

SUMMARY OF PROPOSED COMMITTEE DRAFT:

**Bill 31 (2024)
RELATING TO PRE-CONSTRUCTION FINANCING FOR AFFORDABLE RENTAL
HOUSING.**

The PROPOSED CD1 makes the following amendments:

- A. Amends proposed ROH § 32-5.2(b), relating to the source of funds of the pre-construction financing, in SECTION 2 of the bill by:
 - 1. Removing the provision that payments will be disbursed from the affordable housing fund;
 - 2. Providing that the aggregate of pre-construction financing payments under proposed ROH § 32-5.2 and the post-construction grant payments made under ROH § 32-4.2 may not exceed \$10,000,000 in general funds (provided that there is no limit on pre-construction payments that may be made from funds outside of the general fund);
 - 3. Providing that the maximum amount of funds available per fiscal year is limited to the amount appropriated for pre-construction financing in each fiscal year's executive operating budget and program (rather than the executive capital budget and program); and
 - 4. Removing the limitation that pre-construction financing moneys may only be used in accordance with Charter § 9-204.3 (which relates to the affordable housing fund).
- B. Makes miscellaneous technical and nonsubstantive amendments, including amendments for purposes of clarification.



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

ORDINANCE _____

BILL **31 (2024), CD1** _____

PROPOSED

A BILL FOR AN ORDINANCE

RELATING TO PRE-CONSTRUCTION FINANCING FOR 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 enacted 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 there is a need for certain financial assistance to encourage and facilitate the development of affordable rental housing projects.

SECTION 2. Chapter 32, Revised Ordinances of Honolulu 2021, is amended to add a new Article 5, to read as follows:

"ARTICLE 5: PRE-CONSTRUCTION FINANCING

§ 32-5.1 Administration—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 pre-construction financing eligibility, qualification, compliance with all requirements of this article, and the collection of any forfeiture of pre-construction financing moneys awarded.



A BILL FOR AN ORDINANCE

§ 32-5.2 Pre-construction financing.

- (a) *Pre-construction financing program established.* Pre-construction financing is established for the purpose of financing a portion of the development costs of affordable rental housing units provided for in this chapter.
- (b) *Source of funds.*
 - (1) The aggregate of pre-construction financing payments made under this article and the post-construction grant payments made under § 32-4.2 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.
 - (2) The maximum amount of funds available per fiscal year is limited to the amount appropriated for pre-construction financing pursuant to this article in each fiscal year's executive operating budget and program.
- (c) *Pre-construction financing.* The owner of the zoning lot on which an affordable rental housing project is proposed to be situated may apply for pre-construction financing under this subsection after a building permit 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 pre-construction financing is not eligible for a post-construction grant for the project pursuant to Article 4.
 - (2) *Pre-construction financing amount.* For affordable rental housing units that are a minimum of 300 square feet in size and are rented to households earning 60 percent or below of the AMI, the owner is eligible to receive \$25,000 per affordable rental housing unit.
 - (3) Pre-construction financing 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) To apply for pre-construction financing, no earlier than the date of issuance of a building permit or professional self-certification for the affordable rental housing project, and no later than 12 months after the



A BILL FOR AN ORDINANCE

issuance of a building permit or professional self-certification, the owner shall submit to the department of planning and permitting a pre-construction financing application for the project in a form prescribed by the director of planning and permitting. At a minimum, the pre-construction financing application must include:

- (A) 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 building permit number or professional self-certification number issued for the affordable rental housing project; and
 - (C) The total estimated cost of the affordable rental housing project and all sources of funding for the project.
- (5) Upon receipt of a timely and complete pre-construction financing application for an affordable rental housing project, the department of planning and permitting shall certify project eligibility for the financing, review and, if determining that the project is eligible, process the financing application and calculate the financing amount the project is eligible for.
- (6) All pre-construction financing awards are subject to the execution of a written pre-construction financing agreement between the city and the owner of an eligible affordable rental housing project. At a minimum, the pre-construction financing agreement must include provisions:
- (A) Restricting the use of the pre-construction financing 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;
 - (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 or professional self-certification for the project; provided that the director of planning and permitting, at the



A BILL FOR AN ORDINANCE

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 pre-construction financing agreement, the owner shall forfeit the pre-construction financing moneys received in accordance with the penalty provisions set forth in § 32-5.4(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 the pre-construction financing moneys to determine compliance with the requirements of this article and the applicable pre-construction financing agreement, and require the owner to cooperate with the audit and provide any information requested by the director.
- (7) For all affordable rental housing projects eligible for pre-construction financing, upon the execution of a pre-construction financing 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 pre-construction financing, together with a copy of the project's pre-construction financing application;
 - (B) The building permit number or professional self-certification number issued for the affordable rental housing project;
 - (C) A copy of the fully executed pre-construction financing agreement for the affordable rental housing project; and
 - (D) The total pre-construction financing amount payable, and the calculation thereof.
- (8) The director of budget and fiscal services shall pay or cause to be paid the pre-construction financing amount to the owner no later than 30 days after



A BILL FOR AN ORDINANCE

receipt of the information set forth in subdivision (7) from the director of planning and permitting.

§ 32-5.3 Reporting.

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 council every three years by September 30 of each third year, which at a minimum must include:

- (1) The number of pre-construction financing applications received in each prior fiscal year and for all fiscal years to date;
- (2) The number of pre-construction financing awards for each prior fiscal year and for all fiscal years to date;
- (3) For each affordable rental housing project that received pre-construction financing:
 - (A) The total number of dwelling units in the project that have been rented at each AMI level;
 - (B) The fiscal year in which the project received pre-construction financing; and
 - (C) The total pre-construction financing amount;
- (4) The cumulative pre-construction financing amount awarded for all fiscal years to date;
- (5) For each project that received a pre-construction financing award that was subject to forfeiture:
 - (A) The date on which the project received pre-construction financing;
 - (B) The date on which the project forfeited the pre-construction financing;
 - (C) The nature of the violation that resulted in forfeiture;



A BILL FOR AN ORDINANCE

- (D) The pre-construction financing amount forfeited, and the interest amount paid; and
- (E) Any other actions taken against the violator; and
- (6) The cumulative pre-construction financing amount forfeited for all fiscal years to date and the cumulative interest paid on the forfeited amount for all fiscal years to date.

§ 32-5.4 Penalty.

- (a) An owner of the zoning lot on which an affordable rental housing project is situated who received pre-construction financing 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:
 - (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 prior to the expiration of the required affordability period;

the owner of the affordable rental housing project will be subject to 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 pre-construction financing 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 pre-construction financing moneys were paid to the owner. Any pre-construction financing 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 pre-construction financing agreement, including but not limited to that the pre-construction financing moneys received were used or expended for improper purposes, the owner will be subject to a penalty equal to the total pre-construction financing 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 pre-construction financing moneys were paid to the owner. Any pre-construction financing amounts not yet paid will be forfeited."



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

ORDINANCE _____

BILL **31 (2024), CD1** _____

A BILL FOR AN ORDINANCE

SECTION 3. The Revisor of Ordinances shall, pursuant to the Revisor's authority under Section 1-16.3(b)(1), Revised Ordinances of Honolulu 2021 ("ROH"), 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. The Revisor of Ordinances shall, pursuant to the Revisor's authority under SECTION 2 of Ordinance 23-7, update the Reporting Requirements Table to include the reporting requirements enacted by SECTION 2 of this ordinance.



A BILL FOR AN ORDINANCE

SECTION 4. This ordinance takes effect upon its approval; provided that upon the repeal of ROH Chapter 32, the penalty provisions set forth in ROH Section 32-5.4 will remain in effect for as long as any affordable rental housing project is subject to the requirements of ROH Chapter 32 as it read on the day prior to the date on which ROH Chapter 32 is repealed.

INTRODUCED BY:

Calvin Say

Tyler Dos Santos-Tam

DATE OF INTRODUCTION:

May 9, 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 Rental Housing; Pre-Construction Financing; Reporting Requirements; Penalties; Rulemaking Authority; Department of Planning and Permitting ("DPP"); Department of Budget and Fiscal Services ("BFS")

Description:

Adds a new Article 5 to ROH Chapter 32 to establish pre-construction financing. Sets forth the criteria for eligibility for the pre-construction financing, the amount of pre-construction financing an affordable housing project is eligible to receive, the application requirements for the pre-construction financing, the process by which the DPP and the BFS must process and award the pre-construction financing to eligible owners, and the process by which an owner who receives the pre-construction financing may be subject to certain penalties and the enforcement of those penalties on the owner by the DPP. Creates a reporting requirement. Provides the DPP and the BFS with rulemaking authority.

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