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Submittal Form

DEPARTMENT OF ELECTIONS

For Proposed Initiative Measure(s)

Prior to submittal to the Department of Elections

By 4 or more Supervisors or the Mayor

I, hereby submit the following proposed initiative measure for hearing before the Board of Supervisors' Rules Committee prior to the submittal of the proposed initiative measure to the Department of Elections (per Proposition C, November 2007).

This matter is for the **November 3 2020** Election.

Sponsors: Supervisor Gordon Mar; Hillary Ronen, Dean Preston, Aaron Peskin.

Subject: Initiative Ordinance - Business and Tax Regulations Code - Stock-Based Compensation Tax

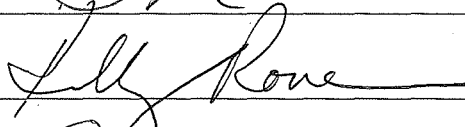
The text is listed below or attached:

(See attached.)

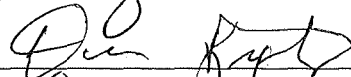
Supervisor Gordon Mar:



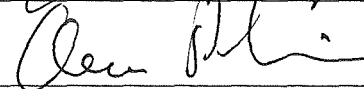
Supervisor Hillary Ronen:



Supervisor Dean Preston:



Supervisor Aaron Peskin:



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PROPOSED INITIATIVE ORDINANCE TO BE SUBMITTED BY FOUR OR MORE SUPERVISORS TO THE VOTERS AT THE NOVEMBER 3, 2020 ELECTION.

[Under Charter Section 2.113(b), this measure must be submitted to the Board of Supervisors and filed with the Department of Elections no less than 45 days prior to the deadline for submission of such initiatives to the Department of Elections set in Municipal Elections Code Section 300(b).]

[Initiative Ordinance - Business and Tax Regulations Code - Stock-Based Compensation Tax]

Ordinance amending the Business and Tax Regulations Code to impose an additional tax on the stock-based compensation payroll expense of publicly traded companies and publicly traded company groups; and to increase the City's appropriations limit by the amount collected under the tax for four years from November 3, 2020.

NOTE: **Unchanged Code text and uncodified text** are in plain font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in *strikethrough italics Times New Roman font*.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Pursuant to Article XIII C of the Constitution of the State of California, this ordinance shall be submitted to the qualified electors of the City and County of San Francisco at the November 3, 2020, consolidated general election.

Section 2. If the voters at the November 3, 2020 election do not adopt any measure to repeal the payroll expense tax imposed by Article 12-A of the Business and Tax Regulations

Code, the Business and Tax Regulations Code is hereby amended in accordance with this Section 2 by adding Article 35, consisting of Sections 3501 through 3511, to read as follows. But if the voters at that election adopt any measure to repeal the payroll expense tax imposed by Article 12-A, the Business and Tax Regulations Code shall instead be amended in accordance with Section 3 of this measure.

ARTICLE 35: STOCK-BASED COMPENSATION TAX

SEC. 3501. SHORT TITLE.

This Article 35 shall be known as the "Stock-Based Compensation Tax Ordinance," and the tax it imposes shall be known as the "Stock-Based Compensation Tax."

SEC. 3502. DEFINITIONS.

Unless otherwise defined in this Article 35, the terms used in this Article shall have the meanings given to them in Articles 6 and 12-A of the Business and Tax Regulations Code, as amended from time to time.

For purposes of this Article 35, the following definitions apply:

"Compensation" means salaries, wages, bonuses, commissions, property issued or transferred in exchange for the performance of services (including but not limited to stock options), compensation for services to owners of pass-through entities, and any form of remuneration to employees for services.

"Payroll Expense" means payroll expense as that term is defined in Section 902.1 of Article 12-A of the Business and Tax Regulations Code, as amended from time to time, except that taxpayers must calculate the amount of compensation to owners of a pass-through entity subject to the Stock-Based Compensation Tax, and may not rely on the presumption for compensation to owners of a pass-through entity in the last sentence of Section 902.1(d).

“Public Company” means a person whose stock is traded on a public exchange.

“Public Company Group” means a group of persons that consists of a parent entity and one or more persons that are more than 50%-owned, by voting power, directly or indirectly, by that parent entity, where the group includes a Public Company during all or any portion of the tax year.

Ownership interests owned, directly or indirectly, by a person shall be considered as being owned proportionately by that person’s owners.

“Stock-Based Compensation” means any Compensation in the form of, or dependent on the value of, stock interests in a Public Company, including but not limited to stock, stock options, restricted stock, restricted stock units, stock acquired as a result of employee stock purchase plans, stock appreciation rights, and phantom stock.

“Stock-Based Compensation Payroll Expense” means Payroll Expense that is attributable to Stock-Based Compensation. For purposes of this definition and this Article 35, the biotechnology exclusion under Section 906.1 of Article 12-A and the clean technology business exclusion under Section 906.2 of Article 12-A shall not apply.

SEC. 3503. IMPOSITION OF TAX.

(a) Except as otherwise provided in this Article 35, for the privilege of engaging in business in the City, the City imposes an annual Stock-Based Compensation Tax on each person engaging in business within the City that has Stock-Based Compensation Payroll Expense and that is either a Public Company or is part of a Public Company Group.

(b) The Stock-Based Compensation Tax shall be calculated by multiplying the person’s Stock-Based Compensation Payroll Expense during the tax year attributable to the City, as set forth in Section 904 of Article 12-A of the Business and Tax Regulations Code, by 1.12%.

(c) Stock-Based Compensation shall be included in a person’s Stock-Based Compensation Payroll Expense at the same time and in the same amount as in Article 12-A.

(d) The Stock-Based Compensation Tax shall be retroactive to January 1, 2020, and shall apply to all Stock-Based Compensation included in Stock-Based Compensation Payroll Expense on or after January 1, 2020.

SEC. 3504. EXEMPTIONS.

(a) The exemptions under Section 906(a) through Section 906(e) of Article 12-A shall apply to the Stock-Based Compensation Tax.

(b) A person that is exempt from the payroll expense tax as a small business enterprise under Section 905-A of Article 12-A of the Business and Tax Regulations Code shall be exempt from the Stock-Based Compensation Tax. This exemption shall not apply to persons subject to the administrative office tax under Section 953.8 of Article 12-A-1 of the Business and Tax Regulations Code.

SEC. 3505. CONSTRUCTION AND SCOPE OF THE STOCK-BASED COMPENSATION TAX ORDINANCE.

(a) This Article 35 is intended to authorize application of the Stock-Based Compensation Tax in the broadest manner consistent with its provisions and with the California Constitution, the United States Constitution, and any other applicable provision of federal or state law.

(b) The Stock-Based Compensation Tax imposed by this Article 35 is in addition to all other City taxes, including without limitation the payroll expense tax imposed by Article 12-A of the Business and Tax Regulations Code, as amended from time to time, and the administrative office tax imposed under Section 953.8 of Article 12-A-1 of the Business and Tax Regulations Code, as amended from time to time. Accordingly, by way of example and not limitation, persons subject to both the Stock-Based Compensation Tax and the payroll expense tax shall pay both taxes. Persons exempt from either the

payroll expense tax or the Stock-Based Compensation Tax, but not both, shall pay the tax from which they are not exempt.

SEC. 3506. ADMINISTRATION OF THE STOCK-BASED COMPENSATION TAX

ORDINANCE.

(a) Except as otherwise provided under this Article 35, the Stock-Based Compensation Tax shall be administered pursuant to Article 6 of the Business and Tax Regulations Code, as amended from time to time, including without limitation all penalties and other charges imposed by that Article.

(b) The provisions applicable to combined groups in Section 907 of Article 12-A of the Business and Tax Regulations Code shall apply to the Stock-Based Compensation Tax.

SEC. 3507. DEPOSIT OF PROCEEDS.

The Stock-Based Compensation Tax is a general tax. Proceeds of the Stock-Based Compensation Tax are to be deposited in the City's general fund and can be spent for any City purposes.

SEC. 3508. AMENDMENT OF ORDINANCE.

The Board of Supervisors may amend or repeal this Article 35 by ordinance without a vote of the people except as limited by Article XIII C of the California Constitution.

SEC. 3509. EFFECT OF STATE AND FEDERAL AUTHORIZATION.

To the extent that the City's authorization to impose or to collect any tax imposed under this Article 35 is expanded or limited as a result of changes in state or federal statutes, regulations, or other laws, or judicial interpretations of those laws, no amendment or modification of this Article shall be required to conform the taxes to those changes, and the taxes are hereby imposed in conformity with

those changes, and the Tax Collector shall collect them to the full extent of the City's authorization up to the full amount and rate of the taxes imposed under this Article.

SEC. 3510. SEVERABILITY.

(a) Except as provided in Section 3510(c), below, if any section, subsection, sentence, clause, phrase, or word of this Article 35, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Article. The People of the City and County of San Francisco hereby declare that, except as provided in Section 3510(c), they would have adopted this Article 35 and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Article or application thereof would be subsequently declared invalid or unconstitutional.

(b) If the retroactive operation of the Stock-Based Compensation Tax as stated in Section 3503(d) is held to be invalid or unconstitutional in a final judicial decision, the Stock-Based Compensation Tax shall be operative the first day of January following the effective date of this Article 35, and references to January 1, 2020 in Section 3503(d) shall instead be to such operative date.

(c) If the imposition of the Stock-Based Compensation Tax in Section 3503 is held in its entirety to be facially invalid or unconstitutional in a final judicial decision, the remainder of this Article 35 shall be void and of no force and effect, and the City Attorney shall cause it to be removed from the Business and Tax Regulations Code.

SEC. 3511. SAVINGS CLAUSE.

No section, clause, part, or provision of this Article 35 shall be construed as requiring the payment of any tax that would be in violation of the Constitution or laws of the United States or of the Constitution or laws of the State of California.

Section 3. If the voters at the November 3, 2020 election adopt any measure to repeal the payroll expense tax imposed by Article 12-A of the Business and Tax Regulations Code, the Business and Tax Regulations Code is hereby amended in accordance with this Section 3, by adding Article 35, consisting of Sections 3501 through 3513, to read as follows. But if the voters at that election do not adopt any measure to repeal the payroll expense tax imposed by Article 12-A, the Business and Tax Regulations Code shall instead be amended in accordance with Section 2 of this measure.

ARTICLE 35: STOCK-BASED COMPENSATION TAX

SEC. 3501. SHORT TITLE.

This Article 35 shall be known as the "Stock-Based Compensation Tax Ordinance," and the tax it imposes shall be known as the "Stock-Based Compensation Tax."

SEC. 3502. DEFINITIONS.

Unless otherwise defined in this Article 35, the terms used in this Article shall have the meanings given to them in Article 6 of the Business and Tax Regulations Code, as amended from time to time.

For purposes of this Article 35, the following definitions apply:

“Compensation” means salaries, wages, bonuses, commissions, property issued or transferred in exchange for the performance of services (including but not limited to stock options), compensation for services to owners of Pass-Through Entities, and any form of remuneration to employees for services.

“Pass-Through Entity” includes a trust, partnership, corporation described in Subchapter S of the Internal Revenue Code of 1986, as amended, limited liability company, limited liability partnership, professional corporation, and any other person or entity (other than a disregarded entity for federal income tax purposes) which is not subject to the income tax imposed by Subtitle A, Chapter 1 of the Internal Revenue Code of 1986, as amended, or which is allowed a deduction in computing such tax for distributions to the owners or beneficiaries of such person or entity.

“Payroll Expense” has the meaning set forth in Section 3503.

“Public Company” means a person whose stock is traded on a public exchange.

“Public Company Group” means a group of persons that consists of a parent entity and one or more persons that are more than 50%-owned, by voting power, directly or indirectly, by that parent entity, where the group includes a Public Company during all or any portion of the tax year. Ownership interests owned, directly or indirectly, by a person shall be considered as being owned proportionately by that person’s owners.

“Stock-Based Compensation” means any Compensation in the form of, or dependent on the value of, stock interests in a Public Company, including but not limited to stock, stock options, restricted stock, restricted stock units, stock acquired as a result of employee stock purchase plans, stock appreciation rights, and phantom stock.

“Stock-Based Compensation Payroll Expense” means Payroll Expense attributable to Stock-Based Compensation.

SEC. 3503. PAYROLL EXPENSE.

(a) The term "Payroll Expense" means the Compensation paid to, on behalf of, or for the benefit of an individual, including shareholders of a professional corporation or a Limited Liability Company ("LLC"), who during any tax year, perform work or render services, in whole or in part in the City; and if more than one individual or shareholders of a professional corporation or members of an LLC, during any tax year performs work or renders services in whole or in part in the City, the term "Payroll Expense" means the total Compensation paid to all such individuals and shareholders of a professional corporation or members of an LLC.

(b) Any person that grants a service provider a right to acquire an ownership interest in such person in exchange for the performance of services shall include in its Payroll Expense for the tax year in which such right is exercised an amount equal to the excess of (1) the fair market value of such ownership interest on the date such right is exercised over (2) the price paid for such interest.

(c) Any individual compensated in his or her capacity as a real estate salesperson or mortgage processor shall be deemed an employee of the real estate broker or mortgage broker for or under whom such individual performs services, and any Compensation received by such individual, including Compensation by way of commissions, shall be included in the Payroll Expense of such broker. For purposes of this Section 3503, "real estate broker" and "mortgage broker" refer to any individual licensed as such under the laws of the State of California who engages the services of salespersons or a salesperson, or of mortgage processors or a mortgage processor, to perform services in the business which such broker conducts under the authority of his or her license; a "salesperson" is an individual who is engaged by a real estate broker to perform services, which may be continuous in nature, as a real estate salesperson under an agreement with a real estate broker, regardless of whether the individual is licensed as a real estate broker under the law of the State of California; a "mortgage processor" is an individual who is engaged by a real estate broker or mortgage broker to perform services which may be continuous in nature, as a mortgage processor under an agreement with such

real estate broker or mortgage broker, regardless of whether the mortgage processor is also licensed as a mortgage broker under the laws of the State of California.

(d) All Compensation, including all pass-through Compensation for services paid to, on behalf of, or for the benefit of owners of a Pass-Through Entity, shall be included in the calculation of such entity's Payroll Expense for purposes of determining such entity's tax liability under this Article 35. For purposes of this Section 3503, the "pass-through Compensation for services" of a Pass-Through Entity shall be the aggregate Compensation paid by such entity for personal services rendered by all such owners, and shall not include any return on capital investment.

SEC. 3504. IMPOSITION OF TAX.

(a) Except as otherwise provided in this Article 35, for the privilege of engaging in business in the City, the City imposes an annual Stock-Based Compensation Tax on each person engaging in business within the City that has Stock-Based Compensation Payroll Expense and that is either a Public Company or is part of a Public Company Group.

(b) The Stock-Based Compensation Tax shall be calculated by multiplying the person's Stock-Based Compensation Payroll Expense during the tax year attributable to the City, as set forth in Section 3505, by 1.12%.

(c) The Stock-Based Compensation Tax shall be retroactive to January 1, 2020, and shall apply to all Stock-Based Compensation included in Stock-Based Compensation Payroll Expense on or after January 1, 2020.

SEC. 3505. APPORTIONMENT OF STOCK-BASED COMPENSATION PAYROLL EXPENSE.

Where Stock-Based Compensation Payroll Expense is incurred by reason of work performed or services rendered by an individual, wholly within the City, all of the Stock-Based Compensation Payroll Expense for such individual shall be attributable to the City and subject to the Stock-Based

Compensation Tax in this Article 35. Where Stock-Based Compensation Payroll Expense is incurred by reason of work performed or services rendered by an individual partly within and partly without the City, the portion of such Stock-Based Compensation Payroll Expense attributable to the City (and subject to the Stock-Based Compensation Tax in this Article 35) shall be determined as follows:

(a) Except as otherwise provided in this Section 3505, the portion of such Stock-Based Compensation Payroll Expense attributable to the City shall be the portion of such Stock-Based Compensation Payroll Expense which the total number of working hours employed within the City bears to the total number of working hours within and without the City.

(b) If the amount of such Stock-Based Compensation Payroll Expense depends on the volume of business transacted by such individual, then the portion of such Stock-Based Compensation Payroll Expense attributable to the City shall be the portion of such Stock-Based Compensation Payroll Expense which the volume of business transacted by such individual in the City bears to the volume of business transacted by such individual within and without the City.

(c) If it is impracticable, unreasonable or improper to apportion such Stock-Based Compensation Payroll Expense as aforesaid either because of the particular nature of the services of such individual, or on account of the unusual basis of Compensation, or for any other reason, then the amount of such Stock-Based Compensation Payroll Expense reasonably attributable to work performed or services rendered in the City shall be determined on the basis of all relevant facts and circumstances of the particular case, in accordance with any rulings or regulations issued or promulgated by the Tax Collector for the purpose.

(d) If the Tax Collector determines that the percentage of Stock-Based Compensation Payroll Expense attributable to the City, for any one or more persons, is a relatively stable percentage, the Tax Collector may establish that percentage as a prima facie evidence of Stock-Based Compensation Payroll Expense attributable to the City; provided, that the Tax Collector shall condition the establishment of such fixed percentage upon the obligation of the taxpayer to report immediately to the

Tax Collector any significant change in the taxpayer's mode of business which may impact the portion of the person's Stock-Based Compensation Payroll Expense which is attributable to the City; and, provided further, that the Tax Collector may rescind any such fixed percentage at any time by providing written notice to the taxpayer of such rescission.

SEC. 3506. EXEMPTIONS.

(a) An organization that is exempt from income taxation by Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the California Revenue and Taxation Code or Subchapter F (commencing with Section 501) of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, as amended, as qualified by Sections 502, 503, 504, and 508 of the Internal Revenue Code of 1986, as amended, shall be exempt from taxation under this Article 35, only so long as those exemptions continue to exist under state or federal law.

(b) For only so long as and to the extent that the City is prohibited from imposing the Stock-Based Compensation Tax or the gross receipts tax in Article 12-A-1, any person upon whom the City is prohibited under the Constitution or laws of the State of California or the Constitution or laws of the United States from imposing the Stock-Based Compensation Tax or the gross receipts tax in Article 12-A-1 shall be exempt from the Stock-Based Compensation Tax.

(c) A small business enterprise shall be exempt from the Stock-Based Compensation Tax. For purposes of this Section 3506(c), the term "small business enterprise" means any person whose taxable Stock-Based Compensation Payroll Expense does not exceed \$100,000. For persons that are required to file as a combined group under Section 3508(b), the \$100,000 threshold shall apply to the aggregate amount of taxable Stock-Based Compensation Payroll Expense of all persons that are required to be included in the combined group. For the 2022 tax year and each second succeeding tax year, the Tax Collector shall increase the ceiling for the small business enterprise tax exemption (rounded to the nearest \$10,000 increment) to reflect increases in the United States Department of Labor's Bureau of

Labor Statistics consumer price index for all urban customers for the San Francisco-Oakland-San Jose area for each of the preceding two tax years.

SEC. 3507. CONSTRUCTION AND SCOPE OF THE STOCK-BASED COMPENSATION TAX ORDINANCE.

(a) This Article 35 is intended to authorize application of the Stock-Based Compensation Tax in the broadest manner consistent with its provisions and with the California Constitution, the United States Constitution, and any other applicable provision of federal or state law.

(b) The Stock-Based Compensation Tax imposed by this Article 35 is in addition to all other City taxes, including without limitation the administrative office tax imposed under Section 953.8 of Article 12-A-1 of the Business and Tax Regulations Code, as amended from time to time. Accordingly, by way of example and not limitation, persons subject to both the Stock-Based Compensation Tax and the administrative office tax shall pay both taxes. Persons exempt from either the administrative office tax or the Stock-Based Compensation Tax, but not both, shall pay the tax from which they are not exempt.

SEC. 3508. ADMINISTRATION OF THE STOCK-BASED COMPENSATION TAX ORDINANCE.

(a) Except as otherwise provided under this Article 35, the Stock-Based Compensation Tax shall be administered pursuant to Article 6 of the Business and Tax Regulations Code, as amended from time to time, including without limitation all penalties and other charges imposed by that Article.

(b) A combined group, as described in Section 956.3 of Article 12-A-1 of the Business and Tax Regulations Code, must file a single Stock-Based Compensation Tax return, and must choose a single person to file the return on its behalf. Each person within the combined group engaging in business within the City must provide a power of attorney to the person filing the return, authorizing that person

to file said return and to act on behalf of each person within the combined group with respect to payments, refunds, audits, resolutions, and any other items related to the tax liability reflected in the return. The power of attorney shall be substantially in a form prescribed or approved by the Tax Collector. Each return filed by a combined group constitutes a combined return under this Article 35 and Article 6. The person filing any combined return shall pay the tax liability reflected on the return and any liability determined on audit at the time and in the manner set forth for returns and liabilities in Article 6. The Stock-Based Compensation Tax liability of the combined group, including the small business enterprise exemption in Section 3506(c), shall be determined on a combined basis, using the Stock-Based Compensation Payroll Expense of all persons in the combined group that are engaged in business within the City.

SEC. 3509. DEPOSIT OF PROCEEDS.

The Stock-Based Compensation Tax is a general tax. Proceeds of the Stock-Based Compensation Tax are to be deposited in the City's general fund and can be spent for any City purposes.

SEC. 3510. AMENDMENT OF ORDINANCE.

The Board of Supervisors may amend or repeal this Article 35 by ordinance without a vote of the people except as limited by Article XIII C of the California Constitution.

SEC. 3511. EFFECT OF STATE AND FEDERAL AUTHORIZATION.

To the extent that the City's authorization to impose or to collect any tax imposed under this Article 35 is expanded or limited as a result of changes in state or federal statutes, regulations, or other laws, or judicial interpretations of those laws, no amendment or modification of this Article shall be required to conform the taxes to those changes, and the taxes are hereby imposed in conformity with

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those changes, and the Tax Collector shall collect them to the full extent of the City's authorization up to the full amount and rate of the taxes imposed under this Article.

SEC. 3512. SEVERABILITY.

(a) Except as provided in Section 3512(c), below, if any section, subsection, sentence, clause, phrase, or word of this Article 35, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Article. The People of the City and County of San Francisco hereby declare that, except as provided in Section 3512(c), they would have adopted this Article 35 and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Article or application thereof would be subsequently declared invalid or unconstitutional.

(b) If the retroactive operation of the Stock-Based Compensation Tax as stated in Section 3504(c) is held to be invalid or unconstitutional in a final judicial decision, the Stock-Based Compensation Tax shall be operative the first day of January following the effective date of this Article 35, and references to January 1, 2020 in Section 3504(c) shall instead be to such operative date.

(c) If the imposition of the Stock-Based Compensation Tax in Section 3504 is held in its entirety to be facially invalid or unconstitutional in a final judicial decision, the remainder of this Article 35 shall be void and of no force and effect, and the City Attorney shall cause it to be removed from the Business and Tax Regulations Code.

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SEC. 3513. SAVINGS CLAUSE.


No section, clause, part, or provision of this Article 35 shall be construed as requiring the payment of any tax that would be in violation of the Constitution or laws of the United States or of the Constitution or laws of the State of California.

Section 4. Appropriations Limit Increase. Pursuant to California Constitution Article XIII B and applicable laws, for four years from November 3, 2020, the appropriations limit for the City shall be increased by the aggregate sum collected by the levy of the Stock-Based Compensation Tax imposed under this measure.


Section 5. Effective Date. The effective date of this ordinance shall be ten days after the date the official vote count is declared by the Board of Supervisors.

* * *


SUBMITTED.




Gordon Mar
Member, Board of Supervisors
Date: 6/16/20



Hillary Ronen
Member, Board of Supervisors
Date: 6/16/20



Dean Preston
Member, Board of Supervisors
Date: 6/16/20



Aaron Peskin
Member, Board of Supervisors
Date: 6/16/20