

COUNCIL OF THE COUNTY OF MAUI
AFFORDABLE HOUSING COMMITTEE

October 1, 2021

Committee
Report No. 21-87

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

Chair and Members:

Your Affordable Housing Committee, having met on September 2, 2021, and reconvened on September 13, 2021, makes reference to Miscellaneous Communication, dated January 19, 2021, from the County Clerk, referring Contract C7183, between the Office of Council Services and Hawaiian Community Assets, Inc., for a Comprehensive Affordable Housing Plan.

By correspondence dated August 27, 2021, the Chair of your Committee transmitted a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING RESIDENTIAL WORKFORCE HOUSING POLICY RELATING TO SELECTION PRIORITY."

The purpose of the proposed bill is to establish a countywide affordable housing interest list and related policies for residents interested in workforce housing rental or ownership units.

By correspondence dated September 9, 2021, the Department of the Corporation Counsel transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 2.96, MAUI COUNTY CODE, RELATING TO RESIDENTIAL WORKFORCE HOUSING POLICY - APPLICANT SELECTION PRIORITY."

The purpose of the revised proposed bill is to establish a countywide workforce housing interest list and related policies for residents interested in workforce housing rental or ownership units.

Your Committee notes \$300,000 was allocated in the Office of Council Services' Fiscal Year 2021 Budget for a Comprehensive Affordable Housing Plan, in accordance with Ordinance 5099 (2020).

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Your Committee also notes Hawaiian Community Assets, Inc. was awarded Contract C7183 to develop the Maui County Comprehensive Affordable Housing Plan, dated July 2021, with a stated goal "to provide a roadmap to create 5,000 affordable homes for local residents below 120% Area Median Income over the next five years."

Your Committee further notes the Maui County Comprehensive Affordable Housing Plan recommends the following:

- "Establish local residency requirements for affordable housing subsidies and strengthen the definition of a Qualified Resident allowed to access county supported affordable housing units."
(Page 7)
- Set the marketing period for workforce ownership units at 180 days maximum, and after that single 180-day period, give the County the first right of refusal to purchase the unit.
(Page 32)
- Department of Housing and Human Concerns, HUD-certified counseling agencies, and developers to "work together to increase community awareness of upcoming affordable housing projects for renters and homebuyers on prequalified and developer waitlist." (Page 91)

Your Committee discussed the difficulties faced by residents in securing affordable housing and the need to adapt the Residential Workforce Housing Policy to better serve the needs of lower-income households.

The Deputy Director of Housing and Human Concerns said residential workforce housing units are defined in Section 2.96.020, Maui County Code, as units to be sold or rented to qualified residents earning 140 percent and below Maui County's area median income ("AMI"), as established by the U.S. Department of Housing and Urban Development

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("HUD"), or as adjusted by the Department of Housing and Human Concerns for Hāna, Lānaʻi, and Molokaʻi.

The Deputy Director also said the Residential Workforce Housing Policy applies to all for-sale and rental developments subject to residential workforce housing agreements and deed restrictions, including projects developed under Sections 2.96 and 2.97, Maui County Code, and Chapter 201H, Hawaiʻi Revised Statutes.

Your Committee discussed the workforce housing applicant selection process for ownership units and rental units under Sections 2.96.090 and 2.96.100, Maui County Code, respectively.

Your Committee determined there was a need for a centralized database of residents interested in workforce housing units. The countywide workforce housing interest list could be used to publicize workforce housing developments, their requirements and eligibility criteria, and available resources to help residents better prepare for ownership or rental opportunities.

Your Committee also discussed a need for project-specific wait lists that residents on the interest list could be referred to as individual workforce housing developments and units become available.

Your Committee expressed concern about the current practice of developers maintaining their own project wait lists and possible mortgage steering and other practices contrary to the Residential Workforce Housing Policy.

Your Committee agreed the interest list and the project wait lists should be developed and managed by the Department of Housing and Human Concerns or its designee, and the Department should work with HUD-certified housing counseling agencies to educate and inform residents on the lists using effective communication tools, including social media platforms. Your Committee emphasized the responsibility of residents to sign up and stay active on the list and to obtain the necessary financial and other qualifications for receiving workforce housing units.

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Your Committee discussed proposals to ensure priority for long-term residents in the applicant selection process for workforce housing units. Your Committee noted that the Department oversees a lottery for eligible applicants for the initial offering of for-sale and rental units, with residents receiving priority over nonresidents.

Your Committee expressed support for the interest list and project wait lists to be open to residents only and for applicants selected in the random lottery to be ranked by length of residency in the County.

Your Committee noted that workforce housing rental developments often use Federal or State funding, which may impact the development's ability to impose certain eligibility criteria and selection requirements. Your Committee agreed the proposed provisions relating to selection priority for rental units would apply to the extent permitted by law.

Your Committee discussed the marketing period for workforce housing ownership units. Under Section 2.96.090(D)(4), Maui County Code, each unit is offered for sale to qualified residents in the initial designated AMI group for 90 days, before being offered to the next higher AMI group. This continues every 90 days until the highest AMI group is reached. Any remaining units are offered for sale to income-qualified nonresidents and then at market rate without deed restrictions. If units are sold at market rate, the developer is required to deposit 50 percent of the difference in the original sales price and final sales price into the Affordable Housing Fund.

Your Committee agreed to extend the marketing period to 120 days, and to delete the current provisions for offering units to nonresidents and selling units at market rate, as provided in Sections 2.96.090(D)(4)(c) and (d), respectively. Your Committee decided that after the final marketing period ends any remaining units would be purchased by the County at the original sales price.

Your Committee was advised that the General Fund could likely be used for the purchase of the workforce home, and the County would likely

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donate the home to a nonprofit land trust agency, such as Na Hale O Maui or Habitat for Humanity, or the State Department of Hawaiian Home Lands.

Your Committee also discussed eligibility criteria for ownership units under Section 2.96.090, Maui County Code, which includes U.S. citizenship or permanent resident alien status. Your Committee noted that some County residents, while legally meeting the criteria, may not identify with either classification.

Your Committee noted the proposed changes to the Residential Workforce Housing Policy will require additional resources and responsibilities for the Department of Housing and Human Concerns, and may also impact current practices of housing developers.

Your Committee authorized the Department of Housing and Human Concerns to establish guidelines for the implementation of the proposed provisions relating to the countywide workforce housing interest list, project wait lists, and the lottery and applicant selection procedures.

Your Committee encouraged the Department to work with housing advocates in promulgating the guidelines, which are to be submitted for Council approval by November 1, 2022, and adopted by the Department once approved. The ordinance would be effective upon approval of the guidelines by Council resolution.

Your Committee notes the revised proposed bill would further advance the goals and purpose of the Residential Workforce Housing Policy, including “to maintain a sufficient resident workforce in all fields of employment” and “to enhance the public welfare by ensuring that the housing needs of the County are addressed.”

Your Committee also notes the revised proposed bill would advance the following Countywide Policy Plan core theme: “Expand Housing Opportunities for Residents.”

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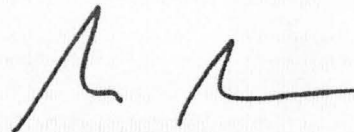
Your Committee expressed support for the revised proposed bill, as further revised.

Your Committee voted 8-1 to recommend passage of the revised proposed bill on first reading. Committee Chair Johnson, Vice-Chair Molina, and members Kama, King, Lee, Paltin, Rawlins-Fernandez, and Sinenci voted "aye." Councilmember Sugimura voted "no."

Your Committee is in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 2.96, MAUI COUNTY CODE, RELATING TO RESIDENTIAL WORKFORCE HOUSING POLICY APPLICANT SELECTION PRIORITY," incorporating your Committee's recommended revisions and nonsubstantive revisions.

Your Affordable Housing Committee RECOMMENDS that Bill III (2021), attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 2.96, MAUI COUNTY CODE, RELATING TO RESIDENTIAL WORKFORCE HOUSING POLICY APPLICANT SELECTION PRIORITY," be PASSED ON FIRST READING and be ORDERED TO PRINT.

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



GABE JOHNSON, Chair

ah:cr:21014(3)aa:ans

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.] Hāna, Lānaʻi, and 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 for [Hana, Lanai, and Molokai.] Hāna, Lānaʻi, and 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] 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 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:

/s/ Mimi Desjardins
MIMI DESJARDINS
Department of the Corporation Counsel
County of Maui
ah:misc:014(3)abill02:jbf
LF2021-0011
AH-14(3) 2021-09-20 Ord Amd 2.96.090 &
2.96.100