

REPORT OF THE COMMITTEE ON ZONING

Voting Members:

Calvin K.Y. Say, Chair; Tyler Dos Santos-Tam, Vice-Chair;
Radiant Cordero, Esther Kia'aina, Matt Weyer

Committee Meeting Held
October 18, 2023

Honorable Tommy Waters
Chair, City Council
City and County of Honolulu

Mr. Chair:

Your Committee on Zoning, to which was referred Bill 6 (2023), CD1, entitled:

"A BILL FOR AN ORDINANCE RELATING TO PROFESSIONAL
SELF-CERTIFICATION,"

which passed Second Reading and was the subject of a Public Hearing held at the
August 9, 2023 Council meeting, reports as follows:

The purpose of the Bill is to temporarily alleviate the backlog of building permit
applications and reviews by providing the Building Official the authority to allow other
outside means to review building permit applications for compliance with pertinent codes.
The Bill is an uncodified bill that will remain in effect for four years after the effective date
of the Bill.

The Managing Director provided comments on the Bill.

The Director of Planning and Permitting testified in support of the Bill.

At your Committee's meeting on October 18, 2023, Pacific Resource Partnership
and Avalon Development, and two individuals testified in support of the Bill. The Hawaii
Regional Council of Carpenters testified in opposition to the Bill. HGEA offered comments
on the Bill.

HONOLULU CITY COUNCIL
Ke Kanihela o ke Kalana o Honolulu
CITY AND COUNTY OF HONOLULU

ADOPTED ON **NOV 1 2023**

COMMITTEE REPORT NO. **291**

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Committee Meeting Held
October 18, 2023
Page 2

Your Committee received written testimony in support of the Bill from NAIOP Hawaii and General Contractors Association of Hawaii. Grassroot Institute of Hawaii, HGEA, Hawaii Regional Council of Carpenters, Pacific Resource Partnership, and one individual submitted comments on the Bill.

Your Committee prepared a CD2 version of the Bill that makes the following amendments:

- A. In SECTION 2 of the bill, subsection (a), relating to definitions:
 - 1. Amends the definition of "eligible project" to mean a project that only:
 - a. Involves the development of an affordable rental housing project pursuant to ROH Chapter 32;
 - b. Consists of commercial building tenant improvements, defined as any interior renovation, alteration, or modification of an existing building used for commercial purposes by a tenant or lessee that does not change the functional use of the building from the use indicated or shown on the original building permit. The following types of commercial building tenant improvements are not eligible for the self-certification program:
 - (i) All exterior improvements to a commercial building, including but not limited to any modification or alteration to exterior walls that would change the number, size, or location of existing doorways or window penetrations;

HONOLULU CITY COUNCIL
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Committee Meeting Held
October 18, 2023
Page 3

- (ii) Any work that would conflict or be inconsistent with the previous building permit plans and approvals;
 - (iii) Any work that requires approval by the building board of appeals to deviate from a relevant code; or
 - (iv) Any work that involves alternate methods, including the use of structures or components that require materials and methods approval, such as prefabricated buildings; or
 - c. Involves a residential project located on lands managed by or under the jurisdiction of, or both, the State Department of Hawaiian Home Lands.
2. Amends the definition of "owner or tenant" to read as follows:
- Owner and Tenant (if not the same).** The persons having control over the real property that is the subject of a building permit application and having responsibility for the work identified in the building permit application and accompanying plans.
3. Amends the definition of "relevant code" to add a reference to the Building Energy Conservation Code (ROH Chapter 16B), and delete the reference to the Sidewalk Code (ROH Chapter 14, Article 3).
- B. In SECTION 2 of the bill, subsection (b), relating to the self-certification program:
- 1. Adds a new subdivision (6) to require the self-certified professional to be insured with professional liability insurance, issued by an insurer authorized

HONOLULU CITY COUNCIL
Ke Kanihela o ke Kalana o Honolulu
CITY AND COUNTY OF HONOLULU

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Committee Meeting Held
October 18, 2023
Page 4

to insure such risks in the State, with minimum policy limits (per claim and in the aggregate for all claims made during the policy period) in the amounts specified by rule adopted by the Building Official; and

2. Adds a new subdivision (7) to require the self-certified professional to attend a training class provided by the Department of Planning and Permitting, and to receive a certificate of completion upon demonstrating substantial comprehension of the materials covered in the training class.
- C. In SECTION 2 of the bill, subsection (d), relating to owners or tenants, references "owner and tenant (if not the same)" (instead of "owner or tenant").
- D. In SECTION 2 of the bill, subsection (e), relating to the authority of the Building Official:
1. Adds the heading "*Building Official*,"
 2. In subdivision (6), references the Department of Planning and Permitting Site Development Division (instead of the DPP Civil Engineering Branch), and adds a reference to the Honolulu Fire Department; and
 3. In subdivision (8) clarifies that the Building Official may revoke (instead of rescind) any building permit issued under the self-certification program if warranted for health and safety reasons.
- E. In SECTION 2 of the bill, subsection (f), adds the heading "*Inspections*."
- F. Makes miscellaneous technical and nonsubstantive amendments.

HONOLULU CITY COUNCIL

Ke Kanihela o ke Kalana o Honolulu
CITY AND COUNTY OF HONOLULU

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Committee Meeting Held
October 18, 2023
Page 5

Your Committee on Zoning is in accord with the intent and purpose of Bill 6 (2023), CD1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as Bill 6 (2023), CD2. (Ayes: Cordero, Dos Santos-Tam, Say, Weyer – 4; Noes: Kia'aina – 1.)

Respectfully submitted,

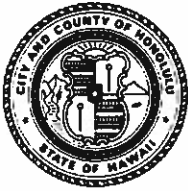

Committee Chair

At the 11/1/23 Council meeting, the Bill was further amended and subsequently passed Third Reading as Bill 6 (2023), CD2, FD1.

HONOLULU CITY COUNCIL
Ke Kanihela o ke Kalana o Honolulu
CITY AND COUNTY OF HONOLULU

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COMMITTEE REPORT NO. 291



HONOLULU CITY COUNCIL
KE KANIHELA O KE KALANA O HONOLULU
CITY AND COUNTY OF HONOLULU

ORDINANCE _____

BILL 6 (2023), CD2

A BILL FOR AN ORDINANCE

RELATING TO PROFESSIONAL SELF-CERTIFICATION.

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

SECTION 1. Purpose and Findings.

The City Council finds that for years, the Department of Planning and Permitting ("DPP") has been faced with challenges, including severe understaffing, high staff turnover rates, a bribery scandal, and outdated technology, resulting in unprecedented delays in the issuance of building permits. As of July 2023, the median time to process a building permit application was 196 days.

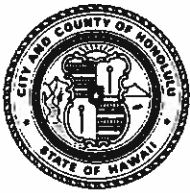
Lengthy delays in obtaining a building permit have caused significant development interruptions and postponements, which may lead to a sluggish economy. Due to inflation, rising costs, and climbing interest rates, prolonged building permit application processing times may result in difficulty obtaining financing and soaring construction costs. In addition, not being able to make needed improvements to buildings and structures may cause hardship, including the lack of safe and decent housing, and disruption to business operations.

The DPP is increasing its staff recruitment, hiring, training, and retention efforts; has procured new software to replace its antiquated POSSE system; is evaluating the various codes to determine whether any provisions are duplicative or overly burdensome; and is looking at ways (internally and externally) to streamline the building permit process. In the short-term, the DPP is considering other solutions to facilitate the processing of building permit applications, while not sacrificing public safety.

The purpose of this ordinance is to temporarily alleviate the backlog of building permit applications by providing the Building Official the authority to allow for alternative means to review building permit applications for compliance with pertinent codes.

SECTION 2. Establishment of a temporary professional self-certification program to expedite the review and processing of certain building permit applications.

- (a) *Definitions.* For the purposes of this SECTION, the following definitions apply unless the context clearly indicates or requires a different meaning.



HONOLULU CITY COUNCIL
KE KANIHELA O KE KALANA O HONOLULU
CITY AND COUNTY OF HONOLULU

ORDINANCE _____

BILL 6 (2023), CD2

A BILL FOR AN ORDINANCE

Building Official. The Director of Planning and Permitting or the Director's designee.

City. The City and County of Honolulu.

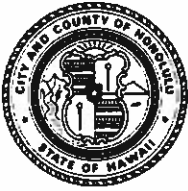
Department. The Department of Planning and Permitting.

Eligible Project. A project that only:

- (1) Involves the development of an affordable rental housing project pursuant to ROH Chapter 32;
- (2) Consists of commercial building tenant improvements, defined as any interior renovation, alteration, or modification of an existing building used for commercial purposes by a tenant or lessee that does not change the functional use of the building from the use indicated or shown on the previous building permit. The following types of commercial building tenant improvements are not eligible for the self-certification program:
 - (A) All exterior improvements to a commercial building, including but not limited to any modification or alteration to exterior walls that would change the number, size, or location of existing doorways or window penetrations;
 - (B) Any work that would conflict or be inconsistent with the previous building permit plans and approvals;
 - (C) Any work that requires approval by the building board of appeals to deviate from a relevant code; or
 - (D) Any work that involves alternate methods, including the use of structures or components that require materials and methods approval, such as prefabricated buildings; or
- (3) Involves a residential project located on lands managed by or under the jurisdiction of, or both, of the State Department of Hawaiian Home Lands.

HAR. The Hawaii Administrative Rules.

HRS. The Hawaii Revised Statutes.



HONOLULU CITY COUNCIL
KE KANIHELA O KE KALANA O HONOLULU
CITY AND COUNTY OF HONOLULU

ORDINANCE _____
BILL 6 (2023), CD2

A BILL FOR AN ORDINANCE

Owner and Tenant (if not the same). The persons having control over the real property that is the subject of a building permit application and having responsibility for the work identified in the building permit application and accompanying plans.

Land Use Ordinance. ROH Chapter 21.

Project. Development that is the subject of a building permit application processed under the self-certification program established by this SECTION.

Relevant Code. The Building Code and Residential Code (ROH Chapter 16), Electrical Code (ROH Chapter 17), Plumbing Code (ROH Chapter 19), Housing Code (ROH Chapter 16A), or Building Energy Conservation Code (ROH Chapter 16B), as appropriate, applicable to the work identified in a building permit application and accompanying plans, for which a self-certified professional is licensed.

ROH. The Revised Ordinances of Honolulu 2021.

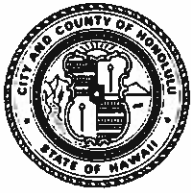
Self-Certified Professional. The design professional appropriately licensed under HRS Chapter 464, duly qualified and registered to participate in the self-certification program under the rules implementing this SECTION, and identified on a building permit application and accompanying plans.

Self-Certification Program. The process by which a building permit application and accompanying plans are reviewed and a building permit is issued pursuant to this SECTION.

State. The State of Hawai'i.

(b) **Self-Certification Program.** To process a building permit application and accompanying plans for an eligible project pursuant to this SECTION, each self-certified professional identified in a building permit application shall submit to the Building Official a signed, personal verification that:

- (1) The plans accompanying the building permit application and stamped by the self-certified professional do not contain any false information;
- (2) The plans are to the best of the self-certified professional's knowledge, information, and belief in compliance with the requirements of the relevant code;



HONOLULU CITY COUNCIL
KE KANIHELA O KE KALANA O HONOLULU
CITY AND COUNTY OF HONOLULU

ORDINANCE _____

BILL 6 (2023), CD2

A BILL FOR AN ORDINANCE

- (3) The plans were prepared by or prepared under the direct supervision of, and reviewed and stamped by the self-certified professional;
 - (4) Every sheet of the plans is authenticated pursuant to HAR § 16-115-9;
 - (5) The personal verification includes a compliance statement in black text directly below the signature of the self-certifying professional as follows: "Having duly read the obligations and requirements relating to the self-certification program, my intent is to design under its provisions";
 - (6) The self-certified professional is insured with professional liability insurance, issued by an issuer authorized to insure such risks in the State, with minimum policy limits (per claim and in the aggregate for all claims made during the policy period) in the amounts specified by rule adopted by the Building Official pursuant to subsection (h); and
 - (7) The self-certified professional has attended a training class provided by the Department, which provides attendees with an overview of the department's self-certification program rules and selected provisions of the ROH. The self-certified professional will receive a certificate of completion upon demonstrating substantial comprehension of the materials covered in the training class, which may involve satisfactory results on written evaluations administered by the Department as a part of the training class.
- (c) *Self-Certified Professional.* In stamping and signing every drawing, the self-certified professional attests that:
- (1) The self-certified professional has exercised a professional standard of care in the preparation, completion, and submission of the documents and is aware that the Building Official will rely upon the truth and accuracy of this statement as the basis for issuing a building permit. If it is determined by the Building Official that the submitted plans do not conform to the relevant codes, the self-certified professional shall immediately take all remedial measures within the self-certified professional's control to meet relevant code requirements;
 - (2) If the self-certified professional becomes aware of any false or inaccurate statements made in any of the documents, whether the misrepresentation is made by the self-certified professional, or an employee or agent of the



HONOLULU CITY COUNCIL
KE KANIHELA O KE KALANA O HONOLULU
CITY AND COUNTY OF HONOLULU

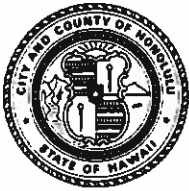
ORDINANCE _____

BILL 6 (2023), CD2

A BILL FOR AN ORDINANCE

self-certified professional, the self-certified professional shall immediately take all necessary measures to correct the statements; and

- (3) The self-certified professional realizes that failure to take corrective action may result in termination of the self-certified professional's participation in the self-certification program and notification to the State Department of Commerce and Consumer Affairs Board of Professional Engineers, Architects, Surveyors, and Landscape Architects under HAR § 16-115-10.
- (d) *Owner and Tenant (if not the same).* The owner and tenant (if not the same) of the real property that is the subject of a building permit application for an eligible project processed pursuant to the self-certification program:
- (1) Agrees to take all measures necessary to correct any misrepresentation or falsification of facts made knowingly or negligently in the building permit application or in any document submitted in support of the building permit application, by the owner and tenant (if not the same) or by their agents, contractors, or employees;
 - (2) Understands that a building permit application processed pursuant to the self-certification program is subject to audit and field inspection by the Building Official;
 - (3) Agrees to take all remedial measures necessary to bring the plans and all project construction completed under the building permit into conformity with City requirements, relevant codes, and all other applicable laws;
 - (4) Agrees to protect, defend, indemnify, and hold the City and its officers, representatives, managers, and employees harmless against any and all claims, demands, awards, suits, judgments, liabilities, losses, or damages arising out of, or being in any way connected with the design, construction, or code compliance review of the work covered by the building permit application; provided that this obligation does not negate, waive, or otherwise reduce any other right or obligation of indemnity that may exist in favor of the City; and
 - (5) Understands and agrees that if project construction is contrary to, or does not comply with the relevant codes, the Land Use Ordinance, or the building permit to be issued for the project, the owner and tenant (if not the same) shall, at the owner and tenant's own expense, remove or modify



HONOLULU CITY COUNCIL
KE KANIHELA O KE KALANA O HONOLULU
CITY AND COUNTY OF HONOLULU

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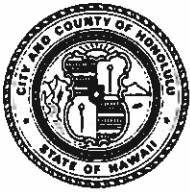
BILL 6 (2023), CD2

A BILL FOR AN ORDINANCE

any and all noncompliant components of the project in order to bring the project into compliance.

(e) *Building Official.* The Building Official may:

- (1) Publish a non-exhaustive list of eligible and ineligible building types for the self-certification program, based on the definition of eligible project in subsection (a);
- (2) Include in the building permit application form options to process the building permit application under the standard building permit review procedures or under the self-certification program;
- (3) Determine whether a structural peer reviewer's report is required under the self-certification program;
- (4) Require a building permit application otherwise eligible for the self-certification program to be reviewed under the standard building permit review procedures if the Building Official determines the project presents an unusual risk or hazard to life or property;
- (5) Require a building permit application to be reviewed under the standard building permit review procedures if there is a dispute as to whether the building permit application is eligible for the self-certification program;
- (6) Issue a building permit application number for tracking pre-approvals and allow self-certified professionals to route their plans to agencies for pre-approvals, including approvals by the State Historic Preservation Division, State Department of Health, Board of Water Supply, Department of Planning and Permitting Land Use Permits Division or Site Development Division, Honolulu Fire Department, Department of Environmental Services Division of Wastewater Engineering and Construction, or other governmental agencies, without regard to the completeness of the relevant code-compliant drawings and plans to be finally uploaded to a computer-based system;
- (7) Qualify and register State-licensed design professionals to participate in the self-certification program, notwithstanding the dollar values of HRS § 464-13; and



HONOLULU CITY COUNCIL
KE KANIHELA O KE KALANA O HONOLULU
CITY AND COUNTY OF HONOLULU

ORDINANCE _____

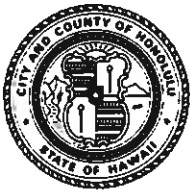
BILL 6 (2023), CD2

A BILL FOR AN ORDINANCE

- (8) Revoke any building permit issued under the self-certification program if warranted for health and safety reasons.
- (f) *Inspections.* The self-certification program does not absolve or relieve Department building code inspectors from performing routine inspections of the buildings during construction, and conducting a final inspection upon completion of construction for purposes of issuing a certificate of occupancy.
- (g) *Penalties.* A self-certified professional who violates this SECTION will be subject to the penalties set forth in subsection (c)(3) and any other penalty provisions included in the rules adopted by the Building Official pursuant to subsection (h). Nothing in this SECTION precludes the Building Official from taking enforcement action pursuant to the Land Use Ordinance and ROH Chapter 18.
- (h) *Adoption of Administrative Rules.* The Building Official shall adopt rules pursuant to HRS Chapter 91 for the implementation, administration, and enforcement of this SECTION.

SECTION 3. This ordinance takes effect upon its approval; provided that:

1. This ordinance will be repealed four years after its effective date; and



HONOLULU CITY COUNCIL
KE KANIHELA O KE KALANA O HONOLULU
CITY AND COUNTY OF HONOLULU

ORDINANCE _____

BILL 6 (2023), CD2

A BILL FOR AN ORDINANCE

2. All building permit applications submitted to the Department of Planning and Permitting and accepted for review and processing under the self-certification program established pursuant to this ordinance prior to the repeal date of this ordinance must be processed in accordance with this ordinance and the rules adopted thereunder.

INTRODUCED BY:

Tommy Waters (br)

DATE OF INTRODUCTION:

February 16, 2023
Honolulu, Hawai'i

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20 _____.

RICK BLANGIARDI, Mayor
City and County of Honolulu