

**BILL043(22)**  
**Testimony**

**MISC. COMM. 443**

COUNCIL

## **COUNCIL Meeting**

Meeting Date: Oct 5, 2022 @ 10:00 AM

Support: 0

Oppose: 1

I wish to comment: 0

Name: Choon James	Email: ChoonJamesHawaii@gmail.com	Zip: 96762
Representing: Self	Position: Oppose	Submitted: Oct 5, 2022 @ 08:58 AM

# STRONGLY OPPOSE [Bill 43](#)

Honolulu City Council Public Hearing

October 5, 2022

10:00 AM

Kapolei Hale

[Bill 43](#) - Relating to administrative enforcement of the building, electrical, plumbing, and sidewalk codes. (Addressing the administrative enforcement of the building, electrical, plumbing, and sidewalk codes.)

Aloha Council Chair Waters, Zoning Chair Elefante and city council members,

**Bill 43 is too hostile to all owners with detached or one-or two-family dwellings.**

Bill 43 may have every good intention to provide the troubled Department of Planning and Permitting ([DPP](#)) with punitive fines for to address some "monster homes". But, there are other ways to regulate the 'monster home' problems by DPP like not issuing permit approvals and/or by regulating current occupancy rules already in the books.

**We cannot throw the baby out with the bath water.**

This fast-track proposed ordinance introduced on June 29, 2022 is **too far-reaching and sweeping**.

We can't try to solve one problem but create a thousand more.

Bill 43 turns Oahu into a punitive "[FINE](#)" police state. **This ordinance pivots from helping mainstream owners to be in compliance to hammering punishments through fines.** This proposed ordinance triggers too much unintended consequences and makes ALL Oahu's property owners vulnerable to DPP, including [corruption](#) and other political abuse and mischief.

**Bill 43 only punishes Oahu owners with detached or one-or two-family dwelling. This is discriminatory.**



**Here are some quick compelling reasons why Bill 43 must not be adopted today.**

1. Can DPP be trusted to be 100% consistently fair and just in its enforcement?

While most DPP "building official" are helpful employees doing his or her job, there had been many instances where a "building official" is used as a "gestapo" by a Mayor and his team.

Inspectors had been dispatched to threaten, intimidate, and harass owners who have crossed a Mayor or other entities in some ways. Faulty violations had been fabricated simply because DPP had the powers to do so or to show who was the "boss".

Other times, vindictiveness amongst private parties also used complaints to threaten, harass or intimidate. DPP had always said when it received a complaint, it had to follow up.

In many instances, a dispatched "building official" had personally questioned why they were told to do what they had to do. These "building officials" confessed they were simply doing "their job" and to not blame them.

2. Bill 43 will make every small property owner of detached or one-or two-family dwelling more vulnerable to heavy-handed tactics and

political mischief.

3. While the Notice of Violation with a 30-day to correct is currently being used, **the fines in Bill 43 have exponentially increased.** Currently, it's \$50.00 fine a day with the city negotiating a portion of the total balance upon correction of violations.
4. But, Bill 43 proposes \$2,000.00 per day fine amounts to \$60,000.00 a month. A year's fine equates to \$720,000.00! Three years of fines would produce a \$2,160,000.00 balance. Bill 43 has no negotiating of lesser fees when violations are corrected. What private property owner with detached or one-or two-family dwellings have this kind of money?

This would surely mean that an owner who has received a Notice of Violation also has a death sentence on their property unless they can address the corrections very quickly.
5. How is an owner supposed to correct a violation if the “building official” may not accept any application for a permit? It appears the intent had always been to PUNISH and not to help solve a problem.
6. Casting the relatively few "monster homes" aside, it must be noted that there are many reasons why a property owner with a detached or one-or two-family dwelling may be in violation intentionally or unintentionally or by default somehow.
7. There are also many reasons why correcting a violation may take a long time. It could include having to work with architects, consultants, or State offices and other unforeseen circumstances.
8. If it's a shoreline property, there will be a needed certification of a shoreline survey approved by the DLNR. The DLNR process would

entail a public publication and comment period and so on. It could take up to 6 months to complete this DLNR process. Or, paperwork could get lost at the DPP department or a thousand other extenuating circumstances could happen.

9. It's all good and fair to protect "Due Process" on paper. **But how many small private owners have succeeded in "winning" at the Building Board of Appeals.** There is a constant worry that members of boards and commissions are an extension of those in power. This appeal could easily entail the hiring of an attorney which will also increase the costs, especially if it's a small property owner who is being targeted or falsely accused.
10. The "building official" presently who signs for liens to be attached onto private property is designated to the Director of Planning and Permitting. This is extremely hostile and punitive and again, exposes all small private property owners of detached or one-or two-family dwelling to huge governmental powers and discretion.
11. What's the judicial enforcement? To impose a "[non-judicial foreclosure](#)"?
12. The added language is chilling and tyrannical. How many property owners have won in this Building Board of Appeals? This appears to be a foregone check list rather than Due Process. The Standard of Review by the Board of Appeals has a very high threshold i.e. If the DPP Director's action was based on a erroneous finding of a material fact, or that the director had acted in an arbitrary and capricious manner or had manifestly abused discretion. Even if there is a tyrannical DPP Director, which small owner can fight in court and bear the legal expenses? The process inherently penalizes an average property owner against the strong arm of the government with bottomless resources.

The General Public cannot trust DPP at this point to have this type of enforcement powers.

Who knows what kind of abusive temperament a mayor or a cabinet member or DPP director may have in the future?

It would be interesting to know what other counties in the USA impose this hostile and punitive punishment on its small private property owners.

PLEASE don not adopt this Bill 43. This fast-tracked Bill will have too many unintended consequences and multiplier impacts on ordinary residents.

**Oahu cannot become a police state. Let's adopt a culture of aloha and a culture to help residents rather than punishing.**

**Please DEFER Bill 43 to allow ordinary property owners of detached or one-or two-family dwellings a heads-up on this proposed action first.**

Mahalo,

Choon James

ChoonJamesHawaii@gmail.com





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A BILL FOR AN ORDINANCE

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RELATING TO ADMINISTRATIVE ENFORCEMENT OF THE BUILDING,  
ELECTRICAL, PLUMBING, AND SIDEWALK CODES.

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

SECTION 1. Purpose. The purpose of this ordinance is to address the administrative enforcement of the building, electrical, plumbing, and sidewalk codes.

SECTION 2. Section 18-7.4, Revised Ordinances of Honolulu 1990, is amended to read as follows:

**"Sec. 18-7.4 Administrative enforcement.**

In lieu of or in addition to enforcement pursuant to Section 18-7.3, if the building official determines that any person, firm, or corporation is not complying with a notice of violation, the building official may have the party responsible for the violation served, by mail or delivery, with an order pursuant to this section.

(a) Contents of the Order.

- (1) The order may require the party responsible for the violation to do any or all of the following:
  - (A) Correct the violation within the time specified in the order;
  - (B) Except as provided in subsection (e)(2), [Pay] pay a civil fine not to exceed \$2,000 in the manner, at the place, and before the date specified in the order; and
  - (C) Pay a civil fine not to exceed \$2,000 per day for each day in which the violation persists, in the manner and at the time and place specified in the order.
- (2) The order ~~[shall]~~ must advise the party responsible for the violation that the order ~~[shall]~~ will become final 30 calendar days after the date of its delivery. The order ~~[shall]~~ must also advise that the building official's action may be appealed to the building board of appeals.

(b) Service of Notice of Order. A notice of order must be served upon responsible persons either personally or by certified mail. However, if the whereabouts of such persons are unknown and the same cannot be ascertained by the building



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**A BILL FOR AN ORDINANCE**

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official in the exercise of reasonable diligence and the building official provides an affidavit to that effect, then a notice of order may be served by publishing the same once each week for two consecutive weeks in a daily or weekly publication in the city pursuant to HRS Section 1-28.5.

- (c) **Effect of Order—Right to Appeal.** The provisions of the order issued by the building official under this section ~~[shall]~~ will become final 30 calendar days after the date of the delivery of the order. The party responsible for the violation may appeal the order to the building board of appeals as provided in Chapter 16. The appeal must be received in writing on or before the date on which the order becomes final. However, an appeal to the building board of appeals ~~[shall]~~ will not stay any provision of the order.
- (d) **Judicial Enforcement of Order.** The building official may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by said order, the building official need only show that the notice of violation and order were served, that a civil fine was imposed, the amount of the civil fine imposed, and that the fine imposed has not been paid.
- (e) **Three Orders Within a Three Year Period.** If a person incurs three final orders under this section within a period of three years, then:
  - (1) For a period of three years from the date the third order becomes final, the building official may not accept any application for a permit under this chapter from the person; and
  - (2) The civil fine for any subsequent violation by the person within three years of the preceding violation will be \$10,000. The building official may not reduce or waive any portion of the civil fine issued pursuant to this subdivision.

A notice of order that has been appealed will be deemed final when it has been sustained upon appeal.

Any person who has incurred three final orders under this section within a three-year period may not circumvent the application of this subsection through the use of third persons, including employees and agents, and any third person knowingly aiding a person in the circumvention of this subsection shall be subject to the fine prescribed in subdivision (2)."



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ORDINANCE \_\_\_\_\_

BILL 43(2022)

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**A BILL FOR AN ORDINANCE**

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SECTION 3. Ordinance material to be deleted is bracketed and stricken. New material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the brackets, the bracketed and stricken material, or the underscoring.

SECTION 4. This ordinance takes effect upon its approval.

INTRODUCED BY:

Tony Nathan

DATE OF INTRODUCTION:

JUN 29 2022

Honolulu, Hawai'i

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Deputy Corporation Counsel

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_  
RICK BLANGIARDI, Mayor  
City and County of Honolulu

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**SUMMARY OF PROPOSED COMMITTEE DRAFT:**

**BILL 43 (2022)**  
**RELATING TO ADMINISTRATIVE ENFORCEMENT OF THE BUILDING,  
ELECTRICAL, PLUMBING, AND SIDEWALK CODES.**

The **PROPOSED CD1** makes the following amendments:

- A. Clarifies in proposed new ROH Section 18-7.4(e) that the three final orders incurred within a period of three years must relate to a detached one- or two-family dwelling, as those terms are used in Chapter 16.
- B. Makes miscellaneous technical and nonsubstantive amendments.



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ORDINANCE \_\_\_\_\_

BILL **43 (2022), CD1**  
PROPOSED

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**A BILL FOR AN ORDINANCE**

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- (e) **Three Orders Within a Three-Year Period.** If a person incurs three final orders under this section within a period of three years relating to a detached one- or two-family dwelling, as those terms are used in Chapter 16, then:
  - (1) For a period of three years from the date the third order becomes final, the building official may not accept any application for a permit under this chapter from the person; and
  - (2) The civil fine for any subsequent violation by the person within three years of the preceding violation will be \$10,000. The building official may not reduce or waive any portion of the civil fine issued pursuant to this subdivision.

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**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ORDINANCE \_\_\_\_\_

BILL **43 (2022), CD1**

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INTRODUCED BY:

Tommy Waters

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DATE OF INTRODUCTION:

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June 29, 2022  
Honolulu, Hawai'i

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Councilmembers

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Deputy Corporation Counsel

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_  
RICK BLANGIARDI, Mayor  
City and County of Honolulu