

# REQUEST FOR LEGAL SERVICES

**D a t e:** August 27, 2021

**F r o m:** Gabe Johnson, Committee Chair

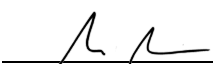
TRANSMITTAL

**Memo to:** DEPARTMENT OF THE CORPORATION COUNSEL  
Attention: Moana Lutey, Esq.

**Subject:** COMPREHENSIVE AFFORDABLE HOUSING PLAN: AMENDING THE RESIDENTIAL WORKFORCE HOUSING POLICY RELATING TO SELECTION PRIORITY (AH-14(3))

**Background Data:** Please see attached bill. Please submit signed bill to ah.committee@mauicounty.us.

**Work Requested:** ☒ FOR APPROVAL AS TO FORM AND LEGALITY  
☐ OTHER:

Requestor's signature  Gabe Johnson	Contact Person <u>James Forrest</u> (Telephone Extension: <u>7137</u> )
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☒ ROUTINE (WITHIN 15 WORKING DAYS) ☐ RUSH (WITHIN 5 WORKING DAYS)  
☐ PRIORITY (WITHIN 10 WORKING DAYS) ☐ URGENT (WITHIN 3 WORKING DAYS)

☐ SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): \_\_\_\_\_  
REASON: \_\_\_\_\_

## FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR: ☐ APPROVED ☐ DISAPPROVED ☐ 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): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DEPARTMENT OF THE CORPORATION COUNSEL

Date \_\_\_\_\_

By \_\_\_\_\_  
(Rev. 7/03)

ah:ltr:014(3)acc01:jbf

Attachment

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

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

A BILL FOR AN ORDINANCE AMENDING RESIDENTIAL WORKFORCE  
HOUSING POLICY RELATING TO SELECTION PRIORITY

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

SECTION 1. This Ordinance's purpose is to establish the Countywide Affordable Housing Interest List.

SECTION 2. Section 2.96.090, Maui County Code, is amended to read as follows:

**"2.96.090 Applicant selection process—Ownership units.**

A. Wait [List Procedure.] list procedure.

1. The [developer, its partner, or its management company shall] department or its designee must establish [wait lists] a countywide affordable housing interest list of interested applicants [by development.] for ownership units. The department or its designee must work with a HUD-certified housing counseling agency to educate people on the countywide affordable housing interest list and assist them in getting prequalified to purchase an affordable housing unit. People on the countywide affordable housing interest list must select the residency areas in which they want to be considered for housing. The department or its designee must educate the public and promote the countywide affordable housing interest list using media outlets, including newspaper, radio, and social media platforms. The public must also be informed in a similar manner of any decision that would substantially affect the maintenance and use of the countywide affordable housing interest list.

2. The department or its designee must establish project wait lists of interested applicants by development. The department or its designee must contact the people on the countywide affordable housing interest list that selected the residency area where the development is located. The person must inform the department or its designee if they want to be placed on the project wait list for the development.

[2.] 3. Prior to initiating the project wait list, the [developer, its partner, or its management company shall] department or its designee must publish, in media outlets with general circulation within the County, at least five public notices that [shall] must contain all information that is relevant to the establishment of the project wait list, including the residency area where the development is located. Media outlets include newspaper, radio, and social media platforms. The public [shall] must also be informed in a [like] similar manner[,] of any decision that would substantially affect the maintenance and use of the project wait list.

[3.] 4. Selection for purchase [shall] must be made by a lottery administered by the [developer, its partner, or its management company and overseen by the] department or its designee, subject to the applicant meeting the eligibility criteria established in subsection (B).

B. Eligibility criteria. [In order to] 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] that does not exceed [one hundred forty] 140 percent of the County's area median income as established by HUD, or as adjusted by the department or its designee, for Hana, Lānaʻi and [Molokai] Molokaʻi. Initial determination for compliance with the maximum gross annual family income provision [shall] must be made by the [developer, its partner, or its management company] department or its designee 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] must 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] 140 percent of the County's area median income as established by HUD, or as adjusted by the department or its designee, for Hana, Lānaʻi, and [Molokai] Molokaʻi. Assets [shall] must include all cash, securities, stocks, bonds, and real property with the understanding that assets being used for the down payment or closing costs [shall] must not be included in the asset calculation. Real property [shall] must be valued at fair market value less liabilities on [such] the real property.

5. For a period of three years before the submittal of the ownership application, have not had an interest of [fifty] 50 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] Department or its designee must verify that each applicant meets the requirements of eligibility. [set forth herein.]

C. Notification of change. Each applicant [shall] must be responsible for notifying the [developer, its partner, or its management company] department or its designee in writing of any changes in mailing address, telephone number, fax number, [and/or] and e-mail address. If an applicant fails to properly notify the [developer, its partner, or its management company] department or its designee of [such] changes and the [developer, its partner, or its management company] department or its designee is unable to contact the applicant, the [developer, its partner, or its management company shall] department or its designee must remove the applicant's name from the project wait list.

D. Selection priority.

1. Residents on the project wait list [shall] must receive first priority for the available units. Nonresidents on the project wait list may purchase a residential workforce housing unit once the project 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 project 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.] For each one-, two-, three-, or four-bedroom unit in each income preference group, the department or its designee must randomly select a number of qualified residents that is equal to four times the total number of available units. The residents selected must then be ranked in the following order:

a. Residents residing in the County, who must then be ranked by the length of time each has been a resident of the County.

b. Residents not residing in the County but employed in the County, who must then be ranked by the length of time each has been employed in the County.

4. [In the event that] If units are not sold within the first [ninety] one hundred eighty 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] must be conducted using the selection priority established in subsection (D)(3) as follows:

a. For the next [ninety-day] one-hundred-eighty-day period, units [shall] must 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] 120 percent of the median income may be sold to families earning up to [one hundred forty] 140 percent of the median income. All other eligibility criteria [shall] must apply.

b. Units [shall] must be offered to the next higher income group every [ninety] one hundred eighty days until the units are sold or there are no more income groups available.

c. Units must then be offered to the County for purchase.

[c.] d. Units [shall] must then be offered to nonresidents on the project wait list in the order in which their names were drawn in the lottery, for the next [ninety-day] one-hundred-eighty-day period, [provided that] as long as the applicant's income is within the residential workforce housing income groups.

[d.] e. Any units that remain unsold may be offered at market rate without deed restrictions. Upon the sale of the unit, the County [shall] must receive [fifty] 50 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] must still [be deemed to have satisfied] satisfy the requirement for producing a residential workforce housing unit.

5. The developer [shall] must 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.”

SECTION 3. Section 2.96.100, Maui County Code, is amended to read as follows:

**“2.96.100 Applicant selection process—Rental units.** A. Wait [List Procedure.] list procedure.

1. The [developer, its partner, or its management company shall] department or its designee must establish [wait lists] a countywide affordable rental housing interest list of interested applicants [by rental development.] The department must work with a HUD-certified housing counseling agency to educate people on the countywide affordable rental housing interest list and assist them getting pre-qualified to rent an affordable housing unit. People on the countywide affordable rental housing interest list must select the residency areas in which they want to be considered for housing. The department or its designee must educate the public and promote the countywide affordable rental housing interest list using media outlets, including newspaper, radio, and social media platforms. The public must also be informed in a similar manner of any decision that would substantially affect the maintenance and use of the countywide affordable rental housing interest list.

2. The department or its designee must establish project wait lists of interested applicants by rental development. The department or its designee must contact the people on the countywide affordable rental housing interest list that selected the residency area where the rental development is located. The person must inform the department or its designee if they want to be placed on the project wait list for the rental development.

[2.] 3. Prior to initiating the project wait list, the [developer, its partner, or its management company shall] department or its designee must initiate the project wait list process by publishing in at least five [issues of a newspaper of general circulation] media outlets within the County, a public notice that shall contain all information that is relevant to the establishment of the wait list including the residency area where the development is located. Media outlets include newspaper, radio, and social media platforms. The public [shall] must also be informed in a [like] similar manner, of any decision that would substantially affect the maintenance and use of the project wait list.

[3.] 4. Selection for rental units [shall] must be made by a lottery administered by the [developer, its partner, or its management company and overseen by the] department or its

designee, subject to the applicant meeting the eligibility criteria established in subsection B of this section.

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

1. If the project is receiving federal [and/or] or state assistance, the applicable federal [and/or] or state eligibility criteria [shall] must apply; and

2. If the project is not receiving federal [and/or] or state assistance, all eligibility criteria in section 2.96.090.B of this chapter [shall] must apply, except for section 2.96.090.B.6 of this chapter.

C. Notification of change. Each applicant [shall] must be responsible for notifying the [developer, its partner, or its management company] department or its designee in writing of any changes in mailing address, telephone number, fax number, [and/or] and e-mail address. If an applicant fails to properly notify the [developer, its partner, or its management company] department of [such] changes and the [developer, its partner, or its management company] department or its designee is unable to contact the applicant, the applicant's name [shall] must be removed from the applicable project wait list.

D. Selection priority.

1. Residents on the project wait list [shall] must receive first priority for the available units. Nonresidents on the project wait list may rent a residential workforce housing unit once the project 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 project 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 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.] For each one-, two-, three-, or four-bedroom unit in each income preference group, the department must randomly select a number of qualified residents that is equal to four times the total number of available units. The residents selected must then be ranked in the following order:

a. Residents residing in the County, who must then be ranked by the length of time each has been a resident of the County.



b. Residents not residing in the County but employed in the County, who must then be ranked by the length of time each has been employed in the County.

4. The developer, its partner, or its management company [shall] must 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] must maintain a wait list for the development after all of the units are rented, which [shall] must be used to fill any vacancy.

6. Any rental unit vacancy [shall] must 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] must notify the department in writing prior to the closing of the sale, and [shall] must 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."

SECTION 4. 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 5. This Ordinance takes effect upon approval.

APPROVED AS TO FORM AND LEGALITY:

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Department of the Corporation Counsel  
County of Maui

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