REPORT OF THE COMMITTEE ON ZONING AND PLANNING

Voting Members:
Ikaika Anderson, Chair; Breene Harimoto, Vice-Chair;
Ann H. Kobayashi, Ron Menor, Kymberly Marcos Pine

Committee Meeting Held
November 1, 2013

Honorable Ernest Y. Martin
Chair, City Council
City and County of Honolulu

Mr. Chair:

Your Committee on Zoning and Planning, to which was referred Bill 56 (2013) entitled:

"A BILL FOR AN ORDINANCE RELATING TO FLOOD HAZARD AREAS,"

transmitted by Departmental Communication No. 619 dated August 15, 2013, and which passed First Reading at the September 11, 2013 Council meeting, reports as follows:

The purpose of Bill 56 (2013) is to repeal the flood hazard district provisions under the Land Use Ordinance, Chapter 21, Revised Ordinances of Honolulu 1990, as amended, and adopt new flood hazard regulations which fully conform to current language in the National Flood Insurance Program (NFIP) regulations under its own chapter in the Revised Ordinances of Honolulu.

Your Committee finds that the Planning Commission, after a public hearing held on August 7, 2013 at which no testimony was received on the proposed amendment, voted to recommend approval of the proposal in concurrence with the recommendation of the Department of Planning and Permitting (DPP) in the Attachment to Departmental Communication No. 619 (2013).

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON NOV 1 3 2013 COMMITTEE REPORT NO. 355

REPORT OF THE COMMITTEE ON ZONING AND PLANNING

Voting Members:
Ikaika Anderson, Chair; Breene Harimoto, Vice-Chair;
Ann H. Kobayashi, Ron Menor, Kymberly Marcos Pine

At your Committee's meeting on November 1, 2013, the Deputy Director of Planning and Permitting testified that the flood hazard regulations are being proposed to be moved outside of the LUO because certain definitions used by the NFIP do not match definitions in the LUO. The Deputy Director also stated that in response to a concern raised by the Office of Council Services, the DPP is investigating whether the Zoning Board of Appeals (ZBA) would be the appropriate party to hear appeals if the flood hazard regulations are moved outside of the LUO. If it is determined that the ZBA is not the appropriate party, options could include having appeals heard by the Building Board of Appeals or through a contested case process.

Your Committee Chair asked the Deputy Director of Planning and Permitting whether previously lawful nonconforming structures and minor repairs would continue to be allowed and if they would be exempt from the flood hazard regulations; whether future amendments to the flood hazard regulations would be transmitted to the Planning Commission; and whether the public would have the opportunity to review future proposals to amend the flood hazard regulations if they are moved outside of the LUO. The Deputy Director of Planning and Permitting testified that previously lawful nonconforming structures and minor repairs to structures would continue to be permitted and they would continue to be exempt from the flood hazard regulations. However, if the total cost over a five year period is more than 50% of the value of the structure, then the structure would need to conform with the flood hazard regulations. With regard to Planning Commission and public review of future proposals to amend the flood hazard regulations, the Deputy Director stated that if the flood hazard regulations are moved outside of the LUO, proposals to amend the regulations would not be submitted to the Planning Commission for review. Public input would be obtained through the legislative process.

Your Committee received no public testimony on the Bill.

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON NOV 1 3 2013 COMMITTEE REPORT NO. 355

REPORT OF THE COMMITTEE ON ZONING AND PLANNING

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Your Committee has prepared a CD1 version of the Bill that makes the following amendments:

A. Corrects the definition of "substantial improvement" by replacing the erroneous term "that ten-year period" with "that five-year period."

B. Amends the provisions of proposed new Sections _-7 and _-12 (Sections _-7 and -1.12 in the CD1) dealing with restrictive covenants to require the covenants to be recorded or filed with the bureau of conveyances or the land court of the State of Hawaii, or both, as appropriate.

C. Makes miscellaneous technical, nonsubstantive, and formatting amendments.

Your Committee believes that additional public testimony at the public hearing recommended herein to be scheduled on this bill will provide further assistance to your Committee and to the Council in their deliberations on this bill.

Your Committee finds that the time needed for further consideration of Bill 56 (2013) could exceed the time limit provided for that consideration. It, therefore, recommends that Bill 56 (2013) be granted a 90-day extension of time subject to receipt of a written request from the Applicant. (Ayes: Anderson, Harimoto, Kobayashi, Menor, Pine – 5; Noes: None.)

REPORT OF THE COMMITTEE ON ZONING AND PLANNING

Voting Members:
Ikaika Anderson, Chair; Breene Harimoto, Vice-Chair;
Ann H. Kobayashi, Ron Menor, Kymberly Marcos Pine

Your Committee on Zoning and Planning recommends that Bill 56 (2013) pass Second Reading in the form attached hereto as Bill 56 (2013), CD1, be scheduled for public hearing, and be referred back to Committee. (Ayes: Anderson, Harimoto, Kobayashi, Menor, Pine – 5; Noes: None.)

Respectfully submitted,

Committee Chair

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON NOV 1 3 2013 COMMITTEE REPORT NO. 355

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL 56 (2013), CD1

A BILL FOR AN ORDINANCE

RELATING TO FLOOD HAZARD AREAS.

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

SECTION 1. Purpose and intent. The purpose of this ordinance is to repeal the flood hazard district provisions under the Land Use Ordinance, Chapter 21, Revised Ordinances of Honolulu 1990, as amended, and adopt new flood hazard regulations which fully conform to current language in the National Flood Insurance Program (NFIP) regulations under its own chapter in the Revised Ordinances of Honolulu. The NFIP requires participating communities to adopt and maintain adequate floodplain management regulations consistent with the minimum standards of the NFIP in order to maintain eligibility in the program. The adoption of the new ordinance is essential to prevent a potential suspension from the NFIP, prevent the denial of federal financial assistance for acquisition and construction purposes, and preclude jeopardizing the making, securing, extension, and renewal of real estate loans by lending institutions regulated by the federal government.

SECTION 2. Chapter 21, Article 9, Revised Ordinances of Honolulu 1990, as amended, is amended by repealing Section 21-9.10 ("Flood hazard districts") and accompanying Sections 21-9.10-1 to 21-9.10-14, inclusive.

SECTION 3. Chapter 21, Article 9, Revised Ordinances of Honolulu 1990, as amended, is amended by adding a new Section 21-9.10 to read as follows:

"**Sec. 21-9.10 Developments in flood hazard areas.**

(a) All permit applications subject to this chapter shall, at the time of processing, be reviewed for compliance with the flood hazard areas ordinance. Whenever applicable, the flood hazard area requirements of a development project shall be determined prior to processing for other approvals mandated by other laws and regulations.

(b) Dwellings in country, residential and agricultural districts, as well as detached dwellings and duplex units in apartment and apartment mixed use districts, may exceed the maximum height in the district by no more than five feet if required to have its lowest floor elevated to or above the base flood elevation, provided such additional height shall not be greater than 25 feet above the base flood elevation.

(c) Notwithstanding any other provision to the contrary, no more than two dwelling units shall be permitted on a single zoning lot whose only buildable area is in the

floodway. This provision, designed to reduce flood losses, shall take precedence over any less restrictive, conflicting laws, ordinances or regulations."

SECTION 4. Section 21-10.1, Revised Ordinances of Honolulu 1990, as amended ("Definitions"), is amended by amending the definition of "Basement" to read as follows:

""Basement" means a floor which is wholly below grade, or which is partly below grade such that the floor above is no more than three feet above grade for at least 50 percent of the floor's perimeter. [For the purpose of the flood hazard district regulations of Article 9, "basement" shall be as defined in Section 59.1 of Title 44 of the Code of Federal Regulations: the National Flood Insurance Program and Related Regulations.]

Grade shall be either existing or finish grade, whichever is lower at all points (see Figure 21-10.2)."

SECTION 5. Section 21-10.1, Revised Ordinances of Honolulu 1990, as amended ("Definitions"), is amended by deleting the definitions of "Coastal high hazard district"; "'Flood' or 'flooding'"; "Flood elevation"; "Flood fringe"; "Flood fringe district"; "Flood hazard districts"; "Flood hazard variance"; "Floodplain"; "Floodproof"; "Floodway"; "Floodway district"; "General floodplain district"; and "Regulatory flood."

SECTION 6. The Revised Ordinances of Honolulu 1990, as amended, is amended by adding a new chapter to be appropriately designated by the revisor of ordinances and to read as follows:

"Chapter __

FLOOD HAZARD AREAS

Article 1. General Provisions

Sec. __-1.1 Purpose.

(a) Within the City and County of Honolulu, certain areas are subject to periodic inundation by flooding or tsunami or both, resulting in loss of life and property, creation of health and safety hazards, disruption of commerce and governmental services as well as extraordinary public expenditures for flood and tsunami protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(b) These flood losses are caused by uses that are inadequately elevated, floodproofed, or protected from flood damage. The cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities also contribute to flood losses.

(c) Congress has determined that regulation of construction in areas subject to flood hazards is necessary for the protection of life and property and reduction of public costs for flood control, rescue and relief efforts, thereby promoting the safety, health, convenience and general welfare of the community. In order to achieve these purposes, this chapter establishes flood hazard areas and imposes restrictions upon manmade changes to improved and unimproved real estate within the areas. These restrictions are necessary to qualify the City and County of Honolulu for participation in the federal flood insurance program.

(d) Failure to participate in the program would result in the denial of federal financial assistance for acquisition and construction purposes, and would jeopardize the making, securing, extension, and renewal of loans secured by improved real estate by lending institutions regulated by the federal government.

(e) This chapter is designed to:

(1) Protect human life and health and promote the general welfare;

(2) Minimize expenditure of public money for costly flood control projects;

(3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(4) Minimize prolonged business interruptions;

(5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;

(6) Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future blighted areas caused by flood damage;

(7) Ensure that potential buyers are notified that property is in an area of special flood hazard; and

(8) Ensure that those who occupy and/or develop the areas of special flood hazard assume responsibility for their actions.

Sec. __-1.2 Statutory authority.

This chapter is enacted pursuant to the U.S. National Flood Insurance Act of 1968 (Public Laws 90-448 and 91-152), as amended, and the U.S. Flood Disaster Protection Act of 1973 (Public Law 93-234), as amended, and Chapter 46, Hawaii Revised Statutes.

Sec. __-1.3 Administration.

(a) Designation of floodplain administrator. The director of planning and permitting is hereby appointed to administer, implement, and enforce this chapter by granting or denying development permits in accordance with its provisions.

(b) Duties and responsibilities shall include, but not be limited to the following:

(1) Review all development permits to determine that the requirements of this chapter have been satisfied, the project site is reasonably safe from flooding, and other required federal or state approvals are obtained.

(2) Where base flood elevation data have not been provided on the federal flood insurance rate maps, the director shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal or state agency, or other source, in order to administer this chapter.

(3) Whenever a watercourse is proposed to be altered or relocated, require that the flood carrying capacity within the altered or relocated watercourse be maintained.

(4) Obtain and maintain for public inspection, certifications and documentation required by this chapter, including a record of all variance actions.

(5) Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazard, where there appears to be a conflict between a mapped boundary and actual field conditions.

(6) Take action to remedy violations of this chapter.

(c) Appeals. The actions of the director in the administration of this chapter shall be appealed to the zoning board of appeals as provided by Section 6-1516 of the charter. Appeals shall be filed within 30 days of the mailing or service of the director's decision.

(d) Enforcement. If the director determines that there is a violation of any provision of this chapter or any permit issued pursuant thereto, the violator shall be subject to the code enforcement rules of the department.

(e) Warning and disclaimer of liability.

(1) The degree of flood and tsunami protection required by this chapter is considered reasonable for regulatory purposes and is based on standard engineering methods of study. Larger floods or tsunamis than the base flood as designated on the flood maps, may occur on occasions, or flood or tsunami elevations may be increased by manmade or natural causes. This chapter does not imply that areas outside the flood hazard area will be free from flooding or damage.

(2) This chapter shall not create liability on the part of the city or any officer, official, or employee for any flood or tsunami damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

(f) Other laws and regulations. All construction and improvements subject to this chapter shall comply with federal, state and other applicable city laws and regulations including, but not limited to, the zoning, building, housing, plumbing and electrical codes, and grading ordinances. This chapter, designed to reduce flood losses shall take precedence over any less restrictive, conflicting laws, ordinances or regulations.

(g) No exemptions. Neither the city nor any agency, department, or division under its control shall be exempted from compliance with the provisions of this chapter.

(h) Severability. This chapter and the various parts thereof are hereby declared to be severable. Should any section of this chapter be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the chapter as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

A BILL FOR AN ORDINANCE

Sec. __-1.4 Definitions.

Definitions contained in regulations governing the National Flood Insurance Program, 44 CFR 59 through 77, as amended, are incorporated by reference and made a part of this chapter as though set forth fully herein. Where terms are not defined in this chapter, they shall have their ordinary accepted meanings within the context in which they are used. The following words and terms used herein are only applicable to this chapter and are defined as follows:

"Architect" means a person who has a license to practice architecture in the State of Hawaii.

"Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year (also called the "100-year flood").

"Base flood elevation" means the water surface elevation of the base flood.

"Basement" means any area of a building having its floor below ground level on all sides.

"Breakaway wall" means any type of wall, whether solid or lattice, and whether constructed of concrete, masonry, wood, metal, plastic, or any other suitable building material, that is not part of the structural support of a building and which is designed to break away without damaging the structural integrity of the building or other buildings to which it might be carried by floodwaters.

"Coastal high hazard area" means a special flood hazard area subject to high velocity wave action from storms or seismic sources and designated on the flood insurance rate map as zone VE or V.

"Development" means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

"Director" means the director of planning and permitting, City and County of Honolulu, or the director's authorized representative.

"Encroachment" means the advance or infringement of uses, plant growth, fill, excavation, walls, buildings, permanent structures, or development into a floodplain which may impede or alter the flow capacity of a floodplain.

"Engineer" means a person who is licensed to practice civil or structural engineering in the State of Hawaii.

"FEMA" means Federal Emergency Management Agency.

"Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters, resulting from any source, such as tsunamis, or the unusual and rapid accumulation of runoff of surface waters or mud from any source.

"Flood fringe area" means a special flood hazard area consisting of the area of the flood fringe designated on the flood insurance rate map as zone AE, AO and AH.

"Flood insurance rate map" or "FIRM" means the map on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

"Flood insurance study" means the report provided by the Federal Emergency Management Agency that includes flood profiles, the flood insurance rate map, the flood hazard boundary map, and the water surface elevation of the base flood.

"Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures and properties that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.

"Floodway" means the channel or watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

"Floodway area" or "AEF" means a special flood hazard area consisting of the portion of zone AE designated on the flood insurance rate map as a floodway.

"Floodway permit" means a permit required under this chapter for a structure within the floodway area.

"Fraud and victimization," as related to Section __-1.12, means that the variance granted must not cause fraud on or victimization of the public. In examining this requirement, the city will consider the fact that every newly constructed building adds to government responsibilities and remains a part of the community for fifty to one-hundred years. Buildings that are permitted to be constructed below the base flood elevation are

subject during all those years to increased risk of damage from floods, while future owners of the property and the community as a whole are subject to all the costs, inconvenience, danger, and suffering that those increased flood damages bring. In addition, future owners may purchase the property, unaware that it is subject to potential flood damage, and can be insured only at very high flood insurance rates.

"Functionally dependent use" means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, and does not include long-term storage or related manufacturing facilities.

"General floodplain" means a special flood hazard area for which detailed engineering studies were not performed by FEMA to determine the base flood elevations or to identify the floodway, and is identified as zone A on the flood insurance rate map.

"Hardship," as related to Section __-1.12, means the exceptional hardship that would result from a failure to grant the requested variance. The city requires that the variance be exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

"Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"Historic structure" means a structure that is: (a) listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) individually listed on a state inventory of historic places pursuant to a historic preservation program approved by the Secretary of Interior; or (d) individually listed on a local inventory of historic places pursuant to a historic preservation program certified either (1) by an approved state program as determined by the Secretary of the Interior or (2) directly by the Secretary.

"Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not modified so as to render the use in violation of the elevation design requirement of this chapter.

"Manufactured home" means a structure (other than a recreational vehicle), transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities.

"Mean sea level" means the national geodetic vertical datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.

"New construction" means structures for which the "start of construction" commenced on or after the effective date of this ordinance, as amended, and includes any subsequent improvements to such structures.

"Public safety and nuisance," as related to Section __-1.12, means that the granting of a variance must not result in anything which is injurious to safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

"Recreational vehicle" means a vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Repetitive loss structure" means a structure that was damaged by flood two or more times within any ten-year period, where the cost of fully repairing the flood damage to the structure, on average, equaled or exceeded twenty-five percent of its market value at the time of each flood.

"Special flood hazard area" or "SFHA" means an area having special flood or flood-related erosion hazards, and shown on a FIRM as zone A, AO, AE, AEF, AH, VE or V.

"Start of construction" includes substantial improvement and other proposed new development and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty days from the date of the permit. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footing, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erections of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"Structure" means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank that is principally above ground, and a manufactured home.

"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed fifty percent of the market value of the structure (excluding land) before the damage occurred.

"Substantial improvement" means any reconstruction, rehabilitation, addition, or series of reconstruction, rehabilitation, or additions, or other proposed new development of a structure or repetitive loss structure, in any five-year period, the cumulative cost of which equals or exceeds fifty percent of the market value of the structure (excluding land) before the "start of construction" of the first improvement during that five-year period. This term includes structures that have incurred "substantial damage," regardless of the actual repair work performed. The term also includes the relocation of a structure even if the cost of improvements associated with the relocation does not equal or exceed fifty percent of the market value of the structure. An improvement shall constitute a substantial improvement only if:

(a) The structure was constructed on or before September 3, 1980;

(b) The structure was constructed after September 3, 1980, and was not within a special flood hazard area at the time of the issuance of the building permit;

(c) The structure was constructed after September 3, 1980, and was the subject of a map change that resulted in higher base flood elevations; or

(d) The structure was constructed after September 3, 1980, and was the subject of a map change that resulted in a FIRM zone change.

The term does not, however, include either:

(1) Any project for improvement of a structure to correct existing violations of state or county health, sanitary, or safety specifications; or

(2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

"Surveyor" means a person who is licensed to practice surveying in the State of Hawaii.

"Violation" means the failure of a structure or other development to be fully compliant with this chapter. A structure or other development without a required elevation certificate, other certification, or other evidence of compliance with this chapter shall be presumed to be in violation until such time as the required certificate or other evidence of compliance is provided.

"Watercourse" means a stream, wash, channel, or other topographic feature on or over which waters flow at least periodically.

"Water surface elevation" means the height, in relation to the national geodetic vertical datum (NGVD) of 1929 (or other datum, where specific), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

"Zoning lot" means a zoning lot as defined by the land use ordinance, Chapter 21, Revised Ordinances of Honolulu 1990, as amended.

Sec. __-1.5 Special flood hazard areas.

(a) Applicability.

This chapter shall apply to all lands within the special flood hazard areas as determined by the director or as delineated on the flood insurance rate maps (FIRM) prepared by the FEMA, or both. The following special flood hazard areas are established:

(1) Floodway area (Floodway in zone AE).

(2) Flood fringe area (zones AE, AO, AH).

(3) Coastal high hazard area (zone VE, V).

(4) General floodplain area (zone A).

(b) Adoption of federal flood maps and reports. The special flood hazard areas identified by the FEMA in the flood insurance rate maps and flood insurance study dated January 19, 2011, and any subsequent revisions and amendments (hereinafter called "flood maps") are hereby adopted and declared to be part of this chapter. The flood maps are on file at the City and County of Honolulu Department of Planning and Permitting, 650 S. King Street, Honolulu, Hawaii 96813.

(c) The flood hazard areas and base flood elevations shall be determined by the flood maps. Where interpretation is needed as to whether or not a project lies within a certain flood hazard area, or interpretation is needed on the base flood elevation in the floodway, flood fringe or coastal high hazard areas, a request for interpretation of the flood maps shall be submitted to the director for determination. The request shall include the project site and location plan, property lines and dimensions and tax map key.

(d) Where flood hazard areas and base flood elevations have not been determined on the flood maps, the director shall obtain and review the information needed to make this determination. A request for interpretation under this section shall be submitted to the director and include three sets of documents, stamped and signed by a licensed professional engineer, containing adequate information and substantiating data consistent with this part, such as flood study, flood data, project site and location plan, property lines and dimension, tax map key, and topographic data, contours or spot elevations based on reference marks on flood maps. Upon initial review by the director, other related information may be subsequently required to evaluate the request.

(e) Flood map revisions. Whenever base flood elevations may change due to a proposed development, the applicant shall obtain a conditional letter of map revision from the FEMA before the approval or issuance of any development permit. A letter of map revision shall be obtained from the FEMA whenever a development has changed the base flood elevation within any special flood hazard area. An application for a letter of map revision shall be submitted to the FEMA no later than six months after the completion of a development.

Sec. __-1.6 General development standards.

Structures within the special flood hazard areas shall conform to the following:

(a) Be designed and adequately anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads, including effects from buoyancy caused by the base flood.

(b) Constructed of flood-resistant materials.

(c) Constructed by methods and practices that minimize flood damage.

(d) Constructed with electrical, heating, ventilation, plumbing, air conditioning, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(e) Provided with adequate drainage to minimize damage in accordance with the storm drainage standards of the department.

(f) For new or replacement potable water system and facilities, be designed to minimize or eliminate infiltration of flood waters into the systems.

(g) For new or replacement sanitary sewer system and waste disposal system, be designed, located and constructed so as to minimize impairment to them or contamination from them during and subsequent to flooding by the base flood.

(h) Manufactured Homes. Manufactured homes that are placed or substantially improved within special flood hazard areas that are not coastal high hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to, or above, the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. Manufactured homes that are placed

or substantially improved within coastal high hazard areas shall meet the requirements of Section __-1.9.

(i) Recreational Vehicles. Recreational vehicles placed within a special flood hazard area shall either:

(1) Be on site for fewer than thirty consecutive days;

(2) Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on wheels or a jacking system, is attached to the site only by a quick disconnect type utilities and security device, and has no permanently attached additions); or

(3) Meet the requirements for manufactured homes under subsection (h) of this section.

(j) A structure that straddles two or more special flood hazard areas shall comply with the standards of the flood hazard area that is considered to have the most stringent or restrictive standards.

Sec. __-1.7 Floodway area.

The floodway identified on the flood maps and located within areas of special flood hazard is the watercourse reserved to discharge the base flood. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which could carry debris, and erosion potential, the following provisions shall apply:

(a) A floodway permit shall be obtained from the director before approval or issuance of any other permits for structures within the floodway area.

(b) A restrictive covenant shall be inserted in the deeds and other conveyance documents of the property and recorded or filed with the bureau of conveyances or the land court of the State of Hawaii, or both, as appropriate, providing that a permit has been granted to a property located in a floodway area that is subject to flooding and flood damage, increases risks to life and property, and the property owners shall not file any lawsuit, action or claim against the city for costs or damages, and shall indemnify and save harmless the city from any liability when such loss, damage, injury or death results due to the permit and the flooding of the property. Upon approval of the floodway permit, such covenant shall be fully executed and recorded. Proof of recordation shall be submitted to the director prior to issuance of any building permits.

(c) Any temporary or permanent encroachment, including fill, structures, storage of material or equipment, or other development within the floodway, shall not be approved unless certification and supporting data, including hydrologic and hydraulic analyses performed in accordance with standard engineering practice, are provided by a licensed engineer demonstrating that the proposed encroachment will not cause any increase in base flood elevations during the occurrence of the base flood.

(d) Proposed structures in the floodway area shall additionally comply with the general development standards and flood fringe area provisions of this chapter.

(e) No more than two dwelling units shall be permitted on a single zoning lot whose only buildable area is in the floodway.

(f) Within an area designated AE without a floodway on the flood maps, until a floodway is designated, no new construction, substantial improvement, or other development (including fill) shall be permitted unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point.

Sec. __-1.8 Flood fringe area.

In addition to the general development standards, the following standards shall be applicable in the flood fringe area:

(a) In areas designated on the flood maps as zone AE or AH:

(1) All new construction or substantial improvements of residential structures shall have the lowest floor, including basements, elevated to or above the base flood elevation.

(2) All new construction or substantial improvements of nonresidential structures shall have the lowest floor elevated to or above the base flood elevation; or together with attendant utility and sanitary facilities, be designed and constructed so that below the base flood elevation, the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy due to the base flood.

(3) Within zone AH, adequate drainage paths shall be provided around structures on slopes to guide floodwaters around and away from proposed structures.

(b) In areas of shallow flooding designated on the flood maps as zone AO:

(1) All new construction or substantial improvements of residential structures shall have the lowest floor including basements, elevated above the highest adjacent grade at least as high as the depth number specified on the flood maps.

(2) All new construction or substantial improvements of nonresidential structures shall have the lowest floor elevated above the highest adjacent grade at least as high as the depth number specified on the flood maps; or together with attendant utility and sanitary facilities, be designed and constructed so that below that level, the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(3) Adequate drainage paths shall be provided around structures on slopes to guide floodwaters around and away from proposed structures.

(c) All new construction or substantial improvements of structures with fully enclosed areas below the lowest floor (excluding basements) that are usable solely for parking of vehicles, building access or storage, and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must meet the following minimum criteria:

(1) For non-engineered openings:

(A) Have a minimum of two openings on different sides having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;

(B) The bottom of all openings shall be no higher than one foot above internal or external grade whichever is highest;

(C) Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwaters; and

(D) Buildings with more than one enclosed area must have openings on exterior walls for each area to allow floodwater directly enter; or

(2) Be certified by a licensed engineer or architect.

(d) A licensed professional architect or engineer shall develop or review the design, specifications and plans and certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this chapter, and include the elevation to which such structures are floodproofed.

Sec. __-1.9 Coastal high hazard area.

In addition to the general development standards, the following standards shall be applicable in the coastal high hazard area:

(a) (1) All new construction or substantial improvements of residential and nonresidential structures shall be elevated on pilings or columns so that the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood elevation.

(2) Piles or column foundations and structures attached thereto shall be anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall each have a one percent chance of being equaled or exceeded in any given year.

(b) (1) All new construction or substantial improvements shall have the space below the lowest floor free of obstructions or constructed with breakaway walls, open wood latticework, or insect screening intended to collapse under wind and water loads without causing collapse, displacement or other structural damage to the elevated portion of the structure or supporting foundation.

(2) Such enclosed space shall not be used for human habitation and shall be used solely for parking of vehicles, building access or storage.

(3) A breakaway wall shall have a design-safe loading resistance of not less than 10 and not more than 20 pounds per square foot, or a licensed architect or engineer shall certify that the breakaway wall shall collapse from a water load less than that which would occur during the base flood.

(c) The use of fill for structural support of buildings shall be prohibited.

(d) All new development shall be constructed landward of the reach of the mean high tide.

(e) Human alterations of sand dunes and native mangrove stands which would increase potential flood damage shall be prohibited.

(f) A licensed architect or engineer shall develop or review the design, specifications and plans and certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this chapter, and that any development in the coastal high hazard area, including structures and improvements, would not affect the base flood nor aggravate existing flood-related erosion hazards.

Sec. __-1.10 General floodplain.

(a) All proposed development within the general floodplain (unnumbered zone A) shall be subject to review and approval of the director. The developer shall provide information signed and stamped by a licensed engineer, to evaluate the flooding and to determine the base flood elevation, and whether the project site is located within a floodway or flood fringe area, under the provisions of Section __-1.5(d).

(b) The director in reviewing the application may consult with other city, state and federal agencies for their comments and recommendations, and shall review the related flood data such as flood elevation, riverine flood velocities, boundaries, etc., and evaluate and determine whether the proposed project is located within a floodway or flood fringe area.

(c) If it is determined that the proposed project is within a floodway area, the project shall comply with the standards and provisions of Section __-1.7. If it is determined that the proposed project is within a flood fringe area, it shall comply with the provisions and standards of Section __-1.8. Until a floodway or flood fringe area is designated, no development shall be allowed that would increase the water surface elevation of the base flood more than one foot at any point.

Sec. __-1.11 Developments adjacent to watercourse outside the flood hazard area.

(a) Applications for building permits for development projects located on property encompassing or adjacent to a property with a watercourse outside of the special flood hazard areas identified on the federal flood maps, shall be subject to review and approval of the director. The application shall include information signed and stamped by a licensed engineer, to evaluate the potential flooding of the area.

(b) The director in reviewing the application may consult with other city, state and federal agencies for their comments and recommendations. If it is determined that the proposed project is within a floodway area, the project shall comply with the provisions and standards of Section __-1.7. If it is determined that the proposed project is within a flood fringe area, the project shall comply with the provisions and standards for Section __-1.8.

(c) No watercourse shall be modified, constructed, lined or altered in any way unless approved by the director.

Sec. __-1.12 Flood Variance

(a) The issuance of a variance is for floodplain management purposes only. Insurance premium rates are determined by statute according to actuarial risk and will not be modified by the granting of a variance.

The variance criteria set forth in this section are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. A variance may be granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this ordinance would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants, or the property owners.

This chapter is designed to help protect the community from flood loss and damage. This need is so compelling and the implications of the cost of insuring a structure built below flood level are so serious that variances from the flood elevation or from other requirements in the flood ordinance are quite rare. The long term goal of preventing and reducing flood loss and damage can only be met if variances are strictly limited. Therefore, the variance guidelines provided

in this ordinance are more detailed and contain multiple provisions that must be met before a variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.

(b) The following may be permitted as a variance from this chapter subject to review and approval of the director:

(1) New construction or substantial improvement of structures, and other proposed new development to be erected on a lot of one-half acre or less in area, contiguous to and surrounded by lots with existing structures constructed below the base flood elevation.

(2) Repair or rehabilitation of historic structures upon a determination that the proposed reconstruction or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(3) Improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by a code enforcement official and which are the minimum necessary to assure safe living conditions.

(4) New construction or substantial improvement of structures, and other proposed new development necessary for the conduct of a functionally dependent use.

(5) New construction or substantial improvement of public beach park facilities.

(c) The application shall be submitted to the director and signed and stamped by a licensed architect and engineer, and shall include three sets of documents with the following information as may be applicable:

(1) Plans and specifications showing the site and location; dimensions of all property lines and topographic survey of the zoning lot; existing and proposed structures and improvements, fill, and storage areas; location and elevations of existing and proposed streets and utilities; floodproofing measures; relationship of the site to the location of the flood boundary; and the existing and proposed flood control measures and improvements.

(2) Cross sections and profiles of the area and the base flood elevations and profile referenced to the national geodetic vertical datum (NGVD) of 1929.

(3) Flood study and drainage report data.

(4) Description of surrounding properties and existing structures and uses, and the effect the variance may have on them and the base flood.

(5) Justification and reasons for the variance in relationship to the intent and provisions of this section, with information as may be applicable on the following:

(A) The danger to life and property, including surrounding properties due to increased flood elevations or velocities caused by the variance.

(B) The danger that materials may be swept onto other lands or downstream to the injury of others.

(C) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions.

(D) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.

(E) The importance of the services provided by the proposed facility to the community.

(F) The availability of alternative locations not subject to flooding for the proposed use.

(G) The compatibility of the proposed use with existing and anticipated development.

(H) The relationship of the proposed use to the floodplain management program for the area.

(I) The safety of access to the property in times of flood for ordinary and emergency vehicles.

(J) The expected elevations and velocity of the base flood at the site due to the variance.

(K) That failure to grant the variance would result in exceptional hardship to the applicant.

(L) That the variance will not result in increased base flood elevations, additional threat to surrounding properties and to public safety , extraordinary public expense, create a nuisance, cause fraud and victimization of the public or conflict with other laws or regulations.

(6) A restrictive covenant which shall be inserted in the deeds and other conveyance documents of the property and recorded or filed with the bureau of conveyances or the land court of the State of Hawaii, or both, as appropriate, providing that a flood variance has been granted to a property located in a special flood hazard area that is subject to flooding and flood damage, that a variance for a structure with its lowest floor below the base flood elevation increases risks to life and property, and that the property owners shall not file any lawsuit, action or claim against the city for costs or damages, and shall indemnify and save harmless the city from any liability when such loss, damage, injury or death results due to the flood variance and the flooding of the property. Upon approval of the flood variance, such covenant shall be fully executed and recorded. Proof of recordation shall be submitted to the director prior to issuance of any building permits.

(7) Such other factors which are relevant to the purposes of this section.

(d) The director in reviewing the variance may consult with other city, state and federal agencies for their comments and recommendations. A flood variance may be granted only upon a:

(1) Showing of good and sufficient cause;

(2) Determination that failure to grant the variance would result in exceptional hardship to the applicant;

(3) Determination that the granting of a variance will not result in increased flood elevations, additional threat to public safety, extraordinary public expense, create a nuisance, cause fraud and victimization of the public, or conflict with other laws or regulations; and

(4) Determination that a variance granted within a floodway area would not result in any increase of the base flood elevation.

(e) The director may approve, approve with conditions or deny the variance. Such conditions may include but not be limited to:

(1) Modification of the project, including the sewer and water supply facilities.

(2) Limitations on periods of use and operation.

(3) Imposition of operational controls, sureties and deed restrictions.

(4) Requirements for construction of channels, dikes, levees and other flood-protective measures.

(5) Floodproofing measures designed consistent with the base flood elevation, flood velocities, hydrostatic and hydrodynamic forces and other factors associated with the base flood.

(6) Other conditions as may be deemed necessary by the director to further the purposes of this chapter.

Sec.__-1.13 Substantial Improvements.

All structures proposed to be substantially improved must be brought into compliance with the standards and provisions of this chapter. For the purpose of determining substantial improvement, the market value of a structure and the cost of the proposed improvements to the structure shall be provided by the applicant from the following sources:

(a) Itemized estimates made by an independent professional construction estimator;

(b) Appraisals prepared by a independent licensed appraiser;

(c) Calculations based on square foot cost factors published in building cost estimating guides recognized by the building construction industry, and signed and stamped by an independent licensed engineer or architect.

Sec. __-1.14 Certification standards.

(a) Pre-construction, during-construction, and post-construction certification of elevation and floodproofing of new construction, development and improvements within the special flood hazard areas shall be submitted to the director and shall be maintained as a matter of public record.

(b) Pre-construction certification.

Requirements for approval of the building permit shall include the following items, as applicable, and any additional items as required by the director to promote public welfare and safety:

(1) Certification of building plans.

Each set of building plans shall include a current topographic survey map prepared by a licensed surveyor, and shall be signed and stamped by a licensed engineer or architect certifying the accuracy of the flood boundary and elevation information.

(2) Flood Hazard Certification.

The City and County of Honolulu's applicable flood hazard certification form, as amended, shall be completed and signed and stamped by a licensed engineer or architect.

(3) Floodproofing Certification.

The Federal Emergency Management Agency's "Floodproofing Certificate" form, as amended, shall be completed and signed and stamped by a licensed engineer or architect.

(4) Certification of No-rise Determination.

For all construction and improvements in the floodway, the Federal Emergency Management Agency's "No-rise Certification" form, as amended, shall be completed and signed and stamped by a licensed engineer.

(b) During-construction certification.

Upon placement of the lowest floor, including the basement, and prior to further vertical construction of a new or substantially improved structure in the special flood hazard area, the Federal Emergency Management Agency's "Elevation Certificate," as amended, shall be completed and signed and stamped by a licensed surveyor.

(c) Post-construction certification.

As a condition for the closing of the building permit or issuance of a certificate of occupancy for a new or substantially improved structure in the special flood hazard area, the Federal Emergency Management Agency's "Elevation Certificate," as amended, shall be completed and signed and stamped by a licensed surveyor, engineer or architect.

SECTION 7. In Sections 3 and 4, ordinance material to be repealed is bracketed and 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 material, or the underscoring.

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL 56 (2013), CD1

A BILL FOR AN ORDINANCE

SECTION 8. This ordinance shall take effect upon its approval.

INTRODUCED BY:

Ernest Martin (br)

DATE OF INTRODUCTION:

August 30, 2013
Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 2013.

KIRK CALDWELL, Mayor
City and County of Honolulu