is relevant to the establishment of the wait list. The public shall also be informed in a like manner, of any decision that would substantially affect the maintenance and use of the wait list.
  - 3. Selection for purchase shall be made by a lottery administered by the developer, its partner, or its management company and overseen by the department, subject to the applicant meeting the eligibility criteria established in subsection (B).
- B. Eligibility criteria. In order to be eligible for a residential workforce housing unit, an applicant must meet the following criteria:
  - 1. Be a citizen of the United States or a permanent resident alien who is a resident of the County.
  - 2. Be eighteen years of age or older.
  - 3. Have a gross annual family income (not to include the income of minors) which does not exceed one

hundred forty percent of the County's area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai. Initial determination for compliance with the maximum gross annual family income provision shall be made by the developer, its partner, or its management company for the initial sale of residential workforce housing units, on the basis of the information provided on the ownership application. The ownership application will be completed when a specific unit is being considered. Final determination for compliance with the maximum gross annual family income provision shall be made by the prospective lender at the time the applicant's income verification data is received.

4. Have assets that do not exceed one hundred forty percent of the County's area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai. Assets shall include all cash, securities, stocks, bonds, and real property with the understanding that assets being used for the down payment or closing costs shall not be included in the asset calculation. Real property shall be valued at fair market value less liabilities on such real property.
  5. For a period of three years before the submittal of the ownership application, have not had an interest of fifty percent or more in real property in fee or leasehold in the United States, where the unit or land is deemed suitable for dwelling purposes, unless the applicant is selling an affordable unit and purchasing a different affordable unit that is more appropriate for the applicant's family size.
  6. Pre-qualify for a loan with the applicant's choice of lender.
  7. Developer, its partner, or its management company shall verify that each applicant meets the requirements of eligibility set forth herein.
- C. Notification of change. Each applicant shall be responsible for notifying the developer, its partner, or its management company in writing of any changes in mailing address, telephone number, fax number, and/or e-mail address. If an applicant fails to properly notify the developer, its partner, or its management company of such changes and the developer, its partner, or its management company is unable to contact the applicant, the developer, its partner, or its management company shall remove the applicant's name from the wait list.
- D. Selection priority.
1. Residents on the wait list shall receive first priority for the available units. Nonresidents on the wait list may purchase a residential workforce housing unit once the wait list has been exhausted of all residents.
  2. The developer, its partner, or its management company may do a mass mailing of housing applications to applicants on the wait list.
  3. The residential workforce housing units must be offered to residents in the order in which their names were drawn in the lottery, provided that there is a unit available in the income group for which they qualify. Nonresidents will be offered residential workforce housing units in the order in which their names were drawn in the lottery.
  4. In the event that units are not sold within the first ninety days after they are offered for sale, and the developer has made a good faith effort, as determined by the director, to contact and qualify applicants on the wait list, the sale of remaining units shall be conducted as follows:
    - a. For the next ninety-day period, units shall be offered for sale to the next-higher income

- preference group, at the original sales price. For example, units targeted for families earning up to one hundred twenty percent of the median income may be sold to families earning up to one hundred forty percent of the median income. All other eligibility criteria shall apply.
- b. Units shall be offered to the next higher income group every ninety days until the units are sold or there are no more income groups available.
  - c. Units shall then be offered to nonresidents on the wait list in the order in which their names were drawn in the lottery, for the next ninety-day period, provided that the applicant's income is within the residential workforce housing income groups.
  - d. Any units that remain unsold may be offered at market rate without deed restrictions. Upon the sale of the unit, the County shall receive fifty percent of the difference between the original sales price of the unit and the actual market rate sales price, for deposit into the affordable housing fund. In this event, the developer shall still be deemed to have satisfied the requirement for producing a residential workforce housing unit.
5. The developer shall submit copies of the following information to the department to verify the sale of residential workforce housing units to eligible buyers:
- a. Applicant's completed ownership application.
  - b. Executed sales contract.
  - c. Pre-qualification notice from lender.
  - d. All signed federal and state tax returns used to determine eligibility, or any other documents used to determine eligibility by the lender.
  - e. Escrow company's settlement statement.

( Ord. No. 4782, §§ 2, 3, 2017; Ord. No. 4177, § 10, 2014; Ord. 3418 § 1 (part), 2006)

#### 2.96.100 - Applicant selection process—Rental units.

##### A. Wait List Procedure.

1. The developer, its partner, or its management company shall establish wait lists of interested applicants by rental development;
2. Prior to initiating the wait list, the developer, its partner, or its management company shall initiate the wait list process by publishing in at least five issues of a newspaper of general circulation within the County, a public notice that shall contain all information that is relevant to the establishment of the wait list. The public shall also be informed in a like manner, of any decision that would substantially affect the maintenance and use of the wait list; and
3. Selection for rental units shall be made by a lottery administered by the developer, its partner, or its management company and overseen by the department, subject to the applicant meeting the eligibility criteria established in subsection B of this section.

##### B. Eligibility Criteria. The eligibility criteria for rentals shall be established on a project-by-project basis by the director in the following manner:

1. If the project is receiving federal and/or state assistance, the applicable federal and/or state eligibility criteria shall apply; and
2. If the project is not receiving federal and/or state assistance, all eligibility criteria in section

2.96.090.B of this chapter shall apply, except for section 2.96.090.B.6 of this chapter.

- C. Notification of Change. Each applicant shall be responsible for notifying the developer, its partner, or its management company in writing of any changes in mailing address, telephone number, fax number, and/or e-mail address. If an applicant fails to properly notify the developer, its partner, or its management company of such changes and the developer, its partner, or its management company is unable to contact the applicant, the applicant's name shall be removed from the applicable wait list.
- D. Selection Priority.
1. Residents on the wait list shall receive first priority for the available units. Nonresidents on the wait list may rent a residential workforce housing unit once the wait list has been exhausted of all residents.
  2. The developer, its partner, or its management company may do a mass mailing of housing applications to applicants on the wait list.
  3. The residential workforce housing units shall be offered to residents in the order in which their names were drawn in the lottery, provided that there is a unit available in the income group for which they qualify. Nonresidents will then be offered residential workforce housing units in the order in which their names were drawn in the lottery, provided that there is a unit available in the income group for which they qualify.
  4. The developer, its partner, or its management company shall submit copies of the following information to the department to verify the rental of residential workforce housing units to eligible renters:
    - a. Applicant's completed final rental application;
    - b. Executed rental lease; and
    - c. All signed federal and state tax returns used to determine eligibility, or any other documents used to determine eligibility by the developer, its partner, or its management company.
  5. The developer, its partner, or its management company shall maintain a wait list for the development after all of the units are rented, which shall be used to fill any vacancy.
  6. Any rental unit vacancy shall be filled by an applicant in the same income group as the original tenant to maintain an equal distribution of rentals across the "very low income" and "low income," "below-moderate income," and "moderate income" groups.
  7. An owner of a residential workforce housing rental development intending to sell the development shall notify the department in writing prior to the closing of the sale, and shall provide documentation to the department that the prospective new owner acknowledges and is aware of the terms, conditions, and restrictions encumbering the development as set forth in section 2.96.070.

(Ord. 3546 § 2, 2008; Ord. 3418 § 1 (part), 2006)

#### 2.96.110 - Review requirements.

- A. The council shall review this chapter every two years.
- B. The director shall provide an annual report to the council on the status of the housing policy that shall include the following:

1. The number of units built for sale and rent, categorized by number of bedrooms, income group, and sale;
  2. The number of purchasers who resold units, categorized by number of bedrooms, income group, and sales price; and
  3. The number of developers, their partner(s), or their management companies maintaining a wait list, and the number of applicants on each wait list.
- C. For rental developments, the developer, its partner, or its management company shall submit an annual report of rental units to the department that includes the following:
1. The tenant's move-in date; and
  2. The income group of the tenant or family.

(Ord. 3418 § 1 (part), 2006)

#### 2.96.120 - Rules.

The director shall adopt administrative rules to implement this chapter, pursuant to chapter 91, Hawaii Revised Statutes, within one hundred eighty days after the effective date of the ordinance codified in this chapter.

(Ord. 3418 § 1 (part), 2006)

#### 2.96.130 - Property assessment value.

The annual tax assessed value, as determined by the County, will take into account the limited resale value of the residential workforce housing property.

(Ord. 3418 § 1 (part), 2006)

#### 2.96.140 - Reserved.

**Editor's note—** Ord. No. 4939, § 1, adopted Dec. 21, 2018, repealed § 2.96.140, which pertained to incentives and derived from Ord. 3418 § 1 (part), adopted in 2006; Ord. No. 4177, § 11, adopted in 2014.

#### 2.96.150 - Qualified housing providers.

Where the department determines that such an agreement will further the purposes of this chapter, the department shall enter into an agreement, on a project-by-project basis, with a qualified housing provider. Such an agreement may provide, without limitation, that the qualified housing provider shall:

- A. Receive, own, manage, rent, operate and sell residential workforce housing units provided by developers pursuant to section 2.96.040.
- B. Receive land and in-lieu fees provided by developers pursuant to subsection 2.96.040(B)(4).
- C. Receive disbursements from the affordable housing fund and other funds provided for the purposes of this chapter.
- D. Administer the selection processes under sections 2.96.090 and 2.96.100 subject to the department's oversight.

1. Where a qualified housing provider receives, owns, develops, rents, operates or sells residential w units, such units shall be rented or sold to applicants qualified under this chapter, as set forth in t provider's agreement with the department.
2. Selection of purchasers or renters for a qualified housing provider's units shall be made in accordance with sections 2.96.090 and 2.96.100 of this chapter or with other selection processes permitted under the qualified housing provider's agreement with the department.
3. All qualified housing provider rentals or sales shall be on terms, conditions, and restrictions set forth in the agreement, which shall be at least as restrictive as the terms, conditions and restrictions applicable to developer rentals or sales under this chapter, and may be more restrictive.
4. All qualified housing provider agreements shall require detailed reports to the department, on no less than an annual basis, of the qualified housing provider's implementation of, and compliance with, the agreement. This report shall include an annual financial audit.

(Ord. No. 4177, § 10[12], 2014; Ord. 3418 § 1 (part), 2006)

#### 2.96.160 - Fast track permitting.

- A. Purpose. The purpose of this section is to support the fast track development of residential workforce housing by codifying the County's priority permitting policy for expediting its permit process and giving priority to qualified residential workforce housing projects.
- B. Project qualifications. A project comprised of 100 percent residential workforce housing units with a fully-executed residential workforce housing agreement between the developer and the County, recorded in the bureau of conveyances or registered in the land court, in compliance with this chapter, shall be eligible for fast track permitting.
- C. Permits subject to fast track permitting. Qualified projects may utilize the fast track permitting process to expedite the review and issuance of all County permits necessary for the development of the project site, including subdivision applications, civil construction plan permits, and other plans and permits associated with the development of the project site. Building permits shall only be expedited for residential workforce housing units.

Fast track permitting applies to applications that require review or approval by the planning commissions, the council, or any other County board or commission. The processing of fast track applications shall be given first priority by County departments while complying with all statutory and procedural requirements.

- D. Fast track permitting processing procedure. All applicable County departments shall review and process permits for qualified projects in accordance with state and county laws. Applicable departments shall begin the permit review process for fast track projects no later than two working days following submission of all required applications and forms deemed complete. Applicable departments shall submit initial comments to the applicant within fifteen working days following submission of all required applications and forms deemed complete. If on the sixteenth working day an applicant does not receive initial comments, the permit will be deemed approved by the applicable department. Applicable departments shall begin the permit review process for qualified projects before all other permit applications for projects not eligible for fast track permitting.

- E. Fast track applications requiring council review. For qualified projects subject to fast track permitting, the council shall schedule the initial meeting for such application within thirty days of the referral to the appropriate committee. The council shall make its reasonable best efforts to approve or deny the application within sixty days of the referral to the committee.
- F. Annual report. The department shall prepare and submit an annual report to the council on the following:
  - 1. The number of qualified projects that utilized the County's fast track permitting process.
  - 2. The length of review time for each permit by each department.
- G. Rules. The director may adopt administrative rules to implement the fast track permitting procedure provided for in this section or amend rules adopted to implement this chapter to include fast track permitting.

( Ord. No. 4939, § 2, 2018)