

SUMMARY OF PROPOSED COMMITTEE DRAFT:
BILL 31 (2024), CD1
RELATING TO PRE-CONSTRUCTION FINANCING FOR
AFFORDABLE RENTAL HOUSING.

The **PROPOSED CD2** makes the following amendments:

A. In SECTION 2 of the bill:

1. Amends proposed new ROH § 32-5.2(b)(2) by removing the proviso that provided that in any given fiscal year, no more than 50 percent of the moneys appropriated for post-construction grants and pre-construction subsidies may be used for pre-construction subsidies.
2. Amends proposed new ROH § 32-5.2(c) as follows:
 - a. Amends subdivision (1) to clarify that an owner of an affordable rental housing project who has been awarded a pre-construction subsidy is not eligible for a post-construction grant pursuant to Article 4 for the same affordable rental housing project.
 - b. Amends subdivision (2)(A) to increase the pre-construction subsidy amount an owner is eligible to receive for each affordable rental housing unit that is less than 300 square feet in size, to \$83 (instead of \$35) per square foot of dwelling unit floor area.
 - c. Deletes subdivision (3), which provided that pre-construction subsidies 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, and renumbers subsequent subdivisions accordingly.
 - d. Amends renumbered subdivision (5) as follows:
 - i. Amends paragraph (A), which previously related to restricting the use of pre-construction subsidy moneys to paying prevailing wages, to instead require a provision in the pre-construction subsidy agreement that the owner comply with relevant provisions of HRS Chapter 104 as they relate to the wage and hour requirements applicable to the project and the use of city funds.

- ii. Deletes paragraph (B), which related to the requirement that the pre-construction subsidy agreement contain a provision 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, and renumbers subsequent paragraphs accordingly.
- B. Adds a new SECTION 3 of the bill (and renumbers subsequent SECTIONS of the bill accordingly) to:
 1. Amend ROH § 32-4.2(b)(1) to provide that the aggregate of post-construction grant payments made under Article 4 and pre-construction subsidies made under Article 5 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. Amend ROH § 32-4.2(b)(2) to provide that the maximum amount of funds available per fiscal year is limited to the amount appropriated for post-construction grants pursuant to Article 4 and pre-construction subsidies pursuant to Article 5 in each fiscal year's executive operating budget and program.
 3. Add a new ROH § 32-4.2(c)(1) to provide that an owner of an affordable rental housing project who has been awarded a pre-construction subsidy is not eligible for a post-construction grant for the same affordable rental housing project. Renumbers subsequent subdivisions accordingly.
- C. Makes miscellaneous technical and nonsubstantive amendments.



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

ORDINANCE _____

BILL **31 (2024), CD2**
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 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 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 ("Affordable Rental Housing"), is amended to add a new Article 5, to read as follows:

"ARTICLE 5: PRE-CONSTRUCTION SUBSIDIES

§ 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 subsidy eligibility, qualification, compliance with all requirements of this article, and the collection of any forfeiture of pre-construction subsidy moneys awarded.



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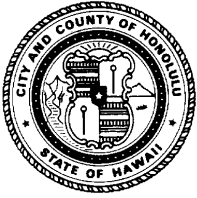
§ 32-5.2 Pre-construction subsidy.

- (a) *Pre-construction subsidy establishment.* A pre-construction subsidy is established for the purpose of funding a portion of the development of affordable rental housing units provided for in this chapter.
- (b) *Source of funds.*
- (1) The aggregate of pre-construction subsidy payments made under this article and post-construction grants made under Article 4 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 subsidies pursuant to this article and post-construction grants pursuant to Article 4 in each fiscal year's executive operating budget and program.
 - (3) No more than five percent of the moneys designated for pre-construction subsidies in any given fiscal year may be used for administrative expenses.
- (c) *Pre-construction subsidy.* The owner of the zoning lot on which an affordable rental housing project is proposed to be situated may apply for a pre-construction subsidy 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 a pre-construction subsidy is not eligible for a post-construction grant pursuant to Article 4 for the same affordable rental housing project.
 - (2) *Pre-construction subsidy amount.*
 - (A) For affordable rental housing units that are less than 300 square feet in size, the owner is eligible to receive \$83 per square foot of dwelling unit floor area; and
 - (B) For affordable rental housing units that are 300 square feet or more in size, the owner is eligible to receive \$25,000 per affordable rental housing unit.



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- (3) To apply for a pre-construction subsidy, 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 issuance of a building permit or professional self-certification, the owner shall submit to the department of planning and permitting a pre-construction subsidy application for the project in a form prescribed by the director of planning and permitting. At a minimum, the pre-construction subsidy 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.
- (4) Upon receipt of the pre-construction subsidy application for an affordable rental housing project, the department of planning and permitting shall certify project eligibility for the funding, review and process the subsidy application, and calculate the subsidy amount the project is eligible for.
- (5) All pre-construction subsidy awards are subject to the execution of a written pre-construction subsidy agreement between the city and the owner of an eligible affordable rental housing project. At a minimum, the pre-construction subsidy agreement must include provisions:
- (A) Requiring the owner to comply with the relevant provisions of HRS Chapter 104 as they relate to the wage and hour requirements applicable to the project and the use of city funds;
 - (B) 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 director's discretion, may extend this 24-month period if the owner demonstrates good cause;



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- (C) Requiring that the owner develop the affordable rental housing project in compliance with all applicable laws, rules, regulations, and other governmental requirements;
 - (D) Providing that if the owner breaches or otherwise violates any terms of the pre-construction subsidy agreement, the owner shall forfeit the pre-construction subsidy moneys received in accordance with the penalty provisions set forth in § 32-5.4(c); and
 - (E) 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 subsidy moneys to determine compliance with the requirements of this article and the applicable pre-construction subsidy agreement, and require the owner to cooperate with the audit and provide any information requested by the director.
- (6) For all affordable rental housing projects eligible for pre-construction subsidies, upon the execution of a pre-construction subsidy agreement pursuant to subdivision (5), 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 subsidy, together with a copy of the project's pre-construction subsidy 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 subsidy agreement for the affordable rental housing project; and
 - (D) The total pre-construction subsidy amount payable, and the calculation thereof.
- (7) The director of budget and fiscal services shall pay or cause to be paid the pre-construction subsidy amount to the owner no later than 30 days after receipt of the information set forth in subdivision (6) from the director of planning and permitting.



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



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- (6) The cumulative pre-construction subsidy 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 a pre-construction subsidy 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 subsidy 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 subsidy moneys were paid to the owner. Any pre-construction subsidy 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 subsidy agreement, including but not limited to that the pre-construction subsidy moneys received were used or expended for improper purposes, the owner will be subject to a penalty equal to the total pre-construction subsidy 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 subsidy moneys were paid to the owner. Any pre-construction subsidy amounts not yet paid will be forfeited."

SECTION 3. Section 32-4.2, Revised Ordinances of Honolulu 2021 ("Post-construction grant"), as amended by Ordinance 24-23, is amended by amending subsections (b) and (c) to read as follows:



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"(b) *Source of funds.*

- (1) The aggregate of post-construction grant payments made under this article and pre-construction subsidies made under Article 5 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 post-construction grants pursuant to this article and pre-construction subsidies pursuant to Article 5 in each fiscal year's executive operating budget and program.
- (3) No more than 5 percent of the moneys designated for post-construction grants in any given fiscal year may be used for administrative expenses.

(c) *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 who has been awarded a pre-construction subsidy pursuant to Article 5 is not eligible for a post-construction grant pursuant to this article for the same affordable rental housing project.

~~[(4)]~~(2) *Post-construction grant amount.*

- (A) For affordable rental housing units that are less than 300 square feet in size, the owner is eligible to receive \$40 per square foot of dwelling unit floor area; and
- (B) For affordable rental housing units that are 300 square feet or more in size, the owner is eligible to receive \$12,000 per affordable rental housing unit.

- ~~[(2)]~~(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 shall submit to the department of planning and permitting a post-construction grant application for the project in a form



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prescribed by the director of planning and permitting. At a minimum, the post-construction grant application must include:

- (A) The building permit number or professional self-certification number issued for the affordable rental housing project; and
- (B) The certificate of occupancy number issued for the affordable rental housing project.

~~[(3)]~~(4) Upon receipt of the post-construction grant application for an affordable rental housing project, the department of planning and permitting shall certify project eligibility for the post-construction grant, review and process the grant application, and calculate the post-construction grant amount the project is eligible for.

~~[(4)]~~(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 post-construction grant, together with a copy of the project's post-construction grant application;
- (B) The building permit number or professional self-certification number issued for the affordable rental housing project;
- (C) The certificate of occupancy number issued for the affordable rental housing project; and
- (D) The total post-construction grant amount payable, and the calculation thereof.

~~[(5)]~~(6) The director of budget and fiscal services shall pay or cause to be paid the post-construction grant amount to the owner no later than 30 days after receipt of the information set forth in subdivision (4) from the director of planning and permitting."



HONOLULU CITY COUNCIL
KE KANIHELA O KE KALANA O HONOLULU
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ORDINANCE _____

BILL **31 (2024), CD2** _____

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SECTION 4. 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.



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SECTION 5. 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 Subsidy; Post-Construction Grants; 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 Chapter 32, Revised Ordinances of Honolulu 2021 ("ROH"), to establish a pre-construction subsidy program. Sets forth the criteria for eligibility for the pre-construction subsidy, the amount an affordable housing project is eligible to receive, the application requirements for the pre-construction subsidy, the process by which the DPP and the BFS must process and award the subsidy to eligible owners, and the process by which an owner who receives the subsidy 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. Amends Article 4 of ROH Chapter 32 to provide that the aggregate of the post-construction grant payments under Article 4 and pre-construction subsidies made under Article 5 may not exceed \$10,000,000 in general funds. Specifies that an owner of an affordable rental housing project may only be awarded a pre-construction subsidy or a post-construction grant, but not both, for the same affordable rental housing project.

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