

File No. 101057

Committee Item No. _____

Board Item No. 12

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee _____

Date _____

Board of Supervisors Meeting

Date 11/23/10

Cmte Board

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Completed by: R Calonsag

Date 11-18-10

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1 [Planning Code - Health Care Services Master Plan]

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3 Ordinance amending the San Francisco Planning Code by adding Sections 342 to

4 342.10 requiring the preparation of a Health Care Services Master Plan identifying the

5 current and projected needs for, and locations of, health care services within San

6 Francisco and recommending how to achieve and maintain appropriate distribution of,

7 and equitable access to, such services; requiring that ~~medical institutions applying for~~

8 any change of use to a Medical Use, as defined, that will occupy a space exceeding

9 10,000 gross square feet of floor area, or an expansion of any existing Medical Use by

10 at least 5,000 gross square feet of floor area ~~land-use approvals obtain a e~~Consistency

11 ~~d~~Determination from the Planning Commission or the Planning Department

12 determining that the proposed use or expansion promotes the goals recommended in

13 the Master Plan; providing fees for time and material costs incurred to prepare the

14 consistency determination, and making findings, including findings of consistency

15 with the General Plan and the eight priority policies of Planning Code Section 101.1 and

16 environmental findings.

17 NOTE: Additions are *single-underline italics Times New Roman*;

18 deletions are *strike-through italics Times New Roman*.

19 Board amendment additions are double-underlined;

Board amendment deletions are ~~strikethrough-normal~~.

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

21 Section 1. Findings. The Board of Supervisors of the City and County of San

22 Francisco hereby finds and determines that:

23 (a) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this

24 ordinance will serve the public necessity, convenience and welfare, for the reasons set forth in

25 Planning Commission Resolution No. 18202, and incorporates such reasons by this reference

1 thereto. A copy of said resolution is on file with the Clerk of the Board of Supervisors in File
2 No. 101057.

3 (b) The Board of Supervisors finds that this ordinance is in conformity with the
4 Priority Policies of Section 101.1 of the Planning Code and with the General Plan, and hereby
5 adopts the findings set forth in Planning Commission Resolution No. 18202 and incorporates
6 such findings by reference as if fully set forth herein. A copy of said resolution is on file with
7 the Clerk of the Board of Supervisors in File No. 101057.

8 (c) The Planning Department concluded environmental review of this ordinance
9 pursuant to the California Environmental Quality Act, Public Resources Code Section 2100 et
10 seq. Documentation of that review is on file with the Clerk of the Board of Supervisors in File
11 No. 101057.

12 Section 2. The San Francisco Planning Code is hereby amended by adding Sections
13 342 to 342.10, to read as follows:

14 **SEC. 342. HEALTH CARE SERVICES MASTER PLAN FINDINGS.**

15 1. On March 23, 2010, President Barack Obama signed into law the "Patient Protection
16 and Affordable Care Act," thereby initiating the most significant change to the health care delivery
17 system that the United States has experienced in forty years. As the City and County of San Francisco
18 ("City") works to implement this monumental law, it is an opportune moment to engage in a
19 comprehensive planning effort for health care services in the City.

20 2. Section 4.110 of the City Charter ("Charter") provides that the Department of Public
21 Health and Health Commission shall provide for the preservation, promotion and protection of the
22 physical and mental health of the inhabitants of the City and County of San Francisco.

23 3. Section 4.105 of the Charter provides that the Planning Commission create and
24 maintain a General Plan consisting of goals, policies and programs for the future development of the
25 City and County that take into consideration social, economic and environmental factors.

1 4. Section 127340(a) of the California Health and Safety Code provides that "private not-
2 for-profit hospitals meet certain needs of their communities through the provision of essential
3 healthcare and other services. Public recognition of their unique status has led to favorable tax
4 treatment by the government. In exchange, nonprofit hospitals assume a social obligation to provide
5 community benefits in the public interests. §"

6 5. ~~The elimination of the Bay Area Health Systems Agency in 1981 and the~~
7 ~~establishment of a competitive marketplace for health services as state policy through state~~
8 ~~legislation resulted in the loss of routine and comprehensive analysis of health service~~
9 ~~resources, needs, trends, local impacts and related information in the City to guide decisions~~
10 ~~by medical institutions and governmental land use decisions. This loss of information~~
11 ~~promoted decisions, both private and public, that could favor short term individual~~
12 ~~developments over long term, City wide public policy goals.~~

13 5. 6. ~~The attempt by the City to fill the policy gap by passing Ordinance Number 279-~~
14 ~~07, requiring Implementation of Ordinance 279-07, requiring the Department of Public Health~~
15 ~~to analyze the relationship between the City's long term health care needs and facility~~
16 ~~planning for medical institutions, has revealed the need for a City-wide Health Care Services~~
17 ~~Master Plan so that the Planning Department has a tool to analyze individual institutional~~
18 ~~planning against a more comprehensive City plan. submission of Institutional Master Plans,~~
19 ~~revealed the need to balance individual institutional planning with a city wide plan within which~~
20 ~~plans of individual institutions can be assessed for their relation to city wide public policy goals~~
21 ~~and the impacts in neighborhoods and the City as a whole.~~

22 6.7. A Health Care Services Master Plan will provide the Health Commission, the Planning
23 Commission and Board of Supervisors with information and public policy recommendations to guide
24 their decisions to promote the City's land use and policy goals developed in such Plan, such as
25 distribution and access to health care services.

1 7.8. *A Health Care Services Master Plan will also provide the Health Commission, the*
2 *Planning Commission and Board of Supervisors with information essential to disaster planning for the*
3 *City.*

4 8.9. *The San Francisco Department of Public Health is particularly well situated to create a*
5 *Health Care Services Master Plan, as it can draw upon the innovative work of Building a Healthier*
6 *San Francisco, including "The Living Community Needs Assessment" which is an up-to-date, web-*
7 *based, compilation of data about community health in neighborhoods throughout the City.*

8 **SEC. 342.1. DEFINITIONS.**

9 *As used in these sections 342 to 342.10, the following terms shall have the following meanings:*

10 (a) — "Application" shall mean an application submitted by an owner or operator of a
11 medical institution for any City land use approval, including but not limited to a conditional use
12 permit, variance, or other entitlement requiring Planning Commission or Zoning Administrator
13 action.

14 (b) — "Applicant" shall mean an owner or operator of a medical institution submitting
15 an application for a land use approval described in section (a) above.

16 (c) (a) "Medical Use Institution" shall mean a use as defined in Sections 790.114,
17 790.44, 890.114, 890.44, 209.3(a), 217(a) and (c) of the Planning Code, excluding any
18 housing operated by a medical provider or any massage use providers of healthcare services,
19 such as hospitals, nursing homes, skilled nursing facilities, in-patient hospices, mental and
20 behavioral health facilities, substance abuse and chemical dependency treatment centers,
21 ambulatory care centers, rehabilitation facilities, free standing imaging centers, surgical
22 centers, birthing centers, clinics, and medical office buildings.

23 **SEC. 342.2. HEALTH CARE SERVICES MASTER PLAN: COMPONENTS**

24 (a) The Department of Public Health and the Planning Department shall prepare a Health
25 Care Services Master Plan that displays and analyzes information concerning the geography

1 (including natural features of land, weather, and water supply), demography, epidemiology,
2 economics/finance, neighborhood characteristics, intensity of use, workforce, technology, and
3 governmental policy pertinent to distribution, access, quality and cost of health care services in the
4 City, including the use of the health care services by patients from outside the City, and referral of
5 patients from the City to medical institutions located outside the City limits. Based on this information,
6 the Health Care Services Master Plan will identify existing and anticipated future needs for health care
7 services compared to available and anticipated resources and potential impacts on neighborhoods, and
8 make recommendations for improving the match between needs and resources, as well as where health
9 care services may be located within an area of the City without a significant to minimize land use
10 burden on particular neighborhoods. The Health Care Services Master Plan shall consider
11 neighborhood density, uses, transit and infrastructure availability, traffic characteristics, including
12 mode split among cars, public transit, bicycles and pedestrians.

13 (b) The Health Care Services Master Plan shall, to the extent feasible, contain all of the
14 following components:

15 (1) Health System Trends Assessment: The Health Care Services Master Plan shall describe
16 and analyze trends in health care services with respect to the City, including but not limited to: disease
17 and population health status; governmental policy (at the national, state, regional levels); disaster
18 planning; clinical technology; communications technology; payment for services; sources and uses of
19 capital for investment in services; organization and delivery of services; workforce; community
20 obligations of providers, and any other trends that, in the discretion of the Department of Public
21 Health, may affect availability, location, access and use of services in the City.

22 (2) Capacity Assessment: The Health Care Services Master Plan shall quantify the current
23 and projected capacities of existing Medical Uses medical institutions in San Francisco, including
24 public and private facilities and community-based and for and non-profit organizations. The
25 capacity assessment shall describe, analyze, and project resources available for emergency services,

1 including trauma services; acute hospital services, including beds and services that require specialized
2 facility accommodations; ambulatory care services including primary care; specialty physician
3 services; hospital-based and free-standing urgent care services; rehabilitation, long term care and
4 home health services; and behavioral health services including psychiatric emergency, mental health
5 and substance abuse services. In addition, the capacity assessment shall quantify "surge capacity"
6 needs in the event of a disaster.

7 (3) Land Use Assessment: The Health Care Services Master Plan shall assess the supply,
8 need and demand for Medical Uses medical institutions in the different neighborhoods of the City;
9 the potential effects or land use burdens of locating such services in particular neighborhoods; and the
10 potential for displacement of other neighborhood-serving uses that may occur as a result of the
11 placement of Medical Uses medical institutions.

12 (4) Gap Assessment: The Health Care Services Master Plan shall identify medical service
13 gaps across the City and medically underserved areas for particular services with reference to
14 geography, transportation/communication options, and unique barriers to accessing care, including
15 but not limited to the absence of cultural competence, language, race, immigration status, gender
16 identity, substance abuse, and public assistance.

17 (5) Historical Role Assessment. The Health Care Services Master Plan shall take
18 into consideration the historical role played, if any, by medical uses in the City to provide
19 medical services to historically underserved groups, such as minority or low income
20 communities.

21 (56) Recommendations: The Health Care Services Master Plan shall include policy
22 recommendations to promote an equitable and efficient distribution of healthcare services in the City;
23 the elimination of healthcare service gaps and medically underserved areas; and the placement of
24 Medical Uses medical institutions within the City in a manner that is consistent with the character,
25

1 needs and infrastructure of the different neighborhoods, and that promotes and protects the public
2 health, safety, convenience and general welfare.

3 **SEC. 342.3. HEALTH CARE SERVICES MASTER PLAN PROCESS:**

4 (a) Timing for Health Care Services Master Plan Completion: The Department of Public
5 Health, or its designated consultant, shall work with the Planning Department to complete a draft
6 Health Care Services Master Plan within ~~twelve (12)~~ nine (9) months of the effective date of this
7 ordinance, which time may be extended upon request and by approval of the Board of Supervisors.

8 (b) Preparation of the Health Care Services Master Plan: The Department of Public Health
9 shall hold at least two publicly-noticed informational hearings and/or workshops during the course of
10 the preparation of the draft Health Care Services Master Plan. The Planning Department shall
11 participate in all hearings and/or workshops.

12 (c) Upon completion of a draft Health Care Services Master Plan, the Department of Public
13 Health shall provide public notice of the availability of the Health Care Services Master Plan draft for
14 public review. The notice shall specify a period of no less than thirty (30) days during which written
15 comments will be received by the Department of Public Health and the Planning Department on the
16 draft Health Care Services Master Plan.

17 (d) Public Hearing: After the close of the written public comment period, the Health
18 Commission and Planning Commission shall hold a joint public hearing on the draft Health Care
19 Services Master Plan. The Commissions shall set the time and date for the hearing within a reasonable
20 period, but in no event shall the hearing date be more than thirty (30) days after the close of the written
21 public comment period. The Commissions may recommend approval or may request additional
22 information or revisions in the Health Care Services Master Plan. If the Health Commission or
23 Planning Commission requests significant or material additional information or revisions for the
24 Health Care Services Master Plan, then the Health Commission and Planning Commission shall hold
25 additional public hearings to consider such changes, either jointly or separately.

1 (e) The Health Commission and the Planning Commission may recommend approval or
2 disapproval of the Health Care Services Master Plan. Following such recommendations, the Board of
3 Supervisors shall schedule a hearing to consider a resolution to adopt the adoption of the Health
4 Care Services Master Plan.

5 (f) Plan Update. The Department of Public Health and Planning Department shall update
6 the Health Care Services Master Plan every three (3) years including a summary of changes since the
7 prior Health Care Services Master Plan was approved. The Department of Public Health and the
8 Planning Department may update the Health Care Services Master Plan at any time if either
9 department believes an update is necessary. If the departments are unable to update the Health
10 Care Services Master Plan within three (3) years of the prior update, they must seek an extension of
11 time from the Board of Supervisors. The Health Commission, the Planning Commission, and the Board
12 of Supervisors shall consider and approve periodic Health Care Services Master Plan updates based
13 upon the same procedures described in sub sections (a)-(e) above.

14 **SEC. 342.4. CONSISTENCY DETERMINATION FEE.**

15 The Planning Department may charge and collect from the a Medical Use medical
16 institution requiring a Consistency Determination pursuant seeking a land-use approval
17 subject to these sections 342 to 342.10 a fee for the preparation of the required Consistency
18 Determination, in an amount that does not exceed the actual cost of preparation. This fee shall
19 be sufficient to recover actual costs that the Department incurs and shall be charged on a time
20 and materials basis. The Department also may charge for any time and materials costs that
21 other agencies, boards, commissions, or departments of the City, including the City Attorney's
22 Office, incur in connection with the processing of the Consistency Determination. Upon
23 request of the Medical Use, the Department shall provide in writing an estimate of the fee to
24 be charged, and the basis for the fee. This fee shall be payable at the time the Consistency
25 Determination Application application for such land-use approval is submitted.

1 SEC. 342.5. CONSISTENCY DETERMINATION.

2 (a) On January 2, 2013 or Upon adoption of the Health Care Services Master Plan,
3 whichever date is later, any change of use to a Medical Use, as defined in Section 342.1(a)
4 that would occupy 10,000 gross sf of floor area, or any expansion of an existing Medical Use
5 that would add at least 5,000 gross sf of floor area shall file a Consistency Determination
6 Application with the Planning Department. The Planning Department shall make findings that
7 the proposed or expanded Medical Use is consistent with the most recently updated Health
8 Care Master Plan recommendations. ~~the Planning Department shall review any application~~
9 ~~for or by a medical institution for a land use approval, in order to make findings that a~~
10 ~~proposed use is consistent with the most recently updated Health Care Services Master~~
11 ~~Plan's recommendations.~~

12 (b) (Consistent Applications. If the Planning Department finds, after consultation with the
13 Health Department, that an application appears to be on balance consistent with the
14 recommendations of the Health Care Services Master Plan, the Planning Department shall issue a
15 Consistency Determination to the applicant, and shall immediately post it on the department's website,
16 inviting interested persons to provide public comment on the Consistency Determination. The Planning
17 Department shall not take any action on the land use application for a minimum of fifteen (15) days
18 following the issuance and notice of the Consistency Determination. If the Planning Department
19 receives no written objections to the Consistency Determination within fifteen (15) days, the
20 Consistency Determination is final. If the Planning Department receives written objections setting forth
21 substantive arguments, as determined by the Planning Director and his or her designee, that the
22 application is not consistent with the recommendations of the Health Care Services Master Plan it shall
23 follow the procedures set forth below for inconsistent applications.

24 (c) Inconsistent Applications. If the Planning Department finds that an
25

1 application appears to be on balance inconsistent with the recommendations of the Health Care
2 Services Master Plan, it shall submit the application to the Health Commission. The Health
3 Commission shall review the application at a public hearing and issue written recommendations
4 concerning whether the applicant's proposal is consistent with the recommendations of the Health
5 Care Services Master Plan. If the Health Commission finds that the application is inconsistent with the
6 Health Care Services Master Plan, the Health Commission shall make recommendations to achieve
7 consistency. If the Health Commission finds that the application is consistent with the Health Care
8 Services Master Plan, it shall make written findings to this effect. The Health Commission shall submit
9 its recommendations or written findings to the Planning Commission within thirty (30) days after
10 receipt of the application. Prior to the Planning Commission's consideration of the Health
11 Commission's recommendation, the applicant may amend its application in an effort to achieve
12 consistency with the Health Care Services Master Plan.

13 (d) Public Hearing. The Planning Commission shall hold a public hearing to consider
14 public testimony regarding whether the application is consistent with the recommendations of the
15 Health Care Services Master Plan within 30 days after receiving the findings from the Health
16 Commission unless the proposed or expanded Medical Use includes other associated
17 entitlements. ~~at the same time that it considers the application as a whole.~~ If the proposed or
18 expanded Medical Use includes other entitlements necessitating a Planning Commission
19 hearing, the Planning Commission shall hear the Application for Consistency Determination at
20 the same time it considers those other entitlements. The Planning Commission shall consider the
21 recommendations of the Health Commission when making a final decision whether or not to issue a
22 Consistency Determination, and shall make written findings to this effect. The Planning Commission
23 may only approve an entitlement application for which it did not issue a Consistency Determination if
24 countervailing public policy considerations justify its approval of the project.

1 (e) City Consideration of Consistency Determination. When a Consistency
2 Determination is required pursuant to Section 342.5(a). The the Planning Department, the
3 Zoning Administrator and all other involved city agencies shall not approve any permit or entitlements
4 for a medical institution Medical Use unless the Medical Use applicant obtained a Consistency
5 Determination from the Planning Department or the Planning Commission, or the Planning
6 Commission found that countervailing public policy considerations justify approval of the application
7 despite its inconsistency with the Health Care Services Master Plan.

8 **SEC. 342.6. APPEALS.**

9 (a) Within thirty (30) days of the issuance or denial of a Consistency Determination by the
10 Planning Commission, any person may file an appeal. If the Board of Supervisors has authority to
11 review the any associated underlying land use approval entitlements, the appeal of the
12 Consistency Determination shall be filed with the Board of Supervisors. If the Board of Supervisors
13 does not have authority to review any associated entitlement the underlying land use approval,
14 the appeal shall be filed with the Board of Appeals.

15 (b) Appeal to the Board of Supervisors: The Board of Supervisors shall hold a public
16 hearing on an appeal of a Consistency Determination. If the Board of Supervisors, based on all of the
17 information before it, disagrees with the Planning Commission's decision to grant or deny a
18 Consistency Determination, the Board of Supervisors may reverse such decision. The Board of
19 Supervisor's decision shall be final.

20 (c) Appeal to the Board of Appeals: The Board of Appeals shall hold a public hearing on
21 an appeal of a Consistency Determination. The Board of Appeals may, based on all of the information
22 before it and on the affirmative vote of four of its members (or, if a vacancy exists, by a vote of three
23 members), disagree with the Planning Commission's decision to grant or deny a Consistency
24 Determination. In such cases the Board of Appeals may overrule the Planning Commission's decision
25 and shall state in writing the reasons for its action. The Board of Appeals' decision shall be final.

1 (d) The Board of Supervisors or Board of Appeal, as applicable, shall act on the
2 appeal of the Consistency Determination at the same time it acts on other entitlements for the
3 proposed use. The Board of Supervisors or Board of Appeal, as applicable, may find that
4 countervailing public policy considerations justify approval of the entitlement despite any
5 inconsistency with the Health Care Services Master Plan.

6 **SEC. 342.7. AUTHORITY TO ADOPT RULES AND REGULATIONS.**

7 *The Planning Director, in consultation with the Department of Public Health, may prepare*
8 *rules, regulations, or guidelines to implement and enforce these sections 342 to 342.10. Rules or*
9 *regulations prepared pursuant to this Section shall be adopted at a regular meeting of the Planning*
10 *Commission, by a majority vote following a public hearing, provided that the amendment has been*
11 *calendared for hearing for at least ten days.*

12 **SEC. 342.8 PREEMPTION.**

13 *In adopting sections 342 to 342.10, the Board of Supervisors does not intend to regulate or*
14 *affect the rights or authority of the State to take any actions that are required, directed, or expressly*
15 *authorized by Federal or State law. This ordinance shall not apply to prohibit conduct that is*
16 *prohibited by Federal and State law. The ordinance does not intend to supplant or supersede any state*
17 *or local land use or environmental laws or regulations, including but not limited to the City's land use*
18 *planning and zoning ordinances and the California Environmental Quality Act.*

19 **SEC. 342.9. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL**
20 **WELFARE.**

21 *In undertaking the adoption and enforcement of these sections 342 to 342.10, the City is*
22 *assuming an undertaking only to promote the general welfare. The City does not intend to impose the*
23 *type of obligation that would allow a person to sue for money damages for an injury that the person*
24 *claims to suffer as a result of a City officer or employee taking or failing to take an action with respect*
25 *to any matter covered by these sections.*

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SEC. 342.10. SEVERABILITY.

If any of the provisions of these sections 342 to 342.10 or the application thereof to any person or circumstance is held invalid, the remainder of these sections, including the application of such part or provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of these sections are severable.

Section 3. This Section is uncodified.

The Board of Supervisors hereby urges the Planning Commission to initiate a General Plan Amendment pursuant to Section 340 of the Planning Code, to bring the Health Care Services Master Plan within the General Plan.

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

By: _____
ANDREA RUIZ-ESQUIDE
Deputy City Attorney

