

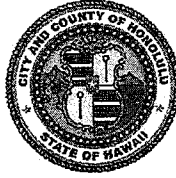
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BUILDING BOARD OF APPEALS
CITY AND COUNTY OF HONOLULU

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January 31, 2023

The Honorable Tommy Waters
Chair and Presiding Officer
and Members
Honolulu City Council
530 South King Street, Room 202
Honolulu, Hawaii 96813

Dear Chair Waters and Councilmembers:

SUBJECT: Building Board of Appeals Five Year Report

Please find enclosed a copy of the Building Board of Appeals' Five Year Report for the Council's 2023 schedule of Periodic Review of Boards and Commissions in accordance with Ordinance 17-44.

If you have any questions, please contact me or my staff, Huiyun Zhang at 808-768-8251 or via email huiyun.zhang@honolulu.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher Hong".

Christopher Hong
Chair
Building Board of Appeals

Enclosure

APPROVAL:

A handwritten signature in black ink, appearing to read "Michael D. Formby".

Michael D. Formby
Managing Director

DEPT. COM. 72

**Building Board of Appeals
Five Year Review Report
2023**

In accordance with the periodic review schedule for boards and commissions established by Revised Ordinances of Honolulu 2021 (ROH), Chapter 3, Article 15, the Building Board of Appeals (BBA) offers the following report:

1) A statement of the purpose for which the board or commission was created.

The BBA was created to hear and determine appeals from the decisions of the building official or the fire official in the administration of the Building Code, Electrical Code, Plumbing Code, Housing Code, Building Energy Efficiency Standards, Fire Code, and ROH Chapter 18, Article 5 and Article 7, including, but not limited to, matters involving any approval or denial, the use of new or alternate materials, types of construction, equipment, devices or appliances, administrative enforcement, and the issuance, suspension or revocation of permits issued under ROH Chapter 18, Article 5 and Article 7; hear and determine appeals for varying the application of Building Code, Electrical Code, Plumbing Code, Housing Code, Building Energy Efficiency Standards, and Fire codes; hear and determine appeals from the decision of the building official concerning the administrative enforcement of ROH Chapter 13, Article 4; hear and determine appeals concerning the summary removal of unlawful signs pursuant to ROH Chapter 13, Article 14; and hear and determine appeals concerning the administrative enforcement of ROH Chapter 40, Article 7.

2) A summary of the accomplishments of the board or commission during the preceding five-year period.

Table 1. BBA Case Information

Year	Appeals Filed	Appeals Denied	Appeals Upheld	Appeals Withdrawn	Appeals Dismissed	BBA Decisions Appealed to Court
2018	41	3		4		
2019	7	10	7	4	13	12
2020	9		2	4		
2021	8	1		10		
2022	20	2		1		1

Table 2. BBA Meeting Information

Year	BBA Meeting Scheduled	Contested Case Hearings Scheduled	Contested Case Hearings Conducted
2018	11	11	6
2019	11	11	7
2020	15	14	3
2021	16	15	4
2022	14	14	4

3) Factors that aided or inhibited the achievement of the accomplishments, including, but not limited to, the composition and purpose of the board or commission and staff support.

- 1) Pursuant to ROH Section 16-1.1(14), under Section 113.1, the BBA consists of nine (9) members, who shall be qualified by experience and training to pass upon matters pertaining to building construction and fire safety and who shall be appointed by the Mayor with the approval of the City Council. Four (4) members must be currently licensed as engineers or architects with the State of Hawaii’s board of registration of professional engineers, architects, land surveyors, and landscape architects. One member must be qualified by experience and training to pass on matters pertaining to electrical work; one member must be qualified by experience and training to pass on matters pertaining to plumbing work; two (2) members must be qualified by experience and training to pass on matters pertaining to fire safety; and one member must be a general contractor licensed under Hawaii Revised Statutes (HRS) Chapter 444.

Due to the technical knowledge and broad subject matters related to the appeals, the qualifications and the composition of the BBA serves as a factor which aids the BBA in rendering its decisions and conclusions.

This same requirement also hinders the City’s ability to fill positions on the BBA, as these requirements reduces the pool of individuals who would be able to serve on the BBA. From July 2021 to December 2021, the BBA operated with only five (5) members although the BBA is comprised of nine (9) members. And since Mr. Orlando Matias’ term expired at the end of 2019, the position for the member who must have electrical work background is still vacant. The BBA had to cancel one meeting in 2018, two meetings in 2021, and one meeting in 2022 due to lack of quorum.

- 2) The BBA serves the public as the venue to appeal decisions made by two city departments; the Department of Planning and Permitting (DPP) and the Honolulu Fire Department (HFD). Testimony and technical

support to the BBA provided by the DPP and HFD staff are significant resources during the hearing process.

- 3) Having each BBA member given the copies of the codes (Building, Electrical, Plumbing, Fire, Building Energy Conservation, and Housing) allows them to be prepared for the hearings.
- 4) Having and maintaining administrative provisions for the enforcement of the codes, which provides the administrator of the codes the ability to resolve issues, thereby, reducing the appeals necessary to the BBA.

To aid the BBA going forward, the BBA, DPP, and HFD recommend that any new or additional amendments to the existing codes be clear enforceable codes, which would greatly assist the BBA by reducing the potential appeals made to the BBA.

- 4) **A statement of the measures implemented by the board or commission to enhance transparency in its operations.**

The meeting agendas are posted on DPP's official website. All meetings of the BBA are recorded so the public may request copies of the recording.

All pleadings filed with the BBA are available for public review at DPP's Data Access and Imaging Branch.

- 5) **A statement of the measures implemented by the board or commission to ensure responsiveness to inquiries and comments from the mayor, the council, and the public.**

The BBA operates in accordance with ROH Section 16-1.1(14) and Section 113 of the Revised Ordinances of the City and County of Honolulu.

The Mayor, City Council, and the public are well-served by the BBA in executing its duties in a timely, legally defensible manner. All testimonies are heard and a decision is rendered at the scheduled meeting by the BBA. The BBA takes action on the Findings of Fact, Conclusions of Law, and Decision and Order as soon as it is prepared and a special BBA meeting is held for the action if no case hearing is scheduled so that the BBA can adopt the Findings of Fact, Conclusions of Law, and Decision and Order. Currently, this process takes an average of six (6) months, a timeframe which is reasonable as the BBA is required to adhere to State provisions related to HRS Chapter 91.

- 6) **The annual cost of operation of the board or commission for each year of the preceding five-year period.**

Table 3. BBA Costs from 2018 to 2022 (approximate)

Year	Description	Cost	Total Cost
2018	Microphone Cable	\$9.37	\$1741.85
	Compensation for BBA members	\$700.00	
	Code books	\$633.86	
	Expenditures for postage	\$398.82	
2019	Gavel and sounding	\$19.99	\$8247.03
	Compensation for BBA members	\$860.00	
	Code books	\$6850.92	
	Expenditures for postage	\$516.12	
2020	Stamps	\$48.12	\$624.38
	Compensation for BBA members	\$240.00	
	Expenditures for postage	\$336.26	
2021	SONY recorder	\$75.65	\$874.47
	Compensation for BBA members	\$400.00	
	Expenditures for postage	\$398.82	
2022	Compensation for BBA members	\$480.00	\$9,194.56
	Code books	\$6,247.66	
	Court reporter	\$1,998.00	
	Expenditures for postage	\$469.20	

- 7) **A statement of whether the charter or ordinance provisions establishing the board or commission should be retained without change, amended, or repealed.**

ROH Section 16-1.1(14), establishing the Board, should be retained without any changes. The Board provides: a due process mechanism for challenging ministerial decisions; provides an opportunity to voice concerns over decisions made relative to building, electrical, plumbing, fire, building energy conservation, and housing codes; provides applicants a means to resolve differences or misunderstandings without going to court; and allows an independent review of actions taken by DPP and HFD, relative to the administration of codes, and the interpretation of the building, electrical, plumbing, fire, building energy conservation, and housing codes.

- 8) **If applicable, suggested modifications and revisions to membership number and qualifications, organizations; purpose; or powers, duties and functions to better enable the board or commission to serve its purpose, including justification and suggested amendatory language.**

See Item 7 above.