

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: Greg Wagner, Acting Director, Department of Public Health
Helynna Brooke, Mental Health Board
Trent Rhorer, Executive Director, Human Services Agency
Jeff Kositsky, Director, Department of Homelessness and Supportive Housing
Vicki Hennessy, Sheriff, Sheriff's Department

FROM:  Alisa Somera, Legislative Deputy Director
Rules Committee

DATE: November 13, 2018

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee has received the following proposed legislation, introduced by Mayor Breed on October 30, 2018:

File No. 181042

Ordinance amending the Health Code to authorize procedures for the appointment of a conservator for a person incapable of caring for the person's own health and well-being due to a serious mental illness and substance use disorder, and designating the City Attorney to institute judicial proceedings to establish housing conservatorships; and amending the Administrative Code to establish the Housing Conservatorship Working Group to conduct an evaluation of the City's implementation of the housing conservatorship program.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: alisa.somera@sfgov.org.

c: Naveena Bobba, Department of Public Health
Sneha Patil, Department of Public Health
Krista Ballard, Human Services Agency
Emily Cohen, Department of Homelessness and Supportive Housing
Theodore Toet, Sheriff's Department
Katherine Gorwood, Sheriff's Department
Nancy Crowley, Sheriff's Department

1 [Health, Administrative Codes - Housing Conservatorships]

2
3 **Ordinance amending the Health Code to authorize procedures for the appointment of a**
4 **conservator for a person incapable of caring for the person's own health and well-**
5 **being due to a serious mental illness and substance use disorder, and designating the**
6 **City Attorney to institute judicial proceedings to establish housing conservatorships;**
7 **and amending the Administrative Code to establish the Housing Conservatorship**
8 **Working Group to conduct an evaluation of the City's implementation of the housing**
9 **conservatorship program.**

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

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

18 Section 1. Article 41 of the Health Code is hereby amended by adding Division IV,
19 consisting of Sections 4131 to 4135, to read as follows:

20 **DIVISION IV: HOUSING CONSERVATORSHIPS**

21
22 **SEC. 4131. FINDINGS.**

23 (a) State law establishes a procedure for the appointment of a conservator for a person who is
24 determined to be gravely disabled as a result of a mental health disorder or an impairment by chronic
25 alcoholism. Chapter 3 of Part 1 of Division 5 of the California Welfare and Institutions Code. State

1 law also establishes a procedure for the appointment of a conservator for individuals who are unable
2 to properly provide for their needs for physical health, food, clothing and shelter, and for individuals
3 who are substantially unable to manage their finances or resist fraud or undue influence. Division 4 of
4 the California Probate Code.

5 (b) Notwithstanding State and City laws and programs designed to provide care for persons
6 who are unable to care for themselves, some people fall through the cracks. For example,
7 conservatorships under the Lanterman-Petris-Short Act, Chapter 3 of Part 1 of Division 5 of the
8 California Welfare and Institutions Code (“LPS conservatorships”), do not take into consideration
9 substance use disorders other than alcoholism. Therefore, individuals with a serious mental illness and
10 co-occurring substance use disorder other than alcohol can be ineligible for LPS conservatorships,
11 notwithstanding their mental health disorder and resulting needs.

12 (c) Individuals grappling with severe mental illness and a debilitating substance use disorder
13 are often difficult to treat under existing short-term psychiatric programs and outpatient drug
14 treatments available outside of conservatorship; these individuals often cycle in and out of treatment
15 and have difficulty maintaining stable housing. As of the adoption of this Division IV, there is no
16 avenue to conserve individuals in a supportive housing environment that provides wraparound services
17 to those individuals.

18 (d) S.B. 1045 (Housing Conservatorship for Persons with Serious Mental Illness and Substance
19 Use Disorders), codified at Chapter 5 of Part 1 of Division 5 of the California Welfare and Institutions
20 Code, authorizes the counties of San Francisco, San Diego, and Los Angeles, to establish procedures
21 for the appointment of a conservator for a person who is incapable of caring for the person’s own
22 health and well-being due to a serious mental illness and substance use disorder, for the purpose of
23 providing the least restrictive and most clinically appropriate alternative needed for the protection of
24 the person.

1 (e) The Department of Public Health (“DPH”), the Human Services Agency (“HSA”), and the
2 Department of Homelessness and Supportive Housing (“HSH”) developed a plan (“the Housing
3 Conservatorship Plan”) to implement Chapter 5 of Part 1 of Division 5 of the California Welfare and
4 Institutions Code, in consultation with representatives of disability rights advocacy groups, a provider
5 of permanent supportive housing services, the county health department, law enforcement, labor
6 unions, and staff from hospitals located in San Francisco. The Housing Conservatorship Plan is
7 available in Board of Supervisors File No. _____.

8 (f) As required by S.B. 1045, as codified in subsection (b)(2) of Section 5450 of the California
9 Welfare and Institutions Code, the Board of Supervisors held a public hearing on _____,
10 where staff from DPH, HSA, and HSH presented the Housing Conservatorship Plan to the Board of
11 Supervisors, and provided testimony concerning the available resources for the implementation of
12 Chapter 5 of Part 1 of Division 5 of the California Welfare and Institutions Code. Based on materials
13 and testimony presented at the hearing, the Board of Supervisors finds that the services set forth in
14 subsection (b)(2) of Section 5450 of the California Welfare and Institutions Code are available in, at a
15 minimum, sufficient quantity, resources, and funding levels to serve the identified population that the
16 Board of Supervisors intends to serve in connection with the implementation of the Housing
17 Conservatorship Program.

18 (g) The City finds that no voluntary mental health program serving adults, no children’s mental
19 health program, and no services or supports provided in conservatorships established pursuant to
20 Division 4 (commencing with Section 1400) of the California Probate Code or conservatorships
21 established pursuant to Chapter 3 (commencing with Section 5350) of the California Welfare and
22 Institutions Code), including availability of conservators, will be reduced as a result of implementation
23 of the Housing Conservatorship Program.

24
25 **SEC. 4132. DEFINITIONS.**

1 Terms not defined in this Division IV shall have the meaning attributed to them in Section 5452
2 of the California Welfare and Institutions Code, as may be amended from time to time.

3 “City” means the City and County of San Francisco.

4
5 **SEC. 4133. AUTHORIZATION OF THE HOUSING CONSERVATORSHIP PROGRAM.**

6 (a) The City authorizes the implementation of Chapter 5 (commencing with Section 5450) of
7 Part 1 of Division 5 of the Welfare and Institutions Code through the establishment of the Housing
8 Conservatorship Program, as provided in this Division IV.

9 (b) The purpose of the Housing Conservatorship Program is to provide the least restrictive and
10 most clinically appropriate alternative needed for the protection of a person who is incapable of caring
11 for the person’s own health and well-being due to a serious mental illness and substance use disorder,
12 as evidenced by frequent detention for evaluation and treatment pursuant to Section 5150 of the
13 California Welfare and Institutions Code (“Section 5150”). If the court determines that the person
14 needs to be moved from the person’s current residence, the placement shall be in supportive community
15 housing that provides wraparound services, such as onsite physical and behavioral health services,
16 unless the court, with good cause, determines that such a placement is not sufficient for the protection
17 of that person.

18 (c) The procedures for establishing, administering, and terminating a conservatorship under
19 this Division IV shall be as set forth in Chapter 5 of Part 1 of Division 5 of the California Welfare and
20 Institutions Code.

21 (d) The San Francisco Public Conservator is designated to provide conservatorship
22 investigations as set forth in this Division IV, and those investigations shall comply with the
23 requirements of Chapter 5 of Part 1 of Division 5 of the California Welfare and Institutions Code.

24 (e) The San Francisco Public Conservator may appoint a conservator of the person for a San
25 Francisco resident who is incapable of caring for the person’s own health and well-being due to a

1 serious mental illness and substance use disorder, as evidenced by frequent detention for evaluation
2 and treatment pursuant to Section 5150.

3 (f) A Housing Conservatorship pursuant to this Division IV shall not be established if a
4 conservatorship or guardianship for the person exists under Division 4 (commencing with Section
5 1400) of the California Probate Code or under Chapter 3 (commencing with Section 5350) of the
6 California Welfare and Institutions Code.

7 (g) The following professionals may recommend an evaluation for Housing Conservatorship to
8 the Public Conservator upon a determination that a person in the professional's care is incapable of
9 caring for the person's own health and well-being due to a serious mental illness and substance use
10 disorder, as evidenced by frequent detention for evaluation and treatment pursuant to Section 5150:

11 (1) The Sheriff, or the Sheriff's designee;

12 (2) The Director of the Department of Public Health, or the Director's designee;

13 (3) The Director of the Human Services Agency, or the Director's designee; or

14 (4) The professional person in charge of an agency providing comprehensive evaluation
15 or a facility providing intensive treatment.

16 (h) If the Public Conservator, upon conducting an evaluation for Housing Conservatorship,
17 finds that the person meets the criteria for Housing Conservatorship and the Housing Conservatorship
18 is the least restrictive alternative, the officer shall petition the Superior Court of San Francisco to
19 establish a Housing Conservatorship.

20
21 **SEC. 4134. UNDERTAKING FOR THE GENERAL WELFARE.**

22 In enacting and implementing this Division IV, the City is assuming an undertaking only to
23 promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an
24 obligation for breach of which it is liable in money damages to any person who claims that such breach
25 proximately caused injury.

1
2 **SEC. 4135. SUNSET DATE.**

3 *This Division IV shall expire by operation of law on December 31, 2023, unless the Legislature*
4 *has amended Chapter 5 of Part 1 of Division 5 of the Welfare and Institutions Code to extend the*
5 *authorization of local housing conservatorship programs beyond that date. If Chapter 5 is amended to*
6 *extend beyond December 31, 2023, but to remain in effect only until a later date certain, on which date*
7 *it is repealed, this Division IV shall expire by operation of law on that later date certain. In either*
8 *event, upon expiration of this Division IV by operation of law, the City Attorney shall cause Division IV*
9 *to be removed from the Health Code.*

10
11 Section 2. Division III of Article 41 of the Health Code is hereby amended to revise
12 Section 4121, to read as follows:

13
14 **SEC. 4121. DESIGNATION OF CITY ATTORNEY.**

15 The City Attorney is designated to represent the county in the following proceedings:

16 (a) Judicial proceedings authorized by Article 9 of Chapter 2 of Division 5 of the
17 California Welfare and Institutions Code (“The Assisted Outpatient Treatment Demonstration
18 Project Act of 2002”); ~~and~~

19 (b) ~~Beginning January 1, 2019, j~~Judicial proceedings authorized by Chapter 3 of Division
20 5 of the California Welfare and Institutions Code (“Conservatorship for Gravely Disabled
21 Persons”); provided, however, that the City Attorney is not designated to represent the county
22 in such proceedings where they concern a person who meets the definition of “gravely
23 disabled” as set forth in subsection (h)(1)(B) of Section 5008 of the California Welfare and
24 Institutions Code.; and

1 (c) Judicial proceedings authorized by Chapter 5 of Part 1 of Division 5 of the California
2 Welfare and Institutions Code (“Housing Conservatorship for Persons with Serious Mental Illness and
3 Substance Use Disorders”).

4
5 Section 3. Chapter 5 of the Administrative Code is hereby amended by adding Article
6 XXXVII, consisting of Sections 5.37-1 to 5.37-5, to read as follows:

7
8 **ARTICLE XXXVII: HOUSING CONSERVATORSHIP WORKING GROUP**

9
10 **SEC. 5.37-1. ESTABLISHMENT OF WORKING GROUP.**

11 There is hereby established the Housing Conservatorship Working Group (the “Working
12 Group”) of the City and County of San Francisco.

13
14 **SEC. 5.37-2. MEMBERSHIP.**

15 The Working Group shall be comprised of 12 members, appointed as follows:

16 (a) Seats 1 and 2 shall be held by representatives of disability rights advocacy groups,
17 appointed by the Mayor and the Board of Supervisors, respectively.

18 (b) Seats 3 and 4 shall be held by representatives of labor unions, appointed by the Mayor and
19 the Board of Supervisors, respectively.

20 (c) Seats 5 and 6 shall be held by representatives of organizations providing direct services to
21 homeless individuals or families, appointed by the Mayor and the Board of Supervisors, respectively.

22 (d) Seat 7 shall be held by an employee of a hospital located in San Francisco with experience
23 in mental health and substance use disorders, appointed by the Director of Health.

24 (e) Seat 8 shall be held by an employee of the Behavioral Health Services program of the
25 Department of Public Health, appointed by the Director of Health.

1 (f) Seat 9 shall be held by an employee of the Department of Public Health, appointed by the
2 Director of Health.

3 (g) Seat 10 shall be held by an employee of the Human Services Agency, appointed by the
4 Director of the Human Services Agency.

5 (h) Seat 11 shall be held by an employee of the Department of Homelessness and Supportive
6 Housing, appointed by the Director of the Department of Homelessness and Supportive Housing.

7 (i) Seat 12 shall be held by an employee of the San Francisco Police Department, appointed by
8 the Chief of Police.

9
10 **SEC. 5.37-3. ORGANIZATION AND TERMS OF OFFICE.**

11 (a) Members of the Working Group shall serve at the pleasure of their respective appointing
12 authorities, and may be removed by the appointing authority at any time.

13 (b) Appointing authorities shall make initial appointments to the Working Group by no later
14 than 90 days after the effective date of this Article XXXVII.

15 (c) The Working Group shall hold its inaugural meeting not more than 30 days after a quorum
16 of the Working Group, defined as a majority of seats, has been appointed.

17 (d) Members of the Working Group shall receive no compensation from the City, except that
18 the members in Seats 8, 9, 10, 11, and 12 who are City employees may receive their respective City
19 salaries for time spent working on the Working Group.

20 (e) Any member who misses three regular meetings of the Working Group within any 12-month
21 period without the express approval of the Working Group at or before each missed meeting shall be
22 deemed to have resigned from the Working Group 10 days after the third unapproved absence. The
23 Working Group shall inform the appointing authority of any such resignation.

24 (f) The Department of Public Health shall provide administrative and clerical support for the
25 Working Group, and the Controller's Office shall provide technical support and policy analysis for the

1 Working Group upon request. All City officials and agencies shall cooperate with the Working Group
2 in the performance of its functions.

3
4 **SEC. 5.37-4. DUTIES.**

5 (a) The Working Group shall conduct an evaluation of the effectiveness of the implementation
6 of Chapter 5 (commencing with Section 5450) of the California Welfare and Institutions Code
7 ("Chapter 5") in addressing the needs of persons with serious mental illness and substance use
8 disorders in the City. The evaluation shall include an assessment of the number and status of persons
9 who have been conserved under Chapter 5, the effectiveness of these conservatorships in addressing
10 the short- and long-term needs of those persons, and the impact of conservatorships established
11 pursuant to Chapter 5 on existing conservatorships established pursuant to Division 4 (commencing
12 with Section 1400) of the California Probate Code or Chapter 3 (commencing with Section 5350) of the
13 California Welfare and Institutions Code, and on mental health programs provided by the City.

14 (b) The Working Group shall prepare and submit a preliminary report and a final report to the
15 Mayor, the Board of Supervisors, and the Legislature on its findings and recommendations regarding
16 the implementation of Chapter 5. The preliminary report shall be submitted to the Mayor and the
17 Board of Supervisors by no later than November 1, 2020, and to the Legislature by no later than
18 January 1, 2021, in compliance with Section 9795 of the California Government Code. The final report
19 shall be submitted to the Mayor and the Board of Supervisors by no later than November 1, 2022, and
20 to the Legislature by no later than January 1, 2023, in compliance with Section 9795 of the California
21 Government Code.

22
23 **SEC. 5.37-5. SUNSET.**

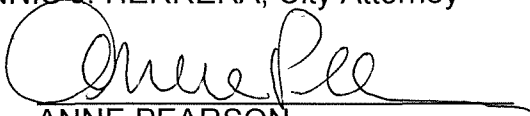
24 Unless the Board of Supervisors by ordinance extends the term of the Working Group, this
25 Article XXXVII shall expire by operation of law, and the Working Group shall terminate, on December

1 31, 2023. In that event, after that date, the City Attorney shall cause this Article XXXVII to be removed
2 from the Administrative Code.

3
4 Section 4. Effective Date. This ordinance shall become effective 30 days after
5 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
6 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
7 of Supervisors overrides the Mayor's veto of the ordinance.

8
9 APPROVED AS TO FORM:
10 DENNIS J. HERRERA, City Attorney

11 By:


12 ANNE PEARSON
13 Deputy City Attorney

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LEGISLATIVE DIGEST

[Health, Administrative Codes - Housing Conservatorships]

Ordinance amending the Health Code to authorize procedures for the appointment of a conservator for a person incapable of caring for the person's own health and well-being due to a serious mental illness and substance use disorder, and designating the City Attorney to institute judicial proceedings to establish housing conservatorships; and amending the Administrative Code to establish the Housing Conservatorship Working Group to conduct an evaluation of the City's implementation of the housing conservatorship program.

Existing Law

Currently, state law establishes a procedure for the appointment of a conservator for a person who is determined to be gravely disabled as a result of a mental health disorder or an impairment by chronic alcoholism. State law also establishes a procedure for the appointment of a conservator for individuals who are unable to properly provide for their needs for physical health, food, clothing and shelter, and for individuals who are substantially unable to manage their finances or resist fraud or undue influence.

On September 27, 2018, Governor Brown signed into law S.B. 1045 (Housing Conservatorship for Persons with Serious Mental Illness and Substance Use Disorders), to be codified at Chapter 5 of Part 1 of Division 5 of the California Welfare and Institutions Code. S.B. 1045, which will go into effect on January 1, 2019, authorizes the counties of San Francisco, San Diego, and Los Angeles, to establish procedures for the appointment of a conservator for a person who is incapable of caring for the person's own health and well-being due to a serious mental illness and substance use disorder, for the purpose of providing the least restrictive and most clinically appropriate alternative needed for the protection of the person.

S.B. 1045 provides that before a county Board of Supervisors may authorize the establishment of a housing conservatorship program, local government departments must develop a plan to implement the program, in consultation with specified stakeholders, and must present the plan to the Board of Supervisors. In addition, after a public hearing and based on materials presented, the Board of Supervisors must make a finding that the county has enumerated services, including but not limited to supportive housing with wraparound services and adequate beds, outpatient mental health counseling, psychiatric and psychological services, and substance use disorder services, in sufficient quantity, resources, and funding levels to serve the identified population that the Board of Supervisors intends to serve. The Board of Supervisors must also make a finding that no voluntary mental health program serving adults, no children's mental health program, and no services or supports provided in other conservatorship programs, including the availability of conservators, may be reduced as a result of the implementation of the housing conservatorship program.

Once the Board of Supervisors has established a housing conservatorship program consistent with the requirements of S.B. 1045, a conservatorship of the person may be appointed for a person who is incapable of caring for the person's own health and well-being due to a serious mental illness and substance use disorder, as evidenced by frequent detention for evaluation and treatment pursuant to Section 5150. The procedures for establishing, administering, and terminating a housing conservatorship are set forth in state law.

The establishment of a housing conservatorship is subject to a finding by the court that the county has previously attempted by petition to obtain a court order authorizing assisted outpatient treatment ("AOT") and that the petition was denied or the AOT was insufficient to treat the person's mental illness, and AOT would be insufficient to treat the person in lieu of a housing conservatorship.

A person for whom a housing conservatorship is sought shall have a right to be represented by the public defender and to demand a jury trial to determine whether the person meets the criteria for the appointment of the conservator.

S.B. 1045 also requires the appointment of a working group that is charged with evaluating the effectiveness of the implementation of S.B. 1045 in addressing the needs of persons with serious mental illness and substance use disorders, and preparing reports to Legislature on its findings and recommendations regarding implementation.

Amendments to Current Law

The proposed ordinance would authorize the implementation of S.B. 1045 through the establishment of a Housing Conservatorship Program. The ordinance would designate the San Francisco Public Conservator as the agency that would provide conservatorship investigations and that may appoint a conservator of the person for San Francisco residents who are incapable of caring for the person's own health and well-being due to a serious mental illness and substance use disorder, as evidenced by frequent detention for evaluation and treatment pursuant to Section 5150.

The proposed ordinance would provide that the process for establishing, administering, and terminating a housing conservatorship would be as set forth in state law.

The ordinance would authorize the court to appoint the San Francisco Public Conservator as conservator if the court makes an express finding that it is necessary for the protection of the proposed conservatee and the granting of the conservatorship is the least restrictive alternative needed for the protection of the conservatee. Housing conservatorships will automatically terminate one year after the appointment of the conservator by the court, or shorter if ordered by the court.

The proposed ordinance would designate the City Attorney's office to represent the Public Conservator in housing conservatorship proceedings. It would also establish a Working

Group charged with evaluating the City's implementation of S.B. 1045. The Working Group would consist of 12 members, appointed by the Mayor, the Board of Supervisors, and specified department heads, and would be charged with preparing a preliminary report by November 2020, and a final report by November 2022.

Background Information

Notwithstanding State and City laws and programs designed to provide care for persons who are unable to care for themselves, some people fall through the cracks. For example, conservatorships under the Lanterman-Petris-Short Act, Chapter 3 of Part 1 of Division 5 of the California Welfare and Institutions Code ("LPS conservatorships"), do not take into consideration substance use disorders other than alcoholism. Therefore, individuals with a serious mental illness and co-occurring substance use disorder other than alcohol can be ineligible for LPS conservatorships, notwithstanding their mental health disorder and resulting needs.

Individuals grappling with severe mental illness and a debilitating substance use disorder are often difficult to treat under existing short-term psychiatric programs and outpatient drug treatments available outside of conservatorship; these individuals often cycle in and out of treatment and have difficulty maintaining stable housing. Currently, there is no avenue to conserve individuals in a supportive housing environment that provides wraparound services to those individuals.

As part of the legislative process, the Board of Supervisors will hold a public hearing at which City departments will present a Housing Conservatorship Plan and other information relating to the available resources for the implementation of S.B. 1045.

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