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

Mr. Chair:  

Your Committee on Zoning and Housing, to which was referred Bill 53 (2018) entitled:  

"A BILL FOR AN ORDINANCE RELATING TO THE BUILDING CODE,"  

Introduced on July 5, 2018, and which passed First Reading at the July 11, 2018 Council meeting, reports as follows:  

The purpose of Bill 53 (2018) is to amend Chapter 16 ("Building Code") of the Revised Ordinances of Honolulu 1990 to strengthen enforcement provisions for buildings and structures erected, constructed, enlarged, altered, repaired, moved, improved, removed, or converted without the necessary permits.  

At your Committee's meeting on July 19, 2018, the Deputy Director of Planning and Permitting stated that if Bill 53 (2018) is adopted, his department would implement the new enforcement mechanisms provided for in the Bill.  

At your Committee's meeting on July 19, 2018 two individuals testified in support of the Bill. 23 individuals and one organization, the Building Industry Association of Hawaii, submitted written testimony in support of the Bill. One individual submitted written testimony in opposition to the Bill.
Your Committee has prepared a CD1 version of the Bill that makes the following amendments:

A. Revises proposed new ROH Section 16-10.4(a)(1)(C) to provide that for each day the violation persists, the violator is subject to a civil fine equal to 10 times the building permit fee amount that would have been incurred pursuant to Section 18-6.2 if the building permit had been properly obtained, or $10,000, whichever is greater.

B. Revises proposed new ROH Section 16-10.4(a)(1)(C) to provide that the building official may, in lieu of the fines, order the demolition of a building or structure, or portion thereof, that has been erected, constructed, enlarged, altered, improved, or converted in violation of that section.

C. Revises ROH Section 16-10.4(c) to provide that if a timely appeal is filed with the Building Board of Appeals, an order to demolish a building or structure, or portion thereof, will be stayed until the conclusion of the appeal, including any judicial review thereof.

D. Adds a proposed new ROH Section 16-10.4(e) to require the building official to, upon issuance of a notice of order pursuant to ROH Section 16-10.4(a)(1)(C), submit a report containing certain specified information to the State Department of Commerce and Consumer Affairs.

E. Makes miscellaneous technical and nonsubstantive amendments.
Your Committee on Zoning and Housing recommends that Bill 53 (2018) pass Second Reading in the form attached hereto as Bill 53 (2018), CD1, be scheduled for public hearing, and be referred back to Committee. (Ayes: Pine, Fukunaga, Kobayashi, Ozawa – 4; Excused: Manahan - 1.)

Respectfully submitted,

Kymberly Pine
Committee Chair
ORDINANCE
CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

BILL 53 (2018), CD1

A BILL FOR AN ORDINANCE

RELATING TO THE BUILDING CODE.

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 provisions for buildings and structures erected, constructed, enlarged, altered, repaired, moved, improved, removed, or converted without the necessary permits.

SECTION 2. Section 16-10.4, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 16-10.4 Administrative enforcement.

In lieu of or in addition to enforcement pursuant to Section 16-10.3, 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 certified 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 [er-all-eff] the following:

(A) Correct the violation within the time specified in the order;

(B) [Pay] Except where paragraph (C) applies, pay a civil fine not to exceed;

(i) $2,000.00 in the manner, at the place, and before the date specified in the order; and

(ii) $2,000.00 per day for each day in which the violation persists, in the manner and at the time and place specified in the order;

(C) Where a building or structure, or portion thereof, is erected, constructed, enlarged, altered, improved, or converted without the necessary permit; and a notice of violation contains an instruction
that the party responsible for the violation suspend work on the building or structure, or portion thereof, and work on the building or structure, or portion thereof, has nevertheless continued:

(i) **Pay a civil fine equal to 10 times the building permit fee amount that would have been incurred pursuant to Section 18-6.2 if the building permit had been properly obtained, or $10,000, whichever is greater, in the manner, at the place, and before the date specified in the order; or**

(ii) **Pay a civil fine equal to 10 times the building permit fee amount that would have been incurred pursuant to Section 18-6.2 if the building permit had been properly obtained, or $10,000, whichever is greater, per day for each day in which the violation persists, in the manner and at the time and place specified in the order; or**

(iii) **Demolish the building or structure, or portion thereof;**

The civil fines issued pursuant to this paragraph cannot be reduced nor can any portion thereof be waived by the building official.

(C) **Pay a civil fine not to exceed $2,000.00 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 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] this chapter. The appeal must be received in writing on or before the date the order becomes final. [However, an] An appeal to the building board of appeals [shall] does not stay any provisions of the order requiring correction of the violation and payment of civil fines. An order or provision of an order to demolish a building or structure, or portion thereof, pursuant to subsection (a)(1)(C)(iii) will be stayed until the conclusion of the appeal, including any judicial review thereof pursuant to HRS Chapter 91.

(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) Report. The building official shall, upon issuance of a notice of order pursuant to subsection (a)(1)(C), submit a report to the State department of commerce and consumer affairs. The report must at a minimum contain the following information:

(1) Date of the order;

(2) Name, address, and license number of any contractor, as that term is defined in HRS Section 444-1, that has performed any work on the building or structure, or portion thereof, contrary to an instruction under subsection (a)(1)(C) by the building official to the responsible party to suspend work; and

(3) Nature and description of the violation, and the penalty imposed."

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:

Kymberly Pine

DATE OF INTRODUCTION:

July 5, 2018
Honolulu, Hawaii

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____day of ________________, 20____.

KIRK CALDWELL, Mayor
City and County of Honolulu