



MEMO TO THE PLANNING COMMISSION

HEARING DATE: February 18, 2021

February 11, 2021

Case Number: 2021-001452PCA
Subject: Informational Presentation on “Expanded Compliance Control and Consumer Protections Where History of Significant Violations” Ordinance.
Project Sponsor: Supervisor Hillary Ronen
Staff Contact: Aaron Starr – +1628-652-7533
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Recommendation: None- Informational Presentation

Background

On January 5, 2021, Supervisor Ronen introduced an amendment to the Building Code (Board File 210015) titled *Expanded Compliance Control and Consumer Protections Where History of Significant Violations*. The purpose of the ordinance is to implement expanded compliance control and consumer protection provisions for projects, individuals, agents, and entities with a history of significant violations. At the Planning Commission’s February 18 hearing, a representative from Supervisor Ronen’s office will present information on this ordinance and answer questions from the Planning Commission.

Summary of Legislation

The ordinance identifies what types of actions would subject individuals, agents, and other entities associated with a permit (hereinafter applicants) to additional review. Those include misrepresentation of existing conditions; structural work without or beyond the scope of the building permit; demolition without or beyond the scope of the permit; or other “substantial non-compliance.” The ordinance requires that these types of violations be documented by Department of Building Inspection (hereinafter DBI). If an applicant has been associated with three or more of these infractions within the last 18-months, then the applicant would be placed on the Expanded Compliance Control List by the Director of DBI. Being on this list subjects projects sponsored by or associated with the applicant to additional review and inspection by all permit reviewing agencies. Applicants stay on this list for 5 years, and any additional subsequent violation extends the duration for an additional five years.

Planning Department's Role

The Planning Department has a limited role in this new compliance controls program; however, as a permit reviewing agency we will be required to review all addenda where an applicant on the Expanded Compliance Control List is involved. Currently we would not review addenda that doesn't involve areas under our purview, such as grading, excavation, and structural addenda.

Required Commission Action

None, Informational Presentation

Attachments:

Board File 210015

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 _____,
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
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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.

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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.

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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.

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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.

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

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

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