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. Makes the use of the term "owner" consistent throughout the bill.

2. Adds the developer as being eligible to apply for the pre-construction subsidy program, and makes conforming amendments throughout the bill showing that the owner and developer have the same responsibilities and liabilities.

3. In ROH Section 32-5.2(b)(2), removes the provision providing 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 and corrects the reference for post-construction grants to Article 4 (instead of Article 5).

4. In ROH Section 32-5.2(c)(1), clarifies that a recipient of a pre-construction subsidy for an affordable rental housing project is not eligible to also receive a post-construction grant pursuant to Article 4 for the same project.

5. In ROH Section 32-5.2(c)(2), amends the pre-construction subsidy amount to be $50,000 per unit, regardless of the unit size.

6. In ROH Section 32-5.2(c)(4)(A), requires a current title report for the property to be included in the pre-construction subsidy application.

7. In ROH Section 32-5.2(c)(6), adds the developer as a party to the execution of the written pre-construction subsidy agreement.

8. Removes the language in ROH Section 32-5.2(c)(8), which required the Director of Budget and Fiscal Services to pay the pre-construction subsidy by a certain deadline, and replaces it with language requiring all pre-construction subsidy awards to be subject to a pre-construction escrow agreement that contains, among other items, a provision for periodic disbursement of the subsidy pro rata in proportion to the percentage of the construction completed to the date of the disbursement.

B. 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 and findings. 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, 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.

A BILL FOR AN ORDINANCE

§ 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 5 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 and developer 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 and developer who have been awarded a pre-construction subsidy are not eligible for a post-construction grant pursuant to Article 4 for the same affordable rental housing project.

(2) *Pre-construction subsidy amount*. An owner and developer may be eligible to receive a total of $50,000 for each unit.

(3) A pre-construction subsidy 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 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 and developer 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 current title report for the property, 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 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 for which the project is eligible.

(6) All pre-construction subsidy awards are subject to the execution of a written pre-construction subsidy agreement between the city and the owner and developer. At a minimum, the pre-construction subsidy agreement must include provisions:

(A) Restricting the use of the pre-construction subsidy 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 and developer 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 and developer demonstrate good cause;

(D) Requiring that the owner and developer develop and manage the affordable rental housing project in compliance with all applicable laws, rules, regulations, and other governmental requirements;

(E) Providing that if the owner and developer breach or otherwise violate any terms of the pre-construction subsidy agreement, the owner and developer shall forfeit and return all the pre-construction subsidy 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 subsidy moneys to determine compliance with the requirements of this article and the applicable pre-construction subsidy agreement, and require the owner and developer to cooperate with the audit and provide any information requested by the director.

(7) For all affordable rental housing projects eligible for pre-construction subsidies, upon the execution of a pre-construction subsidy 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 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.

(8) All pre-construction subsidy awards are subject to the execution of a written pre-construction escrow agreement between the city and the lender providing a construction loan to the project owner and developer to finance the development of the affordable housing project, or other third party reasonably acceptable to the city providing funds control management services to the project. At a minimum, the pre-construction escrow agreement must include a provision for periodic disbursements of the pre-construction subsidy pro rata in proportion to the percentage of construction completed to the date of any such disbursement as evidenced by documentation such as contractor invoices, architect certifications, lien waivers, inspector reports, and other customary documents evidencing the completion of such portion of construction, which will be reviewed and reasonably approved by the lender or third-party funds control manager.

§ 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

(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 and developer 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 and developer 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 and developer will be subject to a penalty equal to the total pre-construction subsidy amount the owner and developer 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 and developer. 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 and developer 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 and developer will be subject to a penalty equal to the total pre-construction subsidy amount the owner and developer 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 and developer. Any pre-construction subsidy amounts not yet paid will be forfeited."

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 Subsidy; 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 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 must process the subsidy, the process by which the BFS and the eligible owners and developers may agree to the disbursement of the subsidy, and the process by which an owner and developer who receive the subsidy may be subject to certain penalties and the enforcement of those penalties on the owner and developer 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.