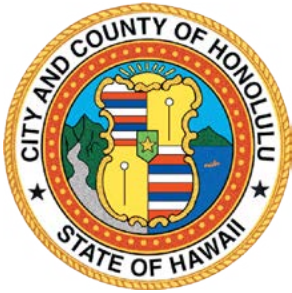




Office of the City Auditor



**City and County of
Honolulu
State of Hawai`i**

**Report to the Mayor
and the
City Council of Honolulu**

Audit of the Permitting and Inspection of Large Detached Dwellings, Resolution 18-223, FD1

**Report No. 19-03
November 2019**

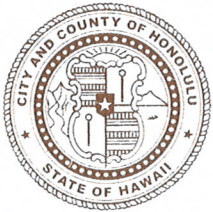
Audit of the Permitting and Inspection of Large Detached Dwellings, Resolution 18-223, FD1

A Report to the
Mayor
and the
City Council
of Honolulu

Submitted by

THE CITY AUDITOR
CITY AND COUNTY
OF HONOLULU
STATE OF HAWAII

Report No. 19-03
November 2019



OFFICE OF THE CITY AUDITOR
CITY AND COUNTY OF HONOLULU

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TROY SHIMASAKI
ACTING CITY AUDITOR

November 13, 2019

The Honorable J. Ikaika Anderson, Chair
and Members
Honolulu City Council
530 South King Street, Room 202
Honolulu, Hawai'i 96813

Dear Chair Anderson and Councilmembers:

A copy of our report, *Audit of the Permitting and Inspection of Large Detached Dwellings, Resolution 18-223, FD1*, is attached. This audit was conducted pursuant to City Council Resolution 18-223, FD1, which requested the city auditor to conduct an audit of the permitting and inspection processes for large detached dwellings.

The audit objectives were to: (1) evaluate the Department of Planning and Permitting's (DPP) management of the building permitting of proposed large detached dwellings; (2) evaluate DPP's management of the building code inspection of permitted construction of large detached dwellings; (3) evaluate DPP's management of the residential code inspection of the uses of large detached dwellings; and (4) make recommendations to improve the administration of permitting and inspection of large detached dwellings.

Background

Large residential dwelling units have become a flashpoint for O'ahu, particularly in neighborhoods with modest, aging homes, where existing dwellings are being demolished and sometimes replaced with larger homes. Today's residential development standards, which have been in place and are mainly unchanged since the late 1960s, were designed to maximize flexibility for property owners. The issue of *monster homes*, which concerned large detached dwellings and their impacts to communities, indicated that additional development standards were necessary to preserve and protect the character and livability of residential areas. Neighborhood opposition and concern can generally be categorized into two camps: 1) physical impacts, sheer size of the structure, parking congestion, and elevating property values, and 2) illegal occupancies, short term rentals, group living, dormitory use, and additional dwellings. Neighbors have raised concerns about dwellings with excessive bedrooms, bathrooms, wet bars, and laundry facilities.

Audit Results

We found that the Department of Planning and Permitting does not effectively manage building permits and inspections related to large detached dwelling units. More specifically:

- The department does not effectively use information from its operations to support its regulatory needs. This lack of assembled information leads to administrative difficulties and delays in researching, reviewing, and monitoring properties systematically or individually. The department's information is not organized to identify at-risk properties, so it is only able to discover issues with qualifying large detached dwellings based on complaints only.

The Honorable J. Ikaika Anderson, Chair
and Members
November 13, 2019
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- The department did not assess the risks of the complaints received and the violations that it issued concerning large detached dwellings. There was no effort to understand the implications of these issues, particularly in the context of the area, community involved, or for residential development in general.
- The department inconsistently applies existing controls on large detached dwellings projects creating unwarranted authorization and difficulties in administration and enforcement. Many large detached dwelling plans were subject to plan expiration but the department did not terminate those plans. Inconsistent application of residential covenants and allowing permits to remain active after the three-year validity period compromised enforcement. Under additional development standards for large detached dwellings, some of these incomplete structures would be forced to comply with expanded regulations concerning their size, common elements, and setbacks, if the department revoked their permits or determined them to be unfinished structures.
- The department does not effectively or efficiently manage its overdue violations leading to lack of accountability for violators and limited deterrent effect. There is a need for better coordination internally within DPP to promptly close out violations and pursue administrative enforcement. Current fees and fines do not seem to deter the violations we observed. Current fines collection by DPP is ineffective and under assesses violations. Furthermore, the department does not pursue all enforcement methods available.

The Managing Director and the Department of Planning and Permitting broadly accepted the audit's findings. The department indicated its agreement that developing a more robust system via its permit review software would improve the monitoring of large detached dwellings during permit review and construction. It is also seeking to increase fee penalties on violators who submit building permit applications after starting unauthorized construction. The department also disagreed with some of the audit's findings. In response, we provided comments and clarifications in the audit report.

We would like to express our sincere appreciation for the cooperation and assistance provided us by the managers and staff of the Department of Planning and Permitting, and the many others who assisted us during this audit. We are available to meet with you and your staff to discuss the audit report and to provide more information. If you have any questions, please call me at 768-3134.

Sincerely,



Troy Shimasaki
Acting City Auditor

c: Mayor Kirk Caldwell, Mayor
Roy Amemiya, Jr., Managing Director
Kathy Sokugawa, Acting Director, Department of Planning and Permitting
Nelson Koyanagi, Jr., Director, Department of Budget and Fiscal Services

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Chapter 1

Introduction and Background

This audit was conducted pursuant to City Council Resolution 18-223, FD1, which requested the city auditor to conduct an audit on the permitting and inspection processes for large detached dwellings (*monster homes*). The City Council adopted measures in the past few years to address the proliferation of large detached dwellings, including placing two-year moratorium on accepting building permit applications for large detached dwellings, and recently amending the land use ordinance to more closely regulate the size and other aspects of dwellings in residential districts. In addition to these measures, the council resolution also requested that the audit review the Department of Planning and Permitting's (DPP) processes by which large detached dwellings are issued permits, and enable it to determine what procedural, organizational, or other changes may be made to allow the DPP to better address the proliferation of large detached dwellings.

Background on Monster Home Issue

Large residential dwelling units have become a flashpoint for O`ahu, particularly in neighborhoods with modest, aging homes, where existing dwellings are being demolished and sometimes replaced with larger homes. Today's residential development standards, which have been mainly unchanged since the late 1960s, were designed to maximize flexibility for property owners. The impact of *monster homes* on their communities, indicate that additional development standards are necessary to preserve and protect the character and livability of residential areas.

Neighborhood opposition and concern can generally be categorized into two camps: 1) physical impacts, sheer size of the structure, parking congestion, and elevating property values, and 2) illegal occupancies, short term rentals, group living, dormitory use, and additional dwellings. Neighbors have raised concerns about dwellings with excessive bedrooms, bathrooms, wet bars, and laundry facilities.

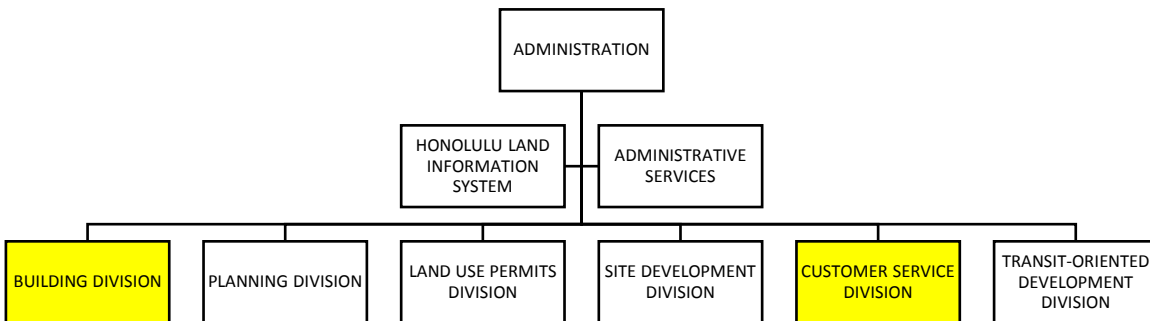
However, it is not necessarily the number and type of rooms and amenities that cause problems in a neighborhood. Rather, the large numbers of people that the dwelling can accommodate generates externalities – impacts to the surrounding neighborhood that are not common to most residential areas. For example, a dwelling that can accommodate many people will generally need more cars. Where there is insufficient on-site parking, competition

for street parking will increase. Traffic congestion may also increase, which can cause public safety issues, especially when emergency services are needed.

Department of Planning and Permitting

The Department of Planning and Permitting (DPP) is responsible for the City and County of Honolulu’s major programs and laws related to land use, from long-range policy planning, community planning and zoning, to infrastructure assessments and regulatory development codes. DPP also manages the Geographic Information System (GIS) used by various governmental agencies and private businesses. The department provides administrative support to the Planning Commission, Zoning Board of Appeals, Building Board of Appeals and the Design Advisory Committee.

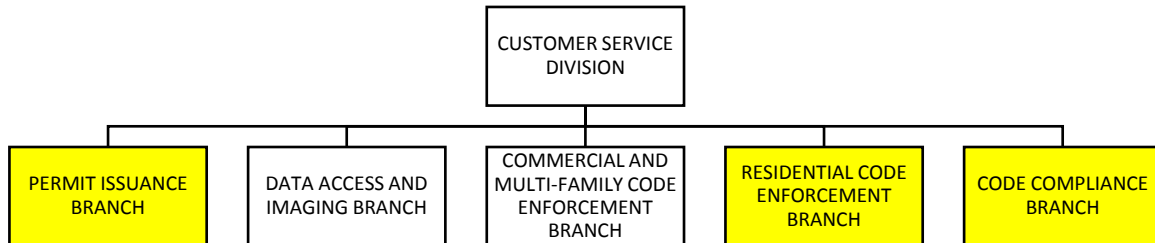
Exhibit 1.1
Organizational Chart – Department of Planning and Permitting



Source: Department of Planning and Permitting

In FY 2018, DPP operating expenditures totaled \$21.6 million, revenues totaled \$20.3 million, and authorized staffing totaled 334 fulltime equivalents, with 56 vacancies. The DPP divisions which contain the permitting and inspection functions pertinent to the audit are the Customer Services and Building divisions. In FY 2018, the DPP Customer Service Division operating expenditures totaled \$3.3 million. The division is subdivided into six branches, as shown in Exhibit 1.2.

Exhibit 1.2 Organizational Chart – Customer Service Division



Source: Department of Planning and Permitting

Customer Service Division

The Customer Service Division operates a consolidated permit counter to:

- handle customer inquiries about various permit requirements and forms;
- process residential/commercial and other minor permits;
- accept permit applications/plans, including e-plans; route them to appropriate divisions or departments; and collect applicable permit fees;
- administer the code enforcement civil fine program; and
- inspect existing buildings, apartments, dwellings and structures in response to customer complaints, including requests for investigation of possible violations of various codes, requirements, rules and other regulations.

The division is comprised of five branches: Permit Issuance, Data Access and Imaging, Code Compliance, Residential Code Enforcement, and Commercial and Multi-Family Code Enforcement. The branches under review are discussed below.

Permit Issuance Branch

The permit issuance branch processes residential/commercial and other minor permits; intakes permit applications/plans, including e-plans, and routes them to appropriate divisions or departments; and collects applicable permit fees. Four plan reviewers review plans submitted with building permit applications. Concerning *monster homes*, the branch has begun to flag suspicious layouts that suggest elements which may indicate a *monster home* type use (e.g., multiple entrances; layouts that can be easily converted to

subdivide living spaces; provide extra unlisted laundry, kitchen, bathroom, or bedroom use easily after building inspection). The branch may require an affidavit or restrictive covenant dedicating the property to residential uses only which will be filed in department records and with the state bureau of conveyances. The covenant is then enforceable against the owner via court proceedings. The permit issuance branch may also issue a temporary certificate of occupancy, which enable the building inspector to enter and inspect a property for an interim period after construction is over.

Residential Code Enforcement Branch

The residential code enforcement branch has a total of seven inspectors. Inspections are conducted for compliance with zoning and housing codes for one and two-family dwellings, sidewalk maintenance, and vacant lot overgrowth. The primary purpose of inspections is to ensure public health, safety, and welfare. Inspections conducted are primarily complaint driven and by referral investigations from other government agency licensing programs. The number of inspections varies based on the number of complaints received. Inspections can increase due to increased public focus or media attention. Concerning *monster homes*, the branch will inspect for non-permitted apartment, transient vacation rental, and other unpermitted residential uses. The following is a summary table of key statistics for residential code enforcement activities in the past five fiscal years.

Exhibit 1.3
Residential Code Enforcement Statistics

<i>Fiscal Year</i>	<i>Total Sidewalks Inspected</i>	<i>Total Vacant Lots Inspected</i>	<i>Total Housing Units with Housing Code Deficiencies Found</i>
FY2014	3,380	252	400
FY2015	2,623	174	338
FY2016	3,108	167	327
FY2017	2,647	154	249
FY2018	2,202	144	169
Total	13,960	891	1,483
Last Year Change	-17%	-6%	-32%
5 Year Change	-35%	-43%	-58%

Source: Department of Planning and Permitting

Code Compliance Branch

This branch has four planners and two inspectors. It houses the civil fine enforcement program that monitors civil fines resulting from violation orders issued by building and residential use inspectors. Concerning *monster homes*, this branch enforces the conditions and collects the fines pertaining to violation orders. It is important to note that an applicant with outstanding fines or violation orders is not prevented from applying for other building permits or city services. In some cases, the fine will be turned over for collection or a lien will be placed on the property that could lead to the foreclosure sale of the property. If a property owner is penalized, payment of penalty fees may be attached to motor vehicle registration fees or driver license service fees when those services are sought.

Building Division

The Building Division administers and enforces the city's building, electrical, plumbing, housing, and zoning codes. The division also enforces the energy conservation ordinance, sidewalk, driveway, grading and other related ordinances and regulations in conjunction with building permit applications. The division provides technical support to the Customer Service Division in their review of permit applications and performs inspections to verify compliance with applicable codes, regulations and ordinances. In addition, it investigates complaints or reports of violations related to projects where a building permit is required or has been issued.

Building Code Branch

Within the Building Division, the Building Code branch conducts code compliance and inspections, and issues certificates of occupancy. Building inspection services inspects for as-built conformance with submitted plans, compliance with the building code, and building with no permit complaints. If problems are found during inspection, the branch will issue a notice of violation indicating the problems and will set a date for correction. The inspector will return later to inspect for corrections and compliance. If no corrections were made, this could result in a violation order that imposes fines, a stop work order to halt all construction, or a revocation of the building permit which removes the authorization to build. Although building code violations are chargeable as criminal misdemeanors, the department's focus is to ensure compliance with the building code rather than seek punishment against applicants.

Regarding *monster homes*, the section reviews large detached dwellings and verifies that certain layouts flagged by the permit issuance branch are planning a structure that may be easily convertible to non-residential uses. During construction, sometimes inspection finds that dwellings or building improvements are being built without a permit. If the violator does not apply for a permit after-the-fact (which applies a double application fee and penalty fees based on the value of improvements), the department can pursue removal of the structure, after progressively providing a violation notice then violation order. In the case of a permitted structure, the department can seek the correction or removal of the non-conforming portions of the structure. Generally, the department will work with these applicants to bring the structure into compliance rather than penalize violators. If the law changes while an applicant does not have authorization to build, the applicant must revise their building plans or conform their as-built structure to the new standards.

In the following exhibits, the five year statistics concerning building code inspections conducted via building permit, complaints, and the number of violation notices issued are presented. The second exhibit shows that inspections caused by complaints is variable and cause between 6-9% of inspections conducted annually. Consistent with the department's characterization, compliance with the building code is the goal, and violation notices after inspection are usually less than 1% annually, meaning that most permitted construction is compliant.

Exhibit 1.4 Building Inspection Services Statistics

<i>Fiscal Year</i>	<i>Building Code Complaints Serviced</i>	<i>Building Code Inspections Conducted</i>	<i>Building Code Violation Notices Issued</i>
FY2014	3,458	61,686	536
FY2015	3,245	49,506	498
FY2016	3,361	52,572	517
FY2017	3,242	68,239	545
FY2018	5,123	54,284	696
Total	18,429	286,287	2,792
Last Year Change	58%	-20%	28%
5 Year Change	48%	-12%	30%

Source: Department of Planning and Permitting

Exhibit 1.5
Total Inspections and Complaint/Violation Percentages

<i>Fiscal Year</i>	<i>Total Inspections</i>	<i>Percentage of Inspections Due to Complaint</i>	<i>Percentage of Inspections Resulting in Building Code Violation Notice</i>
FY2014	65,144	5%	0.8%
FY2015	52,751	6%	0.9%
FY2016	55,933	6%	0.9%
FY2017	71,481	5%	0.8%
FY2018	59,407	9%	1.2%
Total	304,716	6%	0.9%
Last Year Change	-17%	4%	0.41%
5 Year Change	-9%	4%	0.35%

Source: Department of Planning and Permitting

Development controls and monster homes

An objective of the *O`ahu General Plan* is to provide decent housing for all the people of O`ahu at prices they can afford. Policies under this objective dictate that controls should provide decent homes at the least possible cost, streamline approval and permit procedures for housing, and encourage innovative residential development which will result in the more efficient use of streets and utilities.

In most cases where large residential structures have been built, DPP has approved building permits and certificates of occupancy for such structures based on compliance with zoning regulations, which do not restrict the number of bedrooms or wet bars allowed in residential districts. In cases reported by the community and the media, many of these large residential structures are suspected to be illegally converted to long-term rental apartment buildings, housing for multiple families in violation of law, or used as short-term transient vacation rentals.

Upon receiving complaints from the community, DPP has cited landowners for violations in cases where it determined that a violation occurred. Despite such control efforts, the city council believed the rate of construction of large detached dwellings in residential districts appeared to be increasing, resulting in potentially adverse effects on neighborhood character, energy consumption, area infrastructure capacity, and the availability of on-street parking. When these structures are used for short-term rentals, it adversely affects the supply of affordable long-term rental housing.

Legislative efforts concerning the monster home issue

Ordinance 19-3 (2019)

After adopting resolutions and enacting a building permit moratorium on large detached dwellings, the city council passed a new law to address the problem of the illegal use of large residential structures in residential districts. To modernize the city's development standards, the city council found that additional development standards were necessary to:

- preserve and protect the character and livability of our residential areas;
- conserve the beauty and historic character of our neighborhoods;
- reduce storm water runoff into our coastal waters;
- address climate change;
- minimize impacts to existing infrastructure;
- curb the growing problem of regulatory abuses and significant negative impacts to our neighborhoods;
- allow for one-family and two-family households, but not negatively impact extended families and multigenerational households; and
- address the risks and adverse effects associated with large detached dwellings with many occupants, including impacts on municipal sewage systems, street parking availability, and public safety

Additional development standards

On May 1, 2019, the land use ordinance (LUO) was amended under Ordinance 19-3 to more closely regulate the size and other aspects of dwellings in residential districts. Single-family dwellings, two-family detached dwellings, and duplexes within residential districts are subject to these additional development standards:

- The maximum allowed density is a floor area ratio (FAR) of 0.7;
- New limits on the number of wet bars, laundry rooms, and bathrooms allowed on zoning lots;

- New standards for off-street parking; and
- Impervious surfaces may not exceed 75 percent of the lot area.

Furthermore, on lots with an FAR between 0.6 and 0.7, the following regulations apply:

- Side and rear yards must be at least eight feet wide;
- Each dwelling unit must be owner-occupied;
- Dwellings will be subject to inspections for a period of one year after issuance of a temporary certificate of occupancy; and
- A home exemption tax form must be submitted before a certificate of occupancy will be issued.

Monster home data overview

In our review, we examined 200 building permits (for large detached dwellings comprised of 170 properties) under DPP's administration from 2017 through June 2019. The following is a profile summary of their characteristics.

Size

The dwellings we reviewed were very large compared to existing dwellings in their residential zone. The dwellings we reviewed were in the R-3.5, R-5, R-7.5, and R-10 residential zoning districts.

For single-family dwellings:

- 99% were larger than the median structure in their zone
- 61% were between 2 and 4 times as large in floor area

For two-family detached dwellings:

- 92% of two-family detached dwellings were larger than the median structure in their zone
- 59% were between 1.5 and 3 times as large in floor area

We made a comparison to DPP's data on the median size residential structure and median structural FAR in a residential

zone. The median size structure is 3,000 square feet. The median FAR in the residential zoning districts are listed in the table:

**Exhibit 1.6
Median Floor Area Ratio in Residential Zoning Districts**

<i>Residential Zoning District</i>	<i>Median FAR</i>
R-3.5	0.6
R-5	0.4
R-7.5	0.4
R-10	0.3

Source: Department of Planning and Permitting

Compared to the median structure on Oahu (3,000 sq. ft):

- 93% were larger than 3,000 square feet of floor area
- 56% were between 1.5 and 3 times larger than 3,000 square feet in floor area

Compared to the median FAR in their zone:

- 95% were larger in floor area ratio
- 75% had between 1.5 and 3 times larger FAR

Floor area ratio (FAR)

Under the current ordinance, a property owner cannot receive a building permit for a new building or improvements where its ratio of floor area to its lot size is 0.7 or greater. These buildings are considered non-conforming under current law. Dwellings with a FAR of between 0.6 but less than 0.7 may still increase their floor area, but are subject to additional requirements. In our review, we found the following:

- 126 dwellings reviewed (74%) were 0.7 FAR or greater, non-conforming with current land use ordinance
- 14 dwellings reviewed (8%) were between 0.6 and less than 0.7 FAR

- 25 dwellings reviewed (15%) were less than 0.6 FAR
- 5 dwellings reviewed (3%), we did not have data to determine a FAR.

Bathrooms

In the current ordinance, the number of bathrooms is determined by the total lot area. If the number of bathrooms exceeds the current allowance, the dwelling is considered non-conforming. Exhibit 1.7 indicates the maximum bathrooms and half baths per lot area.

Exhibit 1.7
Maximum Bathrooms Per Lot Area

<i>Lot Area</i>	<i>Maximum Baths</i>	<i>Maximum 1/2 Baths</i>
up to 5999	4	1
6000-6999	5	1
7000-7999	6	1
8000-8999	7	1
9000-9999	8	1
10000+	9	1

Source: Department of Planning and Permitting

Bathroom information was only available for 146 of the 170 properties. After this review, we found:

- 88 properties (60%) exceeded the maximum bathrooms permitted by law
- 4 dwellings (3%) exceeded the maximum half bathrooms permitted by law

After applying a combination of FAR and bathroom requirements, we could determine that only 23 of 146 were compliant with both of these requirements. In addition, five of the dwellings with an acceptable FAR did not have an acceptable number of bathrooms, so are non-conforming on this basis.

Owner-occupied

We reviewed the home exemption status of properties. Under current requirements, if a dwelling's FAR is more than 0.6, it must be owner-occupied. A homeowner's exemption must be filed with the city's real property assessment division (RPAD) as proof of owner-occupation of the dwelling.

We found that only 57 of the reviewed properties (33%) had a currently filed home exemption with RPAD. For properties with a FAR of more than 0.6 but less than 0.7, only three of 14 of these dwellings (21%) had filed their home exemption. Based on the assumption that a homeowner will file a home exemption if they occupy their dwelling, the majority of the dwellings reviewed are not owner-occupied, and appear to violate the ordinance.

Restrictive covenant

We also found that DPP determined that 64 building plans required a restrictive covenant before they received a building permit, but only seventeen of these residential covenants were part of their building permit file. In some cases, before issuing a building permit, an affidavit or restrictive covenant dedicating to residential uses only is required to be filed in department records and with the state bureau of conveyances. The covenant is then enforceable against the owner via court proceedings. This requirement is applied to plans that may be easily convertible to a layout or use that will violate the building code or land use ordinance.

Progress status of the dwellings reviewed

We found the following progress status of the building permits reviewed during the audit.

Construction status

Of the permits reviewed (for which data were available):

- 108 permits had completed construction
- 79 were still in progress
- 42% of the building permits are still in construction, permits under active administration

City Council interest properties

Some city councilmembers provided us with listings of properties of concern. Of the 78 building permits deemed questionable,

construction was completed for 55 permits (71%), and the building permits were closed. In these instances, there is no opportunity for continued DPP administration. Oversight must come from monitoring and enforcement of use of these dwellings. Twenty three structures are in progress and under active permit administration.

DPP interest properties

We were provided with property listings for those subject to complaints and violations. Of the 109 permits, construction was completed for 53 permits (49%), and the building permits were closed. The remaining 56 permits were still in progress, and remain under DPP administration.

Administrative status

We determined the administrative status of the 200 building permits. The following is an overall summary of the administrative status of the permits reviewed.

In Permitting Status:

Permits issued:	187
Permit in plan review:	5
Permit approved but unpaid:	1
No permit issued:	4
No data:	3

In Inspection Status (187 building permits issued):

Administration Closed (permits closed):	97
Under inspection:	90

In Enforcement Status (of 170 properties):

Properties with notice of violation:	64
Properties with notice of order:	29

Large detached dwellings were facilitated by a few plan makers

We found that there was a select group of plan makers that created the vast majority of plans for large detached dwellings that we reviewed. We reviewed plans from 44 plan makers during our review. The top plan maker submitted 55 (28%) of the large detached dwelling plans reviewed. In total, we found that the top ten plan makers made 78 percent of the large detached dwelling plans we reviewed.

Owner builder exception

We found 46 building permits (23%) used the owner-builder exception for its construction. There is concern that this method is used to avoid complying with the building code or land use requirements. In our review, we found that DPP issued seven violations to these properties. Six of the violations were subsequently resolved by physical corrections or corrective building permits. The remaining property owner is seeking a corrective permit from the department.

Third party reviewed plans

We found 27 building permits (13.5%) used third party plan review methods for their building permit. There is concern that this method is used to avoid DPP's scrutiny, and complying with the building code or land use requirements. In our review, we found that DPP issued two violations to these properties, and each was subsequently resolved by corrective building permits.

Audit Scope, Objectives and Methodology

The audit objectives were to: (1) evaluate DPP's management of the building permitting of proposed large detached dwellings; (2) evaluate DPP's management of the building code inspection of permitted construction of large detached dwellings; (3) evaluate DPP's management of the residential code inspection of the uses of large detached dwellings; and (4) make recommendations to improve the administration of permitting and inspection of large detached dwellings. The audit findings reported are the only findings from our review.

During the audit, audit staff reviewed departmental files maintained on large detached dwellings concerning building permits, inspections, investigations, violations, and enforcement of applicable laws and regulations, and related project data from calendar year 2017 through the end of fiscal year 2019. This review was largely conducted using the department's system of record, *POSSE*. We determined it to be a reliable information system for the department's information handling needs. Although we identified concern over some information on the system related to completeness, we determined the data to be sufficiently valid and reliable for our review. For issues concerning the review and application of various requirements, we received background information and overview from applicable division staff. We then proceeded with file review and sought clarifications from key staff, as needed. This review, which was criteria-based, focused on the resulting impacts and outcomes

of the department's efforts. We did not apply technical or construction industry standards for making these assessments, or review discretionary decisions made on these bases. This review was conducted from April through July 2019.

Our review generally evaluated if departmental records and information contained sufficient support and documentation of review, inspection, and enforcement decisions, and if they complied with applicable policies, procedures, or laws. We also assessed the control effects of applicable department internal controls, including those related to building permitting, building inspection, residential and use enforcement, and support for decisions concerning restricting property owners by restrictive covenants and temporary certificates of occupancy. For purposes of this audit, we assessed the adequacy and sufficiency of information and data pertaining to large detached dwellings, individually and in general, using professional judgment and reasonableness in review of meeting compliance, criteria, or management objectives.

We reviewed applicable department policies and procedures concerning the areas under review and audit objectives. We also reviewed relevant state laws and administrative rules, the city charter, city ordinances, and city resolutions. We interviewed members of the department's management, supervisors, and other staff. We had discussions with community and business members about their concerns regarding large detached dwellings and the impacts to their community.

We reviewed a sample of 200 building permits for large detached dwellings. This sample was assembled from a combination of properties of interest to policy makers, the department, and community complaint interest. Generally, the activities concerning these properties are of continuing monitoring interest to both policy makers and the communities, so in our assessment, they were most appropriate for our review. We conducted physical observations and visits of these large detached dwellings for background.

We addressed concerns that there may have been fraud, abuse or conflicts of interest that occurred in the department's handling of large detached dwelling permits and complaints. We initially discussed these issues and concerns with policy makers and affected community and business members. As part of our review, we individually reviewed properties of concern and complaint interest, placing attention on areas or opportunities for misfeasance or conflict in the review or approval processes.

According to government auditing standards, we are obligated to make an appropriate referral to the authorities when such evidence emerges during our review.

Our review did not confirm these allegations of fraud, abuse or conflicts of interest, or find evidence to make a referral to the department or law enforcement. We acknowledge that it was highly unlikely that we would find such evidence present in the department's collection of files and information without direction and input from people familiar with or involved with the alleged wrongdoing, abuse, or conflicts. The results of this review are in Chapter 3.

We researched several jurisdictions to determine whether it would be feasible for the city to establish an independent commission to oversee architecture and planning regulations, and serve as a check on the department. Our findings are presented in Appendix B. As above, most jurisdictions are set up similar to Honolulu, with a planning commission, and a defined appeals process. A few jurisdictions have established special areas of emphasis for planning or review to be applied to development in their jurisdictions. Creating an independent review commission concerning large detached dwellings or to review department decisions would be a similar kind of policy decision.

The Office of the City Auditor issued the Review and Assessment of the Department of Planning and Permitting's One-Stop Permit Centers (Report 04-02) in June 2004. The audit focused on the department's One-Stop Permit Centers as representative of administrative and departmental efforts to improve the city's building permit processing system. The audit found that the major re-engineering of the city's building permit approval process was implemented without careful, coordinated, and integrated implementation of all elements to ensure maximum potential for its success. The department and the past administration failed to adequately address the personnel requirements needed to effectively support the changes implemented, and attain the projected efficiency and effectiveness improvements in the building permit process.

Our office is concurrently conducting a performance audit pursuant to City Council Resolution 18-284, CD1, FD1, which requested the city auditor to conduct a performance audit on the department's process for reviewing building permit applications. Although this audit is also within the customer services division, this audit is primarily focused on reviewing the permitting process, and making recommendations for improving

the experience of building permit applicants, including but not limited to reducing processing time, and providing applicants with a timely update on the status of their permit applications. This requested audit is concerned with timely permit issuance and effective program administration. This audit is currently in its reporting phase.

This audit was performed in accordance with generally accepted government auditing standards from February to October 2019. These standards require that we plan and perform the audit to obtain sufficient and appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Audit Results

Ordinance 19-3 provides specific regulatory criteria that need to be evaluated when reviewing and administrating permits for large detached dwellings. The department does not effectively use information from its operations to support its regulatory information needs. This lack of assembled information leads to administrative difficulties and delays in researching, reviewing, and monitoring these properties systematically or individually. The department's information is not organized to identify at-risk properties, so it is only able to discover issues with qualifying large detached dwellings based on complaints only.

The department did not assess the risks of the complaints received and the violations that it issued concerning large detached dwellings. There was no effort to understand the implications of these issues, particularly in the context of the area, community involved, or for residential development in general. By not aggregating that information, the department did not produce knowledge or information that could have led to effective and proactive administration, monitoring, and regulation of problems emerging from the development of large detached dwellings across O`ahu.

The department inconsistently applies existing controls on large detached dwellings projects creating unwarranted authorization and difficulties in administration and enforcement. Many large detached dwelling plans were subject to plan expiration but the department did not terminate those plans. Residential covenants provide the department with a tool to enforce against inappropriate uses in residential districts; however it

is inconsistently applied. Incomplete construction that has not passed inspection over time can burden inspection administration. Some permits have exceeded their three-year validity, but the department has taken no action to revoke them. With the additional development standards for large detached dwellings, some of these structures would be forced to comply with expanded regulations concerning their size, common elements, and setbacks.

DPP does not effectively or efficiently manage its overdue violations leading to lack of accountability for violators and limited deterrent effect. Under the current system, violations take time to be resolved. DPP will work with offenders towards compliance with current codes and regulations in the interest of safety and orderly building. There is a need for better coordination internally within DPP to close out violations and pursue administrative enforcement. Current fees and fines do not seem to deter the violations we observed. Current fines collection by DPP is ineffective and under assesses violations. Furthermore, the department does not pursue all enforcement methods available.

Chapter 2

Decision Support, Complaints and Investigations

The Department Does Not Effectively Use Information From Its Operations to Support Its Regulatory Information Needs

Ordinance 19-3 provides specific regulatory criteria that need to be evaluated when reviewing and administering permits for large detached dwellings. DPP currently does not effectively manage data from permitting and inspection data to provide staff with the information needed to properly review and regulate these dwellings. Very little compliance information about how large detached dwellings comply with criteria is assembled on the department's information systems to support regulatory decisions. This lack of assembled information leads to administrative difficulties and delays in researching, reviewing, and monitoring these properties systematically or individually. Staff has created workaround methods to deal with informational support shortcomings, but these have fallen short in effectiveness. The department's information is not organized to identify at-risk properties, so it is only able to discover issues with qualifying large detached dwellings based on complaints only.

Background

To address the problems associated with large detached dwelling, known as monster homes, the city council passed Ordinance 19-3. Specifically, the ordinance addressed the problem of illegal use of large residential structures in residential zoning districts, and attempted to curb regulatory abuses and significant negative impacts to neighborhoods, without negatively impacting homes for extended or multigenerational families. This ordinance provided additional development standards for proposed new large detached dwellings, additions, or alterations which will result in a large detached dwelling. As a result, single-family, two-family detached dwellings and duplexes in residential districts are subject to additional development standards. These standards create specific regulatory criteria for the permitting, inspection, and use enforcement of large detached dwellings in the residential zone.

Ordinance 19-3 provides specific regulatory criteria that need to be evaluated when considering large detached dwellings

Ordinance 19-3 established additional development standards for single family dwellings, two family detached dwellings and duplexes in the residential zone. These include:

- maximum allowed density floor area ratio (FAR) of 0.7;
- new limits on the number of wet bars, laundry rooms, and bathrooms allowed on zoning lots;
- new standards for off-street parking; and
- impervious surfaces may not exceed 75 percent of the lot area.

On lots with a FAR between 0.6 and 0.7, the following regulations apply:

- side and rear yards must be at least eight feet wide;
- each dwelling unit must be owner-occupied;
- dwellings will be subject to inspections for a period of one year after issuance of a temporary certificate of occupancy; and
- a real property tax home exemption tax form must be submitted before a certificate of occupancy will be issued

DPP must consider these criteria in any regulatory decision to issue a building permit, inspect, and review the land use of a proposed or existing large detached dwelling.

Very little data is presently assembled in POSSE to enable effective decision making or regulation by criteria

The department's permitting, inspection and residential use enforcement operations produce a great deal of information about structures, zoning, building permits, investigations, violations, uses, and other information associated with a property. Most of this information is captured with the department's system of record, POSSE, and is listed separately as a series of property information, individual building permit, request for investigation, violation, and other key details. There are currently no summary details in the department's system concerning these regulatory factors and their associated parcels, and the following details are

not immediately available for review and use by departmental staff in their permitting, inspection, or use enforcement duties:

- No floor area ratio is calculated, and no current structure floor area listed
- No count of bedrooms, bathrooms, wet bars and laundry rooms is listed
- No off-street parking information listed
- Restrictive covenant status
- No set-back and yards information is listed
- No information is listed about owner occupancy
- No summary of inspection information is listed
- Structure status: above 0.7 FAR is now non-conforming

The information is somewhere, but not intentionally assembled for ease of review use

Department staff indicated that all the information needed to regulate the large detached dwelling's regulations or perform their tasks regarding permitting, inspection, or use enforcement is somewhere--It just needs to be located. This creates built-in difficulties and delays for staff to review and research through numerous sources of information each time the information is needed to make an appropriate decision. Although encouraged by management to apply the information discovered and avoid redundant intensive research into the same issue, the assembly of the information about large detached dwellings is not converted into details that could be useful to review and regulatory purposes going forward.

Current system is not set up to provide information critical to monitoring situations

The information in the POSSE system is not easily researched or queried. Due to the age of the system, staff indicated that there are preset queries that exist which were useful at the inception of the system twenty years ago, but are not useful to current users, management, for resolving research questions, or generating ad hoc queries. Specialized queries often need to be conducted by the software's support vendor, and cannot be done by department management or staff. This places certain reporting beyond management's ability to access information which may be critical to monitoring and regulating certain issues, answering emerging

questions, or effectively administering programs within certain regulatory criteria.

Efforts to compensate for inadequacy in system information have fallen short

Regulatory changes brought on by Ordinance 19-3 have prompted department staff to make compensatory efforts to collect important information that POSSE does not collect. According to staff, summary details about regulatory factors cannot be entered into the system and later aggregated in the form of usable data. In the area of large detached dwellings (LDD), staff have taken to noting "LDD" within building permit information, describing number of bedrooms and bathrooms in building permit descriptions or notes, or maintaining separate spreadsheets with assembled property information and listings about monster homes, monster home complaints, and monster home violations. These notations are done informally and inconsistently, making it difficult for DPP to properly enforce applicable regulations. For example, we found that:

- Marking LDD on building permits has not been applied consistently to all non-conforming large detached dwellings by law. As a result, there is no accurate inventory of large detached dwellings under the department's jurisdiction at any given time. Initially the LDD marking was used to identify dwellings with large floor areas and would serve as an alert to building inspectors during the building permits review process. However, this was not done retrospectively to account for all other building permits issued for large detached dwellings. In our review, we found only 3 building permits marked LDD, so it was not used enough to be useful for identifying the total number of large detached dwellings.
- Manually noting bedroom and bathroom information to identify large detached dwellings was also not consistently applied. Initially, DPP management advised plan review staff to identify layouts with 10+ bedrooms and route them to the supervisor for review and consideration for a residential use restrictive covenant. We found 2 examples where a large number of bedrooms and bathrooms were noted in building permit file information, so this also was not used enough to be useful for identifying the total number of large detached dwellings.

- Separate listings created by staff are incomplete or inaccurate. We reviewed several spreadsheets listing building permits or dwelling information about monster homes. We found certain dwellings that did not fulfill the criteria for being a non-conforming large detached dwelling by law. Some were listed because someone had complained about the structure without regard for whether it fit into regulatory criteria requirements.

Alert advisory flagging could improve monitoring

Until the POSSE system or an alternative system can be developed to properly and consistently manage permitting data, the department can make better use of POSSE's red alert advisories system. According to management, the department uses alert advisories, highlighted in red, to notify its permitting, inspection, or use enforcement staff of properties which have violations that need immediate attention, building permits that require a double penalty fee, or building permits that should not be released subject to certain conditions. The red alert advisory should be formally incorporated into DPP policies and procedures, including identification of dwellings or properties subject to new large detached dwelling regulations. By doing so, staff can properly carry out DPP's regulatory duties and comply with city ordinance. According to a/the POSSE administrator, the system has additional data tracking capabilities that have not been used.

Identifying at-risk status of dwellings can be done using current regulatory criteria

With Ordinance 19-3, large detached dwellings can be identified as at-risk properties requiring additional attention or review consideration, provided that certain information and details about the dwelling or parcel can be listed within the department's information system.

The ordinance provides guidance as to how the department could prepare an at-risk inventory of properties that can be identified based on certain factors:

- Nonconforming, for those dwellings with a floor area of 0.7 or greater
- Dwellings with a floor area of above 0.6 are subject to additional regulations
- Of complaint interest, even if currently not qualifying

In our review, we identified 126 properties which had a dwelling that could be considered non-conforming due to its FAR of greater than 0.7. These permits would be subject to the land use provisions on non-conforming structures, and the homeowner could not add any more floor area. Furthermore if the structure were destroyed it would have to conform with current law if the replacement costs were greater than 50 percent of its value. These structures could be at risk for making additional improvements without a building permit or altering the existing structure. However, none of these properties were identified for this risk and DPP did not exercise additional monitoring to ensure that these structures continued to comply with the law.

We also found 14 properties with dwellings that would be subject to additional regulations due to their FAR of between 0.6 and 0.7 ratio. For example, if the dwelling does not already comply with side and rear yard requirements, it is a non-conforming structure. If a dwelling would fall in this FAR range with a proposed addition, it must comply with side and rear yard requirements and be owner-occupied. The 14 building permits we identified would foreseeably be at risk for making additional improvements without a building permit or meeting additional requirements, or altering the existing structure. However, these permits were not identified as high-risk and DPP did not flag it for future monitoring.

In addition, we found 25 building permits that had a complaint or violation filed, and were listed by the department in the monster home lists, but not currently subject to non-conforming status or additional regulations. We could not determine why they were grouped with large detached dwellings. Due to complaint or violation interest, these could be identified as potentially at-risk should additions or alterations be proposed to the existing dwelling in the future. In this example, the department relied on public complaints as the basis for added review and regulation, rather than identifying the actual violation or risk associated with the structure.

The department needs to identify at-risk properties for effective monitoring and regulation

Currently, DPP does not effectively manage permitting data to provide staff with the important data needed to properly regulate building permits. If the department does not properly identify at-risk properties, it will always be discovering issues with qualifying large detached dwellings based on complaints only. The department reported to us that submissions for large detached dwellings declined substantially with the moratorium

on building permits. However, those dwellings that are still in construction or now in use, but pose continued regulatory risks for the department should be identified and put on the department's radar to monitor and enforce compliance with the various codes, land use and residential use provisions.

Complaints and Investigations Did Not Lead to Better Administration and Regulation of Large Detached Dwellings and Their Impacts

The department relies heavily on complaints to discover building code, land use and/or residential use violations. Being complaint-driven, the resulting number of inspections and investigations can be variable and driven by public concerns about certain issues. The department did not assess the risks of the complaints received and the violations that it issued concerning large detached dwellings. There was no effort to understand the implications of these issues, particularly in the context of the area, community involved, or for residential development in general. By not aggregating that information, the department did not produce knowledge or information that could have led to effective and proactive administration, monitoring, and regulation of problems emerging from the development of large detached dwellings across O`ahu.

Background

The department investigates complaints or reports of violation for projects where a building permit is required or has been issued. It will also conduct inspections based on complaints about possible violations of the zoning and housing codes for one and two-family dwellings. Complaints include issues typically attributed to large detached dwellings such as non-permitted apartment, transient vacation rental, and other unpermitted residential uses. The primary purpose of the investigations is to ensure public health, safety and welfare, and compliance with zoning and residential uses. Our review found that for calendar year (CY) 2018, DPP investigated 124 complaints. Out of these, the department issued 36 violations, and continued to monitor 27 violations issued in 2017. In total, the department was monitoring 64 large detached dwelling violations from CYs 2017 through 2018.

Not every complaint is valid, but complaints make the current system work better

Being complaint-driven, the resulting number of inspections and investigations can vary and be driven by public concerns about certain issues. In CY 2018, the department received 124 complaints about large detached dwellings. Complaints generally focused on whether structures being built were legal, how they were being constructed, and how they were being used. At the time of review in CY 2019, the department had received only six complaints about large detached dwellings, a large decline from

the previous year. The department considered this the result of diminishing public interest in the subject and the result of legislation to curb the development of large detached dwellings.

Filing complaints does not mean that violations will be found

We note that filing a complaint does not ensure that deficiencies are present, will be found, or that a violation has occurred. However, public complaints are helpful to the department because it cannot monitor each construction site on a daily basis and some violations cannot be identified or detected by the department without residents complaining about certain construction or uses of large detached dwellings.

One of the advantages of a complaint-based approach is that the department can get a better sense of what people are concerned about in a neighborhood. The department can then assess what concerns are emerging in complaints, what violations have been found, and how widespread the issues are (e.g., property specific, area specific, islandwide). In our review, we found the following resident concern areas noted by the department:

- Is the building following plans?
- Is the construction approved/does it have building permits?
- Size of building in the building envelope (e.g. 50% lot coverage)
- Concerns about a monster home being built
- Effects of large home, such as parking and use

In our analysis, concerns about large detached dwellings evolved in part due to increased public awareness of the monster homes issue, construction or compliance issues, concerns about large detached dwellings' use, or their overall effect to the community. It is important to note that some complaints and concerns are not resolvable by, or under the department's jurisdiction.

Certain issues about the construction of large detached dwellings raised such as working conditions, project safety, alleged use of underage laborers, apparent use of migrant labor, clean air violations, nuisances, etc. cannot be resolved by the department because those issues fall under other jurisdictions. Furthermore, current ordinance and department guidelines does not prohibit DPP from issuing building permits for violations outside of its

jurisdiction. There are other departments in local, state, and federal government that review and enforce requirements related to these resident concerns.

We found that there is a gap area where more coordination and communication between the department and other regulatory bodies could promote a more efficient handling and resolution of resident concerns. While we understand that community members direct their frustration at departmental staff because they may be the most visible during project construction, there is a need for greater public information and awareness in this area and how different government agencies can help them resolve their concerns.

Large detached dwelling regulatory problems evolved and persisted without proactive management

The department did not assess the risks of the complaints received and the violations that it issued. Although it noted individual concerns and kept records of violations, there was no effort to understand the implications of these issues, including whether they were property specific, area specific, or an islandwide issue. Instead, we found that each complaint and resulting violation was viewed by the department as a singular occurrence, and not in the context of the area or community involved or residential development on the island. By not aggregating their data, the department did not produce knowledge or information that could lead to proactive administration, monitoring, and regulation of problems emerging from the development of large detached dwellings across O`ahu.

The department's approach also demonstrated that operations are practically siloed in terms of sharing information that would help to more efficiently or effectively address the issue of large detached dwelling units in the community. For example, regulatory information was not communicated between permitting, inspection, and residential use enforcement. As a result, DPP was not effective in identifying emerging risks, issues, and problems associated with large detached dwellings and it could not adequately address how building permits for large detached dwellings were issued, buildings were inspected, or land use/illegal uses were investigated.

When complaints continued to come in during construction of large detached dwellings, there was a hindsight sense within the community and policy makers that something was amiss in the process and concerns arose questioning how the city could allow such structures to be built. It would have been much more prudent to deal with the potential issues during the permit review process and subsequent monitoring of high-risk projects,

rather than dealing with complaint issues that emerged during or after construction. At that later point, there is very little that can be practically done, despite continuing complaints or public dissatisfaction.

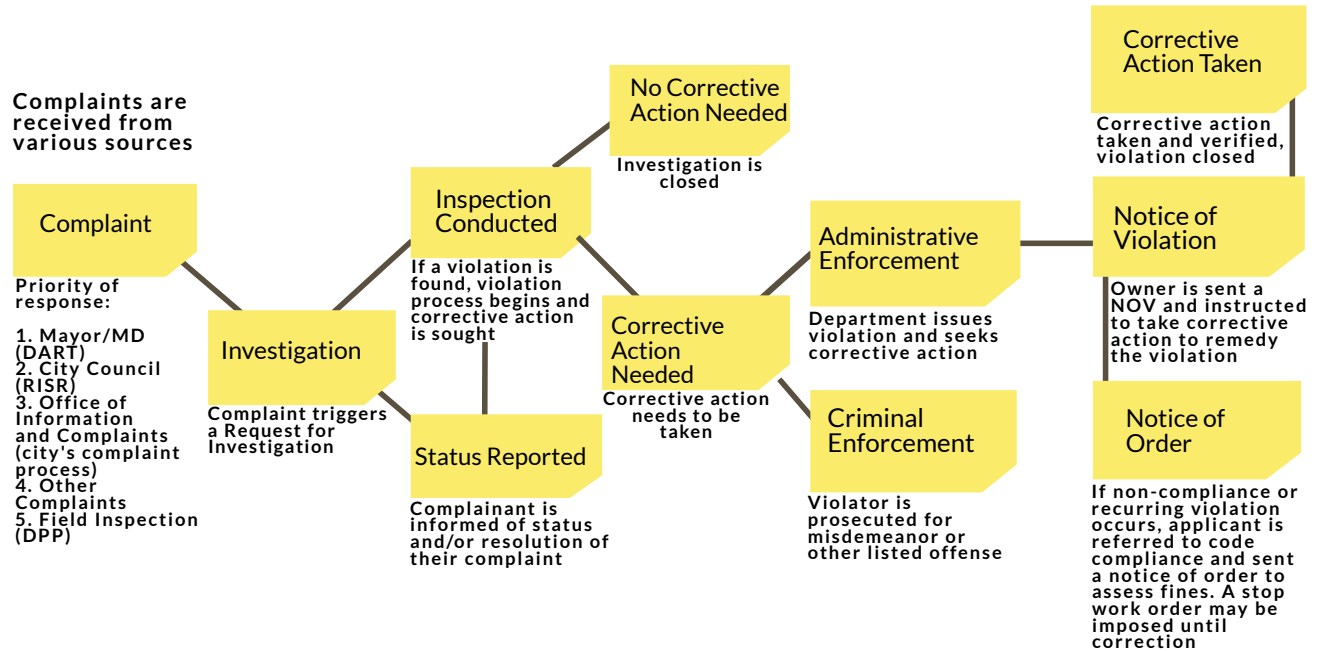
We found that the department has been generally dismissive about community concerns, insisting that this kind of development was permissible under previous development standards. Responding only when legislation was passed to deal with these issues was entirely too late because the large detached dwellings and their impacts were already established and affecting residential communities. Moreover, when attention is not paid to emerging issues and residential concerns, the overall ability to regulate appropriately suffers and residents have to deal with the undesirable outcomes that result in their community. Under these conditions, the department became less able to ensure orderly development according to land use policies, zoning, and maintain designation or restriction of certain uses within the residential zone. Where its actions should have been consistent with its policies and responsibilities to promote and protect public health, safety and welfare, it was less able to do so.

Who complains may determine quicker handling and resolution

We also found inefficiency within the department's handling of complaints and investigations. We identified that not all complaints received equal priority in their handling and resolution. Complaints from political representatives are given the highest priority of response.

The department has established general timeframes to deal with complaints in a prompt and responsive manner. They aspire to have most complaints assigned for investigation, investigated and inspected, and responded to within a week. Per the infographic below, the department established a priority of response depending on the source of the complaint.

**Exhibit 2.1
Complaint to Violations Process Infographic**



Source: Department of Planning and Permitting

Complaints directed to DPP from the mayor’s or managing director’s offices or city council members receive the highest priority of response. Staff indicated that they try to service these within one to three days. Complaints from the public not routed through the city’s Office of Information and Complaint (OIC) receive least priority except for internally being made in the department.

The majority of complaints come from the City Council and the public

Our review revealed that the majority of complaints concerning large detached dwellings logged by the department were from the city council and then directly from the public, with the remaining coming from miscellaneous complaints from the mayor’s office, managing director, OIC, and other political representatives. The response times varied no matter the source, with most being logged as completed by the department within two weeks, with the majority being completed in seven days or less.

Time to resolve complaints is caused by different factors, including priority

There were a few complaints that took more than 30 days to resolve. In these cases, the department had difficulty investigating and completing the complaints due to an inability to schedule and perform inspections in a timely manner. A common issue experienced by building and residential use inspectors is the inability to enter properties without providing notice to the property owner and then finding a convenient time to conduct the inspection and evaluate the complaint.

We found that certain complaints sourced to the managing director's office or council members received comparatively faster service, with most concluding the same day and most within two weeks. Others took longer due to the complexity of research and analysis to investigate complaints. Given stated priorities, we could not determine that the preferential treatment as general rule always resulted in faster response, investigation, and resolution of a complaint. We note however that the danger of prioritizing responses to the complaints of political representatives gives the appearance of unequal treatment and access to complaint resolution, and less priority given to public and community concerns.

Recommendations

The department should:

1. Assemble its information regarding qualifying large detached dwellings to enable its use in permitting, inspection, and use enforcement operations;
2. Develop lists of at-risk large detached dwellings now considered non-conforming or subject to additional requirements for monitoring and enforcement purposes;
3. Develop at-risk criteria derived from complaints and violations throughout its permitting, inspection, and enforcement actions based proactively dealing with problematic issues and their effects; and
4. Amend current policies and procedures to establish response priorities for complaints based on first on individual complaints from the public followed by other complaint sources.

Chapter 3

Permitting and Inspection Controls

The Department Inconsistently Applies Existing Controls on Large Detached Dwellings Projects Creating Unwarranted Authorization and Difficulties in Administration and Enforcement

The Department of Planning and Permitting (DPP) could use existing permitting and inspection controls to better administer its program. Many large detached dwelling plans were subject to plan expiration but the department did not terminate those plans. Residential covenants provide the department with a tool to enforce against inappropriate uses in residential districts; however it is inconsistently applied. Internal alterations and partition violations are a specific area where enforcement of residential covenants could result in better deterrence against these unplanned illegal conversions. Incomplete construction that has not passed inspection over time can burden inspection administration. Some permits have exceeded their three-year validity, but the department has taken no action to revoke them. If the department revoked expired permits, the property owner would have to demolish or seek a new building permit under current laws and regulations. With the additional development standards for large detached dwellings, some of these structures would be forced to comply with expanded regulations concerning their size, common elements, and setbacks.

27 large detached dwelling plans exceeded the 365-day review period, but were issued permits

Building permit applications for some large detached dwellings and their improvements should not have been approved due to the expiration of time review. In our review of 200 building permits, we found that 32 large detached dwelling building permit applications (16%) exceeded the 365 day application period for plan review provided by law (Sect. 18-6.4, ROH) and should have expired. Instead, the department kept these applications open, committed resources to administer them, and did not collect the requisite new plan review fee. More importantly, the applicants did not resubmit a revised application, which would allow the department to re-examine these large dwelling unit plans from the beginning and take necessary action.

Of the 32 applications that exceeded the 365-day review period, 27 building permits were issued. However, since the applications exceeded the time limit, DPP should have required a renewal of their applications. We found no documented action to extend or renew these applications after they expired, resubmit plans or pay a new plan review fee. Twenty-three of these permit applications took more than a year to issue the building permits, and four took more than two years. The remaining five applications are still

open but inactive, all under review for more than 500 days with no permit decision, with one undecided for four years.

Within our sample, the 27 approved applications amount to 14 percent of all the permit applications reviewed. These should have been rejected as non-compliant, too time consuming, and contributing to an unwarranted allocation of resources and time on plans that could not be approved within a reasonable time frame. Furthermore, DPP did not collect additional plan review fees as required to account for the extra time to administer, review, and issue their building permits.

Residential covenants are inconsistently required of applicants

One of the major concerns about large detached dwellings is their potential for illegal uses in residential districts. DPP has the responsibility to review building plan applications and determine if a layout or proposed use of a building can be readily converted to an alternative layout or use in violation of the land use ordinance and/or the building code. The department can require the owner to file a sworn affidavit that the layout or use of the building will not be converted at a future date, or is inconsistent with the original building permit or planned residential use. Any residential use restriction required by DPP would be binding on any tenant, lessee or subsequent owners of the building for as long as the building is in use, unless released by DPP. The property owner must present a certified copy of the covenant recorded with the bureau of conveyances prior to the issuance of the building permit. Filing for a building permit is considered an official proceeding where making a false statement is punishable by law. Persons making false statements about their residential use or who file a false residential covenant are deemed to have committed perjury according to state law, which is a class C felony.

Large detached dwellings, or *monster homes*, became a point of emphasis for building permit reviewers in 2017. If reviewers saw a suspicious layout with 10 or more bedrooms, they would seek the approval of the division's supervisor, who would recommend the filing of a restrictive covenant prior to the issuance of a building permit. The reviewer would then pull a restrictive covenant packet for the applicant and mail it to the applicant. Upon completion, the applicant would then file a restrictive covenant and bring the certified copy to DPP in order to receive their building permit.

The evidence of controls being applied to prevent suspicious uses was very inconsistent

In our sample review of 200 large detached dwelling unit applications, we found that 64 permits required a residential covenant, but only six had a copy of the restrictive covenant in their permit file. Conversely, 132 permits were indicated as not requiring a residential covenant, yet 11 had copies of restrictive covenants in their permit file.

We could not determine the rationale for why restrictive covenants were attached to these applications because none of the files documented the reasoning to require or forgo a restrictive covenant before the building permit was issued. We then analyzed the underlying control actions to determine whether a reviewer thought that a restrictive covenant might be appropriate for some permit applications.

In our review of the underlying control actions, we found that:

- The certified copies of 17 restrictive covenants were in building permits files, but 10 of these files had no documented control actions.
- Plan reviewers recommended that residential covenants be filed in 58 files. DPP staff indicated that these decisions are largely left to the reviewer's professional judgment.
- Only three of these files recommending a covenant documented both the recommendation and covenant packet sent to the property owner.
- Supervisor approval was documented seven times in the files, with only four documenting a covenant packet mailing.
- Covenant packets were documented in files as sent to property owners for 47 permit files, including the seven previously discussed.
- There were no control actions documented concerning restrictive covenants in 91 of the files. Four files had no data.

Combining covenant packets (47) and reviewer recommendations (58) on the assumption that this meant a reviewer determined a restrictive covenant was required, 105 files had evidence that a restrictive covenant should have been required of an applicant,

yet only 17 were documented as recorded in the permit files we reviewed. Plan reviewers did not consistently review large dwelling unit applications, determine or document their decision whether a residential covenant was required, or ensure that covenants were filed and documented prior to permit issuance. As a result, the department is unable to criminally enforce restrictive covenants against property owners whose use or construction of large detached dwellings is inconsistent with their approved building permit, which includes its promised use. By not following through with ensuring restrictive covenants were filed and documented prior to building permit issuance, the department loses one of the controls it has in place to assure that residential structures are built and used as approved.

Internal alterations and partition violations may have been avoided or enforced more effectively

In our review of 200 large dwelling unit permit applications, we found 19 violations that were related to internal alterations or partitions that raised red flags for questionable future use or construction. However none of these building permit files had any evidence that a residential covenant was filed.

Although we found no evidence of residential covenants in the files, there was indication in 16 of the 18 files that plan reviewers deemed them necessary (7 times), and residential covenant packets were mailed to property owners (9 times). Without documented justification, it is difficult to determine why a residential covenant copy should not be a part of the permit files given these control actions. With a certified copy, the department could decide whether to criminally enforce the terms of the restrictive covenant on violators, and this might provide a deterrent effect to those who might attempt to subvert land use or building codes by falsifying or omitting intended improvements from plans. Accessory dwelling units also have restrictive covenant requirements designed to deter short term rentals or use as a transient vacation unit.

Very few ADUs had restrictive covenants on file concerning leasing minimums intended to curb short term rental uses

Accessory dwelling units (ADUs) are intended to provide rental housing. An ADU is an accessory, or second, dwelling unit including its own kitchen, bedroom, and bathroom facilities, attached or detached from the primary dwelling unit on the zoned lot. ADUs are intended to be an accessory to the main house, and are typically much smaller and sited to the rear or side of the primary dwelling unit.

Since September 2015, ADUs are required to be leased for a minimum of six months (180 days) (Sect. 21-5.720(c)(7), ROH). This requirement should be recorded in a covenant running with the land and filed with the bureau of conveyances or the land court of the State of Hawai'i, or both, as appropriate. This requirement facilitates enforcement and deters the ADU from being used as a transient vacation unit.

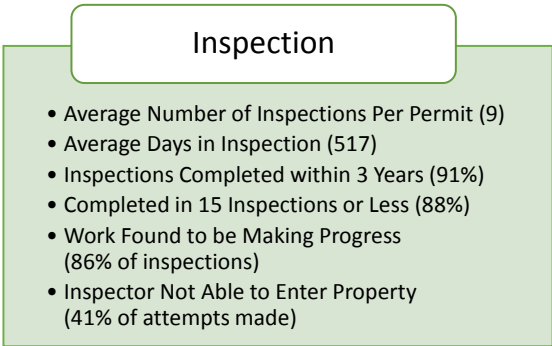
In our sample review, we found that only 3 of the 23 ADU permits reviewed had copies of restrictive covenants in their permit file. There were no documented justifications concerning ADU covenants in the 23 files reviewed. Similar to residential covenants, a properly filed restrictive covenant enables the department to decide whether to criminally enforce the terms of the restrictive covenant on violators who might be using the ADU as a short term rental, unauthorized transient vacation unit, or other use inconsistent with the requirements for an ADU. Furthermore, consistently filing restrictive covenants when applicable might provide a deterrent effect to those who might convert their ADU into this prohibited use.

Inspection controls to manage the administration of some large detached dwellings were inconsistently applied

Background

Once an applicant receives a building permit and begins construction, DPP inspectors visit the site to ensure that the structure is built according to the approved drawings and codes. If there are deficiencies, the project can be stopped, and/or a notice of violation (NOV) issued. When projects are completed, they are usually issued a certificate of occupancy, which means all code requirements, including any applicable conditions of approval, are met.

**Exhibit 3.1
Inspection Data from Review**



Source: Department of Planning and Permitting

Permitted work is subject to inspection

All construction or work related to a building permit is subject to inspection by the department. The permit applicant must make the work and work site accessible for DPP inspectors to conduct their review. In addition, construction personnel must notify the department that the work is ready for inspection and provide the required one-day advance notice in writing or by phone.

Incomplete construction that has not passed inspection over time can burden inspection administration

According to Sect. 18-5.3(c), ROH, building permits are valid for three years. After receiving their building permit, permit applicants have up to three years to complete construction and obtain necessary inspection approvals. After three years, DPP has the authority to revoke the building permit. We found several instances where permits for large detached dwelling units exceeded the three-year time period for review, but were not revoked. We were unable to definitively determine why these permit applications remained active beyond their three-year window. As a result, DPP inspectors wasted time and resources to inspect non-progressing construction projects and did not consistently apply an internal control to properly monitor and terminate non-compliant projects.

We identified 18 large detached dwelling building permits that had exceeded the three year validity of their building permit. Two projects completed construction and passed building, electrical and plumbing inspection despite exceeding their permit's validity. The other 16 properties are still under construction and for the most part have not passed some or all of their inspections. For example, some properties face the following challenges:

- 504 days past their permit's expiration, has not passed any inspections, and includes a 10 month span where inspectors found no construction progress
- 895 days past their permit's expiration, has not passed any inspections, with the last electrical inspection in 2015
- 2,040 days past their permit's expiration, has not passed its plumbing and electrical inspections, the building was not able to be entered for 3 years, plumbing has not been inspected since 2012 and electrical inspectors have not been able to enter since 2017.

Other problems observed include:

- Applicants not making projects available for inspection as needed. We noted five permits where there had been no building inspection for between six months and one year.
- Applicants were requesting inspections without making appropriate progress to justify inspections. In one case, the permit had four inspections with DPP inspectors finding that no progress had been made. This amounts to wasting the inspector's time and efforts.
- Applicants were making no progress towards completing construction or complying with codes. In one case, there was a 10 month span with no progress. In another, the application was in work not started status for 5 months. According to Sect. 18-5.3(c), ROH, making satisfactory progress is a condition of keeping a building permit valid, and insufficient progress can be grounds to suspend or revoke permits (Sect. 18-5.4).
- Applicants not requesting timely inspections. We found instances where large time gaps between sets of inspections occurred. In one case, there was a 28 month gap between inspections. In another case, two periods of one year gaps elapsed between sets of inspections.
- Inspectors unable to enter and inspect for extended periods of time. In one case, DPP inspectors were unable to access the work site to inspect for: building inspection (3 years), electrical inspection (2 years), and the plumbing was not inspected since 2012.
- We generally found that for most lengthy permit reviews, incomplete construction was the primary reason, followed by an applicant's inability to pass building, plumbing, and/or electrical inspections in a timely fashion.
- There were buildings that were completed, but still had not passed inspection. In one case, the building was completed in December 2016, but still had not passed building inspection during this audit (1,227 days in inspection).

In these instances the department had the ability to suspend certain projects for lack of progress. In other jurisdictions, applicants are charged fees for fruitless inspections (e.g. made no progress, not started work, unable to enter property) which

waste resources and efforts that could be better utilized to monitor other projects, or for extending and renewing building permit reviews beyond initial validity to account for extra administrative efforts. These kinds of controls could make for a more orderly construction inspection system and eliminate unnecessary administration of projects that are not currently progressing. The common thread between all of these properties is that they have all exceeded their building permit's three year validity, and are subject to the department revoking the permittees' authorization to build.

There were no extensions of time granted for these properties

The three-year deadline for construction can be extended by the building official to account for time lost when there is a strike or causes beyond the control of the building contractor or owner, including pending litigation over the validity of the building permit; or public insurrection or devastating physical calamity (e.g. tsunami, earthquake). Other reasons include the unavailability of materials or equipment necessary for work to progress; unusually severe weather or muddy ground conditions requiring cessation of all work on the building or structure with written justification filed with building department; or lack of financing when financing is revoked unilaterally due to the lender's financial insolvency. In our review, we found no extensions for time documented as requested or granted for the properties that had exceeded their building permit's three-year validity.

These properties are subject to building permit revocation due to lack of timeliness

Any building or structure that is not completed within the period of validity is subject to building permit revocation. The building official must provide the permittee with written notice that it intends to suspend or revoke their building permit on specific grounds. The permittee is given the opportunity to show cause why the permit should not be suspended or revoked. The permittee may request a hearing before the Building Board of Appeals within 10 days of receiving notice. During this appeal, all work is suspended until the hearing board rules in favor of the permittee. The suspension continues if the ruling is unfavorable. Decisions can also be administratively appealed thereafter to state court. During our review, the department provided no notices to revoke building permits due to untimeliness.

Revoked permits which are not appealed are subject to structure removal or compliance with current laws and regulations

If a building permit is revoked and not appealed, the owner must remove or demolish the structure within 180 days of the written revocation notice or must obtain a new building permit to complete the required work in compliance with current laws and regulations and diligently pursue the work to completion.

Currently, the 16 large dwelling unit permit applications that exceeded their three-year validity are subject to revocation. Furthermore, these structures would be subject to the new requirements in the land use ordinance which regulate the size and other aspects of large detached dwellings in residential districts. These include revising building permit plans and structures to:

- Reduce their density to below a floor area ratio (FAR) of 0.7.
- Comply with limits on the number of wet bars, laundry rooms, and bathrooms allowed on their zoning
- Meet the standards for off-street parking
- Conform to impervious surface restrictions, less than 75 percent of the lot area

If the FAR is between 0.6 and 0.7 on their lot, the applicant must comply with the following regulations:

- Side and rear yards must be at least eight feet wide
- Each dwelling unit must be owner-occupied
- Dwellings will be subject to inspections for a period of one year after issuance of a temporary certificate of occupancy; and
- A home exemption tax form must be submitted before a certificate of occupancy will be issued.

All 16 properties are still in progress of being constructed and have not passed all of their inspections. If the department moved to revoke these permits, it could effectively apply current regulations to these large dwelling units that may be causing distress in various neighborhoods. These controversial structures could be required to conform to current standards, which may

entail reconstruction or demolition of the current structure. Furthermore, if the department decided to revoke these permits, it would serve notice that DPP is serious about the diligent pursuit of construction that is code-compliant. It would relieve the administrative burden of monitoring and inspecting properties that are not making satisfactory progress towards completion and/or code compliance. Considering some of these structures to be unfinished may induce a more prompt and diligent response toward construction of residential dwellings.

Temporary certificates of occupancy were issued to some property owners to control unauthorized changes after construction

In our review of large detached dwellings, we found that the department issued temporary certificates of occupancy (TCO) to some property owners after it determined that the dwelling complied with codes and laws, conformed to plans and building permit requirements, and was safe for occupancy. The 200 building permits reviewed included 170 individual properties. Of the 170 properties, 25 property owners received a temporary certificate of occupancy from the department, which was effective for one year.

During the one-year period that a temporary certificate of occupancy was in effect, the department may, with reasonable notice, conduct periodic inspections of the detached dwelling or duplex to confirm that it is in the same structural form as when the temporary certificate of occupancy was issued. At the end of the one-year period that a temporary certificate of occupancy is in effect, the department may upon final inspection, issue a certificate of occupancy for the detached dwelling and close the building permit. This practice became a formal part of city law on May 2019, via Ordinance 19-3.

DPP did not consistently establish a rationale for issuing temporary certificates of occupancy which could have financial effects on property owners

In our review of permit application files, we could not determine the department's basis for issuing a TCO. This decision was not documented in the permit files we reviewed. We did note correspondence from a few property owners to the department that TCOs may delay their financing or the conversion of their construction loan into a mortgage because their lenders required a regular certificate of occupancy for financing purposes. TCOs are revocable.

Despite authorizing inspections, very few follow-up inspections occurred to TCO properties

We reviewed the permit files of 25 property owners who had received temporary certificates of occupancy and found that 19 had not been inspected since the issuance of their TCO. Generally, issuing a TCO indicates that the structure is at-risk for building code violations, such as changing its layout or structure. Despite TCO status, none of these properties were later inspected for their at-risk basis.

We did find that later inspections of six TCO properties occurred based on third-party complaints regarding the property. This is the usual way that the department will investigate any complaint to determine if a violation has occurred. The department appears to approach inspections of TCOs the same as if they had no TCO, which is to investigate based on complaints and not because they are at-risk and in need of periodic inspections. Periodic inspections during the TCO period are now required by law, but previously, they were not conducted.

Department could take additional control measures to prevent potential fraud, abuse and conflicts of interests

During our review, we heard from concerned citizens, business people, and policy makers about specific situations which highlighted their concerns that fraud, waste, abuse or conflicts of interest were occurring during the recent proliferation of large detached dwellings on O`ahu. We initially discussed these issues and concerns with policy makers and affected community and business members. We reviewed concerns and complaints regarding those who sought building permits for large detached dwellings; developed, constructed or planned them; worked on staff in the department that reviewed building permit applications and plans; inspected building construction; inspected for residential code violations; reviewed complaints; or ordered violation notices, fees or fines on violators.

As part of our review, we individually reviewed properties of concern and complaint interest, placing attention on areas or opportunities for misfeasance or conflict in the review or approval processes. According to government auditing standards, we are obligated to make an appropriate referral to the authorities when such evidence emerges during our review. Our review did not confirm allegations of fraud, abuse or conflicts of interest, nor did we find evidence to make a referral to the department or law enforcement.

We acknowledge that it was highly unlikely that we would find such evidence present in the department's collection of files and

information without direction and input from people familiar with or involved with the alleged wrongdoing, abuse, or conflicts. To best deal with the concerns presented, we believe that the department could increase public confidence in these operations by periodically rotating permitting, inspection, and enforcement staff to minimize opportunities or appearances of wrongdoing, abuse, or conflicts, which may emerge from continually reviewing the work of certain design professionals, contractors, or construction companies.

Recommendations

The department should:

1. Apply existing law to expire plan review on building permits that have exceeded a year, and pursue applicants for renewal of plan review fees;
2. Improve its administration of the residential covenants requirement to document decision making, controls used, and residential covenants filed;
3. Apply existing law to implement criminal enforcement options for residential covenant use violations;
4. Apply existing law to revoke building permits that have exceeded their validity with no satisfactory progress in the interest of conforming development to current laws and regulations;
5. Create policies and procedures to implement a periodic inspection program for properties with temporary certificates of occupancy; and
6. Create policies and procedures to implement rotations of permitting, inspection and enforcement staff to minimize opportunities or appearances of wrongdoing, abuse, or conflicts in their duties.

Chapter 4

Monster Home Violations

DPP Does Not Effectively or Efficiently Manage Its Overdue Violations Leading to Lack of Accountability for Violators and Limited Deterrent Effect

Most violations issued to large detached dwellings were for no building permit for the work being done, not following plans, needing to stop work, or for developing unplanned internal alterations and partitions in the dwelling. Under the current system, violations take time to be resolved. DPP will work with offenders towards compliance with current codes and regulations in the interest of safety and orderly building. There is a need for better coordination internally within DPP to close out violations and pursue administrative enforcement. Current fees and fines do not seem to deter the violations we observed. Current fines collection by DPP are ineffective and under assesses violations. Furthermore, the department does not pursue all enforcement methods available.

Background on Violations Observed

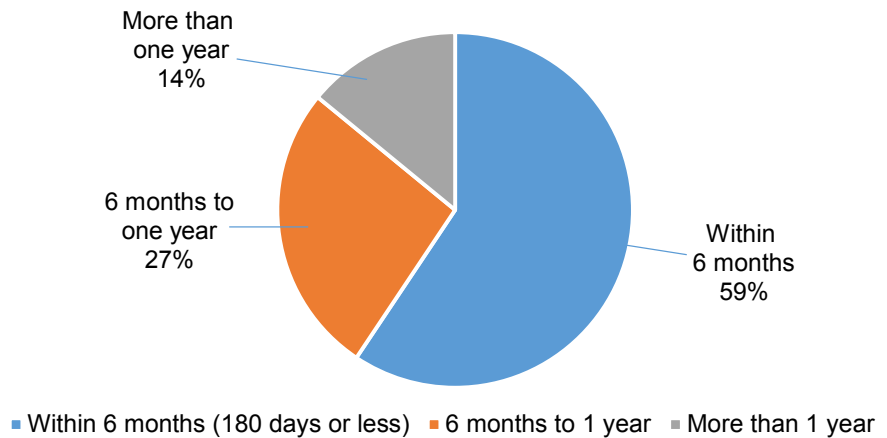
We reviewed 64 violations issued to large detached dwellings from 2017-2019 and found that the two most common violations cited by DPP were lack of a building permit for the work being done (56%) and not following plans (61%). Twenty-five percent of violations issued were to stop work, but none qualified for the enhanced violation of a stop work order penalties, including fines and potential demolition, recently passed by the City Council. Interior alterations and partition violations comprised 28 percent of the violations cited by DPP in the large detached dwellings we reviewed. Enhanced controls or legislation based on these factors may prevent such violations from continuing. All of these violations demonstrate a significant disregard for current codes, regulations, building requirements, and building uses. To the extent these violations compel extra fees, these do not appear to be significant enough to curb violations at the onset. Fines have been assessed as discussed below, but have a very small collection return.

Although most of the codes violated have a criminal and administrative enforcement component, DPP has admitted that they primarily pursue administrative enforcement rather than criminal enforcement to compel compliance or seeking punishment of violators. According to DPP, the department has experienced difficulty in mounting evidence to support a criminal case in the past and believes it has limited support to prosecute violators. As a result, the department primarily pursues administrative enforcement of the pertinent codes.

Violations take time to be resolved

Once a building receives a building permit and begins construction, DPP inspectors visit the site to assure that the building is constructed according to the approved drawings and codes. If there are deficiencies, the project can be stopped using a stop work order, and/or a notice of violation (NOV) may be issued. An NOV is issued when a violation of any code provision (e.g. building code, land use ordinance, building permit) occurs. Violators are provided with the date, name and address of person responsible, location of violation, rule violated with section reference, nature of the violation, and deadline date for compliance. The party responsible for the violation must make the building, structure, or use comply with the applicable code requirements.

**Exhibit 4.1
Time to Resolve Violations**



Source: Department of Planning and Permitting

In our review, we found that 26 (41%) of the violations reviewed were in violation for more than six months after a notice of violation. Only 7 of the violations were corrected in 30 days or less. The time to correct violations can be dependent on the property owner’s efforts to correct the violation, which could include revisions to their plan or seeking corrective building permits. It can also depend on a DPP inspector’s ability to physically inspect or verify changes, or examine corrections to plans and building permits.

Notices of order are issued after varying amounts of time in violation

According to DPP administrative rules, resolution of a violation requires corrective action and payment of civil fines, if assessed. If there is no progress to correct a violation within a reasonable time after a NOV is issued, DPP may issue a notice of order (NOO). A NOO is an official order from the department that a NOV has not been corrected by its deadline. A NOO contains information about the violation, the required corrective action, the date of correction to avoid fines, the initial fine assessed and daily violation fine, the payment date for fines, and a notice that unpaid fines can be recorded as an administrative lien on the property.

Generally, if the violation is not corrected within 30 days after the NOO was issued, daily fines will be assessed. After DPP determines no correction has occurred, the earliest potential time that fines might be assessed for a NOO is 60 days after NOV is issued. The amount of the fine is normally based on the severity of the violation and whether it is a recurring violation. According to DPP's administrative rules, the initial fine assessed for a first time violation is generally the lowest allowable. For the violations we reviewed, the guideline is for a \$50 initial fine, and \$50 per day in violation. Not following a stop work order entails an initial \$100 fine and \$100 per day in violation. According to the ROH, the department director can impose up to a maximum initial fine of \$2,000, then \$2,000 per day in violation for building code and building permit violations. For the land use ordinance violations, permittees can expect a maximum initial fine up to \$1,000, then \$1,000 per day in violation. In extreme cases, the ultimate enforcement can be placing an administrative lien on the property for fines owed and pursuing foreclosure. DPP will refer unresolved NOOs and their fines to corporation counsel for review and recommendation on placing a property lien and pursuing foreclosure to protect the city's interests.

In our review of the 64 violations issued to large detached dwellings, only 23 resulted in the issue of notices of order. Eighteen of the 23 NOOs we reviewed were issued within six months of the notice of violation. Eleven went out within 3 months of the initial notice of violation. Five NOOs took between 6 months and a year to be issued.

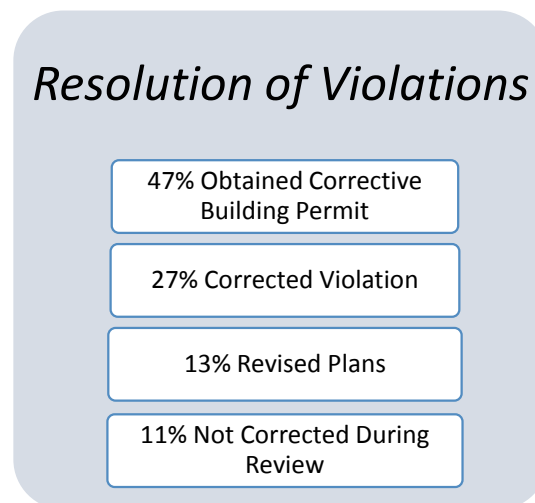
In some instances, we found that DPP did not issue notices of order in anticipation of a corrective measure. Seven violations we reviewed were referred to code compliance for a notice of order, which typically means no correction progress was made. In some cases DPP drafted a notice, but did not formally send it to violators while other permit files had no evidence that notices were even considered. Most of these were in anticipation of a corrective building permit or other corrective action.

DPP allows for corrective building permit or revised plans

In practice, DPP will allow property owners who are in violation for not following their approved plans or not having a building permit for their constructed improvements to seek corrective building permits or to file revised plans. DPP emphasizes that their approach is to ensure that construction projects comply with building and other codes in the interest of public health, safety and welfare. Part of ensuring this compliance is to issue notices of violation to inform the property owner of violations and then give them a reasonable amount of time to make corrections or seek authorization for unpermitted construction. We found that instead of consistent enforcement of violation procedures, DPP took a more *customer service oriented* approach to addressing violations. The department stated that violations procedures are not intended to be punitive, nor meant to overburden the property owner with fines until they can no longer complete their permitted construction.

We reviewed 64 violations concerning large detached dwellings from 2017 to 2019 as shown in Exhibit 4.2. We found that 87 percent of the violations were resolved by a corrective building permit, a correction of the violation verified by inspection, or plan revisions which identified violation corrections. This confirms that the vast majority of violations are corrected to promote

Exhibit 4.2 Resolution of Violations



Source: Department of Planning and Permitting

compliance.

Seven violations were not corrected at the time of review. DPP actions to resolve these violations included revoking a building permit and pursuing notices of orders, which is the normal course of the violations process if there is no violation correction.

Customer-oriented approach may affect administrative priorities to ensure violations are corrected promptly

While DPP's customer service approach is commendable, there is a downside to making exceptions for property owners. These exceptions create the appearance that DPP can hold off on assessing fines for violations under the assumption that violations will be corrected, revised, or corrective building permits will be sought in a reasonable amount of time. We found that, at times, this allowance is not warranted and concedes the city's interest in applying controls to ensure prompt compliance.

- For example, in one case, a correction was eventually made to a property. However, it remained in violation for 151 days, including 60 days after a notice of order was issued. Similarly, we identified another case where no fines were assessed for 276 violation days prior to the correction and 6 months after a notice of order was issued.
- In another case, DPP inspectors were informed that a property owner was seeking to correct a violation or corrective building permit for a violation that occurred in January 2018. In November 2018, DPP drafted a notice of order but did not send it to the permittee. In July 2019, a subsequent inspection found that no corrections were made and no application for a corrective building permit was made. In this instance, the project was in violation for 17 months and did not accrue any fines because DPP did not verify that the property owner actually made corrections.
- In a similar case, a property was in violation since December 2017. DPP drafted a notice of order in May 2018, but it was not sent. The property owner received a corrective building permit in June 2019, 19 months after being in violation. In this instance, fines could have been assessed if the notice of order was issued.
- In another case, the property owner filed a corrective building permit that had remained in plan review from March 2018 until the time of our review, or 15 ½ months. The city issued a notice of order in July 2018, but it remains

in limbo. The city sent a demand letter for \$11,700 in fines accrued by the property owner in October 2018. However, in parallel, the corrective building permit plans are still in the system, awaiting a decision. In corrective building permit cases, DPP would have considered the correction constructively from the date of the corrective building permit application, if the permit was granted. But because the department took no action on the application, the project remains in violation and DPP has not closed the violation resolution process.

A customer service oriented approach should not mean that internal controls, designed to ensure violations are corrected promptly, become less of an administrative priority. The lack of management attention to corrective actions and enforcement indicate a weak control environment. A weak control environment raises the following concerns:

- Properties remain in violation status beyond time guidelines for reasonableness
- Corrective action is deferred or delayed beyond what is reasonable to address public health, safety, and welfare concerns
- Violation orders are deferred so that potential fines do not accurately reflect extended time in violation
- Inspectors or code compliance can justify deferring or delaying determinations beyond what is reasonable for corrective actions that may not occur
- Due to extended time in violation and lack of decisive action, there is concern that decisions or determinations may be influenced by fraud in, or abuse of, the current process.

Poor coordination of violations monitoring and enforcement actions lead to extended administration of previously corrected violations

In some cases, violations are corrected before the notice of order is issued. Poor coordination between violations and enforcement actions caused DPP to incorrectly issue notices of order and levy fines. As a result, the department unnecessarily carried corrected cases forward, issued incorrect fine notices, and proceeded to administer violation procedures based on incorrect information.

These erroneous actions also lengthen the time for applicants to receive final approval of their building application and the requisite certificate of occupancy.

For example:

- In one case, a November 2017 notice of violation was corrected in December 2017, 35 days prior to DPP issuing a notice of order. DPP issued the notice of order over this corrected violation in January 2018, sent a notice of amended fines in April 2018, then a final demand letter for fines owed was sent in August 2018. Two weeks later, DPP referred this case to corporation counsel for lien and foreclosure review for uncorrected violations and unpaid fines. In March 2019, DPP administration closed this case due to the earlier correction with no fines assessed or collected. This case should not have been carried forward for an additional 14 months for an ongoing violation that did not exist.
- In another example, a February 2018 notice of violation was corrected in March 2018, 107 days prior to DPP issuing a notice of order. DPP issued the notice of order in June 2018. In October 2018, DPP sent a demand letter for the outstanding fines owed. Two weeks later, the department referred the case to corporation counsel for lien and foreclosure review. In January 2019, DPP sent a correction letter to the property owner cancelling the notice of order. In this case, the correction actually occurred in the 30 days allowed by the NOV and was not eligible for fines, yet administration of the corrected violation continued for 10 additional months.
- In another case, a violation was kept open for 476 days, until a confirming inspection 16 months later found that the original violation claimed was not valid.

In some cases, there is a lack of coordination and handoff between violations and enforcement efforts. In one case, a violator was cited for:

- not following plans;
- converting their garage into a living area;
- not providing enough parking; and
- building a driveway in the city's right-of-way

DPP issued a notice of violation to the homeowner in November 2017, and a notice of order in January 2018 assessing fines for the violations. In May 2018, a letter was sent to the violator stating they now owed \$3,500 in fines to date. Two weeks later, DPP referred this case to corporation counsel for lien and foreclosure advice review for uncorrected violations.

In this case, inspections continued even with pending outstanding fines unpaid. DPP considered the violation corrected on May 22, 2018, offered the property owner a reduced fine of \$495 due to the correction, despite being under notice of order for 4 months. The property owner paid the reduced fine in December 2018. DPP formally recommended acceptance of a reduction in violation fines from \$4,950 to \$495 to corporation counsel a year later in May 2019.

Although DPP has some discretion in assessing and collecting fines for building code violations, the department should use the fines procedures to enforce legal requirements and assess fines as both a deterrent and penalty for untimely corrections. It is unusual for DPP to seek long after-the-fact approval for a fine settlement that was drastically short of the amount owed, given the time in violation. In this case, the violator was only fined and responsible for about 9 days in violation (\$50 initial fine, \$50 per day), when in reality it was in violation of the NOO for 98 days. This demonstrates poor coordination and conversion of violations into enforcement action. Furthermore, it diminishes the department's ability to enforce existing code requirements, compel compliance, and put violators on notice that untimely failure to correct code violations will result in significant consequences.

Potential actions remain untaken in resolving certain long term violations

There are a number of enforcement options which DPP has left on the table with respect to the large detached dwelling unit properties we reviewed. In many instances DPP unduly waits for a corrective measure to be taken rather than proceed with its own corrective action via notices of order and other measures to effect prompt correction.

- Recommended for Notice of Order but not issued, pending corrective building permit
- Deny the corrective building permit due to expiration of plan review
 - o A corrective permit was in plan review for 15 ½ months, while notice of order issued and corporation

counsel advice sought on lien and property foreclosure on \$11,700 in fines.

- Issue the notice of order and assess the fines owed
 - Recommended for notice of order, pending corrective building permit. No notice of order was issued, building permit has been in plan review for over seven months, which is subject to expiration of plan review. No fines issued for violation from March 2018.
- Settlement offers not accepted by violator, but no follow up action taken
 - Fine reduction offer from \$54,300 to \$13,575 not taken after 6 weeks (time of review)
 - Fine reduction offer from \$35,200 to \$25,700 not taken after 2 ½ months (time of review)
 - Fine reduction offer from \$8,500 to \$1,780 not taken after 5 ½ months (time of review)

Fines should be restored to the initial assessment level if the property owner does not accept the settlement offer.

- Referral to corporation counsel for lien and possible foreclosure, but no advice noted as received
 - No advice noted as received for 2 properties, 4 and 8 1/2 months after request.
- Corporation counsel advised DPP to place a lien on the property to collect fines assessed and owing.
 - 13 ½ months passed (3 properties), fines owed \$19,750; \$5,400; and \$3,500 owed, respectively
 - Over 13 ½ months passed, fines owed \$24,150. DPP made a reduced fine offer of \$18,150 11 months later, which was not accepted after 2 months (time of review).

Fees are paid more often than fines in resolution of violations

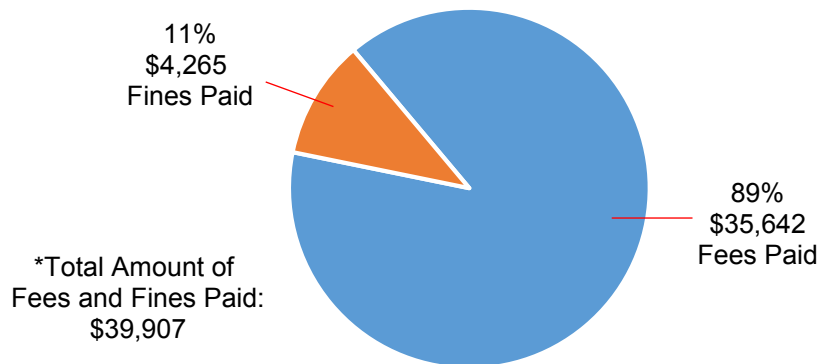
According to Sect. 18-6.2(d), ROH, and DPP administrative rules, Sect. 20-3-3(i), home owners that build residential structures without a valid building permit are assessed both a fee adjustment and fines. For building to continue, the homeowner is assessed a double permit fee to obtain an after-the-fact building permit.

Subject to Sect. 18-6.1(a), Table 18-A, Other Fees (6), buildings that are not following their submitted plans will be assessed a plan revision fee, which is the greater of \$200 or 10% of their original building permit fee. In addition, the department may levy an initial fine of \$50 and \$50 per day of violation after the 30-day due process period when a NOO has passed.

Generally, the doubling of the building permit fee and plan revision fee are significantly less than fines accrued. In an effort to accommodate home owners, DPP will use its discretion to allow building to continue upon payment of the doubled permit and plan revision fees, even if the fines accrued are not paid. We found that this practice was ineffective in controlling building violations and allowed builders to proceed despite being already found using questionable building practices and structures. This may be why builders take the chance of being discovered to have violated code. We found that double permit fees and plan revision fees are not onerous and are paid more frequently in full so that their construction projects may continue. Conversely, it is difficult to determine if fines are more significant and impactful in deterring violations because DPP did not consistently collect fines on the overdue violations we reviewed.

Of the 36 violations we reviewed, 33 were assessed the double building permit fee and a plan revision fee, and nearly 100 percent of the fees assessed (\$35,642) were collected (\$35,649). We acknowledge the necessity of building permits to orderly building, and in this case, continuing their construction under a building permit. However, the amount does not effectively serve as a deterrent for not applying for a proper building permit in the first place.

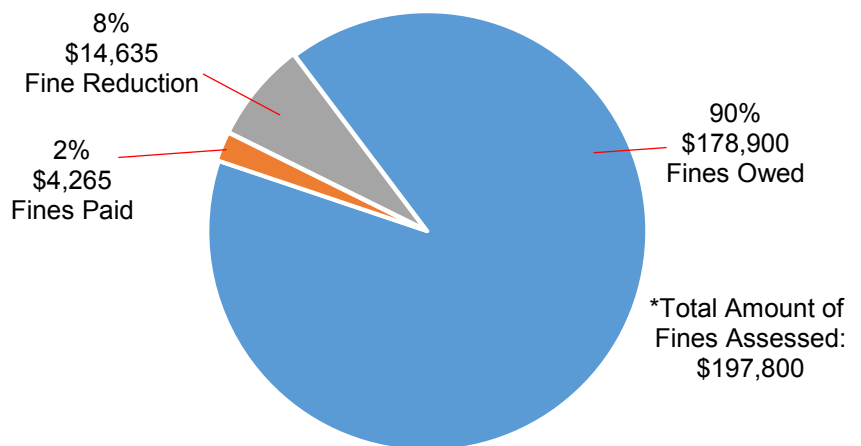
**Exhibit 4.3
Large Detached Dwelling Amount of Fees and Fines Paid**



Source: Department of Planning and Permitting

In our review, large detached dwellings owners were also assessed \$197,800 in fines via notices of order. Of this amount, only \$4,265 has been paid by violators, or 2 percent of the fines assessed. DPP explained that it made settlement offers to reduce some fines based on violator corrective actions. This has resulted in an 8 percent reduction of fines assessed. In total, \$178,900, or about 90 percent of the accrued fines, remains uncollected.

Exhibit 4.4
Large Detached Dwelling Fine Assessments and Collection



Source: Department of Planning and Permitting

Long term unresolved violations could be resolved by taking appropriate last resort actions

The lack of collection was caused by a number of factors beyond lack of payment by violators: lack of follow-up on legally recommended action, failure to consult on legal resolution options, and failure to resolve situations where legal action is the last enforcement action available.

Corporation counsel recommended a property lien and foreclosure in five instances where DPP has sought their advice. But there was no documentation that DPP followed up and took the recommended action to secure the accrued fines via liens and foreclosure.

DPP did not pursue a lien and foreclosure review from corporation counsel for four of the long term violators, which had outstanding fines owed.

In three instances, DPP did not renew its request for corporation counsel review of outstanding fines owed by long term violators. There was a request for advice, but no answer documented from corporation counsel on how to proceed. These cases make up 12 of the 29 violations which resulted in unresolved violation notices or orders issued to owners with large detached dwellings, totaling \$175,650 of the amount currently owed in fines, or nearly all of the amount outstanding. In other words, DPP has not effectively or efficiently managed fines assessment or collection of these overdue fines, and long-term violators are not held accountable for circumventing their building permit or building process.

Current practices severely under assess the amount of days in violation

Our review revealed that the total days of violations with fines assessed to violators was 1,250 days. Under DPP’s current policy, after a reasonable amount of time after an NOV is issued and there is no progress in correcting the violation, a notice of order (NOO) may be issued by DPP. Generally, if the violation is not corrected within 30 days after the NOO was issued, daily fines from the date of the NOO will be assessed. This relies heavily on the inspectors’ correction review, and then on the administrator of DPP’s code compliance in terms of when to start the daily fines.

**Exhibit 4.5
Total Days in Violation**

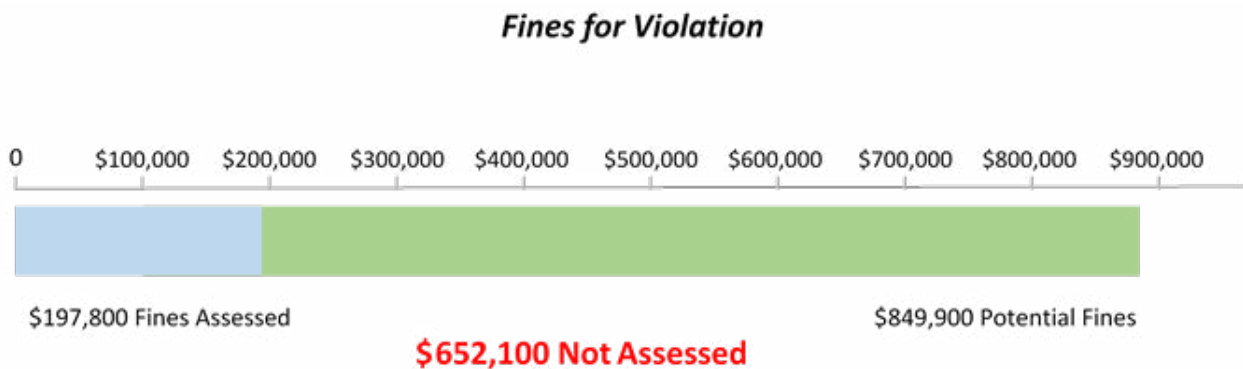


Source: Department of Planning and Permitting

The amount of days in violation as counted from the day the violation is cited in the notice of violation issued to the property owner was 8,627 days in total for all violators with a notice of order in our review. We found that 86 percent of days in violation (7,377 days) were not fined. Although current law limits the daily fines assessed based on due process after a notice of order

is issued, the amount of potential fines that could be assessed from the day of violation, and not the day of the notice of order, can be quite significant. Using a conservative estimate of \$50 initial and \$50 per day on days of violation not assessed a fine, we estimate that the effect of the law as currently implemented forgoes \$849,900 in fines. Assuming DPP was more diligent in issuing notice of orders after notice of violations are not corrected, some of this shortfall in potential fines for days in violation could be closed.

Exhibit 4.6
Potential Fines Based on Total Days in Violation



Source: Department of Planning and Permitting

Based on our estimate, 77 percent of the potential fine value for actual days in violation is currently not assessed. If eligible fines were assessed based on actual days in violation, we estimate at least \$652,100 more in fines could have been assessed. This does not account for more significant fines given to multiple or recurrent violators. This reasonably could result in a fine assessment that is tied more to days actually in violation rather than days in violation of the notice of order.

Since DPP does not effectively or efficiently manage fines collection on overdue violations, it gives an impression that violators are not held accountable for circumventing the building permit process. Violators may be aware of DPP's practice to not assess or collect the full value of fines, and may not see accrual of fines as a deterrent to violating their building permits or other legal requirements. On the other hand, DPP does not appear to be timely exercising its discretion to promptly fine violations where corrections are not occurring timely, or to seek resolution of long term, unresolved violations via last resort enforcement measures.

Recommendations

The department should:

1. As necessary to order and safety, consider increasing fees for violators of no building permits, not following plans, or unplanned internal alterations or partitions as clearly against current orderly building and residential development;
2. As necessary to order and safety, apply existing law to pursue criminal prosecution for violators with demonstrated disregard for current codes;
3. Create policies and procedures for coordinating the close out of violations and outstanding fines and fees;
4. Apply existing law to pursue liens and foreclosure on eligible violators to secure the city's interest in outstanding fines, safety and orderly use and development;
5. Consider assessing fines for violations from the initial day of violation, rather than the time after a notice of order.

Chapter 5

Conclusion and Recommendations

Conclusion

Ordinance 19-3 provides specific regulatory criteria that need to be evaluated when reviewing and administering permits for large detached dwellings. DPP needs to more effectively manage data from permitting and inspection to provide staff with the information needed to properly review and regulate these dwellings. This lack of assembled information leads to administrative difficulties and delays in researching, reviewing, and monitoring these properties systematically or individually. The department's information system should at least be organized to identify the characteristics at-risk properties, so it can better monitor and enforce the requirements concerning these dwellings and their uses. This may lend itself to better analysis of community and islandwide impacts via the department's GIS system, better monitoring and reporting, and timely enforcement.

The department needs to assess the risks of the complaints received and the violations that it issued concerning large detached dwellings, or any other current development issue. It may need to consult with risk management or information technology expertise to better accomplish its regulatory purposes. There was no effort to understand the implications of these issues, including whether they were property specific, area specific, or an islandwide issue. Since it was not effective in identifying emerging risks, issues, and problems associated with large detached dwellings, it could not adequately address how building permits for large detached dwellings were issued, buildings were inspected, or land use/illegal uses were investigated.

When complaints continued to come in during construction of large detached dwellings, there was a hindsight sense within the community and policy makers that something was amiss in the process and concerns arose questioning how the city could allow such structures to be built. It would have been much more prudent to deal with the potential issues during the permit review process and subsequent monitoring of high-risk projects, rather than dealing with complaint issues that emerged during or after construction. Under these conditions, the department was less able to ensure orderly development according to land use policies, zoning, and maintain designation or restriction of certain uses within the residential zone. Where its actions should have been consistent with its policies and responsibilities to promote and protect public health, safety and welfare, it was less able to do so.

The Department of Planning and Permitting had the tools, or controls, necessary to more effectively manage permit application review, inspection, and approval of large detached dwellings. The ineffective application of information systems to monitoring these controls and this information reduced its ability for control and regulatory effectiveness. Revocation of untimely or non-progressing projects and temporary certificates of occupancy are two controls that the department should enforce consistently. If DPP takes action to revoke applications for large dwelling units that exceeded their three-year validity, it can require applicant's to conform to current building requirements that deter construction of unsightly *monster homes*. The department should conduct periodic inspections based on temporary certificates that it has not regularly done. These follow-up inspections can identify building owners who have amended their structure's plan, layout, or use in violation of their approval building application, and deny a final certificate of occupancy.

To best deal with potential fraud and abuse concerns, we believe that the department could increase public confidence in these operations by rotating permitting, inspection, and enforcement staff to minimize opportunities or appearances of wrongdoing, abuse, or conflicts, which may emerge from continually reviewing the work of certain design professionals, contractors, or construction companies.

Since DPP does not effectively or efficiently manage fines assessment or collection for its overdue violations, violators are currently not held accountable for circumventing the building permit process. Most violations issued to large detached dwellings were for no building permit for the work being done, not following plans, needing to stop work, or for developing unplanned internal alterations and partitions in the dwelling. Under the current system, violations take time to be resolved. DPP will work with offenders towards compliance with current codes and regulations in the interest of safety and orderly building. However, there is also need for better coordination internally within DPP to close out violations and pursue administrative enforcement. Current fees and fines do not seem to deter the violations we observed

DPP could do more to pursue the resolution of overdue violations. We found that there were many options which the department could have taken to follow-up on legally recommended action, to consult on last resort legal resolution options for collection and enforcement, and resolve situations using legal action as the last enforcement action available. This possibly could be resolved with better monitoring via information technology. Nearly all of the

outstanding amount currently owed by overdue violations could be addressed by fully pursuing these last resort options. By not fully pursuing this, violators may be getting the wrong message that the department will not assess or collect the full value of fines, or fully pursue outstanding violations. They may not see the need to comply with building permits or other legal requirements, or be deterred being cited for violations or accruing fines.

Recommendations

The department should:

1. Assemble its information regarding qualifying large detached dwellings to enable its use in permitting, inspection, and use enforcement operations;
2. Develop lists of at-risk large detached dwellings now considered non-conforming or subject to additional requirements for monitoring and enforcement purposes;
3. Develop at-risk criteria derived from complaints and violations throughout its permitting, inspection, and enforcement actions based on observed problematic issues and their effects;
4. Amend current policies and procedures to establish response priorities for complaints based on first on individual complaints from the public followed by other complaint sources;
5. Apply existing law to expire plan review on building permits that have exceeded a year, and pursue applicants for renewal of plan review fees;
6. Improve its administration of the residential covenants requirement to document decision making, controls used, and residential covenants filed;
7. Apply existing law to implement criminal enforcement options for residential covenant use violations;
8. Apply existing law to revoke building permits that have exceeded their validity with no satisfactory progress in the interest of conforming development to current laws and regulations;

9. Create policies and procedures to implement a periodic inspection program for properties with temporary certificates of occupancy;
10. Create policies and procedures to implement rotations of permitting, inspection and enforcement staff to minimize opportunities or appearances of wrongdoing, abuse, or conflicts in their duties;
11. As necessary to order and safety, consider increasing fees for violators of no building permits, not following plans, or unplanned internal alterations or partitions as clearly against current orderly building and residential development;
12. As necessary to order and safety, apply existing law to pursue criminal prosecution for violators with demonstrated disregard for current codes;
13. Create policies and procedures for coordinating the close out of violations and outstanding fines and fees;
14. Apply existing law to pursue liens and foreclosure on eligible violators to secure the city's interest in outstanding fines, safety and orderly use and development; and
15. Consider assessing fines for violations from the initial day of violation, rather than the time after a notice of order.

Management Response

The Managing Director and the Department of Planning and Permitting (DPP) broadly accepted the findings of the audit report. The department indicated its agreement that developing a more robust system via its permit review software would improve the monitoring of large detached dwellings (LDDs) during permit review and construction. It also seeks to increase double fee penalties on violators who submit building permit applications after starting unauthorized construction. It also indicated its constructive disagreements with certain facts presented by the audit. We provide these comments in response and for clarification.

The department contended that it was aware of regional or neighborhoods dealing with LDDs, via its assignment of inspectors to geographic areas, and compilation of a listing of LDD applications and their locations even prior to the City Council's concern about the issue. While that may be so, our point

was that this awareness did not convert into better management or monitoring of the situation, so that opportunities for controlling or correcting the situation, and reducing adverse impacts, could have been taken.

The department disagrees that it should pursue criminal prosecution of violators, citing the lack of effectiveness of depending on the criminal prosecution process, lack of inspection staffing to assemble evidence, and skepticism that it would lead to faster or effective resolutions of violations. It has hope that the new state false statements law concerning county inspectors will act to deter and provide consideration of consequences for those who would mislead its inspectors. We note that criminal prosecution remains an option for the department to take against violators of the building permits, the building code, and land use ordinance. While it is clear from its response that DPP does not use this available tool to deter violators, we hope the department will reconsider their position.

We concur that DPP cannot assess fines from the initial day of violation, and that due process notice of the violation must be provided. We amended the report to note this limitation. Our point was there were several examples where if the department were more diligent in issuing notices of order after notices of violation had not been corrected, the amount of fines assessed would better reflect the actual days in violation. It could benefit the department by providing the deterrence of more immediate intervention, and reduce concerns about delays in the department's violation resolution practices.

The department understands our discussion about restrictive covenants to be primarily a filing issue. However, inconsistent filing of restrictive covenants impacts the department's ability to properly monitor and enforce property uses after construction. We reiterate our concern that the reviewer's decision process is not documented and reviewable, including uniformly documenting the reviewer's concerns, management review, documenting the decision to require/withdraw requiring a restrictive covenant, property owner notification, covenant recording and filing. Our review indicated that far more restrictive covenants appeared to be required prior to issuing building permits compared to the number actually in department's files. With inconsistent documentation of that decision, we could not determine the outcome of suspicious layout or use reviews by staff, and how this impacted certain building permits.

DPP concedes that it does not rotate permitting, inspection, and enforcement staff to reduce opportunities or appearance of

inappropriate association with certain individuals or firms in the development industry. While we acknowledge the challenges cited by the department, if the department accepts the premise that the public and the City Council's concerns in this area are warranted, it should explore options to address the issues.

DPP provided additional explanation about the coordination between the notice of violation and notice of order processes, citing the involvement of other departments, interactions between violators and inspector, and the inspector's escalation process to the notice of order process. We indicated in the report that violations take long to resolve. If these additional areas create issues and delay violation resolution, then the department should find ways to make improvements within and between the processes so that violations are corrected promptly.

The department characterizes its discretion in the building permits process as ministerial, and with limited discretionary authority previously over LDDs. They consider controlling LDDs as a zoning issue, and believe they now have more discretion to control them via Ordinance 19-3. We trust that the department will now apply this discretion via the ordinance in its administration of building permits for large detached dwellings.

We amended the report to address information provided by management in its response to the draft audit report. Those amendments did not substantively change our audit results. We made other technical, non-substantive changes to the draft report for purposes of accuracy, clarity, and style. A copy of management's full response can be found on page 63.

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KIRK CALDWELL
MAYOR



ROY K. AMEMIYA, JR.
MANAGING DIRECTOR

 GEORGETTE T. DEEMER
DEPUTY MANAGING DIRECTOR

November 8, 2019

MEMORANDUM

TO: Troy Shimasaki, Acting City Auditor
Office of the City Auditor

FROM: *for* Roy K. Amemiya, Jr., Managing Director 

SUBJECT: Response to Audit of Permitting and Inspection of Large Detached Dwelling Units

This is in response to the Office of the City Auditor's October 2019 draft report, "Audit of Permitting and Inspection of Large Detached Dwelling Units." The audit was conducted pursuant to City Council Resolution 18-223, FD-1. This Resolution requested an audit of the permitting and inspection processes of the Department of Planning and Permitting (DPP) for "large detached dwellings" (LDDs), otherwise referred to as "monster homes."

We appreciate the efforts put forth by the City's Auditor to understand and evaluate the complexity of DPP's residential permitting and inspection process within a short amount of time. We appreciate the quantitative analyses developed for this audit, and the neutral attitude of the staff to understand the processes and challenges as it conducted the audit.

Broadly, we accept the findings of this audit. It supports the underlying assertions of DPP: It is chronically faced with high staff turnover in the building permit review process. This results in spillover impacts, which include:

- Addressing day-to-day workloads is a crisis management process;
- A lack of sufficient number of "journeyman" staff to handle complex processing and drawings quickly, and teach younger staff;
- Reduced time for training;
- The continued use of supervisors as substitute staff - to process and inspect - rather than manage; and
- Persistent use of overtime which can yield long-term fatigue.

Moreover, there have been significant new changes recently, and pending changes to various codes, particularly the Land Use Ordinance. This constant change without time to ingest them, makes it challenging to produce high level results that are accurate, consistent, and timely. In spite of these challenges, we are proud of the staff that remain, who take pride in doing their jobs to the best of their abilities.

Troy Shimasaki
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We are pleased with the finding on Page 41, "Our review did not confirm allegations of fraud, abuse or conflicts of interest, nor did we find evidence to make a referral to the department of law enforcement." We can also agree on several of the findings and recommendations. Specifically, we largely agree with the following findings:

1. *DPP can improve on developing a more robust monitoring system of LDDs during permit review and during construction.*

The current permit monitoring software is almost twenty years old. While incremental improvements have been made over the years, it remains challenging to make necessary changes on a timely basis. DPP is always in transition to keep up with technological improvements, but converting to a web-based permit review software is expected to make a significant difference.

2. *Increase fees for violators.*

We are considering increasing the "double fee penalty" for those applications submitted after work has begun. We may be recommending an increase to triple the normal fee.

We cannot agree with the following findings of the audit:

1. *The department is not aware of regional or neighborhoods dealing with LDDs.*

As inspectors are largely assigned to geographic areas, their supervisors are aware of activities by neighborhood or region, as they not only make assignments, but they confirm Notices of Violation (NOVs) before they are issued.

More specifically, supervisors noticed the increase in dwelling applications involving eight or more bedrooms months before the City Council raised the issue. An inventory of such applications was already created, identifying the location of each property (by noting tax map key number).

2. *The department should pursue criminal prosecution.*

DPP disagrees. The civil fine process was established precisely because of the ineffectiveness of depending on the criminal prosecution process. We would have to double our inspection resources to meet the evidentiary requirements of criminal prosecution, with no guarantees that it will be faster or more effective.

However, under recent Act 114 (2019), making false statements to a county inspector is now a misdemeanor. While we do not expect to pursue such violations at a significant level, we believe this new tool will influence those who feel making false statements has no repercussions.

3. *DPP should assess fines from the initial day of violation.*

This is not legally possible. By Section 46-1.5(24), HRS, an opportunity must be first given to correct a violation before fines can be imposed.

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4. *Permit applications and construction activity beyond applicable deadlines should be categorically cancelled.*

DPP is in transition on this issue. The philosophy of categorically denying, rejecting, or voiding “overdue” applications, helps minimize the number of applications in the queue and workload. But it doesn’t recognize individual cases of hardships and there are many. For decades, the definition of “customer service” was to provide the individual applicant as much attention as necessary to get the desired outcomes. This definition meant one application could be resubmitted as much as ten times before it is approved. Obviously this detracts overall performance, but responds to daily requests from City Council and others to get specific applications processed.

The department is shifting to create a better balance between individual customer service and overall productivity, without sacrificing due process. DPP is now regularly sifting through pending and inactive applications to reduce the backlog. Also, much to the chagrin of some agents, after two cycles of review without a permit approval, the agent must bring in the landowner/applicant to review outstanding issues so that meaningful progress can ensue.

Finally, since September 2019, the Branch Chief of the Permit Issuance Branch holds regular monthly meetings with staff members focusing on improved customer service and permit issuance: improving the acceptance process and stricter reviews of large detached dwellings.

In addition, we believe some audit conclusions were based on incomplete or overly superficial analyses, leading to conclusions we cannot agree with. For example, it was opined that a more systematic filing system for restrictive covenants should be initiated. DPP recently scanned the hard copies about the same time as the supervisor in charge retired, leaving a gap in the procedures, which we are correcting.

Another recommendation is to rotate permitting, inspection, and enforcement staff to reduce opportunities or appearance of inappropriate association with certain individuals or firms in the development industry. This seems straightforward, but entails labor union issues and the availability of staff capable and accepting of rotating assignments. Couple this with the aforementioned challenge of lacking a stable, journeyman workforce, and this becomes an unrealistic expectation.

There was discussion on the lack of coordination between the NOV and enforcement (Notices of Order [NOO]) processes. While every process has room for improvement, this discussion in the audit did not recognize that other departments are involved in enforcement, and its discussion did not fully credit the interaction (or lack thereof) between the violator and inspector in determining when to escalate a violation to the next level of enforcement.

Lastly, the audit report gives the department more discretion than DPP legally has in reviewing and regulating under the building permit process. Building permits are ministerial approvals, with little discretionary authority given. Moreover, the issue of controlling LDDs is a zoning issue, administered under the building permit process. To add more discretion in the control of LDDs, a zoning code amendment first was needed and done, under Ordinance 19-3.

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To sum, we appreciate the report's recommendation to help to us improve our building permit process. While we may not agree with all of them, we appreciate the report's effort to not just define problems, but offer solutions, too. We will continue to review the report's findings and recommendations as we continue our own ongoing commitment to improve the building permit process.

Should you have any questions, please contact Acting Director Kathy Sokugawa, Department of Planning and Permitting, at 768-8000.

cc: Nelson H. Koyanagi, Jr., Director
Department of Budget and Fiscal Services

Appendix A

Glossary of Terms

Accessory Dwelling Unit (ADU): a second dwelling unit including its own kitchen, bedroom, and bathroom facilities, attached or detached from the primary dwelling unit on the zoning lot. ADUs are intended to be “accessory” to the main house, and are typically much smaller and sited to the rear or side of the house.

Civil Fine/administrative fine: For the purposes of this report, a civil fine is any monetary penalty imposed by the director on a violator as a means of enforcing violations of the building code, building permit, land use ordinance or residential codes. When a notice of violation is issued, but violation remains uncorrected, fines—including daily fines—can be assessed, up to \$1,000 for each day a land use violation remains uncorrected, and up to \$2,000 for each day a building code or building permit violation remains uncorrected. DPP may attach unpaid fines to other types of city permits and license fees, including real property taxes. **Unpaid civil fine** means any outstanding civil fine due and owing to the city by a violator, in whole or in part.

Code: for this report on large detached dwellings refers to the relevant ordinances within the building code (ROH chapter 16), building permits (ROH chapter 18), land use ordinance (ROH chapter 21), and housing code (ROH chapter 27).

Department of Planning and Permitting, City and County of Honolulu (DPP): Established as of July 1998, reflecting responsibilities formerly housed under Department of Land Utilization, Building Department, and staff from transportation, sewer, and engineering programs. As of January, 1999, the former Department of Planning merged into DPP.

Director: means the Director of the Department of Planning and Permitting, City and County of Honolulu, or the director’s designated representative, who shall be the administrator of the department’s civil fines program.

Floor Area Ratio (FAR). FAR is defined in the land use ordinance as the ratio of total floor area to total zoning lot area. A larger FAR indicates higher density. Multiplying the permissible FAR by the zoning lot area determines maximum floor area permitted. $FAR = \text{total floor area of building(s)} / \text{zoning lot area}$. The same FAR can be accomplished by different methods of “stacking” buildings, up to the allowable height limit, affecting the percent of lot coverage and building height. Ordinance 19-3 provides a maximum FAR for single and two-family dwellings as 0.7, and additional development requirements for dwellings proposing a FAR of between 0.6 and the maximum 0.7 FAR.

Land Use Ordinance (LUO): The zoning code for the City and County of Honolulu is Chapter 21, ROH.

Nonconforming structure: means a structure or portion of a structure which was previously lawful but which does not comply with current laws and regulations concerning the developmental standards for large detached dwellings.

Notice of Order (NOO): If within a reasonable amount of time after a Notice of Violation is issued, there is no progress in curing the violation, a NOO may be issued by DPP. Generally, if the violation is not corrected within 30 days after the NOO was issued, daily fines will be assessed. The amount of the fine is normally based on the severity of the violation, and whether it is a recurring violation. In extreme cases, the ultimate enforcement can be a lien on the property and foreclosure.

Notice of Violation (NOV): When a project is being built, an inspector could find it to be in violation of the building code or its building permit. Complaints from the general public could be received about the project or its use after construction. Each complaint is investigated, and if the project is violating a code or a condition of approval, the project is so informed and a NOV can be issued.

Oahu General Plan (GP): the long-range policy plan for Oahu. It is required by City Charter, and is an expression of the ideals and aspirations of Oahu residents, particularly as we deal with the future.

Order: means a document signed by the director, identifying a violation, specifying corrective action, and assessing a fine or other penalty as provided by these rules.

Owner-builder: Chapter 444, Hawaii Revised Statutes (HRS) defines owner-builders as owners or lessees of property who build or improve structures on property for their own use, or for use by their immediate family. Normally, a licensed contractor must be hired for any construction work which is valued at more than \$1,000 or for which a building permit is required. Property owners who are building or improving their own home or business site, however, can register as an Owner-Builder with their county building department. This exempts owners from the requirements to be licensed as contractors, yet still allows them to obtain building permits.

Planning Commission: a lay group of persons appointed by the Mayor and confirmed by the City Council. They review various City/County permit applications, including development plan changes and zone changes. They have decision-making responsibility on certain types of developments within the State Agricultural Land Use District, involving 15 or fewer acres.

Revised Ordinances of Honolulu (ROH): Refers to the Revised Ordinances of Honolulu, all laws adopted by the Honolulu City Council.

Single-family dwelling: a detached dwelling permissible in the residential district for a single family.

Two-family dwelling: a detached dwelling permissible in the residential district for two families.

Third party reviewer: means a technical officer, an individual or firm, duly authorized by the Department of Planning and Permitting, pursuant to ROH Chapter 7, to provide Codes (Building Code, Plumbing Code, Electrical Code, Housing Code, Shoreline and Special Management Area Code, Grading, Grubbing and Stockpiling Code, Land Use Code and ordinances pertaining to Land Use and Building Energy Efficiency Standards) that are enforced by the department's compliance plan review services (of building permit submittals) to owners at the owner's expense.

Violation: means the use of any structure or land, or the location or construction of the appropriate permit or variance; and failure to comply, in whole or in part, with the terms or conditions of any permit or authorization issued pursuant to the appropriate Ordinances. Specifically a violation exists when there is the:

- (a) Use of any structure or land, or the location or construction of any structure without a permit or other authorization required by the appropriate Ordinance; or
- (b) Use of any structure or land, or the location or construction of any structure in a manner not permitted by the appropriate Ordinance or by the terms or conditions of any permit or other authorization issued pursuant to the Ordinance; or
- (c) Misrepresentation of fact on any application, plan, or other information submitted to obtain any authorization or permit, including but not limited to representations made in affidavits, recorded covenants, parking agreements, and joint development agreements; or
- (d) Failure to comply, in whole or in part, with any other specific requirement or condition provided by the appropriate Ordinance.

Violator: means any individual, organization, partnership, firm, association, trust, estate, public or private corporation, or any other legal entity that has an interest in the property on which the violation occurs; and may include any or all of the following: fee owner, leaseholder, sub-leaseholder and other assignee, tenant, contractor or any other person, party or parties responsible for a violation or with an interest in the property on which the violation occurs.

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Appendix B

Whether It Would Be Feasible to Establish an Independent Commission to Oversee Architecture, and Planning Regulations in the City, and Serve as a Check on the DPP

In our review, we did not find examples of cities or counties that had an independent commission to oversee architecture and planning regulations. However, we did find a few planning commissions that act as a limited check on their planning department's discretion via appeals review or provided guidance in areas of policy emphasis for the jurisdiction.

In Honolulu, the city's planning commission consists of nine members who are appointed to five-year terms by the mayor and are confirmed by the city council. The commission advises the mayor, council, and director of planning and permitting on planning programs; holds public hearings and makes recommendations on revisions and amendments to the general plan, development plans, and zoning ordinances; and performs such other related duties as necessary to fulfill its responsibilities under the city charter, or as assigned by the mayor or council. The decisions of the department concerning granting and revoking building permits are subject to review by the independent building board of appeals, and appellate review in state court.

All of the city planning commissions reviewed perform similar functions of aiding in drafting and updating the general plan, holding hearings related to land use ordinance and zoning, and reviewing significant projects for approval. There were different government organizational structures (e.g., strong mayor, city manager), hierarchies, and unique operations for each city. As reviewed, planning commissions were advisory in nature and supplemented and provided expert opinion to their city councils or city departments in matters related to planning.

**Exhibit B1.1
Planning Commission Functions Summary**

	Seattle, WA	Portland, OR	New York City, NY	San Francisco, CA	Yorba Linda, CA	San Diego, CA	Eugene, OR	San Jose, CA	Houston, TX
Advisory to the General Plan	✓	✓	✓	✓	✓	✓	✓	✓	✓
Advise on matters of land use, zoning, and permitting	✓	✓	✓	✓	✓	✓	✓	✓	✓
Hold public hearings	✓	✓	✓	✓	✓	✓	✓	✓	✓
Oversight of Planning Department				✓	✓			✓	
Special Topics Considered	✓	✓					✓		

Source: Office of the City Auditor compilation of jurisdiction data

Complete approval review

In Yorba Linda, California, the planning commission has the power to affirm, reverse, or modify any determination, interpretation, decision, or conditions of approval by the community development director. Although confined to community development issues, this was the broadest grant of oversight and review power of a planning department granted to the planning commission in our review.

Limited discretion reviews

In San Jose, California, the planning commission acts as an appellate body to certain planning director decisions concerning site development, planned development, special use and tree removal permits. It also holds public appeals hearings on certain single-family permits within 10 days of decision, which are planning director decisions appealed by the applicant or a property owner located within 300 feet of the subject site.

In San Francisco, California, the planning commission delegates discretionary review over all building permits to the planning department. The planning commission has the special limited power to perform discretionary reviews on building permit applications, and may require the applicant to make changes to their project. This process is triggered by a member of the public requesting a discretionary review of the project by the planning commission, causing a second look at the project. In exceptional and extraordinary circumstances, the planning commission can require changes be made to a building permit plan. In advice from its city attorney, the grant of this discretion is intended to be very limited, and must be exercised with great constraint.

Subject area emphasis

Some planning commissions are directed to provide advice and policy direction in certain areas of policy emphasis for their jurisdiction. In Portland, Oregon, the planning commission is charged with ensuring that sustainability principles and practices are integrated into policy, planning and development decisions. In Seattle, Washington, the commission advises on certain policy and planning issues as assigned by the mayor and/or city council—including the Seattle Comprehensive Plan, mayor’s policy initiatives, council’s work programs, city department work programs, other agency work programs, and other emerging issues. In Eugene, Oregon, it advises its city council and city staff on policy matters pertaining to the “livability” of Eugene—including but not limited to all future growth and development, environmental quality, housing, and thoroughfare (transportation).

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Appendix C

Monster Home Controls Summary

<i>Monster Home Controls</i>	<i>Description</i>	<i># of Exceptions</i>	<i>%</i>
Plan Review Expiration	Applications have a maximum of 365-Days to get approval for their plans; 32 exceeded the time allotted, and 27 were still issued building permits	32/200	16%
Permit Expiration	Permits hold a 3-year validity timeline; 16 Large Detached-Dwelling permits exceeded the time allotted with no extension, subject to permit revocation	16/200	8%
Repeat Plan Makers	The top ten plan makers created a majority of large detached dwellings reviewed: 155 out of 200 structures	155/200	78%
Restrictive Covenant (RC) Not Utilized	When plan reviewers recognize a suspicious layout in an application, a recommendation to apply a restrictive covenant should occur; 105 files contained evidence that covenants were needed, but only 17 covenants were documented in those files	88/105 (Covenants Not Filed)	84%
Inspection Controls: No Progress	Dwellings with inspections conducted that were found to be making no progress in construction	25/185 (Dwellings Inspected)	14%
Inspection Control: Unable to Enter	Dwellings with inspections attempted where inspectors were unable to enter the premises	76/185 (Dwellings Inspected)	41%
Violation: Work w/out a Building Permit	Violations issued that included work done without a building permit	36/64 (Violations Issued)	56%
Violation: Not Following Plans	Violations issued that included work that is not following specified plans	39/64 (Violations Issued)	61%
Days in Violation	Days in violation since a notice of violation was issued. The notice of violation usually provides 30 days for corrections to be made, and the department may issue a notice of order after determining that no correction was made during this time.	26/64 (Construction In Violation for More than 6 Months)	41%
Temporary Certificate of Occupancy (TCO)	A temporary certificate of occupancy allows DPP one-year to conduct periodic inspections of structures for illegal alteration or other violations; 25 were issued, but only 6 were subsequently inspected.	6/25 (TCO Inspections Conducted)	24%

Source: Office of the City Auditor

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Appendix D

Resolution 18-223, FD1



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. **18-223, FD1**

RESOLUTION

REQUESTING THE CITY AUDITOR TO CONDUCT AN AUDIT OF THE DEPARTMENT OF PLANNING AND PERMITTING'S PERMITTING AND INSPECTION PROCESSES FOR LARGE DETACHED DWELLINGS.

WHEREAS, communities in residential districts throughout the City have reported the development of large residential structures with upwards of 20 bedrooms with multiple kitchens and wet bars (i.e., large detached dwellings) that appear to be intended for use as multifamily dwellings in violation of the Land Use Ordinance ("LUO"); and

WHEREAS, many of these large detached dwellings were issued building permits and certificates of occupancy by the Department of Planning and Permitting ("DPP") but were later illegally converted to use as long-term rental apartment buildings that house multiple families in violation of zoning regulations, or as illegal short-term transient vacation rentals; and

WHEREAS, the DPP, when reviewing building plans, will "flag" residential projects containing layouts deemed suspicious because of their potential for conversion into illegal rental units, and require the property owner to file an affidavit or restrictive covenant stating that the permitted use will not be altered, and upon receiving complaints of illegal use from the community, has cited landowners for violations in cases where the DPP was able to determine that a violation occurred; and

WHEREAS, in spite of such efforts, the construction and conversion to illegal use of large detached dwellings has continued, resulting in potentially adverse effects on neighborhood character, energy consumption, area infrastructure capacity, availability of on-street parking, and, when these structures are used for short-term rentals, reductions in the available supply of affordable long-term rental housing; and

WHEREAS, recently, the Council has adopted several measures addressing the proliferation of large detached dwellings; and

WHEREAS, Resolution 17-276, CD1, adopted on December 6, 2017, directs the DPP Director to process a proposed LUO amendment intended to address the rapidly increasing development of large detached dwellings in residential districts; and

WHEREAS, Ordinance 18-6, enacted on March 13, 2018, regulates for an interim period the issuance of building permits for the development of large detached dwellings in residential districts; and



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 18-223, FD1

RESOLUTION

WHEREAS, Resolution 18-77, adopted on April 25, 2018, requests the City Administration to consider changes to the Building Code to address affordable housing and reduce the proliferation of large detached dwellings; and

WHEREAS, the Council believes that in addition to the foregoing measures, which address large detached dwellings, an audit of the Department of Planning and Permitting to review the processes by which large detached dwellings are issued permits would be beneficial to the Council to enable it and the City Administration to determine what procedural, organizational, or other changes may be made to allow the DPP to better address the proliferation of large detached dwellings; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the City Auditor is requested to conduct an audit of the Department of Planning and Permitting's permitting and inspection processes for large detached dwellings; and

BE IT FURTHER RESOLVED that the issues the audit is requested to address include, but are not limited to:

- 1) How current permitting processes allow the construction of large detached dwellings;
- 2) Whether the DPP, in its issuance of permits for large detached dwellings, is in compliance with City ordinances, rules, policies, and procedures;
- 3) How complaints relating to large detached dwellings are investigated;
- 4) Whether fraud, abuse, or conflicts of interest have occurred in the DPP's handling of large detached dwelling permitting and complaints;
- 5) How the DPP's operations can be improved to prevent the proliferation of large detached dwellings and expedite the handing of complaints;
- 6) Whether it would be feasible to establish an independent commission to oversee architecture and planning regulations in the City, and serve as a check on the DPP; and
- 7) Whether DPP inspectors are sufficiently trained, consistently applying, and correctly calculating a structure's floor area and floor area ratio in compliance with LUO definitions, for purposes of determining whether a structure satisfies LUO development standards and requirements.



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 18-223, FD1

RESOLUTION

BE IT FINALLY RESOLVED that copies of this resolution be transmitted to the Mayor, the Managing Director, the Director of Planning and Permitting, and the City Auditor.

INTRODUCED BY:

Ernest Martin (br)

DATE OF INTRODUCTION:

October 9, 2018
Honolulu, Hawaii

Councilmembers

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

RESOLUTION 18-223, FD1

Introduced: 10/09/18 By: ERNEST MARTIN Committee: BUDGET

Title: RESOLUTION REQUESTING THE CITY AUDITOR TO CONDUCT AN AUDIT OF THE DEPARTMENT OF PLANNING AND PERMITTING'S PERMITTING AND INSPECTION PROCESSES FOR LARGE DETACHED DWELLINGS.

Voting Legend: * = Aye w/Reservations

10/17/18	BUDGET	CR-351 – RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION.
11/14/18	COUNCIL	RESOLUTION AMENDED TO FD1. 9 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE. CR-351 AND RESOLUTION 18-223, FD1 WERE ADOPTED. 9 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE.

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.


f GLEN I. TAKAHASHI, CITY CLERK


Ernest Y. Martin, Chair and Presiding Officer