

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

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.

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

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. ____ and is incorporated herein by reference. The Board affirms this
20 determination.

21 (b) The Building Inspection Commission considered this ordinance on _____,
22 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;
- 12 (2) Structural work without or beyond the scope of a building permit, or other work
13 without or beyond the scope of a building permit that endangers the health and safety of
14 building occupants, future occupants, workers, or adjacent neighbors;
- 15 (3) Demolition without or beyond the scope of a building permit; or
- 16 (4) Other substantial non-compliance,

17 the inspector shall notify their Senior and Chief Inspector by submitting a report describing the
18 observed violations, and identifying all individuals, agents, and other entities associated with
19 the permit and/or project in the Permit Tracking System or known to be associated with the
20 permit and/or project. The Senior and Chief Inspector shall log the report in the Compliance
21 Control Tracking File maintained by the Inspection Services Division.

22 **103A.6.2 Candidates for Expanded Compliance Control.**

23 (1) The Inspection Services Division shall review the Compliance Control Tracking File
24 on a monthly basis to determine if any project, individual, agent, or entity has been associated
25

1 with three or more reported violations within the last 18 months. Any such project, individual,
2 agent, or entity shall be a candidate for Expanded Compliance Control.

3 (2) Even if the three-or-more-violations standard is not met during the 18-month
4 period, the Chief Inspector may designate a project, individual, agent, or entity as a candidate
5 for Expanded Compliance Control for one or two violations during the 18-month period that
6 the Chief Inspector determines, individually or together, to be egregious.

7 **103A.6.3 Expanded Compliance Control List.**

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

10 (1) The Chief Inspector shall draft a summary report detailing the violation(s) and
11 exculpatory evidence or arguments, if any, relevant to whether the candidate warrants
12 Expanded Compliance Control.

13 (2) The Chief Inspector shall submit the report to the Deputy Director, who shall:

14 (a) notify the candidate and request any exculpatory information as to why
15 Expanded Compliance Control is not warranted; and

16 (b) 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.

25

1 (4) The Director of the Department of Building Inspection shall review all Expanded
2 Compliance Control determinations made by the Deputy Director and shall make a final
3 determination either affirming the Deputy Director's determination or overruling the Deputy
4 Director's determination. The Director shall either adopt the Deputy Director's findings or
5 issue written findings detailing the basis for the final determination. The Department shall
6 notify the candidate in writing of the Director's final determination, and shall post the final
7 determination on the Department's website.

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

10 (6) The Director shall maintain the Expanded Compliance Control List on the
11 Department's website and shall provide the list to the Building Inspection Commission on a
12 quarterly basis commencing when the first project, individual, agent, or entity is placed on the
13 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
17 violation(s) by a listee shall extend the period of Expanded Compliance Control for that listee
18 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
20 Expanded 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
24 or addenda submitted by or containing reference to the listee undergo Expanded Compliance
25 Control by senior Plan Review Services staff and multi-station (all permit stations applicable to

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

5 (3) Require multi-station site inspections prior to any permit issuance submitted by
6 or containing reference to the listee;

7 (4) Dedicate a Senior Inspector to perform inspections and respond to any
8 complaints or requests regarding the listee; and

9 (5) If warranted, consult with the City Attorney about any additional enforcement
10 actions.

11 **103A.6.5 Permit review staff training.**

12 No later than June 30, 2021, the Department shall provide written guidance and
13 conduct training sessions for all plan review staff on how to recognize and flag permits that
14 signal potential abuse, including but not limited to serial permit applications and post hoc
15 excuses for significant expansion of scope during construction. Further, the Department shall
16 require that staff escalate any permits that indicate potential abuse to senior review staff for
17 their review and refer such permits to the Planning Department to ensure they are consistent
18 with preceding Planning Department approvals.

19
20 **Section 4. Severability.**

21 If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any
22 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
23 decision of a court of competent jurisdiction, such decision shall not affect the validity of the
24 remaining portions or applications of this ordinance. The Board of Supervisors hereby
25 declares that it would have passed this ordinance and each and every section, subsection,

1 sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to
2 whether any other portion of this ordinance or application thereof would be subsequently
3 declared invalid or unconstitutional.

4

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

9

10

11 APPROVED AS TO FORM:
12 DENNIS J. HERRERA, City Attorney

13 By: /s/ Robb Kapla
14 ROBB KAPLA
Deputy City Attorney

15 n:\legana\as2020\2100131\01500557.docx

16

17

18

19

20

21

22

23

24

25

LEGISLATIVE DIGEST

[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 provide a report to their Senior and Chief Inspector each time the inspector 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; structural work or demolition without or beyond the scope of a permit; other work without or beyond the scope of a building permit that endangers health and safety; and any other violations determined by the inspector as substantial non-compliance with City codes. The report 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.

The Proposed Legislation mandates the collection of these reports in a Compliance Control Tracking File, which must be reviewed by the DBI's Inspection Services Division on a monthly basis to determine if any project, individual, agent, or entity has been identified on three or more reports 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, the Chief Inspector may place a candidate on the List for any egregious violation(s) even if the candidate 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 Chief Inspector must draft a summary report describing the violation(s) and any exculpatory evidence relevant to whether the candidate should be placed on the List. The summary report would then be evaluated by the Deputy Director who may

seek additional information from DBI staff and/or the candidate and must determine whether placement on the List is appropriate. The Deputy Director must support that determination with written findings. The Deputy Director's determination would then be reviewed by the Director, who shall make the final listing determination and issue written findings in support of 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 and subject to Expanded Compliance Control measures for five years. Any subsequent violation(s) 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 multi-station review at intake by Planning, Fire, and Public Works in addition to DBI; notify the listee and all other parties associated with the listee on a permit application or addenda of the Expanded Compliance Control requirements; require site inspection by all applicable reviewing departments 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 and misrepresentation by applicants and mandate escalation of permits indicating significant issues to senior DBI staff and Planning Department.

Background Information

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 expanded compliance control list; detailing what expanded compliance control measures are required; and mandating training and issue escalation for permit review staff.

n:\legana\as2020\2100131\01500641.docx

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):

Subject:

The text is listed:

Signature of Sponsoring Supervisor:

For Clerk's Use Only