

COUNCIL OF THE COUNTY OF MAUI
BUDGET, FINANCE, AND ECONOMIC
DEVELOPMENT COMMITTEE

September 3, 2021

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Budget, Finance, and Economic Development Committee,
having met on August 18, 2021, makes reference to the following:

1. County Communication 21-378, from the Director of Housing and Human Concerns, transmitting a proposed resolution entitled "AUTHORIZING THE DIRECTOR OF THE DEPARTMENT OF HOUSING AND HUMAN CONCERNS TO MODIFY THE REQUIREMENTS OF CHAPTER 2.96, MAUI COUNTY CODE, IN RELATION TO THE COUNTY'S PURCHASE OPTIONS, AND APPROVING CERTAIN FINANCING STRUCTURE COMPONENTS RELATING TO THE USE OF FUNDS RECEIVED THROUGH CHAPTER 3.35, MAUI COUNTY CODE, FOR THE LILOA HALE SENIOR RENTAL HOUSING PROJECT."

The purpose of the proposed resolution is to obtain Council approval on the Liloa Hale Senior Rental Housing Project using certain financing structure components relating to funds received under Chapter 3.35, Maui County Code.

2. County Communication 21-383, from the Budget Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING APPENDIX A OF THE FISCAL YEAR 2022 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO PART II, SPECIAL PURPOSE REVENUES – SCHEDULE OF REVOLVING/SPECIAL FUNDS FOR FISCAL YEAR 2022, AFFORDABLE HOUSING FUND (LILOA HALE PROJECT)."

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The purpose of the proposed bill is to amend the Fiscal Year 2022 Budget, Appendix A, Part II, Special Purpose Revenues – Schedule of Revolving/Special Funds, by adding an appropriation under the Affordable Housing Fund for the Liloa Hale Senior Rental Housing Project in the amount of \$4,300,000.

By correspondence dated August 17, 2021, the Budget Director transmitted a revised proposed bill amending the number of units from 150 to 117 and adjusting the breakdown per category.

The Deputy Director of Housing and Human Concerns noted the Council adopted Resolution 20-123, approving the Liloa Hale Senior Rental Housing Project with modifications, in accordance with Section 2.97, Maui County Code, at its meeting of September 11, 2020.

Your Committee clarified with Highridge Costa Development Company (“Developer”) that project financing was changed from a grant to a loan. The Developer said the change would increase Federal and State credits, enhance Federal feasibility, and strengthen applications for Federal and State funding.

Your Committee agreed to correct the project’s affordability restriction period from 65 years to 60 years. The Deputy Director of Housing and Human Concerns explained that it was a typo.

Your Committee further agreed to substitute the bill with the revised version submitted by the Budget Director.

Your Committee noted the reduction in units from 150 to 117 was a result of community feedback the Developer received regarding the building’s size. Your Committee further noted the community did not want a four-story structure, so a floor was removed from the plan, leading to the reduction in proposed units.

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Your Committee voted 6-0 to recommend adoption of the revised proposed resolution, passage of the revised proposed bill on first reading, and filing of the communications. Committee Chair Rawlins-Fernandez, Vice-Chair Paltin, and members Johnson, Lee, Sinenci, and Sugimura voted “aye.” Committee members Kama, King, and Molina were excused.

Your Committee is in receipt of a revised proposed resolution, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee’s recommended revisions and nonsubstantive revisions.

Your Budget, Finance, and Economic Development Committee RECOMMENDS the following:

1. That Resolution _____, as revised herein and attached hereto, entitled “AUTHORIZING THE DIRECTOR OF THE DEPARTMENT OF HOUSING AND HUMAN CONCERNS TO MODIFY THE REQUIREMENTS OF CHAPTER 2.96, MAUI COUNTY CODE, IN RELATION TO THE COUNTY’S PURCHASE OPTIONS, AND APPROVING CERTAIN FINANCING STRUCTURE COMPONENTS RELATING TO THE USE OF FUNDS RECEIVED THROUGH CHAPTER 3.35, MAUI COUNTY CODE, FOR THE LILOA HALE SENIOR RENTAL HOUSING PROJECT,” be ADOPTED;
2. That Bill _____ (2021), as revised herein and attached hereto, entitled “A BILL FOR AN ORDINANCE AMENDING APPENDIX A OF THE FISCAL YEAR 2022 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO PART II, SPECIAL PURPOSE REVENUES - SCHEDULE OF REVOLVING/SPECIAL FUNDS FOR FISCAL YEAR 2022, AFFORDABLE HOUSING FUND (LILOA HALE PROJECT),” be PASSED ON FIRST READING and be ORDERED TO PRINT;
3. That County Communication 21-378 be FILED; and

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4. That County Communication 21-383 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



KEANI N.W. RAWLINS-FERNANDEZ, Chair

bfed:cr:21058aa:lpcm

Resolution

No. _____

AUTHORIZING THE DIRECTOR OF THE DEPARTMENT OF HOUSING
AND HUMAN CONCERNS TO MODIFY THE REQUIREMENTS OF
CHAPTER 2.96, MAUI COUNTY CODE, IN RELATION TO THE COUNTY'S
PURCHASE OPTIONS, AND APPROVING CERTAIN FINANCING
STRUCTURE COMPONENTS RELATING TO THE USE OF FUNDS
RECEIVED THROUGH CHAPTER 3.35, MAUI COUNTY CODE, FOR THE
LILOA HALE SENIOR RENTAL HOUSING PROJECT

WHEREAS, the Council passed Ordinance 5099 (2020), which approved a grant award of \$4,300,000 (the "Grant") to Liloa Senior Housing, LP (the "Partnership") for land acquisition, planning and design, on-site improvements, new construction, and other related development costs to produce 117 rental units, of which 104 units were to be rented at or below sixty percent of the area median income, twelve units were to be rented at or below thirty percent of the area median income, and one unit was to be for an on-site property manager without affordability restrictions, to be known as Liloa Hale Senior Rental Housing Project (the "Project"); and

WHEREAS, on September 11, 2020, the Council passed Resolution 20-123, which approved the Project with modifications; and

WHEREAS, in accordance with Section 3.35.040, Maui County Code ("MCC"), a permitted use of the Affordable Housing Fund is to leverage funds provided by federal, state, nonprofit, or for-profit organizations and other non-County entities to further expand affordable housing opportunities; and

WHEREAS, Section 3.35.070(A)(1), MCC, requires that unless otherwise approved by the Council by Resolution, the Project must be held in perpetuity by the grantee or borrower unless conveyed to the County, or to a qualified nonprofit or community land trust; and

WHEREAS, the Partnership will record and be subject to a Residential Workforce Housing Agreement (as defined in Section 2.96.080, MCC) that will be recorded against the Project property concurrently with the recordation of the construction loan mortgage for the Project, under which the Project will be subject to long-term affordability restrictions; and

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WHEREAS, the Limited Partnership intends to apply for one or more of the following (collectively, “Non-County Funds”): an allocation of Federal Low Income Housing Tax Credits, an allocation of State of Hawaii Low Income Housing Tax Credits, a reservation of tax-exempt multifamily rental housing bonds, and a reservation of Rental Housing Revolving Funds from the Hawaii Housing Finance and Development Corporation (“HHFDC”); and

WHEREAS, in order to realize the benefits to the Project from the Non-County Funds, the Partnership requires that the Grant instead be funded as a loan from the County to the Partnership (the “Loan”) on such terms as are to be later agreed upon by the Partnership and approved by the Director of Housing and Human Concerns (“Director”); and

WHEREAS, Section 3.35.070(A)(3), MCC, requires that, unless otherwise approved by the Council by resolution, the Project must not be sold, exchanged, divested, or converted to other uses that are inconsistent with the purposes established in Chapter 3.35, MCC; and

WHEREAS, Section 3.35.070(A)(4), MCC, requires that, unless otherwise approved by the Council by resolution, the Project must be conveyed to the County or a qualified non-profit or community land trust, in the event of a dissolution or bankruptcy adjudication of the grantee or borrower; and

WHEREAS, the Project’s potential lenders will require that the Project be subject to possible foreclosure or forfeiture in certain events of default under the Project’s loan documents; and

WHEREAS, Section 3.35.070(B)(4), MCC, requires that, unless otherwise approved by Council by resolution, all loans from the Affordable Housing Fund (“AHF”) carry interest at a rate of three percent per annum; and

WHEREAS, in order to obtain adequate funding for the Project, the Partnership requires that the Loan carry a different interest rate; and

WHEREAS, Section 3.35.070(B)(1), MCC, requires that, unless otherwise approved by the Council by resolution, loans from the AHF must be secured by a mortgage in favor of the County that is not lower than second priority; and

WHEREAS, in order to finance the Project, the Partnership will require financing comprised of the following (collectively, the “Senior Loans”): (i) a tax-exempt bond-financed construction loan; (ii) a permanent loan (which may convert from, or serve as “take-out” financing for, the construction loan); (iii) one or more refinancings of the permanent loan; and (iv) a Rental Housing Revolving Fund loan from HHFDC, and each of the Senior Loans will be required to be secured by a mortgage that is senior in priority to the mortgage securing the Loan; and

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WHEREAS, Section 2.96.070(B)(2)(a), MCC, requires that, unless otherwise approved by the Council by resolution, a project owner grant the County a first right to purchase the development from owner in the event the owner decides to sell during the deed restricted period; and

WHEREAS, Section 2.96.070(B)(3), MCC, requires that, unless otherwise approved by the Council by resolution, within ninety days of the expiration of the thirty year deed restricted period, the project owner must offer to sell the Project to the County at a price determined by the owner; and

WHEREAS, the Partnership is unable to comply with the above-described requirements allowing the County the first rights to purchase as they will be in conflict with various agreements that will be necessary to finance the Project; and

WHEREAS, the Partnership is willing to comply with Section 2.96.070(B)(2)(b), MCC, requiring that any new owner during the deed restricted period is required to comply with the applicable deed restrictions; and

WHEREAS, in accordance with Section 2.96.030(D), MCC, the Director is requesting that the requirements of Sections 2.96.070(B)(2)(a) and (B)(3), MCC, be waived; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That in the event title to the Project is transferred by reason of foreclosure or forfeiture under a deed of trust, mortgage or real estate contract, by deed in lieu of foreclosure or by any other similar process, then Chapter 3.35, MCC, will no longer apply to the Project, except to any portion of the Project not so transferred;
2. That the requirement that the Project be conveyed to the County in the event of a dissolution or bankruptcy adjudication of the grantee or borrower will be subordinated to the rights of any Project lender under a deed of trust, mortgage or real estate contract, by deed in lieu of foreclosure or by any other similar process;
3. The Council acknowledges that one unit in the Project will be utilized by a resident, on-site manager, which unit will not be subject to affordability restrictions;
4. The Council authorizes the County to make the Loan to the Partnership instead of the Grant;

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5. The Council authorizes each of the Senior Loans to be secured by a mortgage that is senior in priority to the mortgage that will secure the Loan;
6. The Council authorizes an interest rate on the Loan to be requested by the Partnership not to exceed the “long-term applicable Federal rate” (as defined in Section 1274 of the Internal Revenue Code);
7. The Council authorizes the Director to waive the requirements of MCC Sections 2.96.070(B)(2)(a) and (B)(3), provided that:
 - (i) the Project is subject to affordability restrictions for sixty years;
 - (ii) the Project remains subject to the requirements of Section 2.96.070(B)(2)(b), MCC;
 - (iii) the County must have the option to purchase the Project on the same terms as under any bona fide third party purchase offer, unless such third party assumes the Project owner’s obligations under the Residential Workforce Housing Agreement;
 - (iv) the County must have the right to purchase the Project within ninety days of the expiration of the term of the Residential Workforce Housing Agreement, unless an additional thirty-year deed restriction is recorded against the Project with substantially similar affordability restrictions as under the Residential Workforce Housing Agreement; and
8. That certified copies of this Resolution be transmitted to the Director of Public Works, the Planning Director, and the Director of Housing and Human Concerns.

APPROVED AS TO FORM AND LEGALITY:

/s/Kristina C. Toshikiyo

Department of the Corporation Counsel
County of Maui

bfed:misc:058areso01:ljcm

ORDINANCE NO. _____

BILL NO. _____ (2021)

A BILL FOR AN ORDINANCE AMENDING APPENDIX A
OF THE FISCAL YEAR 2022 BUDGET FOR THE COUNTY OF MAUI
AS IT PERTAINS TO PART II, SPECIAL PURPOSE REVENUES -
SCHEDULE OF REVOLVING/SPECIAL FUNDS FOR FISCAL YEAR 2022,
AFFORDABLE HOUSING FUND (LILOA HALE PROJECT)

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

SECTION 1. Ordinance No. 5217, Bill No. 46 (2021), Draft 1, as amended, "Fiscal Year 2022 Budget", Appendix A, Part II, Special Purpose Revenues – Schedule of Revolving/Special Funds for Fiscal Year 2022, is hereby amended as it pertains to the Affordable Housing Fund, by adding an appropriation for the Liloa Hale Project in the amount of \$4,300,000, to read as follows:

**"II. SPECIAL PURPOSE REVENUES - SCHEDULE OF REVOLVING/SPECIAL FUNDS
FOR FISCAL YEAR 2022**

	<u>ESTIMATED BALANCE AS OF 6/30/2021</u>	<u>ANTICIPATED REVENUES FOR FY 2022</u>	<u>TOTAL FOR FY 2022</u>
L. Affordable Housing Fund (Section 9-20, Revised Charter of the County of Maui (1983), as amended; Chapter 3.35, Maui County Code)	22,267,512	22,969,661	45,237,173
(1) Up to \$70,000 must be for Administrative expenses.			
(2) Up to \$2,000,000 must be for planning, design, engineering, construction, and construction management related to the Lanai Affordable Housing Project.			
(3) Up to \$3,025,442 must be for a grant to Ikaika Ohana for land acquisition, planning and design, new construction, and reimbursement of entitlement work done by the land's sellers for a 56-unit multifamily rental project, for the Kaiaulu O Halelea Phase 1B project, TMK: (2) 2-2-024:033, located at Lipoa Parkway, Kihei, Maui, Hawaii. The project will include 6 units at or below 30 percent of the AMI, 6 units at or below 40 percent of the AMI, 43 units at or below 60 percent of the AMI, and one unit			

for an on-site property manager. The affordability period is 65 years.

- (4) Up to \$4,665,660 must be for a grant to Hawaiian Community Development Board for land acquisition for a 96-unit senior rental project for the Hale O Piikea II, TMK: (2) 3-9-002:076, located at Piikea Avenue and Liloa Drive, Kihei, Maui, Hawaii. The project will include 10 units at or below 30 percent of the AMI, 19 units at or below 50 percent of the AMI, and 68 units at or below 60 percent of the AMI. The affordability period is 61 years.
- (5) Up to \$2,000,000 must be for a grant to Na Hale O Maui for land acquisition, foreclosed or abandoned building acquisition, rehabilitation, and new construction for six single family homes, including three units at or below 100 percent of the AMI and three units at or below 120 percent of the AMI. The affordability period is in perpetuity.
- (6) Up to \$660,000 must be for a grant to Catholic Charities Housing Development Corporation for planning and design of a 179-unit multifamily rental project for the Hale Pilina project, TMK: (2) 3-7-013:026, located at Puunene Avenue, Kahului, Maui, Hawaii. The project will include 18 units at or below 30 percent of the AMI, 18 units at or below 50 percent of the AMI, 142 units at or below 60 percent of the AMI, and one unit for an on-site property manager. The affordability period is 61 years.
- (7) Up to \$650,000 must be for the acquisition of TMK: (2) 4-6-011:011 and 028, located at 266 Dickenson Street, Lahaina, Maui, Hawaii 96761.

(8) Up to \$4,300,000 must be a loan to Liloa Senior Housing, LP for the planning, design, and construction for the Liloa Hale project, TMK: (2) 2-2-002:072, located at Welakahao Road, Kihei, Maui, Hawaii. The 117-unit multifamily senior rental project will include 12 units at or below 30 percent of the AMI, 104 units at or below 60 percent of the AMI, and one unit for an on-site property manager. The affordability period is 60 years."

SECTION 2. New material is underscored.

SECTION 3. This Ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

/s/Kristina C. Toshikiyo

KRISTINA C. TOSHIKIYO
Deputy Corporation Counsel