CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAIʻI

ORDINANCE _____

BILL **41 (2022), CD1**

A BILL FOR AN ORDINANCE

RELATING TO SHORELINE SETBACKS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose. The purpose of this ordinance is to update ROH Chapter 23, relating to shoreline setbacks, to incorporate amendments made by Act 16, Session Laws of Hawaii 2020, to HRS Chapter 205A, the State Coastal Zone Management law, and to implement an erosion-rate-based shoreline setback formula.

SECTION 2. Chapter 23, Article 1, Revised Ordinances Honolulu 1990 ("Shoreline Setbacks"), as amended by Ordinance 20-18, is amended to read as follows:

"**Article 1. Shoreline Setbacks**

Sec. 23-1.1 Authority.

Pursuant to the authority conferred by HRS Chapter 205A, the standards and procedures contained in this chapter are hereby established and shall apply to all lands within the shoreline area of the city.

Sec. 23-1.2 Purpose <u>and Intent</u>.

(a) It is a primary policy of the city to [~~protect~~]<u>:</u>

<u>(1)</u> <u>Reduce exposure to coastal hazards and increase the resilience of the community;</u>

<u>(2)</u> <u>Protect</u> and preserve the natural shoreline, <u>coastal zone environments, and associated ecosystems,</u> especially sandy beaches[~~; to protect~~]<u>, coastal dunes, wetlands, and reefs;</u>

<u>(3)</u> <u>Protect</u> and preserve public pedestrian access laterally along the shoreline and to the sea; [~~and to~~]

<u>(4)</u> <u>Maintain,</u> protect, and preserve open space <u>and coastal scenic resources</u> [~~along the shoreline. It is also a secondary policy of the city to reduce hazards to property from coastal floods.~~]<u>; and</u>

(5) Prohibit shoreline hardening unless necessary for coastal restoration or where it would result in a clear public benefit.

(b) To carry out these policies and to comply with the mandate stated in HRS Chapter 205A, it is the specific purpose of this chapter to establish standards and [~~to~~] authorize the department of [~~land utilization~~] planning and permitting to adopt rules pursuant to HRS Chapter 91[~~,~~] which generally prohibit within the shoreline area any [~~construction~~] structure or activity [~~which~~] that may adversely affect beach processes, public access along the shoreline, or shoreline open space.

(c) Finally, it is the purpose of this chapter to name the director of [~~land utilization~~] planning and permitting as the council's designee to exercise [~~some of the~~] certain powers and functions granted, and duties imposed, pursuant to HRS Chapter 205A, Part III.

Sec. 23-1.3 Definitions.

For the purposes of this chapter, [~~unless it is plainly evident from the context that a different meaning is intended,~~] the following words and phrases are defined as follows:

"Activity" means any action relating to construction, reconstruction, repair, improvement, grubbing, [~~or any~~] grading, or stockpiling [~~of earth materials~~].

"Annual coastal erosion rate" means the average annual rate of coastal erosion applicable to each zoning lot as determined by historical analysis and shown on the Hawaii Shoreline Study web map, or its successor.

"Applicant" means any individual, organization, partnership, firm, association, trust, estate, or corporation, and any agency of the federal, the State, or [~~any~~] county government.

"Beach" means a coastal landform primarily composed of sand from eroded rock, coral, or shell material, or any combination thereof, established and shaped by wave action and tidal processes. A beach includes sand deposits in nearshore submerged areas, sand dunes, and upland beach deposits landward of the shoreline that provide benefits for public use and recreation, coastal ecosystems, and as a natural buffer against coastal hazards.

"Beach processes" mean natural sand movement from wave, current, or wind action, including erosion or accretion of sand.

"Buildable area" means that portion of a zoning lot excluding the shoreline setback, required yards, street setbacks, stream or wetland setbacks, easements, and flag lot stems.

[~~"Certified shoreline" or "certified shoreline survey" means the shoreline as marked on the ground and as shown on a shoreline survey which has been certified by the state department of land and natural resources under Hawaii Administrative Rules Title 13, Chapter 222, entitled "Shoreline Certification."~~]

"Coastal accretion" means a seaward trend in shoreline movement.

"Coastal dune" means one of possibly several continuous or nearly continuous mounds or ridges of unconsolidated sand contiguous and parallel to the beach, situated so that it may provide some form of protection from wave run-up and be accessible to storm waves and seasonal high waves for release to the beach or offshore waters.

"Coastal erosion" means a landward trend in shoreline movement.

"Coastal hazards" means natural processes that place people, property, or the environment at risk for injury or damage, including but not limited to tsunami, hurricane, wind, wave, storm surges, high tide, flooding, erosion, sea level rise, subsidence, or point and nonpoint source pollution.

"Council" means the city council of the City and County of Honolulu.

"Department" means the department of [~~land utilization~~] planning and permitting, which agency shall act as the [~~"county planning department"~~] county planning department under applicable HRS [~~Section 205A-41.~~] sections.

"Director" means the director of [~~land utilization.~~] planning and permitting.

"Dwelling unit" means the same as defined in Section 21-10.1. For purposes of this chapter, dwelling units include farm dwellings, ohana units, accessory dwelling units, and caretaker units.

"Earth material" means any sand, coral or coral rubble, rocks, soil, fill, or marine deposits.

"Excavation" or "cut" means any act by which earth material is cut into, dug, or moved, and any condition resulting therefrom.

"Fill" means any act by which earth material is placed or deposited by artificial means, and any condition resulting therefrom.

"Grading" means any excavation or fill, or any combination thereof.

"Grubbing" means any act by which vegetation, including trees, shrubs, or other [~~plants, is~~] flora are dislodged or uprooted from the surface of the ground.

[~~"HRS" means the Hawaii Revised Statutes.~~]

"Hawaii Sea Level Rise Viewer" means the interactive viewer prepared by the Pacific Islands Ocean Observing System through coordination with the Hawaii Sea Grant Program and the State Department of Land and Natural Resources to support the Hawaii Sea Level Rise Vulnerability and Adaptation Report.

"Hawaii Sea Level Rise Vulnerability and Adaptation Report" means the 2017 report prepared by Tetra Tech, Inc. and the State Department of Land and Natural Resources, Office of Conservation and Coastal Lands, and adopted by the Hawaii Climate Change Mitigation and Adaptation Commission.

"Hawaii Shoreline Study" means the coastal erosion data compiled by the Coastal Geology Group in the School of Ocean and Earth Science and Technology at the University of Hawaii.

"Hawaii Shoreline Study web map" means the map created by the Coastal Geology Group in the School of Ocean and Earth Science and Technology at the University of Hawaii to visualize and share data from the Hawaii Shoreline Study.

"Landscaping" means the modification of landscape or soils for an aesthetic or functional purpose, including but not limited to planting of vegetation. It does not include plants or hedges that may act as a shoreline hardening barrier.

"Mauka" means landward or in a landward direction from the sea.

"Minor shoreline structure" means a structure authorized to be located in the shoreline setback through an approved minor shoreline structure permit that does not adversely affect beach processes, artificially fix the shoreline, interfere with public access or views to and along the shoreline, impede the natural processes or movement of the shoreline or sand dunes, alter the grade of the shoreline setback area, or endanger public health, safety, or welfare.

"Nonconforming structure" means a structure or portion of a structure [~~which~~] that was previously lawful but [~~which~~] is currently located within the shoreline setback as a result of subsequent beach erosion, or as a result of changes in the law relating to the shoreline setback.

"Person" means any individual, organization, partnership, firm, association, trust, estate, public or private corporation, the State or any of its political subdivisions, or any other legal entity.

"Practicable alternative" means an alternative to the proposed project [~~which~~] that is available and [~~capable of being done,~~] achievable, taking into consideration existing technology and logistics, [~~and~~] which would accomplish the basic purpose of the project while avoiding or [~~having less adverse impact~~] decreasing adverse impacts on the shoreline area.

"Public interest" means principally benefiting the general public by promoting natural beach processes, expanding public access to the shoreline, enhancing public views, supporting public health, safety, and welfare, and prioritizing the welfare of the public over the welfare of an individual or individual household.

"Reconstruction" means rebuilding a lawfully established structure when a licensed professional engineer or architect has valued the cost of the reconstruction at 50 percent or more of the current replacement cost of the structure, or if significant portions of the structure are proposed for replacement, including exterior walls, support beams, floors, ceilings, and the foundation.

"Repair" means renovating or fixing ordinary damage to a structure if a licensed professional engineer or architect values the cost of the work at less than 50 percent of the current replacement cost of the structure. Repairs do not involve enlarging, adding to, or expanding a structure; increasing the size or degree of nonconformity of a structure; or intensifying the use of a structure or its impact on coastal processes. Repairs do not involve substantial improvements to a structure, like-for-like replacement of structural materials, or reconstruction.

"Sea level rise exposure area" means the mapped zone on the Hawaii Sea Level Rise Viewer, or its successor, representing the aggregate of the following coastal hazard layers: passive flooding (still water high tide flooding), annual high wave flooding (overwash during the largest wave events of the year), and coastal erosion.

"Shoreline" means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.

[~~"Shoreline area" means all of the land area between the shoreline and the shoreline setback line.~~]

"Shoreline hardening" means the process of fortifying the shoreline or shoreline setback area with structures or landscaping, including but not limited to seawalls, revetments, the placement of loose rocks and boulders, geotextile erosion abatement measures, and the planting, watering, and maintenance of landscaping features like naupaka where it will interfere with the natural beach processes.

"Shoreline lot" means a zoning lot of record, any portion of which lies within the shoreline area, or [~~when there is~~] if no certified shoreline survey exists, any portion of which lies within [~~55 feet inland~~] 130 feet of the natural vegetation line or debris line. A zoning lot may be determined to be a shoreline lot notwithstanding the existence of a second zoning lot or parcel situated between the first zoning lot and the shoreline.

"Shoreline setback area" means all of the land area between the shoreline and the shoreline setback line.

"Shoreline setback line" means that line established by this chapter [~~which runs inland~~] that runs mauka from and parallel to the certified shoreline at the horizontal plane.

"Shoreline survey" means a survey [~~performed~~] map rendered by a registered land surveyor for the purpose of determining the location of the shoreline, in accordance with applicable Hawaii Administrative Rules[~~, Title 13, Chapter 222, entitled "Shoreline Certification."~~]. A shoreline survey is considered a certified shoreline survey when the location of the regulatory shoreline has been determined by the State board of land and natural resources or the State surveyor in accordance with HRS Section 205A-42, or its successor, and the rules adopted pursuant thereto.

[~~"Shore protection structure" means a structure which may artificially fix the location of the shoreline, including but not limited to a groin, seawall, or revetment.~~]

"Stockpiling" means the temporary open storage of materials, including earth materials.

"Structure" means any portion of any building, pavement, road, pipe, flume, utility line, fence, groin, wall, or revetment; or anything constructed or erected with a fixed location at or under the ground, or requiring a fixed location on or under the ground, or attached to something having or requiring a fixed location on or below the ground.

Sec. 23-1.4 [~~Shoreline~~] Establishment of the shoreline setback line.

(a) [~~General Rule.~~] Except as otherwise provided in this section, the shoreline setback line [~~shall be~~] is established 40 feet [~~inland~~] mauka from the certified shoreline[~~.~~] until January 1, 2024, after which the shoreline setback line will be established at the following distances mauka from the certified shoreline:

(1) Sixty feet plus 70 times the annual coastal erosion rate, up to a maximum setback of 130 feet, on zoning lots within all development plan and sustainable communities plan areas except the Primary Urban Center Development Plan area.

(2) Sixty feet on zoning lots within the Primary Urban Center Development Plan area.

(3) Sixty feet on zoning lots where historical erosion data has not been collected for the Hawaii shoreline study, or its successor, where the historical erosion data shows coastal accretion, or where the historical erosion data show an erosion rate of zero.

(b) [~~Adjustment of Shoreline Setback Line on Shallow Lots.~~] Where the [~~depth of the~~] buildable area of a zoning lot[~~, as measured seaward from its inland edge,~~] is reduced to less than [~~30~~] 1,500 square feet, the shoreline setback line [~~shall~~] may be adjusted to allow a minimum [~~depth of~~] buildable area of [~~30~~] 1,500 square feet[~~;~~], subject to review and approval by the director; provided that [~~the~~]:

(1) The adjusted shoreline setback line [~~shall be no~~] may not be reduced to less than [~~20~~] 40 feet from the certified shoreline[~~.~~];

(2) The shoreline setback line may only be reduced to the minimum extent required to permit construction and repair within the reduced buildable area, including the minimum necessary area for wastewater treatment, parking, and other accessory structures;

(3) The proposed structure or activity is positioned in the farthest mauka location on the zoning lot;

(4) The buildable area is measured as a standard polygon with no angle exceeding 120 degrees;

(5) On zoning lots that exceed 60 feet in width, the side yards may be increased so that the buildable area depth is 30 feet;

(6) The proposal does not involve new shoreline hardening;

(7) If a proposed structure is within a special flood hazard area, as defined in Chapter 21A, structural design and construction must be resilient to existing and increasing flood hazards with a finished lowest floor elevation a minimum of three feet above the flood insurance rate map base flood elevation; and

(8) If a proposed structure is outside of the special flood hazard area but within the sea level rise exposure area, the lowest floor of the structure must be a minimum of 3 feet above the highest adjacent grade.

(c) [~~Adjustment of Shoreline Setback Line Related to the Construction of a Shore Protection Structure.~~] Once a shoreline has been certified [~~from which~~] and a shoreline setback line [~~can be~~] has been established, no shoreline setback line [~~shall~~] may be established farther seaward as the result of a subsequent certified shoreline survey [~~following the construction of a shore protection structure~~]. [~~On a lot where the certified shoreline is permanently fixed by a shore protection structure, the shoreline setback line shall be established by measuring inland from the shoreline, as it was located prior to the construction of the shoreline protection structure.~~

~~Where the shore protection structure was constructed without a shoreline survey first being made and certified by the state department of land and natural resources, the director shall determine the prior location of the shoreline solely for the purpose of establishing the shoreline setback line. In so doing, the director shall consider the actual location of the high wash of the waves during the year and the location of the shoreline and the shoreline setback line on adjacent properties.~~

~~The resulting shoreline setback line may be further than 40 feet from the shoreline established by the department of land utilization following construction of the shore protection structure.~~]

(d) A shoreline setback line determination approved by the director for zoning lots with erosion-rate-based setbacks may be issued at a property owner's request prior to the issuance of any land use, development, or building permits, or any subdivision actions.

(e) Prior to the commencement of grubbing, grading, or construction activities, the shoreline and shoreline setback line must be identified on the ground and posted with markers, posts, or other appropriate reference marks by a surveyor licensed in the State of Hawaii.

Sec. 23-1.5 Prohibitions within the shoreline setback area.

(a) The mining or taking of any earth material from the shoreline setback area is prohibited, with the following exceptions:

(1) The inadvertent taking from the shoreline area of materials, [~~not in excess of one gallon per person per day, for reasonable, personal, noncommercial use, provided that it does not result cumulatively in changing the topography of the shoreline area;~~] such as those inadvertently carried away on the body, and on clothes, toys, recreational equipment, and bags;

(2) Where the mining or taking is authorized by a variance granted pursuant to this chapter;

(3) The clearing of materials from existing drainage pipes, canals, and the mouths of streams, including clearing for purposes allowed under HRS Section 46-11.5; provided that sand removed [~~shall~~] must be placed on adjacent areas unless the placement would result in significant turbidity[~~; or~~], or unsanitary or undesirable conditions;

(4) The clearing of the shoreline area for [~~state~~] State or city maintenance purposes[~~,~~]; provided that sand removed [~~shall~~] must be placed on adjacent areas unless the placement would result in significant turbidity[~~.~~], or unsanitary or undesirable conditions;

(5) The taking of driftwood, shells, beach glass, glass floats, or seaweed;

(6) The exercise of traditional cultural practices as authorized by law or as permitted by the department pursuant to Article XII, Section 7, of the Hawaii State Constitution; or

(7) For the response to a public emergency or a State or local disaster.

(b) Structures and activities are prohibited within the shoreline setback area, with the following exceptions:

(1) Minor structures and activities permitted under rules adopted by the department [~~which do~~] that will not, within the lifetime of the structure or duration of the activity, affect beach processes or artificially fix the shoreline and [~~do~~] will not interfere with public access, public views, or open space along the shoreline. If, due to beach erosion or other cause, the director determines that a minor structure permitted under this section may affect beach processes or public access, or has become located seaward of the shoreline, the director or other governmental agency having jurisdiction may order its removal;

(2) Minor structures and activities necessary for or ancillary to continuation, but not expansion, of agriculture or aquaculture in the shoreline area on June 16, 1989[~~:~~], including the restoration of traditional Hawaiian fishpond systems as allowed under State law;

(3) A structure or activity that is necessary for or ancillary to a public shoreline-dependent facility or improvement, including but not limited to boating, maritime, aviation, public infrastructure, recreation-related, or lifeguard facilities; provided that the structure or activity will not interfere with beach processes or public beach access;

[~~(3)~~](4) Maintenance, repair, reconstruction, and minor additions to or alterations of [~~legal, publicly owned boating, maritime, ocean sports recreational facilities, which result in little or no interference with natural shoreline processes. Privately~~] lawfully established structures included in subdivision (3); provided that privately owned boating, maritime, or ocean sports recreational facilities are specifically [~~excluded from~~] not included in this exception;

[~~(4)~~](5) Nonconforming structures or structures that have received a shoreline setback variance;

[~~(5)~~](6) Construction, installation, maintenance, repair, and replacement of public warning or signal devices and sirens[~~.~~]; or

(7) Beach and sand dune restoration and maintenance activities permitted by the State department of land and natural resources.

Sec. 23-1.6 Nonconforming structures.

(a) [~~Any~~] A nonconforming structure may be repaired or altered [~~in any manner which does~~]; provided that the repairs or alterations do not increase [~~its~~] or intensify the nonconformity[~~.~~], and the cumulative valuation of the repairs or alterations does not exceed 50 percent of the replacement cost of the structure over a 10-year period.

(b) If a nonconforming structure is destroyed by any means to an extent of more than 50 percent of its replacement cost at the time of destruction, it [~~shall~~] may not be reconstructed except in conformity with the provisions of this chapter and the shoreline setback rules and regulations, [~~or successor regulations.~~] as may be amended or superseded.

(c) Reconstruction of [~~such~~] a nonconforming structure within the shoreline setback [~~shall require a~~] area requires a shoreline setback variance.

Sec. 23-1.7 Subdivision actions.

(a) Except as provided in this chapter, no new subdivision action, including the subdivision or consolidation of land, [~~for~~] involving an existing shoreline lot [~~to create~~] and the creation of new zoning lots may be approved unless each new lot:

(1) [~~Can accommodate a 60-foot shoreline setback, except for:~~

~~(A) Areas that are not within the coastal high hazard district and where the entire shoreline for the new lot is characterized by either:~~

~~(i) an authorized shoreline protection structure; or~~

~~(ii) a fixed, rocky shoreline;~~

~~in which case the department may approve new shoreline lots that will accommodate a 40-foot shoreline setback; or~~

~~(B)~~ ~~Minor~~] Can accommodate a shoreline setback line established at 60 feet mauka from the certified shoreline until January 1, 2024, after which each newly created shoreline zoning lot must accommodate a shoreline setback line established at 130 feet mauka from the certified shoreline; provided that an exception may be granted to subdivision actions involving the subdivision or consolidation of land only for the purpose of creating easements or adjusting zoning lot lines[~~, and which~~] that will not result in any increase in the number of permitted dwelling units, nonresidential structures, or zoning lots; and[~~,~~]

(2) Has a buildable area adequate to accommodate the proposed [~~development,~~] structures or activities, including [~~appurtenant~~] accessory uses and structures, such as parking.

Accreted lands obtained from the State [~~of Hawaii~~] pursuant to HRS Section 501-33 [~~shall~~] may not be included as part of the land area when [~~making calculations of~~] calculating the zoning lot size available for subdivision.

(b) Subdivision of existing shoreline lots for the purpose of widening roadways designated on the public infrastructure maps adopted pursuant to Chapter 4, Article 8, may be permitted[~~,~~] upon the review and approval of the director.

(c) New residential zoning lots may not be approved unless each new lot:

(1) Has a buildable area of at least [~~3,000~~] 5,000 square feet; [~~and~~]

(2) Has a buildable area outside of the shoreline setback area with a minimum depth and width of at least 50 feet[~~.~~];

(3) Is subdivided perpendicular to the shoreline to create deep lots that maximize opportunities to place structures far from the shoreline; and

(4) Is not a flag lot.

Sec. 23-1.8 Criteria for granting a shoreline setback variance.

(a) The director, as provided in Section 23-1.10, may grant a shoreline setback variance upon finding that, based upon the record presented, the proposed structure or activity is necessary for or ancillary to:

(1) Cultivation of crops;

(2) Aquaculture;

(3) Landscaping; provided that the proposed structure or activity will not adversely affect beach processes and will not artificially fix the shoreline; or

(4) Moving of sand from one location seaward of the shoreline to another location seaward of the shoreline; provided that the director also finds that the moving of sand will not adversely affect beach processes, will not diminish the size of a public beach and will be necessary to stabilize an eroding shoreline.

(b) The director may also grant a shoreline setback variance upon finding that, based upon the record presented, the proposed structure or activity meets one of the following standards [~~of this section~~]:

(1) Shoreline-dependent Facility Standard. A shoreline setback variance may be granted for [~~an activity or~~] a structure or activity that is necessary for or ancillary to a shoreline-dependent facility or improvement, including but not limited to public infrastructure, drainage facilities, and boating, maritime, or [~~ocean sports~~] water sport recreational facilities; provided that the proposal is the practicable alternative [~~which~~] that best conforms to the purpose of the shoreline setback rules.

(2) Public Interest Standard. A shoreline setback variance may be granted for [~~an activity or~~] a structure or activity that is necessary for or ancillary to facilities or improvements by a public agency or [~~by a~~] public utility regulated under HRS Chapter 269, or necessary for or ancillary to private facilities or improvements that are clearly in the public interest; provided that the proposal is the practicable alternative [~~which~~] that best conforms to the purpose of this chapter and the shoreline setback rules. [~~Public interest shall mean principally of benefit to the general public, as determined by the director.~~]

(3) Hardship Standard.

(A) A shoreline setback variance may be granted for [~~an activity or structure that is necessary or ancillary to the following private~~

~~facilities or improvements,~~] a structure or activity if hardship will result to the applicant if the facilities or improvements are not allowed within the shoreline area[~~:~~

~~(i) Private facilities or improvements which will neither adversely affect beach processes nor artificially fix the shoreline; and~~

~~(ii) Private facilities or improvements that may artificially fix the shoreline, but only if hardship is likely to be caused by shoreline erosion and conditions are imposed prohibiting any such structure seaward of the existing shoreline unless it is clearly in the public interest~~].

(B) For the purposes of this subsection, hardship may be found only if[~~:~~] all of the following are met:

(i) The structures will neither adversely affect beach processes nor artificially fix the shoreline, and the applicant and landowner would be deprived of reasonable use of the land if required to comply fully with [~~the shoreline setback ordinance~~] this chapter and the shoreline setback rules;

(ii) The applicant's proposal is due to unique circumstances, [~~and~~] does not draw into question the reasonableness of this chapter and the shoreline setback rules[~~;~~], is consistent and compatible with surrounding land uses, and is unlikely to adversely impact neighboring properties; and

(iii) The proposal is the practicable alternative [~~which~~] that best conforms to the purpose of this chapter and the shoreline setback rules. The analysis of the practicable alternatives must include a thorough assessment of potential impacts and consideration of mitigation measures to avoid or minimize impacts, including but not limited to the relocation or reconfiguration of structures and the restoration of coastal resources.

(C) A shoreline setback variance to artificially fix the shoreline may not be granted in areas with sandy beaches or dunes, or where artificially fixing the shoreline may interfere with existing

recreational and waterline activities or natural sand and sediment replenishment that occur as part of beach processes, unless the granting of the shoreline setback variance is clearly demonstrated to be in the public interest.

[~~(C)~~](D) Before granting a [~~hardship~~] shoreline setback variance on the basis of hardship, the director must determine that the applicant's proposal is a reasonable use of the land. Because of the dynamic nature of the shoreline environment, inappropriate development may easily pose a risk to individuals or to the public health and safety. For this reason, the determination of the reasonableness of the use of land should properly consider factors such as shoreline conditions, erosion, surf and flood conditions, and the geography of the zoning lot.

[~~(D)~~](E) Hardship [~~shall~~] may not be determined as a result of a zone change, plan review use approval, subdivision approval, cluster housing approval, planned development housing approval, conditional use permit, or any other discretionary land use permit granted after June 16, 1989.

Sec. 23-1.9 Conditions on shoreline setback variances.

(a) No shoreline setback variance [~~shall~~] may be granted unless appropriate conditions are imposed:

[~~(a)~~](1) To maintain safe access to and along the shoreline or adequately compensate for its loss;

[~~(b)~~](2) To minimize risk of adverse impacts [~~on~~] to coastal, beach, and marine processes;

[~~(c)~~](3) To minimize the risk of existing legal or proposed structures falling and becoming loose rocks, sharp or otherwise dangerous debris, or rubble on public property; and

[~~(d)~~](4) To minimize adverse impacts on public views to, from, and along the shoreline.

(b) Structures, activities, and uses approved by a shoreline setback variance within the shoreline setback area are not eligible for subsequent shoreline setback

variances to construct shoreline hardening in the shoreline setback area, and hardship may not be determined as a result of a former shoreline setback variance approval.

(c) The city is not liable for any losses, liabilities, claims, or demands arising out of or resulting from damages to structures or property within the shoreline setback area approved by a shoreline setback variance.

Sec. 23-1.10 Authority to act on shoreline setback variance applications [~~--Notice of application~~].

(a) The director shall act upon all shoreline setback variance applications according to the criteria [~~contained~~] set forth in this chapter.

(b) The [~~director~~] applicant shall give reasonable notice of an application for a shoreline setback variance under this chapter to abutting property owners, [~~to~~] affected neighborhood boards and community associations, and [~~to~~] persons [~~who~~] that have requested receipt of a notice.

Sec. 23-1.11 Public hearings [~~on variance applications~~].

(a) The director shall hold a public hearing on each shoreline setback variance application[~~, except that the director may waive the hearing on variances for the following:~~

~~(1) Stabilization of shoreline erosion involving the movement of sand entirely on public lands;~~

~~(2) Application for shore protection where a legal habitable structure is at risk of immediate damage from shoreline erosion as determined by the director;~~

~~(3) Other structures or activities; provided that no person or agency has requested a public hearing within 25 calendar days after public notice of the application;~~

~~(4) Application qualifying for an emergency permit under Chapter 25 of this code; or~~

~~(5)~~ ~~Maintenance, repair, reconstruction and minor additions to or alterations of legal boating, maritime or water sports recreational facilities, which result in little or no interference with natural shoreline processes.~~] that has been accepted as complete.

(b) The director shall give reasonable notice of the public hearing [~~on any~~] for a shoreline setback variance application to the applicant, [~~to any person or agency that~~] affected neighborhood boards and community associations, and persons that have requested notice of the public [~~hearing, and~~] hearing. The applicant must mail notices to [~~abutting~~] neighboring property owners within 300 feet of the zoning lot, and [~~any other person who~~] persons that have requested receipt of a notice.

Sec. 23-1.12 [~~Variance application fee.~~] Application review and processing fees.

(a) [~~The application fee for a variance under this chapter will be $2,400.00, which will not be refundable; provided that the fee will be waived for city projects.~~] The following table sets forth application review and processing fees, which are not refundable. The review fees cover the costs of determining whether an application is complete or incomplete.

Application Type	**Review Fee**	**Processing Fee**	**TOTAL FEE**
Shoreline Setback Variance	$400	$2,000	$2,400
Environmental Assessment	$200	$1,000	$1,200
Environmental Impact Statement	$400	$2,000	$2,400
Minor Shoreline Structure Permit	$100	$500	$600
Shoreline Setback Line Determination	No fee	$600 per tax map key	$600 per tax map key
Confirmation of Shoreline Structure Nonconforming Status	No fee	$600 per tax map key	$600 per tax map key

(b) When [~~a shoreline setback variance or minor shoreline structure permit application, or a related environmental assessment or impact statement is submitted subsequent to the applicant's having completed the activity or structure~~

~~for which the variance or minor shoreline structure permit is sought, or having been cited for the activity or construction without having obtained a variance or minor shoreline structure permit, the application or processing fee will be doubled.~~] an application is submitted, it must include all required fees. The nonrefundable application review fee will immediately be applied to the review of the application. If the application is accepted for processing, the processing fee will be applied to the application. If the application is determined to be incomplete, the processing fee will be returned.

[~~(c) When a request for a written clearance regarding compliance with the shoreline setback ordinance or confirmation regarding the nonconforming status of a shoreline structure is submitted for processing, the fee will be $600.00 per tax map key.~~

~~(d) When a minor shoreline structure permit application is submitted for processing, the application fee will be $600.00.~~

~~(e) When an environmental assessment or impact statement must be prepared as a prerequisite to a variance required by this chapter, and is submitted to the department of planning and permitting for processing as the accepting agency, there will be a processing fee of $1,200.00 for an environmental assessment, and $2,400.00 for an environmental impact statement.~~

~~(f) When a shoreline setback variance, minor shoreline structure permit, or prerequisite environmental assessment or impact statement is submitted for processing, there will be a nonrefundable application review fee to determine whether the application is complete or incomplete, as follows:~~

~~(1) Applications with a fee of $2,400.00 or more will have an application review fee of $400.00;~~

~~(2) Applications with a fee of $1,200.00 will have an application review fee of $200.00; and~~

~~(3) Minor shoreline structure permits will have an application review fee of $100.00.~~

~~When an application under this section has been accepted by the department of planning and permitting for processing, the application review fee for the submitted application will be counted as partial payment towards the total application fee for that submittal.~~]

(c) Review fees and processing fees will be doubled for permits and environmental disclosure documents submitted:

(1) After a notice of violation has been issued for the activity or construction; or

(2) After the proposed work is completed.

(d) Fees may be waived for city projects.

Sec. 23-1.13 Civil fines.

(a) Any person [~~who violates~~] violating any provision of this chapter, any rule adopted pursuant thereto, any permit issued pursuant thereto, or any condition of a shoreline setback variance shall, upon notice issued pursuant to Section 23-1.14, be deemed to have committed a civil violation and shall be subject to an initial civil fine not to exceed [~~$10,000.00~~] $100,000 per violation and a maximum daily fine of [~~$1,000.00~~] $10,000 until the violation is corrected or a variance is granted.

(b) [~~A~~] Any order to pay civil fines will not be stayed by the submittal of a shoreline setback variance application [~~submitted subsequent to an applicant's having completed the activity or structure, or having been cited for the activity or the construction without having obtained a variance, shall not stay any order to pay civil fines.~~] after the applicant has initiated, completed, or been cited for the activity.

Sec. 23-1.14 Enforcement.

(a) Issuance of Notice of Violation and Order. If the director determines that any person is violating any provision of this chapter, any rule adopted thereunder, any permit issued pursuant thereto, or any condition of a shoreline setback variance, the director may have the person served[~~, by registered or certified mail, delivery, or publication,~~] with a written notice of violation and order[~~.~~] in compliance with the agency's administrative rules.

(1) Contents of the Notice of Violation. The notice [~~shall~~] must include at least the following information:

(A) Date of notice;

(B) The name and address of the person given notice;

(C) The section number of the ordinance or rule [~~which~~] that has been violated;

(D) The nature of the violation; and

(E) The location of the violation and the date and time that the violation was discovered.

(2) Contents of the Order. The order may require the person to do any or all of the following:

(A) Cease and desist from the violation;

(B) Correct the violation at the person's own expense, which may include removal of any structure and restoration of land to previous conditions;

(C) Pay a civil fine not to exceed [~~$10,000.00~~] $100,000 in the manner, at the place, and before the date specified in the order;

(D) Pay a civil fine not to exceed [~~$1,000.00~~] $10,000 per day for each day in which the violation persists, in the manner, at the place, and before the date specified in the order; and

(E) Appear before the director at a time and place specified in the order and answer the charges specified in the notice of violation.

The order [~~shall~~] must advise the person that the order [~~shall~~] will become final 30 days after the date of its [~~mailing, delivery, or publication~~] service unless written request for a hearing is mailed or delivered to the director [~~within said 30 days.~~] prior to expiration of the 30-day period.

(b) Effect of Order–Right to Hearing. The provisions of the order issued by the director under this section [~~shall~~] will become final 30 days after the date of the [~~mailing, delivery, or publication~~] service of the order. The person [~~to whom~~] in receipt of the notice [~~is directed~~] may request a hearing before the director. A request for a hearing [~~shall~~] will not stay any provision of the order.

The request for a hearing [~~shall~~] will be considered timely if a written request is delivered or mailed and postmark dated to the director within [~~said 30 days.~~] the 30-day period.

Upon receipt of a request for a hearing, the director shall specify a time and place for the person subject to the order to appear and be heard. The hearing [~~shall~~] will be conducted by the director or the director's designee in accordance with the provisions of HRS Chapter 91. Following [~~said~~] the hearing, the director or the director's designee may affirm, modify, or rescind the order, as [~~in the opinion of~~] the director [~~may be~~] or the director's designee deems appropriate.

(c) Judicial Enforcement of Order. The director may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section.

Where the civil action has been instituted to enforce the civil fine imposed by [~~such~~] an order, the director need only show that a notice of violation and order was served, a hearing was held or the [~~time allowed for requesting~~] 30-day period during which a hearing may be requested had expired without such a request, [~~that~~] a civil fine was imposed, and [~~that~~] the fine imposed has not been paid.

The director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent violation of any provision of this chapter, any rule adopted thereunder, any permit issued pursuant thereto, or any condition of any shoreline setback variance in addition to any other remedy provided for under this chapter.

(d) Nonexclusiveness of Remedies. The remedies provided in this chapter for enforcement of the provisions of this chapter, any rule adopted thereunder, any permit issued pursuant thereto, or any condition of any shoreline setback variance [~~shall~~] will be in addition to any other remedy as may be provided by law.

(e) Appeal in Accordance with Statute. If any person is aggrieved by the order issued by the director pursuant to this section, the person may appeal the order in the manner provided in HRS Chapter 91[~~,~~]; provided that no provision of [~~such~~] an order [~~shall~~] will be stayed on appeal unless specifically ordered by a court of competent jurisdiction.

Sec. 23-1.15 Illegal shore protection structures.

Where the shoreline is affected by a [~~man-made~~] structure that has not been authorized [~~with government~~] pursuant to governmental agency permits required by law:

[~~(a)~~](1) If any part of the structure [~~lies~~] is located within the current tax map boundaries of a [~~privately owned~~] privately-owned parcel, then for purposes of enforcement of this chapter, the structure [~~shall~~] will be construed [~~to be~~] as being located entirely within the shoreline area; and

[~~(b)~~](2) No building permit or grading permit [~~shall~~] will be granted on a shoreline lot unless and until the illegal structure is removed or corrected.[~~; except, however, that such permits may be granted where the director determines it necessary to protect public health and safety.~~]

Sec. 23-1.16 Rules.

The department shall adopt rules pursuant to HRS Chapter 91 to implement this chapter and HRS Chapter 205A, Part III. The rules may [~~designate high quality~~] identify high-quality sandy beaches [~~which~~] that should be preserved, and may include guidelines or prohibitions relating to the types of shore protection structures [~~which~~] that may or may not be [~~allowed on these~~] permitted on high-quality beaches and other beaches."

SECTION 3. Ordinance material to be repealed is bracketed and stricken. New material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the brackets, the material that has been bracketed and stricken, or the underscoring.

SECTION 4. This ordinance takes effect upon its approval; provided that:

1. Any application for a shoreline setback variance submitted to the Director of Planning and Permitting and accepted as complete prior to January 1, 2024, is not affected by the determination of the shoreline setback line under Section 23-1.4, Revised Ordinances of Honolulu 1990, or any successor ordinance;

2. Any application for a subdivision action submitted to the Director of Planning and Permitting and accepted as complete prior to January 1, 2024, is not affected by the determination of the shoreline

A BILL FOR AN ORDINANCE

setback line for subdivision actions involving an existing shoreline zoning lot and the creation of new zoning lots under Section 23-1.7(a)(1), Revised Ordinances of Honolulu 1990, or any successor ordinance; and

3. This ordinance does not affect any shoreline setback variances that have been approved prior to the effective date of this ordinance.

INTRODUCED BY:

Tommy Waters (br)

DATE OF INTRODUCTION:

June 23, 2022
Honolulu, Hawaiʻi

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____day of _____, 20 _____.

RICK BLANGIARDI, Mayor
City and County of Honolulu