

ORDINANCE NO. 3418

BILL NO. 57 (2006)
Draft 1

A BILL FOR AN ORDINANCE ESTABLISHING A RESIDENTIAL WORKFORCE
HOUSING POLICY

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

SECTION 1. Title 2, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

“Chapter 2.96

RESIDENTIAL WORKFORCE HOUSING POLICY

Sections:

- 2.96.010 Purpose.
- 2.96.020 Definitions.
- 2.96.030 Applicability.
- 2.96.040 Residential workforce housing requirements.
- 2.96.050 Residential workforce housing credits.
- 2.96.060 Residential workforce housing restrictions – ownership units.
- 2.96.070 Residential workforce housing restrictions – rental units.
- 2.96.080 Residential workforce housing agreement.
- 2.96.090 Applicant selection process – ownership units.
- 2.96.100 Applicant selection process – rental units.
- 2.96.110 Review requirements.
- 2.96.120 Rules.
- 2.96.130 Property assessment value.
- 2.96.140 Incentives.
- 2.96.150 Qualified housing providers.

2.96.010 Purpose. The purpose of this chapter is to enhance the public welfare by ensuring that the housing needs of the County are addressed. The council finds that there is a critical shortage of affordable housing, making home acquisition by the majority of County resident workers extremely difficult, and creating a shortage of affordable rental units. The resident workforce is leaving the County in search of affordable housing, and new employees are being deterred

by the high cost of living. To maintain a sufficient resident workforce in all fields of employment, and to ensure the public safety and general welfare of the residents of the County, resident workforce housing needs must be addressed. It is the intent of this chapter to encourage the provision and maintenance of residential workforce housing units, for both purchase and rental, to meet the needs of income-qualified households for the workforce, students, and special housing target groups.

2.96.020 Definitions. Whenever used in this chapter, unless a different meaning clearly appears from the context:

“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 by this ordinance; 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.

“Department” means the department of housing and human concerns.

“Density bonus” means a density increase over the otherwise allowed residential density under the applicable zoning and land use designation, without the need for further council approval, subject to enabling legislation.

“Director” means the director of housing and human concerns, County of Maui.

“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 his or her 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.

“Division” means the housing division of the department of housing and human concerns, County of Maui.

“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.

“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.

“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.

“Prevailing interest rate” means the average interest rate of two mortgage lenders in the County, acceptable to the director, for a thirty year fixed loan with no discount points.

“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 to own, develop, construct, administer, operate or otherwise provide residential workforce housing required under this chapter.

“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” means residential developments 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.

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

"Wait list area" means Hana, Lanai, Maui (excluding Hana), or Molokai.

2.96.030 Applicability. A. Any development, including the subdivision of land and/or the construction of single-family dwelling units, two-family dwelling units, multi-family dwelling units, or hotels, as defined in section 19.04.040 of this code, whether constructed at one time or over several years, shall be subject to this chapter upon final subdivision or building permit approval, whichever is applicable and occurs first, if it will result in the creation of the following:

1. Five or more dwelling units, excluding farm labor dwellings or a second farm dwelling, as defined in section 19.04.040 of this code; provided that, such farm labor dwelling or farm dwelling is in full compliance with chapter 205, Hawaii Revised Statutes, and is not part of a condominium property regime, as set forth in chapter 514A, Hawaii Revised Statutes;

2. Five or more new lots;

3. A combination of dwelling units and new lots totaling five or more;

4. Three or more lodging, dwelling, or time share units in a hotel;

5. A conversion of one or more hotel units to dwelling units or time share units; or

6. Any hotel redevelopment or renovation project that increases the number of lodging or dwelling units in a hotel.

B. Exemptions. This chapter shall not apply to any development that falls into one or more of the following categories:

1. A development subject to an affordable housing requirement, evidenced by an executed affordable housing agreement with the County, currently in effect and approved prior to the effective date of this chapter;

2. A development subject to a change in zoning condition that requires affordable or residential workforce housing, unless the condition expressly allows for the application of the affordable housing or residential workforce housing policy set forth herein;

3. A subdivision granted preliminary subdivision approval prior to the effective date of this chapter;

4. A building permit application submitted prior to the effective date of this chapter;

5. A family subdivision, for immediate family members, as described in sections 18.20.280(B)(1) and (B)(2) of this code; or

6. A development by a government entity; a project pursuant to section 201H-H, Hawaii Revised Statutes; a community land trust; or an affordable housing project with more than the residential workforce housing units, in-lieu fees, or in-lieu land required by section 2.96.040, as approved by the director.

C. Adjustment.

1. A developer of any development subject to this chapter may appeal to the council for a reduction, adjustment, or waiver of the requirements based upon the absence of any reasonable relationship or nexus between the impact of the development and the number of residential workforce housing units or in-lieu fees/land required;

2. Any such appeal shall be made in writing and filed with the county clerk prior to final subdivision approval or issuance of a building permit for the development, whichever is applicable. Any such appeal shall administratively stay the processing of the development's subdivision or building permit, whichever is applicable, until a decision on the appeal is rendered. The appeal shall set forth in detail the factual and legal basis for the claim of reduction, adjustment, or waiver, and the developer shall bear the burden of presenting substantial evidence to support the appeal, including comparable and relevant technical information;

3. The council shall approve or disapprove the appeal by resolution within ninety days from the date the developer has concluded its presentation of evidence supporting the appeal. If on the ninety-first day after the developer has concluded presenting such evidence the appeal is not disapproved, the appeal, as submitted by the developer, shall be deemed approved by the council; and

4. If a reduction, adjustment, or waiver is granted by the council, any substantive change or modification in use within the development, as determined by the director, shall invalidate the reduction, adjustment, or waiver previously granted.

2.96.040 Residential workforce housing requirements. A. Prior to final subdivision approval or issuance of a building permit for a development subject to this chapter, the department shall require the developer to enter into a residential workforce housing agreement that requires the following:

1. When more than fifty percent of the dwelling units and/or new lots in the development are offered for sale for less than \$600,000, forty percent of the total number of units and/or lots shall be sold or rented to residents within the income-qualified groups established by this ordinance;

2. When fifty percent or more of the dwelling units and/or new lots in the development are offered for sale for \$600,000 or more, fifty percent of the total number of units and/or lots shall be sold or rented to residents within the income-qualified groups established by this ordinance; or

3. When three or more new lodging, dwelling, or time share units in a hotel are created; there is a conversion of one or more hotel units to dwelling units or time share units; any hotel redevelopment or renovation project increases the number of lodging or dwelling units in the hotel; or five or more new dwelling units for rental purposes are created, forty percent of the total number of units shall be sold or rented to residents within the income-qualified groups established by this ordinance.

B. The requirement may be satisfied by one or a combination of the following, which shall be determined by the director and stated in the residential workforce housing agreement:

1. Offer for sale, single-family dwelling units, two-family dwelling units, or multi-family dwelling units as residential workforce housing within the community plan area;

2. Offer for rent, multi-family dwelling units within the community plan area. A developer may partner with a non-profit organization or community land trust on a specific affordable project to either construct new multi-family dwelling units or renovate existing non-habitable multi-family dwelling units, paying an amount that represents the difference in unit costs for a family of four at one hundred percent and one hundred forty percent of median income pursuant to HUD affordable sales price guidelines as adjusted by the department by wait list area. The developer's requirement shall be deemed satisfied upon receipt of payment. Moneys shall be deposited into the affordable housing fund;

3. In lieu of directly selling or renting units pursuant to sections 2.96.040(B)(1) or (B)(2), the developer may convey such units to a qualified housing provider subject to department approval pursuant to section 2.96.150; or

4. In lieu of providing residential workforce housing units, the residential workforce housing requirement may be satisfied by payment of a fee, by providing improved land, or by providing unimproved land. Any fee must be approved by council resolution. Any donation of land must be approved by the council pursuant to chapter 3.44.015 of this code.

a. The in-lieu fee per unit shall be equal to thirty percent of the average projected sales price of the market rate dwelling units and/or new lots in the development. The in-lieu fee shall be designated in the residential workforce housing agreement, and be secured by a lien on market rate dwelling units if not paid before the dwelling units are constructed. The in-lieu fee shall accrue to the affordable housing fund, which shall be established in the County budget for the purpose of enhancing and supporting housing needs and programs of income-qualified households and special housing target groups; and

b. The value of the improved land shall not be less than the in-lieu fee that would otherwise have been required under this chapter. The value of the unimproved land shall be at least equal to twice the value of the improved land. The in-lieu land shall be used to address the housing needs of income-qualified households and special housing target groups. Such land shall have a minimum lot size of six thousand square feet or the minimum lot size allowed by the applicable zoning, whichever is greater. Such land must be acceptable to the department and may be used by the County or others approved by the County to develop residential workforce housing, resource centers for the homeless, day care centers for seniors, or other public use projects that address the housing needs of income-qualified households and special housing target groups.

2.96.050 Residential workforce housing credits. A. Credits may be given under the following circumstances:

1. One residential workforce housing credit shall be given for every single-family dwelling unit, two-family dwelling unit, or multi-family dwelling unit constructed in excess of the residential workforce housing required by section 2.96.040; and

2. One residential workforce housing credit shall be given for every ten market rate units that contain a deed restriction requiring an owner to occupy the unit for a minimum of three years, and share with the County fifty percent of any profits realized from a sale of that unit within the three-year owner-occupancy period.

B. The credit must be used in the same community plan area in which the unit was constructed.

C. The credit must be applied toward the same type of unit constructed.

D. The credit must be used for the same income group in which the credit was earned, when the credit is earned by constructing more residential workforce housing units than required.

E. The credit must be used for the “gap income” group when the credit is earned by creating a deed restriction.

F. The credit may be used for a future development, but may not be used for an affordable housing or residential workforce housing unit owed at the time the credit is given.

2.96.060 Residential workforce housing restrictions – ownership units. A. Ownership units shall be subject to this chapter for twenty-five years from the initial sale of the unit.

B. Unless an exemption is granted by the director, the percentage of ownership units within each income group shall be as follows:

1. Thirty percent of the ownership units shall be for “below-moderate income” residents;

2. Thirty percent of the ownership units shall be for “moderate income” residents;

3. Twenty percent of the ownership units shall be for “above-moderate income” residents; and

4. Twenty percent of the ownership units shall be for “gap income” residents.

C. Timing of completion.

1. Residential workforce housing units shall be made available for occupancy either before or concurrently with market rate units at the same ratio required of the development; and

2. Certificates of occupancy shall not be issued and/or final inspections shall not be passed for the market rate units unless certificates of occupancy are issued and/or final inspections are passed for the residential workforce housing units concurrently or sooner.

D. Deed restrictions.

1. The unit must be owner-occupied;

2. The unit must remain affordable for twenty-five years from the initial sale, with the owner notifying the department upon a decision to sell; and

3. Under special circumstances an owner of a residential workforce housing unit may appeal to the department for a waiver of the owner-occupancy deed restriction; these circumstances would include, but are not limited to, assignment to active duty military or short-term contracts for off-island employment.

E. Sales price – single-family dwelling units. The sales price of a new single-family dwelling unit shall be set by the department, at the time the developer is ready to market the unit, using the following guidelines:

1. A down payment of five percent shall be assumed;

2. The prevailing interest rate shall be used;

3. The price of a one-bedroom unit shall be based upon seventy percent of the median income of the wait list area, adjusted to the respective target income group;

4. The price of a two-bedroom unit shall be based upon eighty-five percent of the median income of the wait list area, adjusted to the respective target income group;

5. The price of a three-bedroom unit shall be based upon one hundred percent of the median income of the wait list area, adjusted to the respective target income group;

6. The price of a four-bedroom unit shall be based upon one hundred fifteen percent of the median income of the wait list area, adjusted to the respective target income group; and

7. Applicants in each income group shall be assumed to pay no more than thirty percent of the gross annual income of the highest percentage in the applicant's group.

F. Sales price – two-family or multi-family dwelling units. The sales price of a new two-family or multi-family dwelling unit shall be ninety percent of the price of a single-family dwelling unit, as established in section 2.96.060(E).

G. Resale price. The maximum resale price shall be established by the department using the following guidelines:

1. An appraisal of the property shall be required before occupancy;

2. A second appraisal shall be required upon a decision to sell the unit; and

3. Twenty-five percent of the difference between the two appraisals shall be added to the owner's purchase price.

H. Foreclosures.

1. The County shall have the first option to purchase the unit; and

2. If the County does not exercise its right to purchase, the units may be offered at an affordable price, set by the director, with the same deed restrictions.

2.96.070 Residential workforce housing restrictions – rental units. A. Rental units shall be subject to this chapter for the life of the unit, as determined by a building inspector with the development services administration of the department of public works and environmental management.

B. Unless an exemption is granted by the director, the percentage of rental units within each income group shall be as follows:

1. One third of the rental units shall be for "very low income" and "low income" residents;

2. One third of the rental units shall be for "below-moderate income" residents; and

3. One third of the rental units shall be for "moderate income" residents.

C. Timing of completion.

1. Except when the developer is partnering with a non-profit organization or community land trust as allowed in section 2.96.040(B)(2), residential workforce housing units shall be made available for occupancy either prior to or concurrently with market rate units at the same ratio required of the development. Certificates of occupancy shall not be issued and/or final inspections shall not be passed for the market rate units unless certificates of occupancy are issued and/or final inspections are passed for the residential workforce housing units concurrently or sooner; and

2. When the developer is partnering with a non-profit organization or community land trust, the payment to the non-profit organization or community land trust must be made prior to final subdivision approval or issuance of a building permit for the market rate units. The residential workforce housing units must be constructed within three years of the date the certificates of occupancy are issued and/or the final inspections are passed for the market rate units.

D. Vacancies. Any rental unit vacancy must be filled by an applicant in the appropriate income group to better maintain an equal distribution of rentals across the “very low income” and “low income”, “below-moderate income”, and “moderate income” groups.

E. Deed restrictions.

1. The rental unit must remain affordable for the life of the unit;

2. The owner must notify the department upon a decision to sell the rental development; and

3. Any new owner must comply with the deed restrictions.

F. Rental rates. The monthly rental rates shall be set by the department based on HUD income limits.

G. Foreclosures.

1. The County will have the first option to purchase the rental development; and

2. If the County does not exercise its right to purchase, the rental development may be sold with the same deed restrictions.

2.96.080 Residential workforce housing agreement. A. Before final subdivision approval or issuance of a building permit, the developer shall enter into a residential workforce housing agreement that sets forth the detailed terms and conditions of compliance with the residential workforce housing policy, including but not limited to:

1. Sales or rental periods for the residential workforce housing units, which specify procedures for the release of units from the residential workforce housing requirements should units not be sold or rented following the expiration of the sales or rental periods;

2. Identification of the number, type, and location of units;

3. Designation of units for specific income and/or special housing target groups;

4. Marketing process for the residential workforce housing units;
5. Eligibility of income-qualified households;
6. Provision for residential workforce housing credits, as applicable;
7. Payment of in-lieu fees or provision of in-lieu land; and
8. Resale restrictions, which may include buy-back provisions, shared equity, and encumbrances.

B. The residential workforce housing agreement shall be recorded with the bureau of conveyances of the State of Hawaii or the land court of the State as the case may be, so that the terms and conditions of the agreement run with the land and bind and constitute notice to all subsequent grantees, assignees, mortgagees, lienors, and any other persons who claim an interest in such property. The agreement shall be enforceable by the County by appropriate action at law or suit in equity, against the developer, its successors, and assignees.

2.96.090 Applicant selection process – ownership units. A. Wait list procedure.

1. The developer, its partner, or its management company shall establish wait lists of interested applicants by development;
2. Prior to initiating the 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. The public shall also be informed in a like manner, of any decision that would substantially affect the maintenance and use of the wait list; and
3. Selection for purchase shall be made by a lottery administered by the developer, its partner, or its management company and overseen by the department, subject to the applicant meeting the eligibility criteria established in section 2.96.090(B).

B. Eligibility criteria. In order 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 does not exceed one hundred sixty 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 be made by the developer, its partner, or its management company 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 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 sixty percent of the County's area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai. Assets shall include all cash, securities, stocks, bonds and real property. Real property shall be valued at fair market value less liabilities on such real property;

5. For a period of three years before the submittal of the ownership application, have not had an interest of fifty percent or more in real property in fee or leasehold in the United States, where the unit or land is deemed suitable for dwelling purposes, unless the applicant is selling an affordable unit and purchasing a different affordable unit that is more appropriate for the applicant's family size; and

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

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

D. Selection priority.

1. Residents on the wait list shall receive first priority for the available units. Non-residents on the wait list may purchase a residential workforce housing unit once the wait list has been exhausted of all residents;

2. The developer, its partner, or its management company may do a mass mailing of housing applications to applicants on the 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. Non-residents will be offered residential workforce housing units in the order in which their names were drawn in the lottery; and

4. In the event that units are not sold within the first ninety days after they are offered for sale, and the developer has made a good faith effort, as determined by the director, to contact and qualify applicants on the wait list, the sale of remaining units shall be conducted as follows:

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

b. Units shall be offered to the next higher income group every ninety days until the units are sold or there are no more income groups available;

c. Units shall then be offered to non-residents on the wait list in the order in which their names were drawn in the lottery, for the next ninety-day period, provided that the applicant's income is within the residential workforce housing income groups; and

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.

5. The developer shall 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; and

e. Escrow company's settlement statement.

6. An owner of a residential workforce housing unit that is being re-sold must sell the unit to an income-qualified household and notify the department of the sale. The department shall verify the sales price.

2.96.100 Applicant selection process – rental units. A. Wait list procedure.

1. The developer, its partner, or its management company shall establish wait lists of interested applicants by rental development;

2. Prior to initiating the wait list, the developer, its partner, or its management company shall 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. The public shall also be informed in a like manner, of any decision that would substantially affect the maintenance and use of the wait list; and

3. Selection for rental units shall be made by a lottery administered by the developer, its partner, or its management company and overseen by the department, subject to the applicant meeting the eligibility criteria established in section 2.96.100(B).

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

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

2. If the project is not receiving federal and/or state assistance, all eligibility criteria in section 2.96.090(B) shall apply, except for section 2.96.090(B)(6).

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

D. Selection priority.

1. Residents on the wait list shall receive first priority for the available units. Non-residents on the wait list may rent a residential workforce housing unit once the wait list has been exhausted of all residents;

2. The developer, its partner, or its management company may do a mass mailing of housing applications to applicants on the 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. Non-residents will then 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;

4. The developer, its partner, or its management company shall submit copies of the following information to the department to verify the rental of residential workforce housing units to eligible renters:

a. Applicant's completed final rental application;

b. Executed rental lease; and

c. All signed federal and state tax returns used to determine eligibility, or any other documents used to determine eligibility by the developer, its partner, or its management company;

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

6. Any rental unit vacancy shall be filled by an applicant in the same income group as the original tenant to maintain an equal distribution of rentals across the "very low income" and "low income", "below-moderate income", and "moderate income" groups;

7. The developer, its partner, or its management company shall follow the procedure in section 2.96.100(D)(4) if they cannot rent the unit at the appropriate income group; and

8. An owner of a residential workforce housing rental development that is being re-sold shall notify the department of the owner's intent to sell and provide documentation that the new owner knows of the deed restrictions.

2.96.110 Review requirements. A. The council shall review this chapter every two years.

B. The director shall provide an annual report to the council on the status of the housing policy that shall include the following:

1. The number of units built for sale and rent, categorized by number of bedrooms, income group, and sales price if for sale;

2. The number of purchasers who re-sold units, categorized by number of bedrooms, income group, and sales price; and

3. The number of developers, their partner(s), or their management companies maintaining a wait list, and the number of applicants on each wait list.

C. For rental developments, the developer, its partner, or its management company shall submit an annual report of rental units to the department that includes the following:

1. The tenant's move-in date; and

2. The income group of the tenant or family.

2.96.120 Rules. The director shall adopt administrative rules to implement this chapter, pursuant to chapter 91, Hawaii Revised Statutes, within one hundred eighty days after the effective date of this ordinance.

2.96.130 Property assessment value. The annual tax assessed value, as determined by the County, will take into account the limited resale value of the residential workforce housing property.

2.96.140 Incentives. A. For developments subject to this chapter, and under the jurisdiction of the development services administration of the department of public works and environmental management, decisions on permits will be made by all departments within sixty days of the date the permit application is deemed complete by the development services administration. Decisions on permits that require review by any outside agency will be made within thirty days of receipt by the development services administration of the last approval from an outside agency; provided, that decisions on applications that require special management area permit review, or environmental review pursuant to chapter 343, Hawaii Revised Statutes, shall be issued within ninety days of completion of the applicable review.

B. For developments subject to this chapter, and if applicable, the council will schedule the initial meeting for such application within six months of

the referral to the appropriate committee. The council will vote to approve or deny the application within one year of the referral to committee.

C. Developments that include on-site residential workforce housing units may be entitled to a density bonus, subject to enactment of enabling legislation.

2.96.150 Qualified housing providers. Where the department determines that such an agreement will further the purposes of this chapter, the department shall enter into an agreement, on a project-by-project basis, with a qualified housing provider. Such an agreement may provide, without limitation, that the qualified housing provider shall:

A. Receive, own, manage, rent, operate and sell residential workforce housing units provided by developers pursuant to section 2.96.040;

B. Enter into agreements with developers pursuant to section 2.96.040(B)(2), subject to the department's approval, pursuant to which residential workforce housing units are developed, constructed, renovated, or otherwise made available to satisfy the purposes of this chapter;

C. Receive land and in-lieu fees provided by developers pursuant to section 2.96.040(B)(4);

D. Receive disbursements from the affordable housing fund and other funds provided for the purposes of this chapter; and/or

E. Administer the selection processes under sections 2.96.090 and 2.96.100, subject to the department's oversight.

1. Where a qualified housing provider receives, owns, develops, rents, operates or sells residential workforce housing units, such units shall be rented or sold to applicants qualified under this chapter, as set forth in the qualified housing provider's agreement with the department;

2. Selection of purchasers or renters for a qualified housing provider's units shall be made in accordance with sections 2.96.090 and 2.96.100 or with other selection processes permitted under the qualified housing provider's agreement with the department;

3. All qualified housing provider rentals or sales shall be on terms, conditions and restrictions set forth in the agreement, which shall be at least as restrictive as the terms, conditions and restrictions applicable to developer rentals or sales under this chapter, and may be more restrictive; and

4. All qualified housing provider agreements shall require detailed reports to the department, on no less than an annual basis, of the qualified housing provider's implementation of, and compliance with, the agreement. This report shall include an annual financial audit.”

SECTION 2. Title 3, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

“Chapter 3.35

AFFORDABLE HOUSING FUND

Sections:

- 3.35.010 Purpose.
- 3.35.020 Fund established.
- 3.35.030 Administration.

3.35.010 Purpose. There shall be deposited into the affordable housing fund all moneys paid to the County in lieu of providing residential workforce housing units, any council appropriations to the fund, and all moneys donated to the County for affordable housing projects. Revenues in the fund shall be used for the creation and expansion of affordable housing and suitable living environments for persons of very low income to gap income, including the rehabilitation of existing structures, land acquisition or property entitlements, planning, design, and construction. Disbursements from the fund may be made to non-profit organizations and community land trusts by grant agreement.

3.35.020 Fund established. There is established and created a fund to be known as the “Affordable Housing Fund.”

3.35.030 Administration. A. The director of finance shall establish a separate account to record revenues and supplemental transfers credited to, and expenditures made from, the fund.

B. Any balance remaining in the fund at the end of each fiscal year shall not lapse, but shall remain in the fund, accumulating from year to year.

C. The director of housing and human concerns shall administer the fund.

D. The director of housing and human concerns and the director of finance may adopt administrative rules necessary to carry out the purposes of this chapter.

E. Revenues received from a developer to partner with a non-profit organization or community land trust are hereby deemed appropriated upon receipt and are authorized to be expended for the purposes of the fund.”

SECTION 3. Chapter 2.94, Maui County Code, is repealed.

SECTION 4. Section 2.86.610, Maui County Code, is repealed.

[“**2.86.610 Qualifications for affordable housing program.** A. Any housing unit may qualify as affordable housing for an affordable housing project as defined in section 2.86.140.

B. Any affordable housing project approved by the county council for change in zoning pursuant to title 19 of this code shall comply with the following requirements:

1. An application for a development which includes an affordable housing project shall comply with the applicable development requirements of title 19 of this code, chapters 205 and 205A of Hawaii Revised Statutes, the rules and regulations of the appropriate planning commission, and any other applicable federal, state, or county laws.

2. The area median income for the affordable housing project shall be set by the director upon final subdivision approval for lot sales and upon the issuance of building permit(s) for affordable unit sales.

3. In calculating the fifty percent requirement specified herein, where the development is a subdivision with single-family residential housing units to be sold or rented as affordable housing, not more than one dwelling unit per lot shall be considered as affordable housing.

4. Any development application which includes affordable housing shall include a sworn statement setting forth:

a. A description of the affordable housing project intended to be built on the subject property;

b. A statement of the number of dwelling units intended to be built on the subject property; and

c. A statement of the percentage of dwelling units, out of the total number of dwelling units intended to be built on the subject property, which are intended to be marketed as affordable housing by the applicant at price ranges which are affordable to each of the income groups identified in the definition of affordable housing.

5. The developer will submit copies of the following information to the county to verify the sale of affordable units to eligible buyers: (1) completed application form; (2) executed sales contract; (3) pre-qualification notice from lender; (4) signed, federal and State of Hawaii tax returns.

In the event all units or lots are not sold after the first ninety calendar days of the approved sales program, based on the initial date of the approved sales advertisement, and provided the developer has made a sincere and earnest effort to widely advertise and publicize the availability of the affordable units or lots, the sale of remaining units or lots shall be conducted in accordance with the following procedure:

a. For the second ninety calendar day period, affordable units or lots shall be offered for sale at the same price range to families in the next-higher income preference groups. For example, units or lots targeted for families earning up to eighty percent of the area median income may be sold, on a preferential basis, to families earning from eighty percent to one hundred twenty percent of median and then to families earning from one

hundred twenty to one hundred forty percent of median. Units or lots targeted for families earning eighty percent to one hundred twenty percent of median shall be offered for sale to families earning from one hundred twenty to one hundred forty of median. Units or lots targeted for families earning from one hundred twenty to one hundred forty percent of the median may be offered for sale to families earning from one hundred forty to one hundred eighty percent of median. Sales prices on these units or lots may be increased to price levels affordable to families earning from one hundred forty to one hundred eighty percent of the area median income.

b. For a subsequent thirty calendar day period, affordable units or lots shall be offered for sale to families earning up to one hundred eighty percent of the area median income. Sales prices on these units or lots may be increased up to price levels affordable to families earning up to one hundred eighty percent of the area median. All other eligibility criteria shall apply.

c. For a subsequent forty-five calendar day period, affordable units or lots shall be offered for sale at the price ranges specified in the paragraph above to the county. This time requirement may be waived by the county.

d. If the county does not exercise the right to purchase, the units or lots may be offered for sale without regard to (1) income, (2) ownership of other residential real estate, (3) Owner occupancy, and (4) price range. In this event, the developer will still receive credit for producing an affordable unit or lot.

6. The following restrictions shall apply to the transfer of a dwelling unit or lot purchased from the applicant or the applicant's grantee, assignee, mortgagee, lienor, or any other person who claims an interest in such property, as an affordable housing unit, whether on fee simple or leasehold property:

a. That for a period of five years after the purchase by a purchaser qualifying at one hundred percent or below the area median income, for a period of three years for a purchaser qualifying at between one hundred one percent and one hundred twenty percent of the area median income, or one year after the date of purchase by a purchaser qualifying at one hundred twenty-one percent or greater than the area median income, whether by lease, assignment of lease, deed, or agreement of sale, if the purchaser wishes to transfer title to the dwelling unit and the property or the lease, the county shall have the first option to purchase the lot, or the unit and property or lease. If the unit and property or lease is purchased, the price shall not exceed the sum of:

i. The original cost to the purchaser;

ii. The cost of the improvements added by the purchaser; and

iii. Simple interest on the cash equity in the property at the rate of seven percent a year. "Cash equity" means the actual amount of payments of principal which the owner has made for the purpose of purchasing or improving a dwelling unit. It includes the cash down payment made, payments of principal for improvements which add value to the dwelling unit, and payments of principal on mortgage loans incurred to purchase the dwelling unit. "Cash equity" does not include points, appraisal fees, loan servicing fees, and other financing costs. In no case shall the term "cash equity" mean the appreciated value of the dwelling unit caused by market fluctuation. The county may purchase the unit either outright, free and clear of all liens and encumbrances, or by transfer subject to an existing mortgage.

However, if the lot only was purchased and the purchaser provided his labor to construct the dwelling unit, the price shall not exceed the sum of:

i. The fair market value of the dwelling provided by appraisal for the purposes of qualifying for the first mortgage or by appraisal obtained by the county plus the original purchase price of the land, which sum shall be the original purchase price;

ii. The cost of improvements to the dwelling unit added by the owner after the original purchase; and

iii. Simple interest at the rate of one percent per year on the purchaser's original cost and capital improvements.

If by outright purchase, the county shall insure that all existing mortgages, liens, and encumbrances are satisfactorily paid by the purchaser.

In any purchase by transfer subject to an existing mortgage, the county shall agree to assume and to pay the balance on any first mortgage created for the purpose of enabling the purchaser to obtain funds for the purchase of the unit and any other mortgages which were created with the approval and consent of the county. In such cases, the amount to be paid to the purchaser by the county shall be the difference between the above-mentioned price and the principal balance of all mortgages outstanding and assumed at the time of transfer of title to the county.

With the exception of a first mortgage created for the purpose of enabling the purchaser to obtain funds for the purchase of a dwelling unit from the applicant, the

purchaser shall not place or cause to be placed on the purchaser's dwelling unit, any second mortgage or other encumbrance without the prior written approval of the mayor. This restriction shall apply for as long as the county retains the option to purchase the dwelling unit pursuant to the requirements of this chapter and pursuant to the conditional zoning requirements placed upon the project;

b. That during the five, three, or one year period referred to in this section, the dwelling unit shall be occupied by the purchaser at all times. Violation of this subsection shall be sufficient reason for the county to purchase the dwelling unit as provided in the applicable provisions of this chapter;

c. That after the end of the fifth, third or first year from the date of purchase, or execution of an agreement of sale, the purchaser may sell the unit and sell or assign the property to any person free from any price restrictions.

7. The requirements for affordable housing projects set forth in this chapter shall be included in each unilateral agreement executed pursuant to chapter 19.510 of this code. Additionally, whether or not this unilateral agreement is required, the applicant shall enter into an agreement with the county, that shall bind the applicant, and all successors in interest, to build the project as an affordable housing project. No subdivision or building permit, if a subdivision is not required, shall be approved until such agreement, properly executed, has been recorded with the bureau of conveyances of the state or the land court of the state, as the case may be, and filed with the department and the office of the county clerk so that the requirements imposed pursuant to such agreement shall run with the land and shall bind and constitute notice to all subsequent grantees, assignees, mortgagees, lienors, and any other person who claims an interest in such property.

8. The director of public works shall coordinate the submittal and review of all applications for the development of affordable housing projects, including, but not limited to, zoning, subdivision, construction of improvements and building and site development. The director of public works shall not be responsible to facilitate the review process, and may establish time limitations and procedures for review not inconsistent with the provisions of this chapter.

9. There shall be an affordable housing review committee. The committee shall consist of the managing director, director of human concerns, director of planning, director of public works, director of water supply, fire chief, and any other representatives of county, state, or federal agencies as designated from time to time by the director of public works. The committee shall be responsible for carrying out the duties identified in this chapter, as well as other duties which may be assigned by the director of public works.

10. The applicant (or duly authorized agent) for an affordable housing development shall file an application in accordance with the following procedures:

a. Preliminary Subdivision Approval.

i. Application for preliminary subdivision approval shall be filed with the director of public works, and include the following information:

(A) A site plan showing vehicular traffic circulation and utility service systems,

(B) A preliminary subdivision plat map,

(C) A topographic map,

(D) A conceptual grading and drainage and erosion control plan,

(E) Filing fee, in accordance with the Maui County Code, and

(F) Other information, as may be required by the director of public works;

ii. The director of public of public works shall review the application and determine whether it is complete. Within seven calendar days from the date of receipt of the application, the director of public works shall refer the application to the committee and other appropriate government agencies for review and comment; or if the application is incomplete, shall return it to the applicant and specify the additional information required;

iii. Within fifteen calendar days from the receipt of a complete application, the committee shall forward the application, together with its recommendation for approval, approval with conditions, or disapproval, to the director of public works. Included in the recommendation shall be a determination by the director of human concerns stating whether the proposed project meets the affordable housing standards as set forth by either the Housing and Urban Development Agency of the United States or as set forth in the Maui County Code;

iv. Within ten calendar days from the receipt of the application from the committee, the director of public works shall approve, approve with conditions, or disapprove the application for preliminary subdivision approval;

v. Unless otherwise specifically provided for by law, the general provisions of title 18 of this code relating to subdivisions shall apply, consistent with the time requirements provided herein.

b. Construction Plan Approval. Any application for approval of construction plans in conjunction with a subdivision

having received preliminary approval as provided for in subsection (B)(10)(a) of this section shall be submitted to the coordinator in accordance with this chapter.

c. Final Subdivision Approval. All applications for final subdivision approval shall be submitted to the director of public works for review and processing. The director of public works shall approve or disapprove the request for final subdivision approval within ten calendar days from the receipt of the application.

11. The applicant for all building and/or improvement permits for an affordable housing development, desiring to construct any improvements, or to build, replace, enlarge, or modify new or existing structures, where such construction, building, replacement, enlargement, or modification requires a building, plumbing, electrical, or any other type of a permit or approval, shall file an application for such permit or approval with the director of public works.

a. Application Requirement. The application shall contain the following information:

- i. A final subdivision plat map, if applicable;
- ii. A specific development plan, which incorporates applicable design guidelines and also includes, where applicable and required by the director of public works, the following information:

- (A) A detailed drainage, grading, and soil erosion report and plans,

- (B) Landscape planting plan,

- (C) Signage plan,

- (D) Building plans and specification,

- (E) Solid and liquid waste disposal plan, and

- (F) Other pertinent information necessary for permit approval;

- iii. If required, permit fees in accordance with this code.

b. Procedure.

- i. The director of public works shall review the application and determine whether it is complete. Within seven calendar days from the date of receipt of the application, the director of public works shall refer the application to the committee and, if appropriate, other government agencies for review and comment, or if the application is incomplete, shall return it to the applicant and specify the additional information required.

- ii. Within fifteen calendar days from the receipt of a complete application, the committee shall forward the application, together with its recommendation and the

comments of other appropriate government agencies, to the director of public works.

iii. Within ten calendar days from the receipt of the application, the director of public works shall approve, approve with conditions, or disapprove the application for building or site improvement permit.

12. An applicant for a project which qualifies as an affordable housing project shall receive credit, based on housing finance development corporation guidelines effective July 1, 1992 or as subsequently amended, which guidelines are expressly incorporated in this section by this reference. However, the credit in the guidelines given for multifamily units with no bedrooms and one bathroom and with one bedroom and one bathroom shall remain at one credit, even after the guidelines reduce the credit to 0.74 and 0.88, respectively, as of January 1, 1994. In addition, the three enhancement options contained in the guidelines, which will expire on December 31, 1994, shall remain in full force and effect as to the county unless the same are changed by ordinance. Additionally, affordable lots shall receive one credit for each lot up to a maximum of twenty percent of an applicant's total number of affordable units and lots included in the affordable housing project. Any affordable lot beyond this twenty percent maximum shall receive two-thirds of one credit for each lot. The credits set forth in this paragraph shall be based on the guidelines in effect on the date the application is deemed complete by the director of public works, for lots or units so qualifying as affordable, if the director of public works determines that the lots or units comply with the following requirements:

a. The lots or units shall comply with the requirements of this chapter;

b. The available credit applicable shall be for the lots or units within the relevant community plan district;

c. The credit may be transferable subject to the written approval by the county, which approval shall not be unreasonably withheld, or be apportioned among members of a joint venture (applicant) by an agreement filed with the director of public works at the time the application for the affordable housing project is filed;

d. Affordable housing requirements may be permitted to be satisfied in other project districts as provided by the council on a case-by-case basis;

e. If an applicant requests a credit for units or lots to be outside the relevant community plan region or requests affordable housing credit(s) for public service projects, the applicant should petition the county council for such request. The council must approve such request by ordinance, and the applicant shall execute and record a unilateral agreement in favor of the county and shall provide adequate security to assure that the

approved lots, units, improvements, or facilities shall be constructed. The applicant shall receive credit(s) if approved by the council; such credits shall be identified in the referenced unilateral agreement; and

f. The credits shall be recorded by the director of public works and shall be available to satisfy existing and future affordable housing development obligation.”]

SECTION 5. Section 18.04.055, Maui County Code, is repealed.

[“18.04.055 Affordable housing. “Affordable housing” means long-term residential developments to be marketed for sale or for rental for a ten-year period within the price range established by the housing finance and development corporation of the State of Hawaii for persons or families whose incomes are identified as one hundred forty percent or less of the area median income for the county of Maui for an adjusted family size as determined by the Department of Housing and Urban Development of the United States of America. The term “affordable housing” includes persons or families within the following income groups:

- A. “Very low income” which are those earning fifty percent or less of the area median income;
- B. “Lower income” which are those earning more than fifty percent but not more than eighty percent of the area median income;
- C. “Moderate income” which are those earning more than eighty percent but not more than one hundred twenty percent of the area median income; and
- D. “Above-moderate income” which are those earning more than one hundred twenty percent but not more than one hundred forty percent of the area median income”.]

SECTION 6. Section 18.04.057, Maui County Code, is repealed.

[“18.04.057 Affordable housing project. “Affordable housing project” means a long-term residential development of ten or more dwelling units in which fifty percent or more of the dwelling units shall be marketed as affordable housing in accordance with the following requirements:

A. That not less than ten percent of the dwelling units of the development shall be marketed within the price range established by the housing finance and development corporation of the State of Hawaii for persons or families whose incomes are identified as eighty percent or less of the area median income for the county of Maui for an adjusted family size as determined by the United States Department of Housing and Urban Development; and

B. That not more than twenty percent of the dwelling units of the development shall be marketed within the price range established by the housing finance and development corporation of the State of Hawaii for persons or families whose incomes are identified as more than one hundred twenty percent

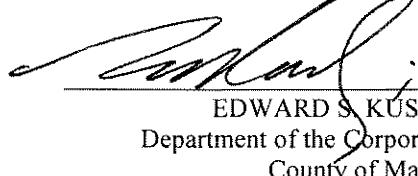
but not more than one hundred forty percent of the area median income for the county of Maui for an adjusted family size as determined by the United States Department of Housing and Urban Development.”]

SECTION 7. If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 8. Material to be repealed is bracketed. In printing this bill, the County Clerk need not include bracketed material.

SECTION 9. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

 11/8/06
EDWARD S. KUSHI, JR.
Department of the Corporation Counsel
County of Maui

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I HEREBY CERTIFY that BILL NO. 57 (2006), Draft 1, was passed by the Council of the County of Maui, State of Hawaii, on First Reading on October 20, 2006, and on Second and Final Reading on November 3, 2006.

I FURTHER CERTIFY that on November 8, 2006, said BILL NO. 57 (2006), Draft 1, was presented to the Honorable Alan M. Arakawa, Mayor of the County of Maui, for his approval or otherwise; that on November 24, 2006, the Mayor's disapproval of BILL NO. 57 (2006), Draft 1, was received; and that after reconsideration by the Council on December 5, 2006, said BILL NO. 57 (2006), Draft 1, was passed by the following vote:

AYES: Councilmembers Michelle Anderson, Jo Anne Johnson, Dain P. Kane, Dennis A. Mateo, Charmaine Tavares, Vice-Chair Robert Carroll, and Chair G. Riki Hokama.

NOES: None.

EXCUSED: Councilmembers Michael J. Molina and Joseph Pontanilla.

I FURTHER CERTIFY that said BILL NO. 57 (2006), Draft 1, was designated as ORDINANCE NO. 3418 of the County of Maui, State of Hawaii, effective December 5, 2006.

DATED at Wailuku, Maui, Hawaii, this 5th day of December, 2006.

COUNCIL OF THE COUNTY OF MAUI



G. RIKI HOKAMA
Chair and Presiding Officer

ATTEST:



ROY T. HIRAGA
County Clerk