

December 4, 2019

MEMO TO: Affordable Housing Committee

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



SUBJECT: **CONFLICTS BETWEEN CHAPTER 2.96, MCC, RELATING TO THE RESIDENTIAL WORKFORCE HOUSING POLICY, AND CHAPTER 3.35, MCC, RELATING TO THE AFFORDABLE HOUSING FUND (AH-23)**

In the discussion of appropriations from the Affordable Housing (AH) Fund during the review of the Mayor's Recommended FY 2020 Budget, there was a recommendation that the use of AH Fund be restricted to projects offering affordable housing "in perpetuity" to be consistent with provisions of Maui County Code (MCC) 3.35.

As Chair of this Committee, I asked our Committee Staff in OCS to research and provide information on this issue. The balance of this memo is the information provided by Committee Staff.

Nature of Conflict

The conflict is not necessarily between Chapters 3.35 and 2.96, but is an internal conflict between:

- Section 3.35.060(B)(3) – "in perpetuity," and;
- Section 3.35.050(A) – "subject to the restrictions of" Chapter 2.96"

Relevant Provisions:

Section 3.35.060(B)

Grant or loan proposals shall meet the following criteria for approval:

(3) Demonstrate that the subject property directly advances the objective of providing affordable housing in perpetuity.

Section 3.35.050(A)

Ownership housing units financed by the affordable housing fund shall be subject to the restrictions of subsection 2.96.060(B) of this code. Rental housing units financed by the affordable housing fund shall be subject to the restrictions of subsection 2.96.070(C) of this code.

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From Committee Chair

Affordable Housing (AH) Committee

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Section 2.96.060 *Residential workforce housing restrictions - ownership units*
(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.*

Section 2.96.070 *Residential workforce housing restrictions - rental 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.

Issues for Committee Consideration

Language of Section 3.35.060(B)

Does the language “the project directly advances the objective of providing affordable housing in perpetuity” in Section 3.35.060(B) mean that the project must be affordable in perpetuity? Could “directly advances the objective” still be met even if the project itself is not affordable in perpetuity?

Perhaps the provision was meant to be broader in scope and the choice of language is indirect on purpose? If it was clearly meant to be limited to in-perpetuity projects, it could have read as such: “the project provides affordable housing in perpetuity.”

The provision wasn’t discussed by Councilmembers during deliberations in 2007—when the language came into being. one testifier spoke on it, at the July 31, 2007 meeting of the Policy Committee:

MR. ANDERSEN: Good afternoon, Chair Mateo. My name is John Andersen, I am the Executive Director of Na Hale O Maui. And good afternoon to all the Members. It’s my pleasure to come here this afternoon to **thank you**. And I regret that Mr. Molina is not in the room right now because I wanted to thank Mike and his staff for the work that they did on the revisions during the Budget session of what you’re going to consider

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this afternoon--being the legislation for the two percent affordable housing fund. I was present at the hearing that occurred, before the Budget sessions where a number of concerns were raised. And in reviewing this draft ordinance, I can see that those concerns regarding the timing of the report for. . .and plan from the Housing Department and other issues have been addressed. I was also **extremely** pleased to see the addition of selection criteria to give the Housing Department guidance that it needs in reviewing its plan, putting its plan together in reviewing applications for use of this Affordable Housing Fund. And very, **very** significant. And I applaud very strongly criteria number 3--demonstrate that the subject property directly advances the objective of providing affordable housing **in** perpetuity. That has been a goal of this Council for years now. And you're continuing on that mission. And it is the right mission to go on because we're talking about public funding here, money coming from the community in terms of tax dollars. And if that's invested in affordable housing that remains affordable in perpetuity, that community funding will be recycled over and over again, year after year, generation after generation for the benefit of the **community** as a whole, not a windfall for a few individuals, but public funds for the benefit of the public. And it will stay that way year after year. So I applaud your efforts. You are **absolutely** on the right track. Keep on it and we will provide affordable housing for our community. I have no doubt in my mind. Thank you.

Impact on Project Funding

Does Chapter 3.35 require amendment to allow financing of projects that meet Chapter 2.96 requirements by removing or redrafting the perpetuity reference—or will financing be limited to in-perpetuity projects?

Impact on Similar Code Sections

The exact same language of “the project directly advances the objective of providing affordable housing in perpetuity” is used in Section 16.28.070 relating to the Experimental and Demonstration Housing Projects Fund. If this section is interpreted to require “affordable housing in perpetuity,” would all projects receiving funding under 16.28 be required to be “affordable in perpetuity?”

Potential Restriction on Ownership

Section 3.35.070A(1) states, “Title to any real property shall be held in perpetuity by grantee/borrower unless conveyed to the County, or to a qualified nonprofit or community land trust.” Does this mean that any property benefiting from AH Fund proceeds must be owned by the original grantee, a qualified nonprofit, a community land trust or the County?

Impact on Financing and Affordable Housing Recipient

Moving to requiring “affordability in perpetuity” may substantially decrease the availability of mortgage funding for the affordable homes as the banking industry avoids that restriction on title. Housing for most households is both shelter and an investment – the restriction reduces the ability of the household to use the equity in the house to improve their financial standing.

Always a Need for Affordable Housing

The argument for “in perpetuity” is one of hope – a hope that if a portion of the housing stock is required to always be “affordable” that the community will eventually fully address the need for affordable housing.

Allowing Affordable Housing to “Term Out” is Inequitable

If affordable housing eventually reaches the end of the limitation period (“term out”) then the owner can reap an effective windfall if the property is sold at market rates. The policy argument is why should a select, “lucky few” get the benefit of a County-funded program. Policy options to address this issue include the development of a “shared appreciation model,” a limitation on equity growth and greater use of community land trusts (where the land is held in perpetuity – similar to the structure of Hawaiian Home Lands developments).