

File No. 210015 Committee Item No. 1  
Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation Committee Date March 1, 2021

Board of Supervisors Meeting Date \_\_\_\_\_

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/> | Motion                                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Resolution                                   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Ordinance                                    |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Youth Commission Report                      |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Introduction Form                            |
| <input type="checkbox"/>            | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/> | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Subcontract Budget                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Application                                  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Public Correspondence                        |

#### OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Referral CEQA 011321</u>      |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Referral BIC 011321</u>       |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>CEQA Determination 011321</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>BIC Response 021821</u>       |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Ronen PPT 022221</u>          |
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Completed by: Erica Major Date February 26, 2021  
Completed by: Erica Major Date \_\_\_\_\_

1 [Building Code - Expanded Compliance Control and Consumer Protections Where History of  
2 Significant Violations]

3 **Ordinance amending the Building Code to implement expanded compliance control**  
4 **and consumer protection provisions for projects, individuals, agents, and entities with**  
5 **a history of significant violations; and affirming the Planning Department’s**  
6 **determination under the California Environmental Quality Act.**

7 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
8 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
9 **Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.  
10 **Board amendment additions** are in double-underlined Arial font.  
11 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
12 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
13 subsections or parts of tables.

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

15 Section 1. Findings.

16 (a) The Planning Department has determined that the actions contemplated in this  
17 ordinance comply with the California Environmental Quality Act (California Public Resources  
18 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
19 Supervisors in File No. 210015 and is incorporated herein by reference. The Board affirms  
20 this determination.

21 (b) The Building Inspection Commission considered this ordinance on February 17,  
22 2021, at a duly noticed public hearing, pursuant to Charter Section D3.750-5.

23 Section 2. California Health and Safety Code Section 17958.7. No local findings are  
24 required under California Health and Safety Code Section 17958.7 because the amendments  
25 to the Building Code contained in this ordinance do not regulate materials or manner of

1 construction or repair, and instead relate in their entirety to administrative procedures for  
2 implementing the code and remedies available for enforcing code violations, which are  
3 expressly excluded from the definition of a “building standard” by California Health and Safety  
4 Code Section 18909(c).

5  
6 Section 3. The Building Code is hereby amended by adding Section 103A.6, to read  
7 as follows:

8 **103A.6 Expanded Compliance Control and permit review.**

9 **103A.6.1 Significant violation tracking reports.**

10 When a building inspector issues a Notice of Violation in which there is an instance of:

11 (1) Misrepresentation of existing conditions that results in circumvention of notification or  
12 review requirements;

13 (2) Structural work or demolition of structural features without or beyond the scope of a  
14 building permit, or other work without or beyond the scope of a building permit that endangers  
15 the health and safety of building occupants, future occupants, workers, or adjacent neighbors;

16 (3) Work under permit performed by a party without required license—Demolition  
17 without or beyond the scope of a building permit; or

18 (4) Other substantial non-compliance, including but not limited to, work without or beyond  
19 the scope of a building permit;

20 Inspection Services Division the inspector shall log the violation notify their Senior and Chief  
21 Inspector by submitting a report describing the observed violations, and identifying all  
22 individuals, agents, and other entities associated with the permit and/or project in the Permit Tracking  
23 System or known to be associated with the permit and/or project at the time the Notice of Violation  
24 is issued. The Senior and Chief Inspector shall log the report in the Compliance Control  
25 Tracking File maintained by the Inspection Services Division.

1           **103A.6.2 Candidates for Expanded Compliance Control.**

2           (1) The Inspection Services Division shall review the Compliance Control Tracking File on a  
3 monthly basis to determine if any project, individual, agent, or entity has been associated with three or  
4 more reported violations within the last 18 months. Any such project, individual, agent, or entity shall  
5 be a candidate for Expanded Compliance Control.

6           (2) Even if the three-or-more-violations standard is not met during the 18-month period, the  
7 Department, in consultation with the City Attorney, Chief Inspector may designate a project,  
8 individual, agent, or entity as a candidate for Expanded Compliance Control for any violation or one  
9 or two violations during the 18-month period that the Department Chief Inspector determines,  
10 individually or together, to be egregious.

11           **103A.6.3 Expanded Compliance Control List.**

12           For each project, individual, agent, or entity designated as a candidate for Expanded  
13 Compliance Control, the following actions shall be taken:

14           (1) Inspection Services staff, designated by the Director of the Department of Building  
15 Inspection, The Chief Inspector shall notify the candidate and request any exculpatory  
16 information as to why Expanded Compliance Control is not warranted and shall draft a  
17 summary report detailing the violation(s) and exculpatory evidence or arguments, if any, relevant to  
18 whether the candidate warrants Expanded Compliance Control.

19           (2) The summary report shall conclude with a determination Chief Inspector shall  
20 submit the report to the Deputy Director, who shall:

21           (a) that the candidate should be placed on the Expanded Compliance  
22 Control List, and provide written findings supporting that determination; notify the candidate  
23 and request any exculpatory information as to why Expanded Compliance Control is not  
24 warranted; and or

1                   **(b)** that the candidate should not be placed on the Expanded Compliance  
2 Control List, and provide written findings for why the candidate does not warrant Expanded  
3 Compliance Control if necessary, request additional information from the Chief Inspector.

4                   **(3)** ~~Upon completing review of the report and any additional information from the~~  
5 ~~candidate and Chief Inspector, the Deputy Director shall:~~

6                   ~~—————(a)—— Determine the candidate should be subject to Expanded Compliance~~  
7 ~~Control and place the candidate on the Expanded Compliance Control List and provide written~~  
8 ~~findings for this determination; or~~

9                   ~~—————(b)—— Determine the candidate should not be placed on the Expanded~~  
10 ~~Compliance Control List, and provide written findings for why the candidate does not warrant~~  
11 ~~Expanded Compliance Control.~~

12                   ~~————(4) *The Director of the Department of Building Inspection shall review all Expanded*~~  
13 ~~*Compliance Control determinations made by designated staff the Deputy Director and shall make a*~~  
14 ~~*final determination either affirming or overruling their Deputy Director's determination or*~~  
15 ~~*overruling the Deputy Director's determination. The Director shall either adopt the staff Deputy*~~  
16 ~~*Director's findings or issue the Director's own written findings detailing the basis for the final*~~  
17 ~~*determination. The Department shall notify the candidate in writing of the Director's final*~~  
18 ~~*determination, and shall post the final determination on the Department's website in a manner that*~~  
19 ~~*complies with all City regulations regarding multilingual accessibility.*~~

20                   **(45)** Any person may appeal the Director's final determination to the Building Inspection  
21 Commission pursuant to the provisions of Chapter 77 of the Administrative Code.

22                   **(56)** The Director shall maintain the Expanded Compliance Control List on the Department's  
23 website and shall provide the list to the Building Inspection Commission on a quarterly basis  
24 commencing when the first project, individual, agent, or entity is placed on the list.

25                   **103A.6.4 Expanded Compliance Control Provisions.**

1           **103A.6.4.1 Duration.** *Any project, individual, agent, or entity placed on the Expanded*  
2 *Compliance Control List (“listee”) shall remain on the list for five years. Any subsequent significant*  
3 *violation(s), as defined in subsection 103A.6.1, by a listee shall extend the period of Expanded*  
4 *Compliance Control for that listee by five years from the date of the subsequent violation(s).*

5           **103A.6.4.2 Measures.** *Upon placing a project, individual, agent, or entity on the Expanded*  
6 *Compliance Control List, the Department shall take the following actions:*

7           (1) Refer the listee to any applicable licensing board or regulatory agency with the  
8 Director’s final determination and written findings;

9           (2) Require all existing permit applications and addenda and any new applications or  
10 addenda submitted by or containing reference to the listee undergo Expanded Compliance Control by  
11 senior Plan Review Services staff and multi-station (all permit stations applicable to a given  
12 permit) project—Planning Department, Public Works, Fire Marshal) review at intake and after the  
13 Planning Department approves the Site Permit (if applicable); and notify all parties listed on the  
14 applications or addenda for these permits of the Expanded Compliance Control requirement;

15           (3) Require ~~multi-station~~ site inspections by the Department of Building Inspection and  
16 Planning Department prior to any permit issuance submitted by or containing reference to the listee;

17           (4) Require that a licensed contractor be named on the permit prior to issuance,  
18 unless the applicant is filing for the permit as an Owner-Builder, in conformance with  
19 California Health and Safety Code Section 19825;

20           (5) Dedicate a Senior Inspector to perform inspections and respond to any complaints or  
21 requests regarding the listee; and

22           (6) If warranted, consult with the City Attorney about any additional enforcement actions.

23           **103A.6.5 Permit review staff training.**

24           No later than ~~September~~ June 30, 2021, the Department shall provide written guidance and  
25 conduct training sessions for all plan review staff on how to recognize and flag permits that signal

1 ~~potential abuse, including but not limited to serial permit applications and post hoc excuses for~~  
2 ~~significant expansion of scope during construction.~~ All guidance and training materials and  
3 procedures shall be prepared with a goal of being sensitive to the cultural differences of  
4 individuals, agents, and other entities associated with permits and/or projects as well as  
5 current and future building occupants, workers, or adjacent neighbors. *Further, the Department*  
6 *shall create and implement guidelines for require that staff to escalate any permits that indicate*  
7 *potential abuse to senior review staff for their review and refer such permits to the Planning*  
8 *Department to ensure they are consistent with preceding Planning Department approvals.*

9  
10 Section 4. Severability.

11 If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any  
12 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a  
13 decision of a court of competent jurisdiction, such decision shall not affect the validity of the  
14 remaining portions or applications of this ordinance. The Board of Supervisors hereby  
15 declares that it would have passed this ordinance and each and every section, subsection,  
16 sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to  
17 whether any other portion of this ordinance or application thereof would be subsequently  
18 declared invalid or unconstitutional.

19  
20 Section 5. Effective Date. This ordinance shall become effective 30 days after  
21 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
22 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
23 of Supervisors overrides the Mayor's veto of the ordinance.

1 APPROVED AS TO FORM:  
2 DENNIS J. HERRERA, City Attorney

3 By: /s/ Robb Kapla  
4 ROBB KAPLA  
Deputy City Attorney

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**REVISED LEGISLATIVE DIGEST**  
(Amended in Committee, 2/22/2021)

[Building Code - Expanded Compliance Control and Consumer Protections Where History of Significant Violations]

**Ordinance amending the Building Code to implement expanded compliance control and consumer protection provisions for projects, individuals, agents, and entities with a history of significant violations; and affirming the Planning Department’s determination under the California Environmental Quality Act.**

Existing Law

The Building Code does not contain mandatory provisions for tracking a project, individual, agent, or entity’s history of involvement in permits with significant violations, nor any expanded compliance control provisions for projects, individuals, agents, or entities found to have a history of significant violations.

Amendments to Current Law

The Proposed Legislation would require that Department of Building Inspection (“DBI”) inspectors log each incidence where DBI issues a Notice of Violation involving a significant violation of the Building Code. The significant violations that trigger a report include misrepresentation of conditions at the project site that circumvents notification or review requirements; structural work or demolition of structural features without or beyond the scope of a permit; work performed under a permit without the required licensure; and other substantial non-compliance. The log entry shall contain a description of the violation and identify all individuals, agents, or other entities associated with the permit or project in DBI’s permit tracking system and those known to be associated with the permit or project at the time the violation is issued.

The Proposed Legislation mandates the collection of these entries in a Compliance Control Tracking File, which must be reviewed by DBI on a monthly basis to determine if any project, individual, agent, or entity has been identified on three or more log entries in the last 18 months. Any such projects, individuals, agents, or entities shall be candidates for placement on the Expanded Compliance Control List (“List”). Additionally, DBI may determine a project, individual, agent, or entity warrants being a candidate for the List for an egregious violation—even if the project, individual, agent, or entity does not have three separate violations within an 18-month period.

To ensure fair and efficient use of Expanded Compliance Control resources, the Proposed Legislation proscribes a detailed administrative process before placing a candidate on the

List. For each candidate, the Inspection Services Division shall notify the candidate and request any exculpatory information, draft a summary report describing the violation(s) and any exculpatory evidence relevant to whether the candidate should be placed on the List and make a recommendation with written findings as to whether the candidate should or should not be placed on the List.

The summary report would then be evaluated by the Director of DBI. The Director shall make a final determination whether to place the candidate on the List and provide written findings supporting that determination. The Director's determination and findings shall be sent to the candidate and placed on DBI's website. Any person may appeal the Director's determination to place or not place a candidate on the List by filing an appeal to the Building Inspection Commission within 15 days of the posting of the determination on DBI's website. The List will be available on DBI's website and provided to the Building Inspection Commission on a quarterly basis.

Projects, individuals, agents, or entities placed on the List ("listees") shall remain on the List for five years. Any subsequent significant violation(s)—those that would trigger a log entry in the Compliance Control Tracking File—by a listee restarts the five-year period.

The Proposed Legislation mandates DBI perform the following Expanded Compliance Control measures for each listee: provide the Director's final determination and findings to any applicable licensing board or regulatory agency (if any); require all new or existing permits or addenda submitted by or containing reference to a listee undergo Expanded Compliance Control by senior Plan Review Services staff and review at intake by applicable departments; notify the listee and all other parties associated with the listee on a permit application or addenda of the Expanded Compliance Control requirements; require a licensed contractor be named on a permit; require site inspection by DBI and the Planning Department prior to permit issuance for projects associated with the listee; dedicate a Senior Inspector to respond to complaints and conduct all inspections regarding the listee; and, if warranted, consult with City Attorney about any other enforcement options.

The Proposed Legislation would also require training for all DBI permit review staff on how to identify signs of potential abuse of the permit process. All training materials shall be prepared in a manner that is sensitive to cultural differences of applicants, agents, and current and future occupants and neighbors. The training shall also detail procedures for escalating permits that indicate significant issues to senior DBI staff and the Planning Department.

#### Background Information

This Legislative Digest reflects amendments made in the Land Use committee on February 22, 2021, including providing more specific criteria to the significant violations list, revising the administrative review process for placement on the List, and correcting an error in the ordinance as introduced by correcting the fonts to accurately reflect the language that

currently exists in the municipal code, and the amendments that are proposed by this legislation.

Significant violations of the Building Code threaten public health and safety; require DBI time and resources to identify, enforce, and abate; and often result in costly litigation and delay in repairing or constructing much needed housing throughout the City. For all parties—property owners/consumers, residents, DBI, and the public at large—it is safer, more cost-effective and efficient to adopt expanded compliance control provisions that ensure compliance throughout the permit review process, rather than address violations after the fact through enforcement proceedings.

A substantial portion of the most significant Building Code violations involve repeat actors—a small handful of projects, individuals, agents, and other entities. DBI may apply informal compliance control and permit review for such repeat actors that warrant additional scrutiny due to known abuses of the permit process, but there is no codified process that identifies criteria, tracks candidates, or details mandatory compliance control measures for such entities.

The Proposed Legislation addresses this need by: codifying a reporting process to track significant violations and all parties associated with such violations; mandating monthly review of tracking reports to identify candidates for expanded compliance control measures; creating an administrative process to review and appeal determinations regarding placement of candidates on the List; detailing what expanded compliance control measures are required; and mandating training and issue escalation for permit review staff.

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**BUILDING INSPECTION COMMISSION (BIC)**

**Department of Building Inspection  
49 South Van Ness Avenue, 5<sup>th</sup> Floor San Francisco, California 94103**

**Voice (628) 652 -3510**

February 18, 2021

London N. Breed  
Mayor

**COMMISSION**

Angus McCarthy  
President

Jason Tam  
Vice-President

Alysabeth  
Alexander-Tut  
Raquel Bito  
Kevin Clinch  
Jon Jacobo  
Sam Moss

Sonya Harris  
Secretary

Patrick O’Riordan,  
C.B.O.,  
Interim Director

Ms. Angela Calvillo  
Clerk of the Board  
Board of Supervisors, City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4694

Dear Ms. Calvillo:

**RE: File No. 210015**

**Ordinance amending the Building Code to implement expanded compliance control and consumer protection provisions for projects, individuals, agents, and entities with a history of significant violations; and affirming the Planning Department’s determination under the California Environmental Quality Act.**

The Building Inspection Commission met and held a public hearing on February 17, 2021 regarding File No. 210015 on the proposed amendment to the Building Code referenced above. The Commissioners voted unanimously to **recommend approval** of the proposed Ordinance with the following amendment: There is a big difference between a contractor making an honest mistake, compared to someone who deliberately and strategically manipulates the system to avoid the public process. Please continue to refine this legislation so that it only applies to the deserving group.

|                            |     |                     |     |
|----------------------------|-----|---------------------|-----|
| President McCarthy         | Yes | Vice-President Tam  | Yes |
| Commissioner Bito          | Yes | Commissioner Clinch | Yes |
| Commissioner Jacobo        | Yes | Commissioner Moss   | Yes |
| Commissioner Alexander-Tut | Yes |                     |     |

Should you have any questions, please do not hesitate to call me at (628) 652-3510.

Sincerely,

Sonya Harris  
Commission Secretary

cc: Patrick O'Riordan, Interim Director  
Mayor London N. Breed  
Supervisor Hillary Ronen  
Supervisor Aaron Peskin  
Supervisor Matt Haney  
Board of Supervisors

# **BUILDING CODE AMENDMENTS – EXPANDED COMPLIANCE CONTROL & CONSUMER PROTECTIONS**

**Sponsor: Hillary Ronen**

**Cosponsored by Supervisors Aaron Peskin and Matt Haney**

**Board File 210015**



# Internal Tracking of Serious Violations

- Significant NOVs recorded and tracked internally:
  - Misrepresentation of existing conditions to circumvent notification or review
  - Structural work or demolition of structural features without or beyond permit
  - Unlicensed work
  - Other substantial non-compliance with significant health and safety risk
- Three or more significant NOVs within 18 months triggers candidacy for Expanded Compliance Control List

## Public-Facing Expanded Compliance Control List for Repeat Violators

- DBI Inspection Services prepares preliminary report, *including any exculpatory info from candidate*
- DBI Director makes final determination
- DBI notifies listee
- DBI maintains Expanded Compliance Control List on website
- DBI provides quarterly reports to BIC on Expanded Compliance Control List



# Protocols for Expanded Compliance Control

- Report to applicable licensing board or regulatory agency
- Require Senior Plan Review staff and multi-station review at intake and after approval of the site permit
- Require multi-station site inspections by DBI and Planning prior to permit issuance
- Require that a licensed contractor be named on the permit prior to issuance
- Dedicate a Senior Inspector for inspections and any complaints
- Consult with the City Attorney about any additional enforcement actions

## Ongoing Reporting / Opportunities for Appeal

- Building Inspection Commission receives quarterly updates on the Expanded Compliance Control List
- Lister remains on the Expanded Compliance Control List for five years, with extension for subsequent significant violation
- Determination can be appealed to BIC

# Internal Staff Accountability Through Training & Guidance

- Written guidance and training sessions for all plan review staff to recognize and flag permits that signal potential abuse
- Guidelines for staff to escalate any applications that indicate potential abuse
- Sensitivity to the cultural differences of individuals, agents, and other entities associated with permits and/or projects

# Amendments

- Tightened criteria for *significant* NOVs for tracking
- Simplified language for internal process, emphasis on steps and on roles of Director and BIC
- Revised criteria to allow for immediate implementation of Expanded Compliance Control
- Added requirement to name licensed contractor for work on Expanded Compliance Control List
- Extended date for internal training and guidance
- Called out need for sensitivity to cultural differences

**From:** [Sarah Currier](#)  
**To:** [Major, Erica \(BOS\)](#)  
**Subject:** Letter for Review Today  
**Date:** Monday, February 22, 2021 11:20:09 AM

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Dear Supervisors,

I am the principal of a 100 year-old downtown school campus with a vibrant and engaged community of teachers, students, parents, and parishioners.

Our historic buildings require a lot of TLC to keep our campus in working order, including the assistance of architects and engineers. We have been fortunate over the years to receive pro-bono assistance from several wonderful architects and engineers. These dedicated consultants have volunteered countless hours to our community and, as a non-profit trying to create an equitable learning experience for all students, we depend on the donations of time and talent to help offset the cost of operating an affordable school in San Francisco.

However, the architects and engineers that have helped us tremendously over the last several decades have informed me that they may no longer be able to assist us, particularly with small projects or pro-bono work, because of the proposed Expanded Compliance Control Ordinance. These consultants explained to me that they could be blacklisted by DBI by providing consulting services to our campus, which will impair their ability to be hired for future projects. Furthermore, they explained they could be blacklisted through no fault of their own because of "non-compliance" that they may have had no knowledge of nor ability to control.

Though I wholeheartedly agree that measures should be put in place to eliminate corruption and fraud, it seems like there are some key elements that need to be considered here. It is incredibly difficult to manage a non-profit in a predictable year. Now more than ever, schools are under threat because of COVID19. School operational budgets are (on average) down 25%-50% across the city. At a time when schools like ours are offering in-person learning and spending every available dollar on student success, losing the expertise of dedicated architects and engineers will have a devastating impact on the upkeep of our historic campus and the vitality of our community.

While I hope our City leadership can find ways to reduce and eliminate fraud and corruption, I hope you will reconsider the impacts of the proposed ordinance on schools and other non-profit organizations that depend on honest, well-intentioned volunteers.

Thank you for your time and consideration,

Sarah Currier, Principal

Ecole Notre Dame des Victoires

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**Mrs. Sarah Currier  
Principal**

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[Click here to view our Infection Mitigation and Reopening Site](#)



**659 Pine Street**

**San Francisco, California 94108**

**Ph. 415.421.0069 | Fax: 421.421.1440**

[www.ndvsf.org](http://www.ndvsf.org)

**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Cc:** [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Major, Erica \(BOS\)](#)  
**Subject:** FW: Building Code - Expanded Compliance Control and Consumer Protections Where History of Significant Violations  
**Date:** Tuesday, February 23, 2021 8:25:34 AM

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**From:** Sarah Willmer <[swillmer@studio-sw.com](mailto:swillmer@studio-sw.com)>  
**Sent:** Monday, February 22, 2021 2:03 PM  
**To:** Board of Supervisors, (BOS) <[board.of.supervisors@sfgov.org](mailto:board.of.supervisors@sfgov.org)>  
**Cc:** Vivian Dwyer <[viv@dwyer-design.com](mailto:viv@dwyer-design.com)>  
**Subject:** Building Code - Expanded Compliance Control and Consumer Protections Where History of Significant Violations

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board of Supervisors,

I am an architect in the city with an office of 8 people. We primarily do residential renovations. It has been brought to my attention from the AIA that a possible new regulation may impact my business and many companies like mine. The issues, as I understand it, is to keep track of entities (contractors, architects, homeowner etc) that ignore building and planning codes requirements during construction and after permits have been issued. I understand and agree that much of this may be going by "bad actors" but I ask that you do not group architects with these possible and other responsible parties. Our work as the architect for a project often ends after receiving an approved building permit. Many clients choose to proceed with the construction work without our continue service. This means, that contractors and some home owners may choose to do work that is not code complying but we may not be there to advise to do otherwise. Therefore to connect architects with this illegal work by other parties is an over-reach and will unduly hurt our business in an unfair way. I request that the legislation be reworded to disconnect the architect from any work initiated by a contractor or owner where the architect's services are currently NOT being used.

Thank for you time and I would appreciate a follow up to how this issue is resolved.

Thank you, Sarah E Willmer, AIA

Studio Sarah Willmer, Architecture  
415-642-1166  
[www.studio-sw.com](http://www.studio-sw.com)

**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Cc:** [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Major, Erica \(BOS\)](#)  
**Subject:** FW: Building Code - Expanded Compliance Control and Consumer Protections Where History of Significant Violations  
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**From:** Sarah Willmer <[swillmer@studio-sw.com](mailto:swillmer@studio-sw.com)>  
**Sent:** Monday, February 22, 2021 2:03 PM  
**To:** Board of Supervisors, (BOS) <[board.of.supervisors@sfgov.org](mailto:board.of.supervisors@sfgov.org)>  
**Cc:** Vivian Dwyer <[viv@dwyer-design.com](mailto:viv@dwyer-design.com)>  
**Subject:** Building Code - Expanded Compliance Control and Consumer Protections Where History of Significant Violations

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board of Supervisors,

I am an architect in the city with an office of 8 people. We primarily do residential renovations. It has been brought to my attention from the AIA that a possible new regulation may impact my business and many companies like mine. The issues, as I understand it, is to keep track of entities (contractors, architects, homeowner etc) that ignore building and planning codes requirements during construction and after permits have been issued. I understand and agree that much of this may be going by "bad actors" but I ask that you do not group architects with these possible and other responsible parties. Our work as the architect for a project often ends after receiving an approved building permit. Many clients choose to proceed with the construction work without our continue service. This means, that contractors and some home owners may choose to do work that is not code complying but we may not be there to advise to do otherwise. Therefore to connect architects with this illegal work by other parties is an over-reach and will unduly hurt our business in an unfair way. I request that the legislation be reworded to disconnect the architect from any work initiated by a contractor or owner where the architect's services are currently NOT being used.

Thank for you time and I would appreciate a follow up to how this issue is resolved.

Thank you, Sarah E Willmer, AIA

Studio Sarah Willmer, Architecture  
415-642-1166  
[www.studio-sw.com](http://www.studio-sw.com)



**From:** [S.H](#)  
**To:** [Major, Erica \(BOS\)](#)  
**Cc:** [Board of Supervisors, \(BOS\)](#)  
**Subject:** Land Use Committee Hearing  
**Date:** Monday, February 22, 2021 2:38:12 PM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Good afternoon Supervisors,

I called into the Land Use Committee hearing today and raised my hand to be called on, only to hear there were not other people waiting to speak, but I was there waiting to speak. Frustrating...

Anyway, my name is Shane and I live in the Richmond District.

I want to express my concern about this ordinance.

An architect and engineer who help out on projects at my kids' school have informed us they may have to stop doing pro-bono consulting work for the school if this ordinance passes.

They said the ordinance causes too many extra headaches and creates a risk of them being blacklisted by the City through no fault of their own.

It seems really unfair to punish good people who are just trying to help out in the community.

Schools and other non-profits who depend on the efforts of volunteers could be very hard hit by this ordinance.

Thank you,  
Shane Hiller

**From:** [Ross Levy](#)  
**To:** [Major, Erica \(BOS\)](#)  
**Cc:** [vivian dwyer](#)  
**Subject:** proposed legislation  
**Date:** Monday, February 22, 2021 1:54:17 PM  
**Attachments:** [image001.png](#)

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

RE: 210015 [Building Code - Expanded Compliance Control and Consumer Protections Where History of Significant Violations]

As an Architect and member of the Community I am writing to express support for legislation to curb “bad actors” in The San Francisco Building Industry.

I also want to register my CONCERN, that the proposal is too over-arching in regard to the “shaming and or naming” of ALL parties related to instances of work beyond the limits of the issued permit. Architects do NOT always exercise control of work in the field and can not be held accountable for the transgressions of others. It is comparable to dolphins being caught in tuna nets, unintended, but causing great harm.

Ross Levy, Principal



**From:** [David Kane](#)  
**To:** [Major, Erica \(BOS\)](#)  
**Subject:** Expanded Compliance Control Ordinance  
**Date:** Monday, February 22, 2021 12:56:07 PM  
**Attachments:** [Land-Use-Committee-2021-02-22.pdf](#)

---

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Erica,  
I am submitting the attached statement for consideration by the Board of Supervisors and today's Land Use Committee hearing. Please confirm receipt.

Thanks,

David Kane, S.E.  
847 Sansome Street, 4<sup>th</sup> Floor  
San Francisco, CA 94111  
Tel: 415.501.9000 x100  
dkane@hk-se.com

February 22, 2021

San Francisco Board of Supervisors  
Attn: Land Use and Transportation Committee  
1 Dr. Carlton B Goodlett Place  
San Francisco, CA 94102  
Erica.Major@sfgov.org

Re: Expanded Compliance Control and Consumer Protections Where History of Significant Violations

Dear Supervisors:

I am submitting a statement of concern regarding the above referenced proposed ordinance for consideration by the Land Use and Transportation Committee and Board of Supervisors.

Beyond the practical problems and concerns outlined in my previous letter emailed to you on February 19, 2021, I would now like to emphasize the proposed ordinance conflicts with State of California laws and regulations and is an attempt to regulate the practice of architecture, engineering, and other professions licensed by the State of California. Further confirming this point were the recent presentations to the Building Inspection Commission and the Planning Commission regarding the proposed ordinance, in which representatives of the government of the City and County of San Francisco described and discussed the intent and need for the ordinance.

The ordinance provides for punishment not only based on the actual culpability of a party, but based on a potentially innocent party unknowingly “associating” with another party who commits alleged acts of “non-compliance.” While this should be obviously unfair to a reasonable person, the proposed ordinance is illegal as it violates the following laws and regulations.

California Business & Professions Code 460(a): Delays and/or increased costs resulting from DBI assigning prejudice against an architect or engineer is an infringement on the targeted architect’s or engineer’s ability to conduct business and practice in their profession. The mandate for extra ordinary review will increase the time and fees required to obtain all the necessary City approvals for a project.

California Business & Professions Code 5536.25(a) and 6735(b): Responsibility cannot be imposed upon an architect or engineer for changes made without the architect’s or engineer’s approval.

California Business & Professions Code 5536.25(b) and 6735.1: Responsibility cannot be imposed upon an architect or engineer to supervise construction.

California Code of Regulations Title 16, Section 415: Engineers shall only practice in fields in which they are fully competent and proficient. An engineer cannot be required to review or otherwise be responsible for work beyond the engineer’s area of expertise, such as determining compliance with the Planning Code or determining compliance with Building Code provisions beyond the engineer’s discipline.

State of California Constitution, Article XI, Section 7: The State of California has preempted the regulation of architecture and engineering.

California Health & Safety Code 17960.1 & 19837: The ordinance's mandate for extra ordinary review will contribute to DBI non-compliance with State of California requirements for plan check.

The California Department of Consumer Affairs has authority to regulate professions including revoking licenses, assessing fines, and assessing other punishments. The City and County of San Francisco does not have authority to create or maintain a blacklist of architects and engineers.

The City Attorney and District Attorney can file civil and criminal charges against an architect, engineer, contractor, expediter, agent, or any other party when fraud, forgery, or other unlawful acts are committed. Any person, including a DBI employee, a Planning Department employee, the Mayor, a City Supervisor, the City Attorney, or general member of the public, can report unlawful acts or simply unprofessional conduct by a licensed professional to the California Department of Consumer Affairs who can then take disciplinary action.

While I fully support the Board of Supervisors desiring to take action to eliminate corruption and fraud, the actions and enforcement need to be done in a lawful manner. I would like nothing more than to be able to operate my business and conduct my profession on a fair and level playing field, free of bad actors.

As an alternative to proposing legislation to require that DBI create a prejudiced permitting system, the Board of Supervisors could focus on helping provide oversight and ensure enforcement of the many existing anti-fraud and anti-corruption laws, regulations, and policies that already exist, including DBI's AB-40. Appropriate punishments and adequate deterrents to permit fraud are already in place, if enforcement is made a priority.

Sincerely,

David Kane  
847 Sansome Street, 4<sup>th</sup> Floor  
San Francisco, CA 94111  
415.501.9000 x100  
dkane@hk-se.com

**From:** [Mark Gilligan](#)  
**To:** [Major, Erica \(BOS\)](#)  
**Subject:** Public Comment-Land Use and Transportation Committee -2/22/2021 - Item 210015  
**Date:** Monday, February 22, 2021 12:13:56 AM  
**Attachments:** [Land-Use-Commission-02-22-2021.pdf](#)

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

I would like to offer the attached document as Comments on the Proposed "Expanded Compliance Control and Consumer Protections Where History of Significant Violations" Ordinance that is being considered by the Committee and by the Board of Supervisors.

BOS file #210015

Mark Gilligan SE  
510-548-8029

## **Public Comment by Mark Gilligan S.E. for the San Francisco Land Use and Transportation Committee:**

**Regarding “Expanded Compliance Control and Consumer Protections Where History of Significant Violations” (BOS file #210015)**

These comments are submitted to educate the Committee and the City and County of San Francisco regarding problems with the Proposed ordinance Titled “Expanded Compliance Control and Consumer Protections where History of Significant Violations”

The proposed ordinance should be rejected because it does not address the root cause of the problem, it is not necessary, and because the City does not have the legal authority to do what is being proposed.

### **Public Comment is Being Suppressed**

We are being told at the hearings that changes to the proposed ordinance will be made but the exact language of the changes are not being made available to the public in time for individuals to make comments at the hearings.

### **The Ordinance Does Not Solve the Problem.**

While there are bad actors involved with some projects they should be seen more as a symptom of a dysfunctional system. The problem is that the permit process in San Francisco is unusually slow, cumbersome, and restrictive, especially in the Planning Department. This means project sponsors are incentivized to find faster ways to get projects constructed. Thus, when a bad actor is eliminated Owners will just be motivated to find another individual to take their place.

The current ordinance attempts to ignore this reality by blaming the problem on a few bad actors thus allowing the City to continue to ignore the dysfunctional permitting system.

If the City wishes to really address this problem, they will need to address the current dysfunctional system. But instead, the City is proposing a solution that makes the existing permitting system even more dysfunctional. This will further incentivize and reward bad actors.

### **The Ordinance is Not Necessary.**

SFDBI already has sufficient legal options to deal with the perceived bad actors. For example, the City can report problem individuals to the state licensing boards. Just because the City is not happy with that option this does not give the City the authority to ignore the state system of regulation and to replace it with one of their liking.

If the City believes that a crime has been committed the City Attorney could prosecute the transgression as a crime but in such a case the defendant would have more legal protections than the City’s appeal process allows.

### **The City of San Francisco Does Not Have the Authority to Take Action Against Architects, Engineers, and Contractors.**

The Laws authorizing the adoption of building codes contemplate a system that regulates the characteristics of the building. More bluntly the building code says the building shall comply with the adopted regulations. Thus, it is the building owner who has control over the building and it is the owner who is responsible for compliance with the building code. The Architect and Engineer, are acting as consultants to the Owner and while they may have contractual obligations

to the Owner, they are not subject to direct regulation by the DBI or the Planning Department.

The state of California has preempted the regulation of building construction and Cities only have the authority to regulate in this area if the legislature has specifically given the City such authority. Similarly, the state of California has preempted the regulation of the practice of Architecture, Engineering, and Contracting and has delegated no authority to adopt regulations to local jurisdictions.

By placing extra burdens on the practice of engineering and contracting with respect to construction permitting, in effect regulates the scope of practice of engineers and contractors. The City does not have any authority to regulate the practice of architecture, engineering or contracting. Being placed on the Expanded Compliance Control List will essentially blacklist a design professional or contractor from doing work in the City.

The ordinance is formulated to punish those architects, engineers, and contractors that the City has had problems with. When an individual or company is on the City's blacklist, they will have difficulty finding clients. In addition, design professionals will be penalized by having to spend more time responding to the City's review comments which will either require higher professional service fees, which will result in fewer projects, or they will be penalized by having to accept lower profits.

Similarly, Contractors as well as architects and engineers will be additionally penalized by having to spend more time dealing with the enhanced inspections contemplated by the ordinance.

Supporting the contention that the City intends the ordinance to punish those on the list is the statement made by Ms. Beinhart that it was expected that the City would charge higher permit fees for those projects subject to expanded compliance control. This is evidence of a desire to penalize certain projects. This would also evidence a desire of the city to abandon the current system for determining permit fees based on cost of construction or fixed fees for particular reviews.

In the case of Contractors, the state contractors licensing board already has provisions for disciplining contractors who have done work without a permit. Thus, because the state has preempted the regulation of certain groups the City cannot have the authority to punish Contractors for the same reason.

While the City denies that they intend to punish individuals it is clear to structural engineers that the ordinance creates a system that is meant to punish individuals on the list.

Measures which restrict or revoke the ability of design professionals or contractors to work in their fields are governed by the State regulatory boards, which have more robust due process rules than the rules under the proposed ordinance.

### **The Ordinance May Expose the City to Antitrust Liability**

The Ordinance obviously penalizes those firms or individuals on the City's list in ways that will make them unable to effectively compete for clients. This has the effect of displacing competition which would subject the City of San Francisco to antitrust liability. While states acting as a sovereign are not subject to antitrust laws the US Supreme Court is clear that Cities cannot avail themselves of this immunity because the clear articulation requirement of the State Action Doctrine can only be satisfied if the Legislature has clearly articulated the desire to displace competition. The Supreme Court has made it clear that Cities or Counties cannot satisfy this requirement.



**San Francisco's Claim that they Have Authority to Adopt Administration Provisions is Flawed.**

While the City does have some flexibility with regards to enforcement this is not without constraints. The City must harmonize any such requirements with relevant state statutes and regulations. Thus, any attempts to enforce the building code cannot have the effect of regulating the practice of architecture, engineering, or contracting. The City must find another way to accomplish their objective.

It is interesting to note that state law prohibits a state agency from adopting a regulation where another state agency has exclusive authority. This means that another state agency such as DSA that has construction enforcement responsibilities for public schools cannot adopt a regulation that regulates the practice of engineering or architecture since other agencies have the exclusive authority to adopt such regulations. Thus, it would be inconsistent for local jurisdictions to have an authority that a state agency cannot have. As a result, the authority that the City may have to adopt procedural requirements related to enforcement cannot have the effect of punishing various parties.

**The Ordinance Results in Guilt by Association.**

Civil and Structural Engineers provide recommendations to the Client and thus do not control the contractor. The licensing laws are clear that professional engineers do not have an obligation to inspect the work unless provided for in their contract. Thus, it is unfair to punish an engineer for acts of others simply because he was involved with a project

In many small projects the engineer may not be aware if a permit has been issued or whether construction has started.

The injustice of finding guilt by association is compounded by the lack of any requirement that the individual intended to violate the building regulations.

**The Due Process Provisions in the Ordinance are Inadequate**

While the provision requires multiple individuals be involved with any decision to place an individual on the blacklist, it needs to be appreciated that all these individuals are part of the same operational group and subject to the same biases. This is unfair.

By only allowing an appeal after an individual is on the blacklist the City has only allowed an appeal after much of the damage has been done. Is this fair?

The Building Inspection Commission membership is not able to provide an independent appeal process. Not only do the individual commissioners lack the training regarding administrative law but there is also a concern that they cannot provide an independent review with respect to SFDBI policy because they are ultimately beholden to either the Mayor or the Board of Supervisors. In addition, the BIC will be dependent on the advice from City Attorney's Office which is also tasked with defending the ordinance. So where is the independence?

**The Ordinance Creates a System That is in Conflict with the Right to Have Equal Protection Under the Law.**

The ordinance could unfairly penalize future projects and their owners, design professionals and contractors involved in them, by subjecting those projects to more review and more delay than normal where a contractor or design professional is on the Expanded Compliance Control List.

This system creates a situation where there are in effect two different regulatory systems with those on the list being subject to a more aggressive interpretation of the laws than those not sanctioned.

February 21, 2021

Experience with some notorious state agencies suggests that more aggressive enforcement often results in a de facto different interpretation of the code provisions. The fact that the ordinance effectively expects the plan checkers to make more comments, whether justified or not, will pressure the plan checkers to adopt questionable interpretations of the regulations. The net effect will effectively result in different regulations for some individuals or projects.

Given the politically charged nature of the proposed ordinance whoa be the plan checker who attempts to treat such projects the way they would treat any project not subject to the expanded compliance control. Thus, no matter how good the design is the plan checkers will be incentivized to make extensive comments that would not normally be made.

Given the different levels of enforcement one might ask whether this is being done to protect the public or to punish certain engineers or architects. If there is a claim that the requirement is to protect the public then one might ask whether the default level of enforcement is by implication deficient. On the other hand, if the intent is to punish certain entities then the City has exceeded their authority and have denied individuals equal protection under the law.

Sincerely,

Mark K. Gilligan S.E.

BOARD of SUPERVISORS



City Hall  
Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

January 13, 2021

**File No. 210015**

Lisa Gibson  
Environmental Review Officer  
Planning Department  
1650 Mission Street, Ste. 400  
San Francisco, CA 94103

Dear Ms. Gibson:

On January 4, 2021, Supervisor Ronen submitted the following legislation:

**File No. 210015**

**Ordinance amending the Building Code to implement expanded compliance control and consumer protection provisions for projects, individuals, agents, and entities with a history of significant violations; and affirming the Planning Department's determination under the California Environmental Quality Act.**

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in black ink, appearing to read "Erica Major".

By: Erica Major, Assistant Clerk  
Land Use and Transportation Committee

Attachment

c: Joy Navarrete, Environmental Planning  
Don Lewis, Environmental Planning

Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it would not result in a direct or indirect physical change in the environment.

01/13/2021

A handwritten signature in black ink, appearing to be a stylized name.

BOARD of SUPERVISORS



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Dr. Carlton B. Goodlett Place, Room 244  
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By: Erica Major, Assistant Clerk  
Land Use and Transportation Committee

Attachment

c: Joy Navarrete, Environmental Planning  
Don Lewis, Environmental Planning

BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

## MEMORANDUM

TO: Patrick O'Riordan, Director, Department of Building Inspection  
Sonya Harris, Commission Secretary, Building Inspection Commission

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: January 13, 2021

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Land Use and Transportation Committee has received the following legislation, introduced by Supervisor Ronen on January 5, 2021:

**File No. 210015**

**Ordinance amending the Building Code to implement expanded compliance control and consumer protection provisions for projects, individuals, agents, and entities with a history of significant violations; and affirming the Planning Department's determination under the California Environmental Quality Act.**

The proposed ordinance is being transmitted pursuant to Charter, Section D3.750-5, for public hearing and recommendation. It is pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Please forward me the Commission's recommendation and reports at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: [Erica.Major@sfgov.org](mailto:Erica.Major@sfgov.org).

c: John Murray, Department of Building Inspection  
Patty Lee, Department of Building Inspection

# Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor [ ] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [ ] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. [ ]
- 9. Reactivate File No. [ ]
- 10. Topic submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.**

Sponsor(s):

Ronen; Peskin, Haney

Subject:

[Building Code - Expanded Compliance Control and Consumer Protections Where History of Significant Violations]

The text is listed:

Ordinance amending the Building Code to implement expanded compliance control and consumer protection provisions for projects, individuals, agents, and entities with a history of significant violations; and affirming the Planning Department's determination under the California Environmental Quality Act.

Signature of Sponsoring Supervisor: /s/ Hillary Ronen

For Clerk's Use Only