

SUMMARY OF PROPOSED COMMITTEE DRAFT:
BILL 3 (2024)
RELATING TO INCENTIVES FOR THE CONSTRUCTION OF
AFFORDABLE RENTAL HOUSING.

The **PROPOSED CD1** makes the following amendments:

- A. Separates ROH § 32-4.1 into subsections (a) and (b), and in subsection (b) provides that the BFS Director and the DPP Director may adopt rules for the implementation, administration, and enforcement of the article, including procedural provisions to ensure grant eligibility, qualification, compliance with all requirements of the article, and the collection of any forfeiture of grant moneys awarded.
- B. Moves the \$10,000,000 aggregate limit provision in former ROH § 32-4.2(f) to new ROH § 32-4.2(b). Realphabetizes subsequent subsections.
- C. In realphabetized ROH § 32-4.2(c), deletes all pre-construction grant requirements and adds new pre-construction grant requirements, including:
 - 1. Providing that an owner of an affordable rental housing project who has been awarded a pre-construction grant is not eligible for a post-construction grant pursuant to subsection (d);
 - 2. Specifying the grant amounts available at each AMI level (\$25,000 per affordable rental housing unit rented to households earning more than 60 percent of the AMI, but less than or equal to 100 percent of the AMI, and \$35,000 per affordable rental housing unit rented to households earning 60 percent or below of the AMI) and providing that these amounts are doubled if State matching funds are available;
 - 3. Providing that grant funds may only be used for purposes of paying prevailing wages to every laborer and mechanic performing work on the job site for the construction of the affordable rental housing project, in compliance with HRS Chapter 104;
 - 4. Providing that to apply for a pre-construction grant, the owner must submit a grant application to the DPP no earlier than the date of issuance of a building permit, special assignment inspection approval, or professional self-certification approval for the affordable rental housing project, and no later than 12 months after the issuance of a building permit, special assignment inspection, or professional self-certification. Also lists the minimum information that must be included in the grant application;

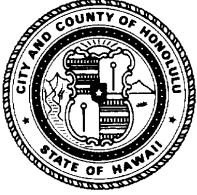
5. Providing that upon receiving the grant application, the DPP is required to certify project eligibility for the grant, review and process the grant application, and calculate the grant amount the project is eligible for;
 6. Providing that all grant awards are subject to the execution of a written grant agreement between the city and the owner of an eligible affordable rental housing project; also lists the minimum types of provisions and requirements that must be included in the grant agreement;
 7. Providing that upon the execution of the grant agreement, the DPP Director is required to transmit to the BFS Director certain specified information; and
 8. Requiring the BFS Director to pay or cause to be paid the grant amount to the owner no later than 30 days after receipt of the information from the DPP Director.
- D. In ROH § 32-4.2(d), deletes all post-construction grant requirements, and sets forth new post-construction grant requirements, including:
1. Providing that an owner of an affordable rental housing project applying for a post-construction grant must not have been awarded a pre-construction grant pursuant to subsection (c);
 2. Specifying the grant amounts available at each AMI level (\$9,000 per affordable rental housing unit rented to households earning more than 60 percent of the AMI, but less than or equal to 100 percent of the AMI, and \$15,000 per affordable rental housing unit rented to households earning 60 percent or below of the AMI) and providing that these amounts are doubled if State matching funds are available;
 3. Providing that to apply for a post-construction grant, no earlier than the date of issuance of a certificate of occupancy for the affordable rental housing project and no later than 12 months after the issuance of a certificate of occupancy, the owner must submit to the DPP a grant application. Also lists the minimum information that must be included in the grant application;
 4. Providing that upon receipt of the grant application, the DPP is required to certify project eligibility for the grant, review and process the grant application, and calculate the grant amount the project is eligible for;
 5. Providing that for all projects eligible for the grant, the DPP Director is required to transmit to the BFS Director certain specified information; and

6. Requiring that the BFS Director pay the grant amount to the owner no later than 30 days after receipt of the information from the DPP Director.
- E. In ROH § 32-4.3, deletes all reporting items required in the annual report from the DPP Director and the BFS Director to the Council, and requires a report every three years by September 30 of each third year, commencing on the effective date of the ordinance. Adds new reporting items as follows:
1. The number of grant applications received in each prior fiscal year and for all fiscal years to date;
 2. The number of grants awarded in each prior fiscal year and for all fiscal years to date;
 3. Specified information for each affordable rental housing project that received a grant;
 4. The cumulative grant amount awarded for all fiscal years to date;
 5. Specified information for each affordable rental housing project that received a grant award that was subject to forfeiture; and
 6. The cumulative grant amount forfeited for all fiscal years to date and the cumulative interest paid on the forfeited amount for all fiscal years to date.
- F. In ROH § 32-4.4, deletes all penalty provisions and adds new penalty provisions:
1. Providing that if the DPP Director determines that:
 - a. The project fails to satisfy any of the requirements of ROH Chapter 32; or
 - b. The use of the affordable rental housing project is abandoned;

then the owner of the affordable housing project will be subject to the administrative enforcement provisions in ROH § 21-2.150-2; provided that in addition to the civil fines specified in ROH §§ 21-2.150-2(e)(2)(C) and 21-2.150-2(e)(2)(D), and the penalty amounts specified in ROH § 32-1.6(a), the owner will be subject to a penalty equal to the total grant amount the owner received from the City, together with a penalty in the form of interest at 10 percent per annum, from the date the grant award moneys were paid to the owner, and any grant amounts not yet paid will be forfeited; and
 2. Providing that if the DPP Director determines at any time that the owner breached of any of the terms of the grant agreement, including but not

limited to that the grant moneys received were used or expended for improper purposes, the owner will be subject to a penalty equal to the total grant amount the owner received from the City, together with a penalty in the form of interest at 10 percent per annum, from the date the grant award moneys were paid to the owner, and any grant amounts not yet paid will be forfeited.

- G. In SECTION 3 of the bill, pursuant to the Revisor of Ordinance's authority under ROH § 1-16.3(b)(1), directs the Revisor to replace the phrase "effective date of this ordinance" or similar phrase used in the codified language of this ordinance with the actual date on which the ordinance takes effect.
- H. Makes miscellaneous technical and nonsubstantive amendments.



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

ORDINANCE _____

BILL **3 (2024), CD1** _____

PROPOSED

A BILL FOR AN ORDINANCE

RELATING TO INCENTIVES FOR THE CONSTRUCTION OF AFFORDABLE RENTAL HOUSING.

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

SECTION 1. Purpose. The purpose of this ordinance is to address affordable rental housing in the City and County of Honolulu ("City").

The City Council ("Council") finds that, since the enactment of Ordinances 19-8, 20-13, and 21-12, which were adopted to address the shortage of affordable rental housing in the City, the continuing economic and social effects of the COVID-19 pandemic have exacerbated that shortage. Owners and developers considering the development of affordable rental housing projects pursuant to Chapter 32, Revised Ordinances of Honolulu 2021, may be hesitant to move forward due to economic uncertainties and high construction costs in the aftermath of the COVID-19 pandemic.

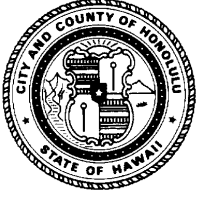
Accordingly, the Council finds that amendments to certain financial incentives for affordable rental housing projects are necessary to encourage and expedite the construction of these projects.

SECTION 2. Chapter 32, Article 4, Revised Ordinances of Honolulu 2021, is amended to read as follows:

"ARTICLE 4: GRANTS

§ 32-4.1 Administration[-] and rulemaking.

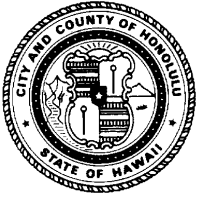
- (a) The director of budget and fiscal services, or the director's duly appointed representative, shall administer this article.
- (b) The director of budget and fiscal services and the director of planning and permitting may adopt rules pursuant to HRS Chapter 91 for the implementation, administration, and enforcement of this article, including procedural provisions to ensure grant eligibility, qualification, compliance with all requirements of this article, and the collection of any forfeiture of grant moneys awarded.



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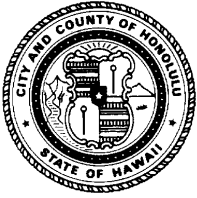
§ 32-4.2 Grants.

- (a) Grant establishment. A grant is established for the purpose of incentivizing the completion of construction of affordable rental housing units provided for in this chapter.
- (b) \$10,000,000 aggregate limit. The aggregate of grant payments made under this article may not exceed \$10,000,000 in general funds; provided that there is no limit on payments made under this article from funds outside of the general fund.
- (c) Pre-construction grant. The owner of the zoning lot on which an affordable rental housing project is proposed to be situated may apply for a pre-construction grant under this subsection after a building permit, special assignment inspection, or professional self-certification has been issued for the affordable rental housing project in accordance with the following provisions.
- (1) An owner of an affordable rental housing project who has been awarded a pre-construction grant is not eligible for a post-construction grant pursuant to subsection (d).
- (2) Grant amount:
- (A) For affordable rental housing units rented to households earning more than 60 percent of the AMI, but less than or equal to 100 percent of the AMI, the owner is eligible to receive \$25,000 per affordable rental housing unit; and
- (B) For affordable rental housing units rented to households earning 60 percent or below of the AMI, the owner is eligible to receive \$35,000 per affordable rental housing unit;
- provided that if the State provides the city with matching funds for the grant program under this article, the grant amount the owner is eligible to receive under this subdivision is doubled, subject to the availability of the matching funds.
- (3) Pre-construction grant awards may only be used for purposes of paying prevailing wages to every laborer and mechanic performing work on the job site for the construction of the affordable rental housing project, in compliance with HRS Chapter 104.



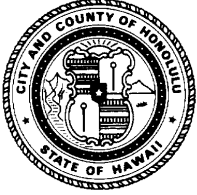
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- (4) To apply for a pre-construction grant, no earlier than the date of issuance of a building permit, special assignment inspection, or professional self-certification for the affordable rental housing project, and no later than 12 months after the issuance of a building permit, special assignment inspection, or professional self-certification, the owner must submit to the department of planning and permitting a grant application for the project in a form prescribed by the director of planning and permitting. At a minimum, the grant application must include:
- (A) The department of planning and permitting file reference number for the affordable rental housing project, and a description of the affordable rental housing project, including but not limited to location, zoning lot tax map key number, underlying zoning district, height, density, the number of affordable units at each AMI level, and whether there is a commercial component to the project;
 - (B) The identification number for the building permit, special assignment inspection, or professional self-certification issued for the affordable rental housing project; and
 - (C) The total cost of the affordable rental housing project and all sources of funding for the project.
- (5) Upon receipt of the grant application for an affordable rental housing project, the department of planning and permitting shall certify project eligibility for the grant, review and process the grant application, and calculate the grant amount the project is eligible for.
- (6) All grant awards are subject to the execution of a written grant agreement between the city and the owner of an eligible affordable rental housing project. At a minimum, the grant agreement must include provisions:
- (A) Restricting the use of the grant moneys in accordance with subdivision (3);
 - (B) Requiring that annual payroll records be submitted to the director of planning and permitting, due by September 30 of each year, consisting of a certified copy of all payrolls and a certified copy of a fringe benefit report in compliance with HRS § 104-3;



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- (C) Requiring the owner to obtain a certificate of occupancy for the affordable rental housing project within 24 months after the issuance of a building permit, special assignment inspection, or professional self-certification for the project; provided that the director of planning and permitting, at the director's discretion, may extend this 24-month period if the owner demonstrates good cause;
- (D) Requiring that the owner develop the affordable rental housing project in compliance with all applicable laws, rules, regulations, and other governmental requirements;
- (E) Providing that if the owner breaches or otherwise violates any terms of the grant agreement, the owner shall forfeit the grant moneys received in accordance with the penalty provisions set forth in § 32-4.4(c); and
- (F) Providing that the director of budget and fiscal services may, from time to time at the director's discretion, conduct an audit of the use of grant moneys to determine compliance with the requirements of this article and the applicable grant agreement, and requiring the owner to cooperate with the audit and provide any information requested by the director.
- (7) For all affordable rental housing projects eligible for a pre-construction grant, upon the execution of a grant agreement pursuant to subdivision (6), the director of planning and permitting shall transmit the following to the director of budget and fiscal services:
 - (A) Certification that the affordable rental housing project is eligible for the grant, together with a copy of the project's grant application;
 - (B) The identification number for the building permit, special assignment inspection, or professional self-certification application issued for the affordable rental housing project;
 - (C) A copy of the fully executed pre-construction grant agreement for the affordable rental housing project; and
 - (D) The total grant amount payable, and the calculation thereof.



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(8) The director of budget and fiscal services shall pay or cause to be paid the grant amount to the owner no later than 30 days after receipt of the information set forth in subdivision (7) from the director of planning and permitting.

(d) *Post-construction grant.* The owner of the zoning lot on which an affordable rental housing project is situated may apply for a post-construction grant under this subsection after a certificate of occupancy has been issued for the affordable rental housing project in accordance with the following provisions.

(1) An owner of an affordable rental housing project applying for a post-construction grant must not have been awarded a pre-construction grant pursuant to subsection (c).

(2) Grant amount:

~~[(b)](A)~~ (A) For affordable rental housing units rented to households earning more than 60 percent of the AMI, but less than or equal to 100 percent of the AMI, the [amount of the incentive shall be \$11.25 per square foot of dwelling floor area contained in the building permit issued by the department of planning and permitting for the] owner is eligible to receive \$9,000 per affordable rental housing [project.] unit; and

~~[(c)](B)~~ (B) For affordable rental housing units rented to households earning 60 percent [and] or below of the AMI, the [amount of the incentive shall be \$15 per square foot of dwelling floor area contained in the building permit issued by the department of planning and permitting for the] owner is eligible to receive \$15,000 per affordable rental housing [project.] unit;

provided that if the State provides the city with matching funds for the grant program under this article, the grant amount the owner is eligible to receive under this subdivision is doubled, subject to the availability of the matching funds.

~~[(d)] Grants authorized under this article shall not exceed \$9,000 per dwelling unit within a project eligible under subsection (b).~~

~~[(e)] Grants authorized under this article shall not exceed \$15,000 per dwelling unit within a project eligible under subsection (c).~~



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- ~~(f) — The aggregate of grant payments made under this article shall not exceed \$10,000,000.~~
- ~~(g) — All grants payable to the owner of an eligible affordable rental housing project shall only be authorized upon issuance of a certificate of occupancy for that project.~~
- ~~(h) — An intent to claim a grant under this article shall be submitted upon the filing of a building permit application.~~
- ~~(i) — The intent to claim shall be made to the director of planning and permitting on a form prescribed by the director of planning and permitting. The director of planning and permitting shall forward the intent to claim and estimated amount of the grant to the director of budget and fiscal services no later than 30 days after receipt of the intent to claim.~~
- ~~(j) — A claim for the grant shall be made by the owner of an affordable rental housing project no earlier than the date of issuance of a certificate of occupancy for the affordable rental housing project and no later than one year after the issuance of the certificate of occupancy, provided that an initial intent to claim was submitted pursuant to subsection (h).~~
- ~~(k) — A claim for the grant shall be made to the director of planning and permitting on a form prescribed by the director of planning and permitting and must be supported by documentation establishing the number of square feet of dwelling space permitted by the building permit for the project and a copy of the certificate of occupancy for the project. The director of planning and permitting shall forward the amount determined to be paid as a grant to the director of budget and fiscal services no later than 30 days after receipt of a claim, and the director of budget and fiscal services shall pay the grant amount to the claimant no later than 30 days after receipt of the information from the director of planning and permitting.~~
- ~~(l) — No claim for a grant payment shall be made for an affordable rental housing project with a certificate of occupancy issued after the repeal of this chapter.~~
- ~~(m) — The director of budget and fiscal services may waive the requirements of subsection (h) for affordable rental housing projects containing one or more grant-eligible units for which a building permit application had been submitted, or a building permit was issued, prior to April 21, 2021 if the waiver is consistent with the purpose of this article and in the public interest.]~~



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- (3) To apply for a post-construction grant, no earlier than the date of issuance of a certificate of occupancy for the affordable rental housing project, and no later than 12 months after the issuance of a certificate of occupancy, the owner must submit to the department of planning and permitting a grant application for the project in a form prescribed by the director of planning and permitting. At a minimum, the grant application must include:
- (A) The department of planning and permitting file reference number for the affordable rental housing project;
 - (B) The identification number for the building permit, special assignment inspection, or professional self-certification issued for the affordable rental housing project; and
 - (C) The identification number for the certificate of occupancy issued for the affordable rental housing project.
- (4) Upon receipt of the grant application for an affordable rental housing project, the department of planning and permitting shall certify project eligibility for the grant, review and process the grant application, and calculate the grant amount the project is eligible for.
- (5) For all affordable rental housing projects eligible for a post-construction grant, the director of planning and permitting shall send the following to the director of budget and fiscal services:
- (A) Certification that the affordable rental housing project is eligible for the grant, together with a copy of the project's grant application;
 - (B) The identification number for the building permit, special assignment inspection, or professional self-certification issued for the affordable rental housing project;
 - (C) The identification number for the certificate of occupancy issued for the affordable rental housing project; and
 - (D) The total grant amount payable, and the calculation thereof.



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- (6) The director of budget and fiscal services shall pay or cause to be paid the grant amount to the owner no later than 30 days after receipt of the information set forth in subdivision (5) from the director of planning and permitting.

§ 32-4.3 Reporting.

~~[The]~~ Commencing on the effective date of this ordinance, the director of budget and fiscal services and the director of planning and permitting shall provide reports to the city council every ~~[six months beginning on April 21, 2021, that]~~ three years by September 30 of each third year, which at a minimum must include:

- ~~[(1) The number of building permit applications submitted under the grant program established by this article for the six-month period and cumulatively;~~
- ~~(2) The number of building permits approved under the grant program for the six-month period and cumulatively;~~
- ~~(3) The number of grant applications submitted under the grant program at each AMI tier for the six-month period and cumulatively;~~
- ~~(4) The number of grant claims approved under the grant program for the six-month period and cumulatively;~~
- ~~(5) The number of affordable rental housing units supported with grants for the six-month period and cumulatively;~~
- ~~(6) The amount of grant funds disbursed for the six-month period and cumulatively;~~
- ~~(7) The number of waivers granted under § 32-4.2(m) for the six-month period and cumulatively;~~
- ~~(8) The number of affordable rental housing units built under the grant program for the six-month period and cumulatively; and~~
- ~~(9) A description of any violations of this article discovered during the six-month period and actions taken against the violator.]~~

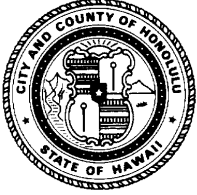


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- (1) The number of grant applications received in each prior fiscal year and for all fiscal years to date;
- (2) The number of grants awarded for each prior fiscal year and for all fiscal years to date;
- (3) For each affordable rental housing project that received a grant:
 - (A) The total number of dwelling units in the project at each AMI level;
 - (B) The fiscal year in which the project received a grant; and
 - (C) The total grant amount, and whether it was a pre-construction or post-construction grant award;
- (4) The cumulative grant amount awarded for all fiscal years to date;
- (5) For each project that received a grant award that was subject to forfeiture:
 - (A) The date on which the project received a grant;
 - (B) The date on which the project forfeited the grant;
 - (C) The nature of the violation that resulted in forfeiture;
 - (D) The grant amount forfeited, and the interest amount paid; and
 - (E) Any other actions taken against the violator; and
- (6) The cumulative grant amount forfeited for all fiscal years to date and the cumulative interest paid on the forfeited amount for all fiscal years to date.

§ 32-4.4 Penalty.

- (a) An owner of the zoning lot on which an affordable rental housing project is situated and who received a grant under this article will be subject to the penalty provisions set forth in this section.
- (b) If the director of planning and permitting determines at any time that:



A BILL FOR AN ORDINANCE

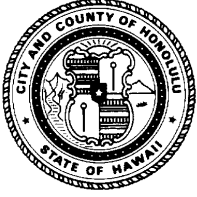
(1) The affordable rental housing project fails to satisfy any of the requirements of this chapter; or

(2) The use of the affordable rental housing project is abandoned;

the director of planning and permitting may administratively enforce the provisions of this article in accordance with the administrative enforcement provisions in § 21-2.150-2; provided that in addition to the civil fines specified in § 21-2.150-2(e)(2)(C) and 21-2.150-2(e)(2)(D), and the penalty amounts specified in § 32-1.6(a), the owner will be subject to a penalty equal to the total grant amount the owner received from the city, together with a penalty in the form of interest at 10 percent per annum, from the date the grant award moneys were paid to the owner. Any grant amounts not yet paid will be forfeited.

(c) If the director of planning and permitting determines at any time that the owner breached any of the terms of the grant agreement, including but not limited to that the grant moneys received were used or expended for improper purposes, the owner will be subject to a penalty equal to the total grant amount the owner received from the city, together with a penalty in the form of interest at 10 percent per annum, from the date the grant award moneys were paid to the owner. Any grant amounts not yet paid will be forfeited."

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 bracketed and stricken material, or the underscoring. The Revisor of Ordinances shall, pursuant to the Revisor's authority under ROH § 1-16.3(b)(1), replace the phrase "effective date of this ordinance" or similar phrase used in the codified language of this ordinance with the actual date on which the ordinance takes effect.



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

ORDINANCE _____

BILL **3 (2024), CD1** _____

A BILL FOR AN ORDINANCE

SECTION 4. This ordinance takes effect upon its approval and will be repealed on the repeal date of Chapter 32, Revised Ordinances of Honolulu 2021 ("ROH"); provided that the penalty provisions in ROH § 32-4.4 will remain in effect for as long as any affordable rental housing project is subject to the requirements of ROH Chapter 32.

INTRODUCED BY:

Tyler Dos Santos-Tam

DATE OF INTRODUCTION:

January 17, 2024
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

Report Title:

Affordable Housing; Grant; Construction; Penalties; Rulemaking Authority; Reporting; DPP; BFS

Description:

Establishes a pre-construction grant program and amends the existing post-construction grant program to incentivize the development of affordable rental housing. Amends the program reporting requirements. Provides the DPP and the BFS with rulemaking authority. Establishes penalties for non-compliance.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.