

REPORT OF THE COMMITTEE ON ZONING AND PLANNING

Voting Members:

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

Committee Meeting Held
April 24, 2014

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

Mr. Chair:

Your Committee on Zoning and Planning, to which was referred Bill 36 (2014) entitled:

"A BILL FOR AN ORDINANCE RELATING TO GRADING VIOLATIONS AND PENALTIES,"

which passed First Reading at the April 16, 2014 Council meeting, reports as follows:

The purpose of Bill 36 (2014) is to strengthen enforcement actions and penalties for violations of the city's grading, grubbing, and stockpiling regulations.

Councilmember Pine, the introducer of the Bill, explained that the Bill is intended to address illegal grading and dumping.

The Director and Deputy Director of Planning and Permitting testified that the Department is generally in support of the Bill as it provides the Department with another tool to enforce the grading, grubbing, and stockpiling regulations. The Department is concerned, however, that unlike instances of recurring violations which can be easily determined, it may be difficult to determine if a violation is "willful". As a result, the Department will likely make determinations of willful violations sparingly.

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON MAY 7 2014

COMMITTEE REPORT NO. 125

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Your Committee received testimony in support of the Bill from the Land Use Research Foundation, and five members of the public. Testimony in opposition to the Bill was received from the Hawaii Agriculture Research Center. Comments were received from Hawaii's Thousand Friends and two members of the public. Several persons testifying in support of the Bill expressed support for extending the time period for enforcement of a recurring violation to five years.

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

- A. Extends the time period during which fines for recurring violations may be imposed from 12-months to 5 years.
- B. Other minor non-substantive changes.

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

CITY COUNCIL
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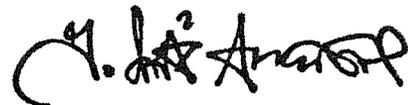
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Your Committee on Zoning and Planning recommends that Bill 36 (2014) pass Second Reading in the form attached hereto as Bill 36 (2014), CD1, be scheduled for public hearing, and be referred back to Committee. (Ayes: Anderson, Kobayashi, Menor, Pine – 4; Noes: None; Excused: Harimoto - 1.)

Respectfully submitted,



Committee Chair

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON MAY 7 2014

COMMITTEE REPORT NO. 125



A BILL FOR AN ORDINANCE

RELATING TO GRADING VIOLATIONS AND PENALTIES.

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

SECTION 1. Purpose. The purpose of this ordinance is to strengthen enforcement actions and penalties for violations of grading, grubbing and stockpiling regulations for such violations.

SECTION 2. Section 14-16.4, Revised Ordinances Honolulu 1990, as amended ("Administrative Enforcement"), is amended to read as follows:

"Sec. 14-16.4 Administrative enforcement.

- (a) In lieu of or in addition to enforcement pursuant to Section 14-16.3, if the [chief engineer] director of planning and permitting determines that any person, firm or corporation is not complying with a notice of violation, the [chief engineer] director of planning and permitting may issue an order to the person or entity responsible for the violation, pursuant to this section.
- (b) Contents of 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) Upon compliance with the provisions of HRS Chapter 91, pay a civil fine not to exceed [\$1,000.00] \$5,000.00 in the manner, at the place and time specified in the order; and
 - (C) Upon compliance with the provisions of HRS Chapter 91, pay a civil fine not to exceed [\$1,000.00] \$5,000.00 per day for each day in which the violation occurs, in the manner and at the time and place specified in the order.
 - (D) Restore the land affected by the violation to its original condition and obtain a certificate of completion from the director of planning and permitting. Restoration of the land must be completed within days of the order's issuance.



A BILL FOR AN ORDINANCE

- (2) The order shall advise the party responsible for the violation that the order shall become final 30 calendar days after the date of its delivery.
- (c) Willful Violation. If the director of planning and permitting determines that a party committed a willful violation of any provision of this chapter, or any rule adopted thereunder, or any permit issued pursuant thereto, the director of planning and permitting shall issue an order pursuant to this section and the order must, at a minimum, require the person to pay a civil fine of at least \$1,000.00 per day for each day in which the violation persists.
- (d) Discretion of the director of planning and permitting. In determining the amount of the civil fine, and whether a violation was willful, the director of planning and permitting shall consider any relevant mitigating and aggravating factors, including, but not limited to:
- (1) The effect, if any, of the violation;
 - (2) The degree and extent of harm caused by the violation;
 - (3) The cost of rectifying the damage;
 - (4) Whether the violator received economic benefit through noncompliance;
 - (5) Whether the violator took reasonable measures to comply with this chapter;
 - (6) Whether the violator acted in bad faith;
 - (7) Whether the violator reported the violation; and
 - (8) The violator's record of compliance or noncompliance with previous orders issued pursuant to this chapter and other permits issued by the Department of Planning and Permitting.
- (e) Recurring Violations.
- (1) Persons who have previously committed a violation under this chapter, in a 5-year period, may be required to pay initial and daily civil fines under subsection (b) hereof in amounts up to two times the fine amounts previously imposed by the director of planning and permitting for the immediately preceding violation.



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(2) This section does not apply to violations where a person commits a violation under this chapter, at the same location, more than one time in a 12-month period. In those instances, the director of planning and permitting shall seek enforcement through Section 14-16.3.

[(c)](f) Judicial Enforcement of Order. The [chief engineer] director of planning and permitting may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section. If a violator does not pay the civil penalty assessed by the director of planning and permitting within 30 days after it is due, or does not request an administrative hearing to contest the violation within the time provided by the order, the director of planning and permitting shall request the corporation counsel to institute a civil action to recover the amount of the assessment. Where the civil action has been instituted to enforce the civil fine imposed by said order, the [chief engineer] director of planning and permitting 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.

(g) Injunctive Relief. The director of planning and permitting may institute a civil action in any court of competent jurisdiction to enjoin any violation, or threatened violation of this chapter. The institution of an action for injunctive relief does not relieve any person from liability under the civil and criminal penalties for violations of this chapter."

SECTION 3. Chapter 14, Article 16, Revised Ordinances of Honolulu 1990, as amended ("Violations, Penalties and Liabilities for Grading, Grubbing and Stockpiling"), is amended by adding a new section to be appropriately designated by the revisor of ordinances, and to read as follows:

"Sec. 14-16. Depository of Civil Penalties.

Payments of civil penalties are to be deposited into a special account of the general fund, to be appropriately named by the department of budget and fiscal services, and shall be used for expenses related to enforcement activities of the department of planning and permitting."

SECTION 4. Ordinance material to be repealed is bracketed. New ordinance material is underscored. When revising, compiling or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the revisor of ordinances need not include the brackets, the bracketed material, or the underscoring.



A BILL FOR AN ORDINANCE

SECTION 5. This ordinance takes effect upon its approval.

INTRODUCED BY:

Kymerly Pine

DATE OF INTRODUCTION:

April 9, 2014
Honolulu, Hawaii

_____ Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20____.

KIRK CALDWELL, Mayor
City and County of Honolulu