

# REQUEST FOR LEGAL SERVICES

**D a t e:** September 16, 2021

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

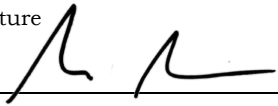
TRANSMITTAL

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

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

**Background Data:** Please see attached revised bill as amended by Committee and with nonsubstantive revisions. 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)acc02:jbf/ans

Attachment

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

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

A BILL FOR AN ORDINANCE AMENDING CHAPTER 2.96,  
MAUI COUNTY CODE, RELATING TO RESIDENTIAL WORKFORCE  
HOUSING POLICY APPLICANT SELECTION PRIORITY

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

SECTION 1. This Ordinance's purpose is to establish the Countywide Workforce 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] ownership units. A. [Wait List Procedure.] Countywide workforce housing interest list and project wait lists.**

1. The [developer, its partner, or its management company shall] department or its designee must establish [wait lists] a countywide workforce housing interest list of interested residents for ownership units [applicants by development]. The department or its designee must work with HUD-certified housing-counseling agencies to educate applicants about workforce housing requirements, eligibility criteria, available opportunities, and methods for prequalification. The department or its designee must inform the public and promote the 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 interest list.

2. The department or its designee must establish project wait lists of interested applicants by development project. For each project, the department or its designee must notify those on the countywide workforce housing interest list and invite applicants to declare their interest in being placed on the project wait list.

[2.] 3. Prior to initiating [the] a project 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.] department or its designee must publish, in media outlets with general circulation within the County, at least five public notices that contain all information that is relevant to the establishment of the project wait list, including the community plan 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.

4. The developer, its partner, or its management company may do a mass mailing of housing applications to applicants on the project wait list.

[3.] 5. 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, to the extent permitted by law, 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[, for Hana, Lanai, and Molokai]. 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~~[, for Hana, Lāna'i, and Moloka'i]~~ or its designee. 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]~~ a workforce unit and purchasing a different ~~[affordable]~~ workforce unit that is more appropriate for the ~~[applicant's family size]~~ applicant.

6. Pre-qualify for a loan with the applicant's choice of lender.

7. ~~[Developer, its partner, or its management company shall]~~ The 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 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.]~~ The department or its designee must conduct a random lottery of an appropriate number of qualified applicants in accordance with the guidelines established in subsection (E).

~~[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.] 2. The applicants selected by lottery must then be ranked by the total length of time each has been a resident of the County. The workforce housing units must then be offered in the order of the rankings.

4.] 3. [In the event that] If units are not sold within the first [ninety] one hundred twenty 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 project 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 twenty-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 twenty 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 as long as 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.] c. Any units that remain unsold must be purchased by the County, at the original sales price.

[5.] 4. 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.

E. Department guidelines. The department must adopt guidelines to implement the provisions of section 2.96.090, subject to council approval by resolution."

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

**"2.96.100 Applicant selection process—[Rental] rental units.** A. [Wait List Procedure.] Countywide workforce housing interest list and project wait lists.

1. The [developer, its partner, or its management company shall] department or its designee must establish [wait lists] a countywide workforce rental housing interest list of interested applicants [by rental development;]. The department must work with HUD-certified housing-counseling agencies to educate applicants about workforce housing requirements, eligibility criteria, and available opportunities. The department or its designee must inform the public and promote the 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 interest list.

2. The department or its designee must establish project wait lists of interested applicants by rental development project. For each project, the department or its designee must notify those on the countywide workforce rental housing interest list and invite applicants to declare their interest in being placed on the project wait list.

[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 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.] publish, in media outlets with general circulation within the County, at least five public notices that contain all information that is relevant to the establishment of the project wait list, including the community plan 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[: and].

4. The developer, its partner, or its management company may do a mass mailing of housing applications to applicants on the project wait list.

[3.] 5. 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, to the extent permitted by law, subject to the applicant meeting the eligibility criteria established in subsection [B of this section] (B).

B. Eligibility [Criteria.] criteria. The eligibility criteria for [rentals shall] rental units 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] subsection (B) [2.96.090.B of this chapter shall] must apply, except for [section] subsection (B)(6) [2.96.090.B.6 of this chapter].

C. Notification of [Change.] 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 applicant's name [shall] must be removed from the [applicable] project wait list.

D. Selection [Priority.] 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.] The department or its designee must conduct a random lottery of an appropriate number of qualified applicants, in accordance with the guidelines established in section (E).



[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 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.] 2. The applicants selected by lottery must then be ranked by the total length of time each has been a resident of the County. The workforce housing units must then be offered in the order of the rankings.

[4.] 3. 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.] 4. The [developer, its partner, or its management company shall] department or its designee must maintain [a] the project wait list for the development to fill any vacancy after all of the units are rented[, which shall be used to fill any vacancy].

[6.] 5. 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] rental units across the "very low income" and "low income," "below-moderate income," and "moderate income" groups.

[7.] 6. 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.

E. Department guidelines. The department must adopt guidelines to implement the provisions of section 2.96.100, subject to council approval by resolution."



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. The Department of Housing and Human Concerns must adopt guidelines for the implementation of Sections 2.96.090 and 2.96.100, Maui County Code, no later than November 1, 2022, subject to Council approval by resolution. This Ordinance takes effect upon Council approval of the guidelines by resolution.

APPROVED AS TO FORM AND LEGALITY:

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MIMI DESJARDINS  
Department of the Corporation Counsel  
County of Maui

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