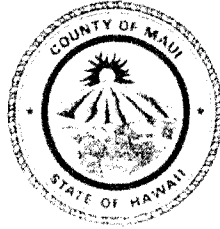


MICHAEL P. VICTORINO
Mayor

LORI TSUHAKE
Director

LINDA R. MUNSELL
Deputy Director



DEPARTMENT OF HOUSING
& HUMAN CONCERNS
COUNTY OF MAUI
2200 MAIN STREET, SUITE 546
WAILUKU, MAUI, HAWAII 96793
PHONE: (808) 270-7805

September 23, 2021

Honorable Michael P. Victorino
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Michael P. Victorino 9/28/21

Mayor Date

For Transmittal to:

Honorable Gabe Johnson, Chair
Affordable Housing Committee
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

Dear Chair Johnson:

**SUBJECT: COMPREHENSIVE AFFORDABLE HOUSING PLAN: EFFECTIVELY
PROMOTING THE AVAILABILITY OF AFFORDABLE HOUSING FOR
MAUI COUNTY RESIDENTS (AH-14(3))**

Thank you for your communication dated September 16, 2021 requesting the Department's responses related to Section 2.96.090(D)(4)(d) of the Maui County Code.

1. Relating to Section 2.96.090(D)(4)(d), Maui County Code:

- a. How many residential workforce housing projects sold units at market rate after reaching the end of their marketing period for all income-qualified groups?

RESPONSE:

In the last five years, four projects sold units at market without deed restrictions.

- b. For each project, please provide the following information:

1. Name and type of development.
2. Total number of units.
3. Number of units sold to income-qualified homebuyers.
4. Number of units sold at market rate.

RECEIVED
2021 SEP 29 PM 3:00
OFFICE OF THE
COUNTY CLERK

RESPONSE:

Project Name	Project Type	Total WF Units	Sold Income Qualified	Sold to Market*
Kamalani	Multi-family	170	30	140
Kalama Kai	Multi-family	40	35	5
Kahoma Village	Mixed	122	49	73
Kua'aina Mauka	SF (cottages)	7	2	5

* Of the total units that timed out and were sold to non-qualified (market) buyers without deed restrictions, 24% (54 units) were sold at or below the workforce prices

The total cost to the County had we purchased these units at workforce prices would have been \$98.3M, plus the Homeowners Association fees, utility, maintenance expenses, taxes, insurance, additional management personnel costs, and associated seller costs paid at closing for each unit sale until all units are sold or transferred.

2. Relating to other provisions in the Residential Workforce Housing Policy, how many times has the County been given the first right of refusal to purchase a workforce housing unit? How many times has the County declined to purchase the unit?

RESPONSE:

Over the past seven years the County has been given first right of refusal to purchase only eight (8) homes. Of those eight homes, the County has declined to purchase four (4) multi-family units.

In all four cases where the County declined to purchase, the owners were granted permission to sell their units in accordance with the deed restrictions in effect for those units. The owners were required to sell to a residential workforce qualified buyer at a not-to-exceed price determined by formula in the workforce housing agreement. The buyers are then required to comply with all deed restrictions for the remainder of the restriction period.

Of those four units, two owners subsequently decided not to sell their units, one unit was sold to an income qualified teacher/single mother, and one unit is still pending a buyer.

Of the four units the County offered to purchase, one owner declined the County's purchase offer and withdrew their request to sell. For the remaining three (3) units, the County completed the purchase of those units, and the units were subsequently granted to Na Hale O Maui. All of these units were single family units.

Please note that Na Hale O Maui has indicated that, for a variety of reasons, they would not be able to accept condominium units even if they are granted to them.

Honorable Gabe Johnson, Chair
Affordable Housing Committee
September 23, 2021
Page 3 of 3

3. Please provide a copy of the Administrative Rules adopted for Chapter 2.96, Maui County Code.

RESPONSE:

A copy of the Administrative Rules is attached.

Thank you for the opportunity to provide this information. Should you have any questions, please feel free to contact me at Ext. 7805.

Sincerely,

A handwritten signature in black ink, appearing to read "Lori Tsuhako", written in a cursive style.

LORI TSUHAKO, LSW, ACSW
Director of Housing and Human Concerns

Attachment
xc: Housing Division

DEPARTMENT OF HOUSING AND HUMAN CONCERNS

Adoption of Chapter 07-107
Rules Relating to the Administration of
Chapter 2.96, Maui County Code, Pertaining to the
Residential Workforce Housing Policy

SUMMARY

1. Chapter 07-107, entitled "Rules Relating to the Administration of Chapter 2.96, Maui County Code, Pertaining to the Residential Workforce Housing Policy", is adopted to read as follows:

2000 2001 2002 2003 2004 2005

TITLE MC-07

DEPARTMENT OF HOUSING AND HUMAN CONCERNS

SUBTITLE 1

DIRECTOR OF HOUSING AND HUMAN CONCERNS

CHAPTER 107

RULES RELATING TO THE ADMINISTRATION
OF CHAPTER 2.96, MAUI COUNTY CODE, PERTAINING
TO THE RESIDENTIAL WORKFORCE HOUSING POLICY

Subchapter 1 General Provisions

\$07-107-1	Title
\$07-107-2	Purpose
\$07-107-3	Definitions

Subchapter 2 Applicability

\$07-107-4	Applicability
\$07-107-5	Confirmation of applicability

Subchapter 3 Adjustment

\$07-107-6	Adjustment, reduction, or waiver of requirements
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Subchapter 4 Residential Workforce Housing
Requirements

\$07-107-7	General provisions
\$07-107-8	Alternative measures
\$07-107-9	In-lieu fee payment

§07-107-10 Provision of land
§07-107-11 Partnering with a non-profit
organization or community land trust
§07-107-12 HUD and departmental guidelines

Subchapter 5 Residential Workforce Housing
Agreement

§07-107-13 General
§07-107-14 Draft workforce housing agreement

Subchapter 6 Applicant Selection Process

§07-107-15 Ownership units
§07-107-16 Rental units

Subchapter 7 Residential Workforce Housing
Restrictions For Ownership Units

§07-107-17 Ownership units
§07-107-18 Appraisal of unit before occupancy
§07-107-19 Deed restrictions
§07-107-20 Sales price
§07-107-21 Ensuring continued affordability
§07-107-22 Acquisition by the County
§07-107-23 Acquisition by a non-profit or
community land trust
§07-107-24 Acquisition by a developer
§07-107-25 Acquisition by an income-qualified
resident
§07-107-26 Determination of resale price
§07-107-27 Resale to income-qualified residents
§07-107-28 Foreclosure
§07-107-29 Rental units

Subchapter 8 Residential Workforce Housing
Credits

§07-107-30 General

Subchapter 9 Qualified Housing Providers

§07-107-31 General

SUBCHAPTER 1

GENERAL PROVISIONS

§07-107-1 Title. The rules in this chapter shall be known as the "Rules Relating to the Administration of Chapter 2.96, Maui County Code, Pertaining to the Residential Workforce Housing Policy". [Eff 2/21/09] (Auth: HRS §91-2, MCC §2.96.120) (Imp: MCC §2.96.120)

§07-107-2 Purpose. The purpose of these rules is to implement the goals and objectives of chapter 2.96, Maui County Code, by ensuring that the housing needs of the County are addressed, and to encourage the provision and maintenance of residential workforce housing units, for both purchase and rental, to meet the needs of income-qualified households. [Eff 2/21/09] (Auth: HRS §91-2, MCC §2.96.120) (Imp: MCC §2.96.120)

§07-107-3 Definitions. Words defined in section 2.96.020, Maui County Code, shall have the same meaning wherever used herein. Unless otherwise apparent from the context, the following definitions shall apply:

"Community land trust" means a non-profit organization that acquires land that:

- (1) Is held in perpetuity;
- (2) Is primarily for conveyance under a long-term ground lease for the creation of dwelling units that shall be sold or rented to applicants within the income-qualified groups established in sections 2.96.060 and 2.96.070, Maui County Code; and
- (3) Retains an option to purchase any dwelling unit at a price determined by formula that

is designed to ensure that the dwelling unit remains affordable in perpetuity.

"Council" means the Maui county council.

"County" means County of Maui, State of Hawaii.

"Department" means the department of housing and human concerns.

"Director" means the director of the department of housing and human concerns, or the director's designated representative.

"Disabled" means a person who is determined, by a medical doctor, to have a physical, mental, or emotional impairment that:

- (1) Is expected to be of long-continued and indefinite duration;
- (2) Substantially impedes the person's ability to live independently; and
- (3) Is of such a nature that the ability to live independently could be improved by more suitable housing conditions.

"Dwelling unit" means a room or group of rooms connected together constituting an independent housekeeping unit for family and containing a single kitchen.

"Elderly" means a person who has attained the age of sixty-two years.

"Employed" means working for compensation in the County for any number of hours.

"Homeless" means:

- (1) An individual or family who lacks a fixed, regular, and adequate nighttime residence; or
- (2) An individual or family who has a primary nighttime residence that is:
 - (A) A supervised shelter designed to provide temporary living accommodations; or
 - (B) A place not designed for or ordinarily used as sleeping accommodations for human beings.

"Hotel" means a transient vacation rental, other than a bed and breakfast home containing lodging or dwelling units.

"HUD" means the United States Department of Housing and Urban Development.

"Improved land" means land that has necessary infrastructural improvements to support a public use project or a use density of at least a single-family or a two-family residential building per acre, in conformity with state and county zoning laws and building permit requirements.

"Lot" means any improved or unimproved land that has been subdivided.

"MCC" means the Maui County Code, as amended.

"Median family income" means the middle income in a series of incomes ranked from smallest to largest as determined by HUD for the County, or as adjusted by the department, for Hana, Lanai, and Molokai.

"Multi-family dwelling" means a building or portion thereof that consists of three or more dwelling units and which is designated for occupancy by three or more families living independently of each other.

"Qualified housing provider" means a community land trust, non-profit agency, or other private or public organization, agency, or entity authorized and designated by the department in accordance with section 2.96.150, MCC, to own, develop, construct, administer, operate, or otherwise provide residential workforce housing required under chapter 2.96, MCC.

"Resident" means a person who meets one of the following criteria:

- (1) Currently employed in the County;
- (2) Retired from employment in the County, having worked in the County immediately prior to retirement;
- (3) A full-time student residing in the County;
- (4) A disabled person residing in the County who was employed in the County prior to becoming disabled;

- (5) The parent or guardian of a disabled person residing in the County;
- (6) A spouse or dependent of any such employee, retired person, student, or disabled person residing in the County; or
- (7) In the event of the death of the employee, retired person, student, or disabled person, the spouse or dependent of any such person residing in the County.

"Residential workforce housing unit" means a unit or lot to be sold or rented to residents within one of the following income groups as established by the department:

- (1) "Very low income", which are those households whose gross annual family income is fifty percent or less of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai;
- (2) "Low income", which are those households whose gross annual family income is more than fifty percent, but not more than eighty percent of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai;
- (3) "Below moderate income", which are those households whose gross annual family income is more than eighty percent, but not more than one hundred percent of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai;
- (4) "Moderate income", which are those households whose gross annual family income is more than one hundred percent, but not more than one hundred twenty percent of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai;

- (5) "Above-moderate income", which are those households whose gross annual family income is more than one hundred twenty percent, but not more than one hundred forty percent of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai; and
- (6) "Gap income", which are those households whose gross annual family income is more than one hundred forty percent, but not more than one hundred sixty percent of the area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai.

"Special housing target group" means a group of residents that can be demographically defined as having a special or unique housing need, including but not limited to, the elderly, homeless, and disabled.

"Subdivision" means improved or unimproved land or lands divided or proposed to be divided into two or more lots, parcels, sites, or other divisions of land for purposes of, whether immediate or future, sale, lease, rental, transfer of title or interest, in any or all of such parcels, and shall include resubdivision, and when appropriate to the context shall relate to the process and procedure of subdividing of the land being subdivided. Easements for roadway or access purposes shall be construed as subdivided land. The term includes a building or group of buildings, other than a hotel, containing or divided into three or more dwelling units. Planned unit developments and condominiums shall be considered subdivisions.

"Two-family dwelling unit" means a building consisting of only two dwelling units designed for occupancy by two families living independently of each other.

"Unimproved land" means land not classified as improved land.

"Wait list area" means Hana, Lanai, Maui
(excluding Hana), or Molokai. [Eff 2/21/09] (Auth:
HRS §91-2, MCC §2.96.120) (Imp: MCC §2.96.120)

SUBCHAPTER 2

APPLICABILITY

§07-107-4 Applicability. (a) The director shall determine if any new development, redevelopment, renovation, or conversion to time share use, including the subdivision of land and/or the construction of single-family dwelling units, two-family dwelling units, multi-family dwellings, or hotels, whether constructed at one time or over several years, is subject to the requirements of chapter 2.96, MCC, and these rules, or whether the development is exempt pursuant to section 2.96.030(B), MCC. The director shall review all completed subdivision and building permit applications. The director shall make the determination within thirty days of receipt of the completed application.

(b) In determining the applicability of chapter 2.96, MCC, the director shall use the criteria in sections 2.96.030(A)(1) through (6), MCC.

(c) In determining whether a development is exempt, the director shall use the criteria in section 2.96.030(B), MCC. [Eff 2/21/09] (Auth: HRS §91-2, MCC §2.96.120) (Imp: MCC §2.96.120)

§07-107-5 Confirmation of applicability. (a) The director shall provide electronic or written confirmation of the applicability, non-applicability, or exemption of the development to the receiving agency and the developer.

(b) The director shall provide a copy of said confirmation and a copy of each executed workforce housing agreement to the directors of the departments of public works, parks and recreation, and planning.

(c) The department shall maintain a record of all executed workforce housing agreements and written confirmations of applicability, non-applicability, or

exemption for future reference. [Eff 2/21/09] (Auth:
HRS §91-2, MCC §2.96.120) (Imp: MCC §2.96.120)

SUBCHAPTER 3

ADJUSTMENT

§07-107-6 Adjustment, reduction, or waiver of requirements. (a) Upon receipt of the director's written determination that a development is subject to the requirements of chapter 2.96, MCC, and these rules, an applicant may appeal to the council for a reduction, adjustment, or waiver of the requirements. The time within which to file the appeal, and the contents and legal basis of the appeal, shall be in accordance with section 2.96.030(C), MCC.

(b) For purposes of section 2.96.030(C)(4), MCC, for all appeals heard before the council, the director shall obtain and maintain written transcripts of the proceedings in the event any substantive change or modification in the development occurs subsequent to a grant of a reduction, adjustment, or waiver by the council. [Eff 2/21/09] (Auth: HRS §91-2, MCC §2.96.120) (Imp: MCC §2.96.120)

SUBCHAPTER 4

RESIDENTIAL WORKFORCE HOUSING REQUIREMENTS

§07-107-7 General provisions. (a) The amount or number of residential workforce housing units required for developments subject to chapter 2.96, MCC, and any alternative measures to satisfy said requirements, shall be in accordance with section 2.96.040, MCC.

(b) In determining the sale price or average sale price of proposed market rate dwelling units or lots in a development, the director shall consider the applicant's documented or published offering, sales or marketing statements, or notices.

(c) The applicant shall provide the director with a copy of a settlement statement for all residential workforce for-sale units or lots and any other documents required by the director to verify eligibility of the buyers and sales price requirements.

(d) The applicant shall provide the director with a copy of an executed lease or rental agreement for all for-rent units and any other documents required by the director to verify eligibility of the tenant(s) and rental rate requirements. [Eff 2/21/09]
(Auth: HRS §91-2, MCC §2.96.120) (Imp: MCC §2.96.120)

§07-107-8 Alternative measures. (a) In determining whether the residential workforce housing requirements of section 2.96.040(A), MCC, may be satisfied by alternative measures pursuant to section 2.96.040(B), MCC, the director shall use, but not be limited to, the following criteria:

- (1) The alternative measures will accomplish the objective of producing as many workforce

dwelling units as possible in a reasonable period of time.

- (2) The alternative measures will meet the needs of income-qualified households for the workforce, students, and special housing target groups.
- (3) The alternative measures satisfy the requirements of sections 2.96.040(B)(1) and 2.96.040(B)(2), MCC, by providing for the sale or rental of the required number of workforce dwelling units or lots to income-qualified residents.

(b) The director shall draft and transmit a resolution to the council for approval of any proposed payment of in-lieu fees, or payments of moneys to a designated non-profit organization or community land trust pursuant to a co-development agreement, or provision of improved or unimproved land.

(c) After council approval is obtained, the director shall grant the funds and/or land or lots to the appropriate entity. Council approval may be required for the conveyance of the land or lots pursuant to chapter 3.44, MCC. The granting of funds and land and/or lots to a non-profit organization or community land trust shall require a grant agreement.
[Eff 2/21/09] (Auth: HRS §91-2, MCC §2.96.120) (Imp: MCC §2.96.120)

§07-107-9 In-lieu fee payment. (a) In the event payment of a fee is proposed to satisfy the requirements of section 2.96.040, MCC, the total amount of the in-lieu fee due and owing the County, if not paid in advance, shall be secured by a lien recorded against the property on which the market rate units or lots will be situated. Said lien will be released by the County upon full payment of the in-lieu fee.

(b) The department shall notify the department of public works when council authorizes acceptance of

an in-lieu fee in satisfaction of a housing requirement. [Eff 2/21/09] (Auth: HRS §91-2, MCC §2.96.120) (Imp: MCC §2.96.120)

§07-107-10 Provision of land. In the event provision of improved or unimproved land is proposed pursuant to section 2.96.040(B)(4)(b), MCC, the value of such land(s) shall be determined by an appraisal completed by a certified land appraiser, the cost and fees of which shall be paid by the developer, which appraisal shall be reviewed and approved by an appraiser employed by the County department of finance. The date of the appraisal shall not be earlier than six months from the date of occupancy of any market rate dwelling units or lots in the development. [Eff 2/21/09] (Auth: HRS §91-2, MCC §2.96.120) (Imp: MCC §2.96.120)

§07-107-11 Partnering with a non-profit organization or community land trust. When partnering with a non-profit organization, the developer's residential workforce housing requirement shall be deemed satisfied upon receipt of payment and/or other in-lieu contribution. Moneys shall be deposited into the County affordable housing fund, designated for the non-profit organization or community land trust selected by the developer. Lots and/or land-in-lieu contributions shall be conveyed to the County, designated for the non-profit or community land trust selected by the developer. All in-lieu contributions and corresponding designations shall be in accordance with a co-development agreement entered into by the developer and the non-profit organization or community land trust, and approved by the department prior to execution. A copy of the executed co-development agreement shall be transmitted to the department. [Eff 2/21/09] (Auth: HRS §91-2, MCC §2.96.120) (Imp: MCC §2.96.120)

§07-107-12 HUD and departmental guidelines. In implementing section 2.96.040(B), MCC, the department shall use "family income" statistics rather than the HUD-referenced "family of four" term. Further, the department shall use its workforce housing guidelines to determine the workforce sales prices as adjusted by the department by wait list areas. [Eff 2/21/09]
(Auth: HRS §91-2, MCC §2.96.120) (Imp: MCC §2.96.120)

SUBCHAPTER 5

RESIDENTIAL WORKFORCE HOUSING AGREEMENT

§07-107-13 General. The terms, conditions, requirements, and contents of a residential workforce housing agreement between an applicant and the department shall be in accordance with section 2.96.080, MCC. [Eff 2/21/09] (Auth: HRS §91-2, MCC §2.96.120) (Imp: MCC §2.96.120)

§07-107-14 Draft workforce housing agreement. The applicant of a development that is subject to chapter 2.96, MCC, shall provide the department a draft workforce housing agreement for review. The director shall approve or deny the draft, or request modifications thereto, within thirty days of receipt of the draft workforce housing agreement. If revision of the draft is requested, the director shall approve or deny the revised workforce housing agreement within thirty days of receipt of the revised draft. [Eff 2/21/09] (Auth: HRS §91-2, MCC §2.96.120) (Imp: MCC §2.96.120)

SUBCHAPTER 6

APPLICANT SELECTION PROCESS

§07-107-15 Ownership units. (a) The developer shall establish and maintain a wait list of interested purchasers of residential workforce housing units. The procedure to establish such a wait list shall be in accordance with section 2.96.090(A), MCC.

(b) No later than fourteen calendar days prior to any publication of the public notice to establish a wait list, the developer shall deliver a draft of the notice to be published to the department for the department's review and approval. Should the department have a standard form notice, said notice shall be used without prior review and approval.

(c) Any lottery conducted by the developer to establish a wait list shall be monitored by the department, and written notice of the date, time, and place of any lottery shall be delivered to the department no later than seven calendar days prior to the lottery.

(d) Failure to timely provide the department a draft of a notice to establish a wait list, or a notice of a lottery date, time, and place, shall be deemed a breach of the requirements set forth in section 2.96.090(A), MCC, and the director may require the developer to repeat or redo the procedure to establish its wait list.

(e) The final day of publication of the notice to establish a wait list shall constitute the beginning of the initial ninety-day marketing period described in section 2.96.090(D)(4), MCC, with subsequent ninety-day periods thereafter commencing with the ending of the preceding ninety-day period.

(f) The terms, conditions, and procedures concerning wait list eligibility criteria, responsibility for notification of change in status of interested applicants, selection priority, and

documentation required to be provided to the department shall be in accordance with sections 2.96.090(B), (C), and (D), MCC.

(g) To implement the terms and conditions of section 2.96.090(D)(4)(d), MCC, in the event a residential workforce housing unit is sold at a market rate without deed restrictions, the County's right to receive fifty percent of the difference between the original sales price and the actual market rate resale price shall be due and payable upon the close of escrow of the sale of the subject unit. The developer shall provide a copy of the purchase agreement and escrow information no later than thirty calendar days prior to the scheduled closing date. Upon receipt of the copy, the department shall calculate the amount due the County and place a demand in escrow for satisfaction of the County's rights under section 2.96.090(D)(4)(d), MCC. [Eff 2/21/09] (Auth: HRS §91-2, MCC §2.96.120) (Imp: MCC §2.96.120)

§07-107-16 Rental units. (a) The requirements regarding notification to the department set forth in section 07-107-15 of these rules shall also apply to residential workforce rental units.

(b) The terms, conditions, and requirements regarding eligibility criteria, responsibility for notification of change in status of interested applicants, selection priority, and documentation required to be provided to the department shall be in accordance with sections 2.96.100(B), (C), and (D), MCC. [Eff 2/21/09] (Auth: HRS §91-2, MCC §2.96.120) (Imp: MCC §2.96.120)

SUBCHAPTER 7

RESIDENTIAL WORKFORCE HOUSING RESTRICTIONS FOR OWNERSHIP UNITS

§07-107-17 Ownership units. The director shall determine the required term of owner occupancy, the percentage of required units in each income group, the timing of completion of said units, and the issuance of certificates of occupancy and scheduling of final inspections for market rate units in accordance with sections 2.96.060(A), (B), and (C), MCC. [Eff 2/21/09] (Auth: HRS §91-2, MCC §2.96.120) (Imp: MCC §2.96.120)

§07-107-18 Appraisal of unit before occupancy. An appraisal of all residential workforce housing units offered for sale, on a fee simple, deed-restricted market rate basis, shall be provided to the department by the developer prior to occupancy. Said appraisal shall be dated no earlier than six months before occupancy. [Eff 2/21/09] (Auth: HRS §91-2, MCC §2.96.120) (Imp: MCC §2.96.120)

§07-107-19 Deed restrictions. The proposed deed to convey title of an ownership unit to an owner-occupant shall be submitted to the department for review and approval before closing of any sale. The department shall ensure that all restrictions set forth in section 2.96.060, MCC, including, but not limited to, resale restrictions, foreclosure rights, and options to purchase, are contained in the proposed deed. The director shall approve or disapprove the proposed deed, or request revisions thereto, within thirty days of receipt of the deed. If revisions are requested, the director shall approve or disapprove the revised deed within thirty days of receipt of the

revised deed. [Eff 2/21/09] (Auth: HRS §91-2, MCC §2.96.120) (Imp: MCC §2.96.120)

§07-107-20 Sales price. The procedure and guidelines to be used by the department in establishing the sale price for new single-family or multi-family dwelling units shall be in accordance with sections 2.96.060(E) and (F), MCC. [Eff 2/21/09] (Auth: HRS §91-2, MCC §2.96.120) (Imp: MCC §2.96.120)

§07-107-21 Ensuring continued affordability. Upon receipt of a notice of intent to sell from an owner-occupant, or a notice of default, the director will review the deed restriction conditions and take timely action to ensure the continued affordability of the dwelling unit by:

- (1) Acquisition and resale by the County; or
- (2) Acquisition and resale by a non-profit or community land trust; or
- (3) Acquisition by a developer; or
- (4) Direct acquisition by an income-qualified resident. [Eff 2/21/09] (Auth: HRS §91-2, MCC §2.96.120) (Imp: MCC §2.96.120)

§07-107-22 Acquisition by the County. Where the director has determined that the continued affordability of a dwelling unit should be ensured by acquisition of the unit by the County, the director shall:

- (1) Transmit a formal request to purchase the dwelling unit, within the time specified in the deed restriction, and a proposed budget amendment, if required, to council for approval or rejection.
- (2) Upon council approval, prepare a purchase agreement and complete the acquisition

within the time specified by the deed restriction. [Eff 2/21/09] (Auth: HRS §91-2, MCC §2.96.120) (Imp: MCC §2.96.120)

§07-107-23 Acquisition by a non-profit or community land trust. The director may authorize a sale of a deed-restricted dwelling unit to a non-profit or community land trust within the time specified in the deed restriction when the director has determined that such a sale will further the purposes of chapter 2.96, MCC. The purchase and sale agreement shall be subject to section 2.96.150, MCC. [Eff 2/21/09] (Auth: HRS §91-2, MCC §2.96.120) (Imp: MCC §2.96.120)

§07-107-24 Acquisition by a developer. The director may authorize a sale of a deed-restricted dwelling unit to the original developer within the time specified in the deed restriction when the director has determined that such a sale will further the purposes of chapter 2.96, MCC. [Eff 2/21/09] (Auth: HRS §91-2, MCC §2.96.120) (Imp: MCC §2.96.120)

§07-107-25 Acquisition by an income-qualified resident. The procedure and guidelines to be used by the department for a sale of a deed-restricted dwelling unit to an income-qualified resident shall be in accordance with section 2.96.090, MCC. [Eff 2/21/09] (Auth: HRS §91-2, MCC §2.96.120) (Imp: MCC §2.96.120)

§07-107-26 Determination of resale price. (a) The department shall require the owner-occupant to provide, upon the owner-occupant's decision to sell a unit and at the owner-occupant's cost and expense, a

second appraisal of the subject unit, on a fee simple, deed-restricted market rate basis. This appraisal shall not be dated earlier than six months before the date of closing of the anticipated resale.

(b) The resale price shall equal the owner-occupant's purchase price plus twenty-five percent of the difference between the appraisal obtained pursuant to subsection (a) of this section and the appraisal obtained prior to occupancy pursuant to section 07-107-18 of these rules.

(c) If the appraisal obtained prior to occupancy pursuant to section 07-107-18 of these rules is greater than the appraisal obtained pursuant to subsection (a) of this section, no amount shall be added to the owner-occupant's purchase price. The resale price shall be equal to the appraisal obtained pursuant to subsection (a) of this section. [Eff 2/21/09] (Auth: HRS §91-2, MCC §2.96.120) (Imp: MCC §2.96.120)

§07-107-27 Resale to income-qualified residents. Upon determining the resale price for a subject unit, the department shall monitor and require the initial owner-occupant to sell the subject unit for the established resale price only to income-qualified residents as defined in chapter 2.96, MCC. The department shall review the residential status and financial qualifications of potential buyers of the unit to be resold, and no resale of the unit shall be closed without the approval of the department. In the event a unit subject to these restrictions is resold without the approval of the department, the department may institute foreclosure proceedings against the new buyer/owner-occupant to enforce these restrictions. [Eff 2/21/09] (Auth: HRS §91-2, MCC §2.96.120) (Imp: MCC §2.96.120)

§07-107-28 Foreclosure. At any foreclosure sale commenced by a mortgagee of the subject unit, the County shall have a first option to purchase the subject unit at foreclosure, which right shall be incorporated and stated as a restriction or reservation in the owner-occupant's deed. The director shall draft and transmit to the council any resolution required for approval of an acquisition in accordance with section 3.44.015, MCC. [Eff 2/21/09] (Auth: HRS §91-2, MCC §2.96.120) (Imp: MCC §2.96.120)

§07-107-29 Rental units. (a) The required term of affordability of residential workforce housing rental units, the percentage of required units in each income group, the timing of completion and occupancy of said units, the procedure to fill vacancies for such units, and the process to establish monthly rental rates shall be in accordance with sections 2.96.070(A), (B), (C), (D), and (F), MCC.

(b) The restrictions and requirements referenced in subsection (a) of this section, as well as the County's first option to purchase the rental unit at foreclosure, shall be set forth in the deed for the rental unit. The proposed deed shall be submitted to the department for review and approval before occupancy of any rental units subject to this section.

(c) An owner or developer of a residential workforce housing rental unit desiring to sell such unit shall notify the department in writing, no later than thirty calendar days prior to the closing of the sale, and shall include documentation acceptable to the department that the prospective new owner acknowledges the terms, conditions, and restrictions encumbering the unit pursuant to section 2.96.070, MCC, and that such terms, conditions, and restrictions run with, and remain an encumbrance on, the subject real property.

(d) At any foreclosure sale commenced by a mortgagee of a residential workforce housing rental unit(s), the County shall have a first option to purchase said unit(s). The price to be offered for the subject property shall be negotiated between the director and the mortgagee, and the director shall draft and transmit to the council any resolution required for approval of such acquisition in accordance with section 3.44.015, MCC. [Eff 2/21/09]
(Auth: HRS §91-2, MCC §2.96.120) (Imp: MCC §2.96.120)

SUBCHAPTER 8

RESIDENTIAL WORKFORCE HOUSING CREDITS

§07-107-30 General. (a) The terms, conditions, requirements, and restrictions regarding the issuance and granting of credits for providing residential workforce housing units in excess of the number of units required under section 2.96.040, MCC, shall be in accordance with section 2.96.050, MCC.

(b) To implement section 2.96.050(A)(2), MCC, whereby market rate units are subject to owner-occupant deed restrictions, the County's right to fifty percent of any profits realized from a resale of a market rate unit within the three-year, owner-occupancy period shall be secured by a lien in favor of the County, duly recorded in the bureau of conveyances or the land court of the State of Hawaii. At least forty-five days prior to the closing of a sale/purchase of any such unit, the applicant shall submit to the department for review and approval copies of the proposed deed to be used and the notice of lien securing the County's right. [Eff 2/21/09]
(Auth: HRS §91-2, MCC §2.96.120) (Imp: MCC §2.96.120)

SUBCHAPTER 9
QUALIFIED HOUSING PROVIDERS

§07-107-31 General. (a) The terms, conditions, requirements, restrictions, and provisions under which a qualified housing provider may be used and authorized to satisfy a developer's requirement to provide residential workforce housing units shall be in accordance with section 2.96.150, MCC.

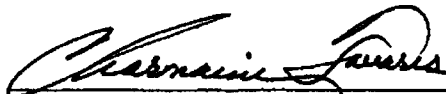
(b) Any agreement between a qualified housing provider and a developer of a project or development subject to chapter 2.96, MCC, shall be reviewed and approved by the department. [Eff 2/21/09] (Auth: HRS §91-2, MCC §2.96.120) (Imp: MCC §2.96.120)

ADOPTED THIS 26th day of January,
2009.

DEPARTMENT OF HOUSING AND
HUMAN CONCERNS



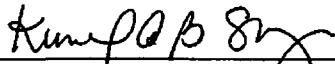
LORI TSUHAKO
Director



CHARMAINE TAVARES
Mayor, County of Maui

Approved this 10th day of
FEBRUARY, 2009.

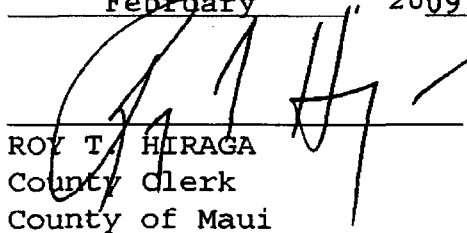
APPROVED AS TO FORM
AND LEGALITY:



KIMBERLY A. B. SLOPER
Deputy Corporation Counsel
County of Maui

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Received this 11th day of
February, 2009.



ROY T. HIRAGA
County Clerk
County of Maui

CERTIFICATION

I, LORI TSUHAKE, Director, Department of Housing and Human Concerns, County of Maui, do hereby certify:

1. That the foregoing is a full, true and correct copy of the Rules Relating to the Administration of Chapter 2.96, Maui County Code, Pertaining to the Residential Workforce Housing Policy, drafted in Ramseyer format, pursuant to the requirements of Section 91-4.1, Hawaii Revised Statutes, which were adopted on the 26th day of January, 2009, following a public hearing that closed on January 15, 2009, and which were filed with the Office of the County Clerk.

2. That the notice of public hearing on the foregoing Rules, which notice included the substance of such Rules, was published in The Maui News on December 11, 2008.



LORI TSUHAKE
Director
Department of Housing and
Human Concerns