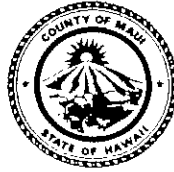


CHARMAINE TAVARES
Mayor



BRIAN T. MOTO
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL

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May 9, 2007

MEMO TO: Danny A. Mateo
Council Member

F R O M: Edward S. Kushi, Jr.
Deputy Corporation Counsel

A handwritten signature in black ink, appearing to read "Edward S. Kushi, Jr.", is written over the typed name.

SUBJECT: **PERCENTAGE REQUIREMENT FOR 201H PROJECTS** (PAF 07-053)

Pursuant to our discussion on April 30, 2007 with Legislative Analyst Gayle Revels, we respond to your memorandum of March 28, 2007, wherein the following question was presented:

MAY THE COUNCIL ADOPT AN ORDINANCE THAT WOULD INCREASE THE DEPARTMENT OF HOUSING AND HUMAN CONCERN'S CURRENT MINIMUM PERCENTAGE REQUIREMENT OF 51% AFFORDABILITY FOR PROPOSED SECTION 201H-38, HAWAII REVISED STATUTES, PROJECTS TO 80% OR 100% AFFORDABILITY?

SHORT ANSWER: Yes.

DISCUSSION:

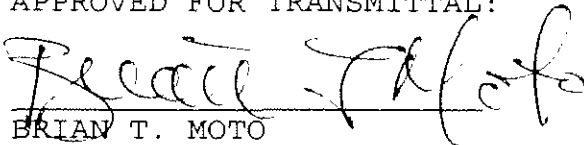
We have not found any statute, rule, or case decision relating to housing projects proposed under Section 201H-38, Hawaii Revised Statutes ("HRS"), that would prevent the Council, as the "legislative body of the county in which the housing project is to be situated",¹ from adopting an ordinance that would impose a minimum percentage of affordability requirement when Council considers such projects for approval or disapproval pursuant to Section 201H-38(a)(3)(A), HRS. Indeed, Section 201H-38(a)(3)(B) states that "[n]o action shall be prosecuted or maintained against any county, its officials, or employees on account of actions taken by them in reviewing, approving, or disapproving the plans and specifications" of a proposed Section 201H-38 housing project.

¹Section 201H-38(a)(3), HRS.

Danny A. Mateo
Council Member
May 9, 2007
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We understand that, based on the advice just rendered, your office intends to draft and submit a bill for an ordinance that would require proposed Section 201H-38 housing projects to meet a minimum percentage of affordability requirement as a criterion for Council approval.

APPROVED FOR TRANSMITTAL:



BRIAN T. MOTO
Corporation Counsel

S:\ALL\ESK\Advisory\memo to mateo re 201H, HRS, affordability § 2.wpd

ESK:lkk

cc: Vanessa A. Medeiros, Director, Department of Housing and Human Concerns
Ed Okubo, Housing Division, Department of Housing and Human Concerns
✓ Michele M. White, Legal Assistant