

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 or project scope that results in circumvention
12 of notification or 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. The Compliance Control Tracking

1 File is for internal purposes only; an individual, agent, or entity's presence in the file does not
2 indicate responsibility for any violation or misconduct.

3 **103A.6.2 Candidates for Expanded Compliance Control.**

4 (1) The Inspection Services Division shall review the Compliance Control Tracking File on a
5 monthly basis to determine if any project, individual, agent, or entity has been associated with three or
6 more reported violations described in 103A.6.1 within the last 18 months. Any such project,
7 individual, agent, or entity shall be a candidate for Expanded Compliance Control.

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

13 **103A.6.3 Expanded Compliance Control List.**

14 **103A.6.3.1 Factors.** In determining whether to include any candidate on the
15 Expanded Compliance Control List, the following factors shall be considered: the candidate's
16 role and conduct that contributed to the violations; any impacts on individual or public health,
17 and safety; whether the misrepresentation of existing conditions or the misrepresentation of
18 project scope was reckless or intentional to avoid permit review or notification requirements;
19 the extent of the demolition or work that occurred without or beyond the scope of a building
20 permit or without the necessary license or certification; any impacts on historically significant
21 structures; prospective undervaluation of the construction cost that resulted in lower permit
22 fees from the violations; and the number, frequency, and severity of violations.

23 **103A.6.3.2 Process.** For each project, individual, agent, or entity designated as a
24 candidate for Expanded Compliance Control, the following actions shall be taken:

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

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

8 (a) that the candidate should be placed on the Expanded Compliance
9 Control List, and provide written findings, including but not limited to findings in response to
10 the factors described in 103A.6.3.1, supporting that determination; notify the candidate and
11 request any exculpatory information as to why Expanded Compliance Control is not
12 warranted; and or

13 (b) that the candidate should not be placed on the Expanded Compliance
14 Control List, and provide written findings, including but not limited to findings in response to
15 the factors described in 103A.6.3.1, for why the candidate does not warrant Expanded
16 Compliance Control if necessary, request additional information from the Chief Inspector.

17 (3) Upon completing review of the report and any additional information from the
18 candidate and Chief Inspector, the Deputy Director shall:

19 (a) Determine the candidate should be subject to Expanded Compliance
20 Control and place the candidate on the Expanded Compliance Control List and provide written
21 findings for this determination; or

22 (b) Determine the candidate should not be placed on the Expanded
23 Compliance Control List, and provide written findings for why the candidate does not warrant
24 Expanded Compliance Control.

1 ———(4) The Director of the Department of Building Inspection shall review all Expanded
2 Compliance Control determinations made by ~~designated staff~~ the Deputy Director and shall make a
3 final determination either affirming or overruling their Deputy Director's determination or
4 overruling the Deputy Director's determination. The Director shall either adopt the ~~staff~~ Deputy
5 Director's findings or issue the Director's own written findings detailing the basis for the final
6 determination. The Department shall notify the candidate in writing of the Director's final
7 determination, and shall post the final determination on the Department's website in a manner that
8 complies with section 104A.6.

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

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

14 **103A.6.4 Expanded Compliance Control Provisions.**

15 **103A.6.4.1 Duration.** Any project, individual, agent, or entity placed on the Expanded
16 Compliance Control List ("listee") shall remain on the list for five years. Any subsequent significant
17 violation(s), as defined in subsection 103A.6.1, by a listee shall extend the period of Expanded
18 Compliance Control for that listee by five years from the date of the subsequent violation(s).

19 **103A.6.4.2 Measures.** Upon placing a project, individual, agent, or entity on the Expanded
20 Compliance Control List, the Department shall take the following actions:

21 (1) Refer the listee to any applicable licensing board or regulatory agency with the
22 Director's final determination and written findings;

23 (2) Require all existing permit applications and addenda and any new applications or
24 addenda submitted by or containing reference to the listee undergo Expanded Compliance Control by
25 senior Plan Review Services staff and multi-station (all permit stations applicable to a given

1 ~~permit~~project—~~Planning Department, Public Works, Fire Marshal~~) review at intake and after the
2 Planning Department approves the Site Permit (if applicable); and notify all parties listed on the
3 applications or addenda for these permits of the Expanded Compliance Control requirement;

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

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

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

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

13 **103A.6.5 Permit review staff training.**

14 No later than ~~September~~June 30, 2021, the Department shall provide written guidance and
15 conduct training sessions for all plan review staff on how to recognize and flag permits that signal
16 potential abuse, including but not limited to serial permit applications and post hoc excuses for
17 significant expansion of scope during construction. All guidance and training materials and
18 procedures shall be prepared with a goal of being sensitive to the cultural differences of
19 individuals, agents, and other entities associated with permits and/or projects as well as
20 current and future building occupants, workers, or adjacent neighbors. Further, the Department
21 shall create and implement guidelines for require that staff to escalate any permits that indicate
22 potential abuse to senior review staff for their review and refer such permits to the Planning
23 Department to ensure they are consistent with preceding Planning Department approvals.

24
25 Section 4. Severability.

1 If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any
2 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
3 decision of a court of competent jurisdiction, such decision shall not affect the validity of the
4 remaining portions or applications of this ordinance. The Board of Supervisors hereby
5 declares that it would have passed this ordinance and each and every section, subsection,
6 sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to
7 whether any other portion of this ordinance or application thereof would be subsequently
8 declared invalid or unconstitutional.

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10 Section 5. Effective Date. This ordinance shall become effective 30 days after
11 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
12 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
13 of Supervisors overrides the Mayor’s veto of the ordinance.

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16 APPROVED AS TO FORM:
17 DENNIS J. HERRERA, City Attorney

18 By: /s/ Robb Kapla
19 ROBB KAPLA
 Deputy City Attorney

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