

SUMMARY OF PROPOSED COMMITTEE DRAFT:

**BILL 44 (2023)
RELATING TO FALSE STATEMENTS.**

THE PROPOSED CD1 makes the following amendments:

- A. Deletes SECTION 2 of the bill.
- B. Adds a new SECTION 2 of the bill that adds a new, unnumbered ROH chapter entitled, "FALSE STATEMENTS RELATED TO COMPLIANCE WITH THE BUILDING AND CONSTRUCTION CODES, RELATED PERMITTING, AND THE LAND USE ORDINANCE," and the following articles:
 - 1. General Provisions, which sets forth the appropriate definitions and applicability;
 - 2. Violations, which prohibits a person from knowingly making or inciting the making of a false statement to a City employee under particular circumstances;
 - 3. Prior History of Making False Statements, which designates certain persons as having a history of making false statements; and
 - 4. Enforcement, which establishes the administrative enforcement, judicial enforcement, temporary certificate of occupancy, and demolition order provisions.
- C. Makes miscellaneous technical and nonsubstantive amendments.



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

ORDINANCE _____

BILL **44 (2023), CD1**

PROPOSED

A BILL FOR AN ORDINANCE

RELATING TO FALSE STATEMENTS.

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

SECTION 1. Purpose. The purpose of this ordinance is to deter persons from making or inciting the making of a false statement to a public servant.

SECTION 2. The Revised Ordinances of Honolulu 2021 is amended by adding a new chapter to be appropriately designated by the Revisor of Ordinances and to read as follows:

**"CHAPTER __: FALSE STATEMENTS RELATED TO COMPLIANCE WITH THE
BUILDING AND CONSTRUCTION CODES, RELATED PERMITTING, AND THE
LAND USE ORDINANCE**

ARTICLE 1: GENERAL PROVISIONS

§ __-1.1 Definitions.

For the purposes of this chapter, the following definitions apply unless the context clearly indicates or requires a different meaning.

Director. Has the same meaning as defined in § 21-10.1.

False Statement. Any statement, in oral, written, printed, or electronic form, that is incorrect, inaccurate, or not in accordance with truth or fact.

Incite. Influencing another person's behavior, including by requesting, encouraging, commanding, compelling, or coercing that person.

§ __-1.2 Applicability.

This chapter applies to false statements made or incited during the course of an investigation or inspection to ascertain compliance or non-compliance with any of, or any combination of, the following:

- (1) Chapter 16: Building Code;
- (2) Chapter 16A: Housing Code;



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- (3) Chapter 16B: Building Energy Conservation Code;
- (4) Chapter 16C: Building Management;
- (5) Chapter 17: Electrical Code;
- (6) Chapter 18: Fees and Permits for Building, Electrical, Plumbing, and Sidewalk Codes;
- (7) Chapter 18A: Grading, Soil Erosion, and Sediment Control;
- (8) Chapter 19: Plumbing Code;
- (9) Chapter 20: Fire Code of the City and County of Honolulu; and
- (10) Chapter 21: Land Use Ordinance.

ARTICLE 2: VIOLATIONS

§ __-2.1 Violations.

Any person who knowingly makes a false statement to a city employee or incites the making of a false statement to a city employee is deemed to have committed a civil violation if:

- (1) The false statement is made or incited during the course of an investigation or inspection;
 - (2) The purpose of the investigation or inspection is to ascertain compliance or non-compliance with the provisions specified in § __-1.2;
 - (3) The investigation or inspection is conducted by a city employee designated by the director; and
 - (4) The investigation or inspection is conducted within the scope of the city employee's duties and responsibilities.
- (b) Any person in violation of this section is subject to a civil fine of not less than \$500 and not more than \$5,000.



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ARTICLE 3: PRIOR HISTORY OF MAKING FALSE STATEMENTS

§ __-3.1 Prior history of making false statements.

- (a) A person may be designated by the director as a person with a history of making false statements if the person has been:
- (1) Convicted of the criminal offense of unsworn falsification to authorities or making a false, fraudulent, or fictitious claim, or both, pursuant to HRS Chapter 710, or its successor provisions; or
 - (2) Issued a final order pursuant to § __-4.1 that states the person has been found to have violated § __-2.1.

ARTICLE 4: ENFORCEMENT

§ __-4.1 Administrative enforcement.

- (a) *Service of notice of violation and order.* If the director determines that any person has violated § __-2.1, the director shall serve a notice of violation and order to the party responsible for the violation. A notice of violation and order must be served upon the responsible person either personally or by certified mail. However, if the whereabouts of the responsible person are unknown and cannot be ascertained by the director in the exercise of reasonable diligence and the director provides an affidavit to that effect, then a notice of violation and order may be served by publishing the notice of violation and order in accordance with HRS § 1-28.5, or if that provision no longer applies, by publication once each week for two consecutive weeks in a newspaper of general circulation in the city.
- (b) *Contents of notice of violation.* The notice of violation must include at least the following information:
- (1) Date of the notice;
 - (2) The name and address of the person noticed, and the address of the real property that pertains to the violation;
 - (3) The section number of the ordinance, code, or rule that has been violated;
 - (4) The nature of the violation; and



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- (5) The date of the violation and the date that the violation was discovered.
- (c) *Contents of the order.*
- (1) The order must require the party responsible for the violation to pay a civil fine of not less than \$500 and not to exceed \$5,000 in the manner, at the place, and before the date specified in the order.
- (2) The order must advise the responsible person:
- (A) That the fines, if unpaid within the prescribed time period, can be added to specified fees, taxes, or charges collected by the city, and can be recorded as an administrative lien on all real property owned by the responsible person;
- (B) That the order becomes final 30 calendar days after the date of its delivery;
- (C) That the director's action may be appealed; and
- (D) Of the appropriate agency to which the director's action may be appealed under HRS Chapter 91.
- (d) *Effect of order—right to appeal.* The provisions of the order issued by the director under this section will become final 30 calendar days after the date of the delivery of the order. The director shall determine the appropriate agency to which the order may be appealed. Appropriate agencies include the building board of appeals as provided in Chapter 16 or the zoning board of appeals as provided in Chapter 21. The party responsible for the violation may appeal the order to the agency stated in the order. Appeals to the building board of appeals must be made in accordance with Chapter 16, and appeals to the zoning board of appeals must be made in accordance with Chapter 21. 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 or the zoning board of appeals does not stay any provision of the order.



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- (e) *Addition of unpaid civil fines to fees or charges collected by the city; administrative liens.*
- (1) When civil fines imposed pursuant to this subsection remain unpaid after all rights to administrative appeal or judicial review have been exhausted and the fines either:
- (A) Exceed \$150,000; or
 - (B) Have been outstanding for more than five years;
- the director shall, pursuant to Chapter 6, Article 1, and rules adopted by the director, add the civil fines to the fees and charges specified in subsection (e)(2) and record the unpaid civil fines as a lien in favor of the city on all real property owned by the responsible person.
- (2) The director shall, at a minimum, add the civil fines to the following fees and charges collected by the city, if applicable to the responsible person:
- (A) All fees collected by the department of planning and permitting, unless the fees are for permits, applications, or approvals for work necessary to correct the violation that is the subject of the notice of order;
 - (B) Motor vehicle registration fee and vehicle weight tax;
 - (C) Motor vehicle transfer of ownership fee;
 - (D) Driver's license renewal fee;
 - (E) Business license renewal fee;
 - (F) Liquor license and renewal fees;
 - (G) Refuse collection fee; and
 - (H) Refuse disposal fee.



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§ __-4.2 Judicial enforcement.

- (a) *Judicial enforcement of order.* The corporation counsel may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this article at the request of the director. Where a civil action has been instituted to enforce the civil fine imposed by an order issued pursuant to this article, the corporation counsel need only show that the notice of violation and order were served by the director, that a civil fine was imposed, the amount of the civil fine imposed, and that the fine imposed has not been paid.
- (b) *Lien enforcement.* The corporation counsel may seek enforcement of a lien under § __-4.1(e) in the circuit court of the first circuit, and the proceedings before the circuit court will be conducted in the same manner and form as ordinary foreclosure proceedings as provided for in HRS Chapter 667. The corporation counsel may request the court to permit service to be made in the manner provided by HRS §§ 634-23 through 634-29 if:
- (A) The owners or claimants of the property against which a lien is sought to be foreclosed are at the time out of the city, cannot be served within the city, or are unknown;
 - (B) That fact is made to appear by affidavit to the satisfaction of the court; and
 - (C) In like manner, it appears prima facie that a cause of action exists against the owners or claimants or against the property described in the complaint, or that the owners or claimants are necessary or proper parties to the action.

§ __-4.3 Temporary certificate of occupancy.

The director shall, for any applicant for a permit issued pursuant to Chapter 18 who has a history of making false statements, issue a temporary certificate of occupancy that is valid for a period of two years after issuance, or other time period after issuance established by the director, when a certificate of occupancy would otherwise be issued.

During the period that the temporary certificate of occupancy is valid, the department may, with reasonable notice to the holder of the building permit, conduct periodic inspections of the permitted building or structure to confirm that it is in the same structural form as when the temporary certificate of occupancy was issued.



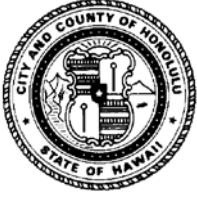
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At the end of the period during which the temporary certificate of occupancy is valid, the department may, upon final inspection, issue a certificate of occupancy for the permitted building or structure and close the building permit upon confirming that the permitted building or structure is in the same structural form as when the temporary certificate of occupancy was issued.

§ __-4.4 Demolition order.

The director may issue an order requiring the demolition of a building or structure, or portion thereof, if:

- (1) The responsible person has made a false statement, as determined by the issuance of a final order pursuant to § __-4.1, with respect to an investigation into or inspection of the building, structure, or portion thereof being ordered to be demolished; and
- (2) The responsible person or the building or structure, or portion thereof, is not in compliance with any provision specified in § __-1.2, as determined by the issuance of a final order pursuant to those provisions specified in § __-1.2 stating as such."



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SECTION 3. This ordinance takes effect upon its approval.

INTRODUCED BY:

Tyler Dos Santos-Tam

Tommy Waters

DATE OF INTRODUCTION:

July 6, 2023
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