



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

LATE

ON THE FOLLOWING MEASURE:

S.B. NO. 2722, RELATING TO OFFENSES AGAINST PUBLIC ADMINISTRATION.

BEFORE THE:

SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND
MILITARY AFFAIRS

DATE: Tuesday, February 13, 2018 **TIME:** 2:05 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Russell A. Suzuki, Acting Attorney General, or
Lance Goto, Deputy Attorney General.

Chair Nishihara and Members of the Committee:

The Department of the Attorney General ("the Department") appreciates the intent of the bill and submits comments.

The purpose of this bill is to create the class C felony offense of obstructing county real property zoning enforcement operations, which prohibits a person from knowingly making a false or misleading statement to a bona fide county inspector in the course of the inspector's investigation.

On line 7, the word "misleading" is vague and could result in enforcement issues.

On line 8, "bona fide" is not defined, and appears unnecessary.

While the offense is entitled "obstructing county real property zoning enforcement operations," the broad reference to "a bona fide county inspector" means that the offense could apply to statements made to any county inspector, even those not involved in real property zoning enforcement.

With respect to the grading of the offense as a felony, the Department notes that the felony grading has to be justified and consistent with the grading of existing offenses. Perjury, in violation of section 710-1060, Hawaii Revised Statutes (HRS), is a very serious offense and is graded as a class C felony offense. False Swearing in Official Matters, in violation of section 710-1061, HRS, is a misdemeanor. False Reporting to Law-enforcement Authorities, in violation of section 710-1015, HRS, is a

LATE

misdemeanor. Unsworn Falsification to Authorities, in violation of section 710-1063, HRS, is very similar to the proposed offense in this bill, and is a misdemeanor.

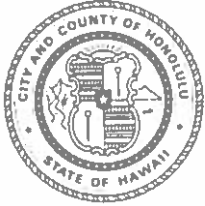
The Department also notes the unusually narrow focus of the proposed offense. The offense appears intended to only address an issue related to real property zoning enforcement by county inspectors. But a state law should not only prohibit false statements to county inspectors. Such a limitation could imply that it would be acceptable to make false statements to a state inspector or investigator. The narrow issue might be more appropriately addressed by a specific county through its own ordinances.

If the Committee would like to address the issue of false statements to inspectors, the Department respectfully suggests that it consider an amendment to an existing criminal statute. The proposed offense is similar to the existing offense of Unsworn Falsification to Authorities, set forth in section 710-1063, HRS. As such, it may be simpler and more effective to amend section 710-1063 by adding another subsection that reads:

Makes any statement, in oral, written, printed, or electronic form, which the person does not believe to be true, to a public servant engaged in criminal, civil, or administrative enforcement activity.

"Public servant" is broadly defined in section 710-1000, HRS, to mean any officer or employee of any branch of government.

The Department appreciates the opportunity to provide comments.



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 202
HONOLULU, HAWAII 96813-3065
TELEPHONE: (808) 768-5010 • FAX: (808) 768-5011

ANN H. KOBAYASHI
COUNCILMEMBER, DISTRICT 5
CHAIR, COMMITTEE ON PARKS,
COMMUNITY AND CUSTOMER SERVICES
TELEPHONE: (808) 768-5005
FAX: (808) 768-6327
EMAIL: akobayashi@honolulu.gov

February 12, 2018

The Honorable Senator Clarence Nishihara, Chair
Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Hawaii State Capitol
Honolulu, HI 96813

Re: Senate Bill No. 2092
Tuesday, February 13, 2018 2:05 p.m.
Conference Room 229

Dear Chair Nishihara and Committee members,

Thank you for the opportunity to submit testimony on Senate Bill No. 2722, Relating to Offenses Against Public Administration. The purpose of this bill would classify lying to a county inspector as a Class C felony a fine of up to \$10,000.

As Councilmember for many areas in Honolulu's urban core, I have witnessed the proliferation of large residential homes in neighborhoods such as Palolo, Manoa, and Kaimuki. I have also received calls from neighbors expressing their concerns in regards to the limited number of on-street parking, water and sewer capacity, storm drainage, and the overall size of the structure with multiple floors and rooms.

In many cases, the dwellings are modified beyond the scope of the building permit or the purpose of the modifications, and oftentimes, post inspections confirm the concerns of the neighbors. This Bill would provide the City's Department of Planning and Permitting the resources necessary to preserve the character and quality of our neighborhoods across the island.

Therefore, I support Senate Bill 2722 and respectfully request the Senate Committee on Public Safety, Intergovernmental, and Military Affairs to pass SB 2722 to preserve the wellbeing and quality of residential neighborhoods.

Sincerely,

A handwritten signature in cursive script that reads "Ann H. Kobayashi".

Ann H. Kobayashi
Councilmember, District V

SB-2722

Submitted on: 2/12/2018 1:44:35 PM

Testimony for PSM on 2/13/2018 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Planning	Testifying on behalf of County of Maui-Dept. of Planning	Comments	No

Comments:

February 12, 2018

The Honorable Clarence K. Nishihara, Chair,
and Members of the Senate Committee on Public Safety, Intergovernmental, and
Military Affairs
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Nishihara and Committee Members:

**SUBJECT: SENATE BILL 2722, RELATING TO OFFENSES AGAINST PUBLIC
ADMINISTRATION**

The Department of Planning supports the intent of Senate Bill 2722, which
would establish that knowingly making a false or misleading statement to a
zoning inspector is a felony.

False and misleading statements impede our inspectors' ability to enforce
land use laws for the community's benefit. Providing an express requirement
for truthfulness during the course of investigations, with the possibility of
criminal penalties for lying, may improve our enforcement capabilities.

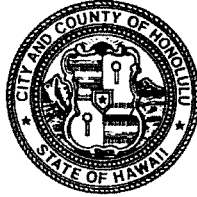
We will watch this bill as it proceeds through the legislative process and
will provide additional comments if needed as amendments are proposed. Thank
you.

Sincerely,
WILLIAM R. SPENCE
Planning Director, County of Maui

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honolulu.dpp.org • CITY WEB SITE: www.honolulu.gov

KIRK CALDWELL
MAYOR



KATHY K. SOKUGAWA
ACTING DIRECTOR

TIMOTHY F. T. HIU
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

February 13, 2018

The Honorable Clarence K. Nishihara, Chair
and Members of the Committee on Public Safety,
Intergovernmental, and Military Affairs
Hawaii State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Nishihara and Committee Members:

Subject: Senate Bill No. 2722
Relating to Offenses Against Public Administration

The Department of Planning and Permitting (DPP) **supports the intent** of Senate Bill No. 2722, which would establish the offense of obstructing county real property zoning enforcement operations a class C felony.

We appreciate any new tools that will bolster our enforcement programs. Our inspectors do experience situations where people are not forthright with information. Proving false or misleading information has been given is difficult, but perhaps the threat of criminal prosecution may be enough of an incentive to persuade clients, tenants, landowners and others to be more truthful.

You may want to re-visit whether to establish the penalty as a class C felony. We note that in another bill, the Senate withdrew its proposal related to short term rental enforcement from a class C felony to a misdemeanor.

Very truly yours,

A handwritten signature in black ink that reads "Kathy K. Sokugawa".

Kathy K. Sokugawa
Acting Director

Keep It Kailua

Preserving Kailua's Character

February 12, 2018

To: Senator Clarence K. Nishihara, Chair, Senator Glenn Wakai, Vice Chair and the Committee on Public Safety, Intergovernmental, And Military Affairs

Re: **Strong Support for SB2092 & SB2722**

We adamantly support **SB2092 & SB2722** as written. It's very apparent County officials are being asked to enforce zoning laws without the tools and State laws to support their efforts. Making a false statement to a county inspector a crime within the offense of unsworn falsification will assist county officials tremendously.

It has become extremely common for both property owners and their guests to lie to zoning inspectors regarding their illegal vacation rental activities without any consequence for their actions. Property owners will instruct their paid guest to tell inspectors that they are just friends of the owners and are not compensating them for their stay.

State law already makes it a crime to lie to enforcement officers, the same should apply to zoning inspectors (*§710-1015 : False reporting to law-enforcement authorities. (1) A person commits the offense of false reporting to law- enforcement authorities if the person intentionally makes a report or causes the transmission of a report to law-enforcement authorities relating to a crime or other incident within their concern when the person knows that the information contained in the report is false.*)

Thank you for your consideration.

Keep it Kailua

Keep It Kailua is a grassroots community group founded in 2004 whose purpose is to retain Kailua's family-oriented residential character and quality of life.

Keep It Kailua's goals are to:

- *Protect residential zoning and promote permanent residency in our neighborhoods*
- *Preserve and enhance scenic, civic, recreational and cultural features that define Kailua's sense of place*
- *Protect water resources essential to the health of the environment*
- *Preserve trees and maintain open green space*
- *Promote walking and the use of non-motorized bicycles as alternatives to automobile transportation within and around the town*

- *Promote businesses that serve the residential community*
- *Support other community groups with similar goals*

Please visit us at www.keepitkailua.com



LANIKAI ASSOCIATION * P.O. BOX 481 * KAILUA, HI 96734

February 12, 2018

Aloha Senators:

The Lanikai Association Board of Directors hereby reaffirms the Association's continued support to strengthen enforcement of existing zoning laws limiting these businesses in residential such as.

The reasons we support enhanced enforcement as proposed in SB2092 and SB2722 are as follows:

1. The purpose of residential zoning as defined in the General Plan is to provide housing for residents, not hotel rooms for tourists. Converting homes to short-term rental businesses depletes our limited residential housing supply, and increases housing costs and corresponding property taxes for actual residents and would-be residents in our community.
2. Short-term rentals significantly alter the residential character of our neighborhoods by displacing our long-term neighbors. The Lanikai Association firmly believes having neighbors is the cornerstone of our community. Short-term tenants do not engage in the sort of activities that weld and strengthen our community. They do not participate in local government, coach paddling, lead a scout troop, volunteer at the library, or keep an eye on an elderly neighbor. Our members chose to live in a residential area with the understanding that their neighbors would also be residents.

The Lanikai Association requests that you preserve the nature of our community under the zoning laws.

Mahalo,

Tom Cestare, President Lanikai Association



LOREN CLIVE REALTY

Loren E. Clive, Broker
Exclusively Maui real estate

PO Box 925
Haiku HI 96708
loren.clive@gmail.com
808-250-6891 call/text

February 11, 2018

Re: SB2722

Dear Hawaii State Legislators:

I strongly oppose the passage of SB2722. This heavy-handed and unnecessary measure would allow homeowners to be fined up to \$10,000 and imprisoned for up to five years for lying to County inspectors, and lump them into the same category as thieves. As noted by your own committee, the proposition is redundant and already covered by HRS 710-1063, which makes it a misdemeanor to lie to public servants. That is punishment enough!

Ironically, such heavy penalties would in fact discourage cooperation with County inspectors and lead to a worse situation than what we have now. Faced with prison time, do you think anyone is going to want to speak with an inspector?! No way.

The definition of private property is just that: it's private. We have too many nosy neighbors in Hawaii trying to tell people how to live in their own homes. With the ongoing housing crisis, the last thing we need is more restrictions on building.

A better solution would be to simplify building codes statewide so that laypeople can easily understand them. The current code, at least in Maui County, is far from simple, and studies have shown that more restrictions on zoning actually contributes to income inequality and our present housing shortage.

I recommend that you all focus on bringing more better paying jobs to Hawaii so that with improved incomes, local people can afford to buy the housing that's here, as well as streamlining the development process so that we can get the new homes we so desperately need.

Mahalo for reading my testimony.

Cordially,

Loren E. Clive
Broker/Owner

www.lorencliverealty.com

SB-2722

Submitted on: 2/11/2018 4:29:04 PM

Testimony for PSM on 2/13/2018 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
		Support	No

Comments:

Aloha -

I support SB2722. In our experience when reporting illegal TVUs in our North Shore community, the renters are coached by the owners to tell any city inspectors that they are just friends staying there or that they are staying there longer than the one or two weeks. This makes it almost impossible for the inspectors to follow up or investigate further. Any possible evidence of lying cannot be factored into the equation when trying to shut the illegal TVUs down.

I respectfully request that the committee support this bill to give the counties the ability to have more enforcement when investigating illegal TVUs.

Mahalo for your time and consideration.

Kathleen Pahinui

Waialua, North Shore, Oahu

SB-2722

Submitted on: 2/11/2018 6:04:06 PM

Testimony for PSM on 2/13/2018 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Neil Frazer		Support	No

Comments:

Aloha Senators,

I strongly support SB2722 making it a Class C felony to lie to a county housing inspector.

My neighborhood is being ruined by scofflaw operators of transient vactation rentals. Most of them are from out of state, and they laugh at Hawaii's laws. They laugh all the way to the bank while citizens go homeless.

Please pass this bill.

Mahalo,

Neil Frazer/ Kailua 96734

SB-2722

Submitted on: 2/11/2018 7:10:13 PM

Testimony for PSM on 2/13/2018 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Marten		Support	No

Comments:

Please support this Bill. I live in a community heavily impacted by illegal vacation rentals. Efforts by inspectors to issue violations to the properties next to me have largely been unsuccessful because the property manager asks the renters to lie if asked if they are renting. I agree that renters themselves should not be fined - it is the property owners and property managers that are aware of the laws they are breaking. However, lying to a State or County official is not pono and if there are consequences, people will not take the risk on behalf of the property owner who they do not even know.

Mahalo for protecting our residential communities.

SB-2722

Submitted on: 2/12/2018 4:51:39 AM

Testimony for PSM on 2/13/2018 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jeannine Johnson		Support	No

Comments:

I strongly support SB 2722 which makes it a class C felony to lie to a county housing inspector with a fine up to \$10,000. I would suggest an amendment that would make fines start at \$10,000 and eliminate the Department of Permitting and Planning's discretion to decrease the fines. Mahalo for your support of our communities.

SB-2722

Submitted on: 2/12/2018 6:45:52 AM

Testimony for PSM on 2/13/2018 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Morelli		Support	No

Comments:

I support SB 2722 and think it is way over due

SB-2722

Submitted on: 2/12/2018 7:06:08 AM

Testimony for PSM on 2/13/2018 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
jerry lam		Support	No

Comments: I am writing testimony in support of SB2722, which will add teeth to the failing enforcement of city regulations. We must work together to develop measures which will place a limit on these gargantuan, humongous ugly structures which block sun and views from our island's residents. This bill will help this prolem. A monster home in Palolo has 16 bedrooms and 11 bathrooms and mailboxes that read a,b,c etc. A home in Manoa has 10 bedrooms, 10 bathrooms and separate electrical boxes. An article I read has one home having coin operated washer dryers and no parking. You cannot ignore the fact that 10 more toilets flushing in an old neighborhood like Manoa will compromise the aging sewer system. The builder's and developer's argument that these homes help affordable housing is a fallacy. Rooms on craigslist list for over a \$1000 for a small room with no parking and a shared bathroom. For \$16.000 a month income, monster home owners can even air condition the rooms. And the current minimal penalties are much less than the lucrative rent that these monsters bring in. Many times the City sends out notices of violation but collect zero in penalties. Foreign buyers continually outbid Hawaii residents for residential home land because they know they will make a lucrative business renting or selling the monster home. Then they parley their profit and move on to purchasing new land and starting their next monster palace. I was told one developer and his home building crew has erected over 20 of these large homes (each one within three months time). We know that these homes are not multi-generational homes. They care little about taxing the infrastructure, the increase in noise, the overflow of street parking, the ambiance of neighborhood character, energy consumption, and they ignore laws that prohibit more than 5 non related persons to live in these massive houses. They certainly do not provide ample parking for their tenants. We notice they are always built with the smallest house front facing the street and the long rows of bedrooms running deep into the totally cemented lot. The floor area ratio should be less than .75 with the option of appealing this. We know that hand in hand with these newly developing building rules, there also needs to be a specific plan for investigation and enforcement of the new law. And the token penalties must be raised considerably to deter these apartments from proliferating in neighborhoods that are zoned "residential". The burden of proof should be on the monster home owners to prove the legitimacy of the tenancy and not on the complaining neighbor nor DPP. As short term rentals abound, no one will know who their neighbors are, and that will affect community security and trust. There is more to say, but I will end. Please support stricter enforcement and establish an insightful committee to come up with fines that are meaningful and that will help DPP make Oahu a livable island for us, our children and our kupuna! Jeremy Lam, M.D. 2230 Kamhameha Avenue Honolulu, HI 96822

SB-2722

Submitted on: 2/12/2018 9:04:43 AM

Testimony for PSM on 2/13/2018 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jacqueline Wah		Support	No

Comments:

I am in full favor of SB2722. The punishment for lying to a county inspector needs to be raised to a class C felony and the fine raised to an amount (up to \$10,000) that would deter someone from even starting to build a monster home or renting out their home to Airbnb illegally.

If the penalty or fine are not high enough builders, contractors, monster home owners, and Airbnb providers will just consider it the cost of doing business. They would consider it a slap on the wrist and nothing more than a risk worth taking.

Please make it hurt enough to end the building of these monster homes that mar our communities and use up more parking and resources than the area can handle. Illegal Airbnb rentals help to create the housing shortage we are experiencing and take away precious housing from legal renters who help to stabilize a community. Please pass SB 2722.

From: [Linda Legrande](#)
To: [PSMTestimony](#)
Subject: SB2722
Date: Monday, February 12, 2018 7:39:17 AM

To Whom it May Concern:

I support SB2722 and think the \$10,000 fine is totally in line with the damage that these lying builders/contractors are doing to our neighborhoods. Local people are priced out of buying homes because there is so much money to be made in these monsters, the builders just over bid to buy the property that they then construct these money machines!!

Thank you for your attention to this.

aloha, Linda Legrande
2243 Mohala Way
Honolulu, HI 96822

From: [Andrea Davis](#)
To: [PSMTestimony](#)
Subject: Re SB 2092 and SB 2722
Date: Monday, February 12, 2018 6:30:32 AM

Aloha,

Please support these bills. As inspectors of illegal rentals will tell you, owners of these rentals have their guests state they are either friends or there for a longer period of time. These bills will make lying either a misdemeanor or a felony. I support the intent of these bills as lying to inspectors is one of the factors DPP says stops them in their investigations.

Mahalo,

Andrea Davis

59-468 Hoalike Road

Haleiwa, HI 96712

(808) 200-2018

Senate Committee on Public Safety, Intergovernmental and Military Affairs
Senator Clarence K. Nishihara, Chair
Senator Glenn Wakai, Vice Chair

Re: Support for SB2722

Aloha Chair Nishihara, Vice Chair Wakai and other Members of the Committee,

My name is Davin Aoyagi, and I am a concerned resident and neighborhood board member for the Kuli'ou'ou / Kalani Iki Neighborhood Board #2. I am writing to express my support for SB2722, which would make it a class C felony to lie to county housing inspector.

We are all aware that one of the most critical problems facing Hawaii is the cost of affordable housing and the general cost of living, which serve as critical barriers for Hawaii residents to thrive. And while I think we need to be empathetic toward those individuals that want to call paradise their home, it is important to recognize that the development of "monster homes" and illegal vacation rentals cannot be pointed to as a suitable fix for affordable living in our state. Monster homes and illegal vacation rentals attempt to curb the cost of living for some, and in doing so, several diminish the quality of living in desirable neighborhoods for all Hawaii residents.

Within my own neighborhood and the surrounding neighborhoods, we have seen the rise of monster homes lead to congested streets which are full of cars that exceed the on-site parking limits for homes. These congested streets serve to make traffic more unwieldy in our neighborhood and much more dangerous for pedestrians.

As a neighborhood board member, I've learned that many of the challenges that Honolulu county faces arise from a lack of severe, punitive measures that they can deploy against those homeowners that lie to city and county inspectors. We've heard so many stories of houses that, upon completion, are then modified to accommodate large numbers of people far beyond the scope of the original house plan. And we are too familiar with anecdotal accounts of frustrated inspectors who are just as concerned as long-time residents, but find themselves unable to enforce compliance due to limitations of current statute.

I urge you to support SB2722 and appreciate your consideration of my testimony.

Sincerely,
Davin Aoyagi

SB-2722

Submitted on: 2/12/2018 11:25:34 AM

Testimony for PSM on 2/13/2018 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Sarah Chinen	Individual	Support	No

Comments:

Thank you for this Bill that will stop irresponsible builders, architects, and developers from making false statements just to get their way as they destroy the ambience of neighborhoods with monster houses built on false premises of family needs, or other b.s. reasons.

There is no aloha in their hearts for the neighbors or communities. Their idea of progress is build fast, build big, sell big, and repeat. They are not held accountable for the devastation to neighborhoods and lie to get their way. They don't care and can afford to pay the piddly fines that are a minor nuisance. Charging them for their crimes of lies for profit is a good step forward.

As Steve McGarrett used to say to Danny, "Book 'em, Danno!"

Thank you very much.

SB-2722

Submitted on: 2/12/2018 1:13:06 PM

Testimony for PSM on 2/13/2018 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
David DiBeradino	Individual	Support	No

Comments:

I support this bill as I have witnessed 1st hand property owners and renters of illegal vacation rentals lie to City inspector David Kalei for 10 years to circumvent the law. This property 424 D N Kalaheo has been levied more than \$800,000 in fines yet the flagarent abuse still takes place by lying to city inspectors.

From: [Vanessa Distajo](#)
To: [PSMTestimony](#)
Subject: Testimony in Support of SB2092 and SB2722
Date: Monday, February 12, 2018 1:50:58 PM

Dear Senators,

Over the course of the last year, my quaint, residential neighborhood in Manoa has been dealing with the emergence of monster homes, and the proliferation of illegal Airbnb operations. The charm and security of our community is at risk. There are so many strangers checking in and out of an Airbnb on our street, at all hours of the day and night, that it no longer feels safe for my children and I to play in our yard, or relax in our patio.

Since March, I have been reporting the violations of one house in particular to DPP. The inspector, Colin Ishikawa, has made several visits to the house. Each time, the homeowners lie to him about their illegal operations. Colin Ishikawa has told me repeatedly that there is nothing he can do unless the home owners admit the wrong doing. This seems absurd when people are knowingly breaking the law. Especially when the home owner has confessed his illegal operations to my husband and I, and tried to intimidate us into not reporting him to the City.

In December, I was finally able to track down the website link they are using to conduct this illegal business. I forwarded it to the DPP inspector, along with numerous photos of various groups of people coming and going with their luggage and rental cars, night after night. To this date, nothing has been done to get them to stop. I reported this to Manoa Neighborhood Board members, as well as Coucilmember Ann Kobayashi.

Something must be done to get people to stop breaking the law. It should be illegal to lie to a City official, and there should be a steep fine or punishment to deter this malfeasance. Thus, I strongly support SB2092 and SB2722, and implore you to pass at least one of these bills. Please help the law-abiding, local people to live a safe and happy life.

Thank you for finally doing something to combat the monster house and Airbnb offenders!

Sincerely,
Vanessa Distajo
vanvanes@aol.com
(808)561-1150