

REQUEST FOR LEGAL SERVICES

RECEIVED

By Dept of the Corporation Counsel at 2:21 pm, Feb 08, 2021

Date: February 5, 2021
From: Gabe Johnson, Chair
Affordable Housing Committee

TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Mimi DesJardins, Esq.

Subject: A BILL FOR AN ORDINANCE AMENDING SECTION 2.96.030, MAUI COUNTY CODE, RELATING TO RESIDENTIAL WORKFORCE HOUSING PROJECTS DEVELOPED UNDER CHAPTER 201H, HAWAII REVISED STATUTES (AH-15)

Background Data: Please see attached bill.

Work Requested: [X] FOR APPROVAL AS TO FORM AND LEGALITY
[ ] OTHER:

Table with 2 columns: Requestor's signature (Gabe Johnson) and Contact Person (Alison Stewart or James Forrest)

- [ ] ROUTINE (WITHIN 15 WORKING DAYS) [ ] RUSH (WITHIN 5 WORKING DAYS)
[ ] PRIORITY (WITHIN 10 WORKING DAYS) [ ] URGENT (WITHIN 3 WORKING DAYS)

[X] SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): February 10, 2021
REASON: For posting on the February 19, 2021 Council agenda.

FOR CORPORATION COUNSEL'S RESPONSE

Table with 3 columns: ASSIGNED TO: MDJ, ASSIGNMENT NO.: 2021-0011, BY: jcm

TO REQUESTOR: [ ] APPROVED [ ] DISAPPROVED [X] OTHER (SEE COMMENTS BELOW)
[ ] RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): Made change to paragraph 2.c

DEPARTMENT OF THE CORPORATION COUNSEL

Date February 9, 2021

By /s/ Mimi Desjardins

(Rev. 7/03)

ah:misc:015acc01:ans

Attachment

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

BILL NO. \_\_\_\_\_ (2021)

A BILL FOR AN ORDINANCE AMENDING SECTION 2.96.030, MAUI COUNTY CODE, RELATING TO RESIDENTIAL WORKFORCE HOUSING PROJECTS DEVELOPED UNDER CHAPTER 201H, HAWAII REVISED STATUTES

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

SECTION 1. Section 2.96.030, Maui County Code, is amended to read as follows:

**“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] is 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,] so long as 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] stated 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] does 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] under 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[/] or land required.

2. Any such appeal [shall] must 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] will 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] must set forth in detail the factual and legal basis for the claim of reduction, adjustment, or waiver, and the developer [shall] will 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] must convene a meeting within forty-five days of the county clerk's receipt of the appeal, to consider the appeal. The council [shall] must 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] will 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] will invalidate the reduction, adjustment, or waiver previously granted.

D. Adjustment by [D]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] under chapter 201H, Hawaii Revised Statutes, [shall be] are subject to the requirements of this chapter[, provided that where]. Where the terms of this chapter and chapter 201H are in conflict, [the terms contained in chapter 201H shall control] the stricter provisions will control.

F. Projects under chapter 201H, Hawaii Revised Statutes, are required to provide a minimum of seventy-five percent of the total dwelling units for very low, low, below-moderate, and moderate-income households, unless a lower percentage, which is greater than fifty percent, is approved by council resolution."

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 will take effect on approval.

APPROVED AS TO FORM AND LEGALITY:

/s/ Mimi Desjardins

Department of the Corporation Counsel  
County of Maui

ah:misc:015abil01:ans