

File No. 101057

Committee Item No. 6

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date November 1, 2010

Board of Supervisors Meeting

Date _____

Cmte Board

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OTHER

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Completed by: Alisa Somera Date October 29, 2010

Completed by: _____ Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

[Planning Code - Health Care Services Master Plan]

Ordinance amending the San Francisco Planning Code by adding Sections 342 to 342.10 requiring the preparation of a Health Care Services Master Plan identifying the current and projected needs for, and locations of, health care services within San Francisco and recommending how to achieve and maintain appropriate distribution of, and equitable access to, such services; requiring that medical institutions applying for land use approvals obtain a consistency determination from the Planning Commission determining that the proposed use promotes the goals recommended in the Master Plan; providing fees for the consistency determination, and making findings, including findings of consistency with the General Plan and the eight priority policies of Planning Code Section 101.1 and environmental findings.

NOTE: Additions are single-underline italics Times New Roman;
deletions are ~~strike through italics Times New Roman~~.
Board amendment additions are double-underlined;
Board amendment deletions are ~~strikethrough normal~~.

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

Section 1. Findings. The Board of Supervisors of the City and County of San Francisco hereby finds and determines that:

(a) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this ordinance will serve the public necessity, convenience and welfare, for the reasons set forth in Planning Commission Resolution No. _____, and incorporates such reasons by this reference thereto. A copy of said resolution is on file with the Clerk of the Board of Supervisors in File No. _____.

(b) The Board of Supervisors finds that this ordinance is in conformity with the Priority Policies of Section 101.1 of the Planning Code and with the General Plan, and hereby

adopts the findings set forth in Planning Commission Resolution No. _____ and incorporates such findings by reference as if fully set forth herein. A copy of said resolution is on file with the Clerk of the Board of Supervisors in File No. _____.

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

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

SEC. 342. HEALTH CARE SERVICES MASTER PLAN FINDINGS.

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

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

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

4. Section 127340(a) of the California Health and Safety Code provides that "private not-for-profit hospitals meet certain needs of their communities through the provision of essential healthcare and other services. Public recognition of their unique status has led to favorable tax

1 treatment by the government. In exchange, nonprofit hospitals assume a social obligation to provide
2 community benefits in the public interests."

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

9 6. The attempt by the City to fill the policy gap by passing Ordinance Number 279-07,
10 requiring submission of Institutional Master Plans, revealed the need to balance individual institutional
11 planning with a city-wide plan within which plans of individual institutions can be assessed for their
12 relation to city-wide public policy goals and the impacts in neighborhoods and the City as a whole.

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

17 8. A Health Care Services Master Plan will also provide the Health Commission, the
18 Planning Commission and Board of Supervisors with information essential to disaster planning for the
19 City.

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

24 **SEC. 342.1. DEFINITIONS.**

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

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

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

6 (c) "Medical Institution" shall mean providers of healthcare services, such as hospitals,
7 nursing homes, skilled nursing facilities, in-patient hospices, mental and behavioral health facilities,
8 substance abuse and chemical dependency treatment centers, ambulatory care centers, rehabilitation
9 facilities, free standing imaging centers, surgical centers, birthing centers, clinics, and medical office
10 buildings.

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

12 (a) The Department of Public Health and the Planning Department shall prepare a Health
13 Care Services Master Plan that displays and analyzes information concerning the geography
14 (including natural features of land, weather, and water supply), demography, epidemiology,
15 economics/finance, neighborhood characteristics, intensity of use, workforce, technology, and
16 governmental policy pertinent to distribution, access, quality and cost of health care services in the
17 City, including the use of the health care services by patients from outside the City, and referral of
18 patients from the City to medical institutions located outside the City limits. Based on this information,
19 the Health Care Services Master Plan will identify existing and anticipated future needs for health care
20 services compared to available and anticipated resources and potential impacts on neighborhoods, and
21 make recommendations for improving the match between needs and resources, as well as where health
22 care services may be located within an area of the City without a significant land use burden on
23 particular neighborhoods. The Health Care Services Master Plan shall consider neighborhood
24 density, uses, transit and infrastructure availability, traffic characteristics, including mode split among
25 cars, public transit, bicycles and pedestrians.

1 **(b) The Health Care Services Master Plan shall contain all of the following components:**

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

9 **(2) Capacity Assessment: The Health Care Services Master Plan shall quantify the current**
10 **and projected capacities of existing medical institutions in San Francisco, including public and private**
11 **facilities and community-based organizations. The capacity assessment shall describe, analyze, and**
12 **project resources available for emergency services, including trauma services; acute hospital services,**
13 **including beds and services that require specialized facility accommodations; ambulatory care services**
14 **including primary care; specialty physician services; hospital-based and free-standing urgent care**
15 **services; rehabilitation, long term care and home health services; and behavioral health services**
16 **including psychiatric emergency, mental health and substance abuse services. In addition, the capacity**
17 **assessment shall quantify "surge capacity" needs in the event of a disaster.**

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

23 **(4) Gap Assessment: The Health Care Services Master Plan shall identify medical service**
24 **gaps across the City and medically underserved areas for particular services with reference to**
25 **geography, transportation/communication options, and unique barriers to accessing care, including**

1 but not limited to language, race, immigration status, gender identity, substance abuse, and public
2 assistance.

3 (5) Recommendations: The Health Care Services Master Plan shall include policy
4 recommendations to promote an equitable and efficient distribution of healthcare services in the City;
5 the elimination of healthcare service gaps and medically underserved areas; and the placement of
6 medical institutions within the City in a manner that is consistent with the character, needs and
7 infrastructure of the different neighborhoods, and that promotes and protects the public health, safety,
8 convenience and general welfare.

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

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

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

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

23 (d) Public Hearing: After the close of the written public comment period, the Health
24 Commission and Planning Commission shall hold a joint public hearing on the draft Health Care
25 Services Master Plan. The Commissions shall set the time and date for the hearing within a reasonable

1 period, but in no event shall the hearing date be more than thirty (30) days after the close of the written
2 public comment period. The Commissions may recommend approval or may request additional
3 information or revisions in the Health Care Services Master Plan. If the Health Commission or
4 Planning Commission requests significant or material additional information or revisions for the
5 Health Care Services Master Plan, then the Health Commission and Planning Commission shall hold
6 additional public hearings to consider such changes, either jointly or separately.

7 (e) The Health Commission and the Planning Commission may recommend approval or
8 disapproval of the Health Care Services Master Plan. Following such recommendations, the Board of
9 Supervisors shall schedule a hearing to consider adoption of the Health Care Services Master Plan.

10 (f) Plan Update. The Department of Public Health and Planning Department shall update
11 the Health Care Services Master Plan every three (3) years including a summary of changes since the
12 prior Health Care Services Master Plan was approved. If the departments are unable to update the
13 Health Care Services Master Plan within three (3) years of the prior update, they must seek an
14 extension of time from the Board of Supervisors. The Health Commission, the Planning Commission,
15 and the Board of Supervisors shall consider and approve periodic Health Care Services Master Plan
16 updates based upon the same procedures described in sub sections (a)-(e) above.

17 **SEC. 342.4. CONSISTENCY DETERMINATION FEE.**

18 The Planning Department may charge and collect from the medical institution seeking a land
19 use approval subject to these sections 342 to 342.10 a fee for the preparation of the required
20 Consistency Determination, in an amount that does not exceed the actual cost of preparation. This fee
21 shall be payable at the time the application for such land use approval is submitted.

22 **SEC. 342.5. CONSISTENCY DETERMINATION.**

23 (a) Upon adoption of the Health Care Services Master Plan, the Planning Department shall
24
25

1 review any application for or by a medical institution for a land use approval, in order to make findings
2 that a proposed use is consistent with the most recently updated Health Care Services Master Plan's
3 recommendations.

4 (b) Consistent Applications. If the Planning Department finds that an
5 application appears to be consistent with the recommendations of the Health Care Services Master
6 Plan, the Planning Department shall issue a Consistency Determination to the applicant, and shall
7 immediately post it on the department's website, inviting interested persons to provide public comment
8 on the Consistency Determination. The Planning Department shall not take any action on the land use
9 application for a minimum of fifteen (15) days following the issuance and notice of the Consistency
10 Determination. If the Planning Department receives no written objections to the Consistency
11 Determination within fifteen (15) days, the Consistency Determination is final. If the Planning
12 Department receives written objections setting forth substantive arguments that the application is not
13 consistent with the recommendations of the Health Care Services Master Plan it shall follow the
14 procedures set forth below for inconsistent applications.

15 (c) Inconsistent Applications. If the Planning Department finds that an
16 application appears to be inconsistent with the recommendations of the Health Care Services Master
17 Plan, it shall submit the application to the Health Commission. The Health Commission shall review
18 the application at a public hearing and issue written recommendations concerning whether the
19 applicant's proposal is consistent with the recommendations of the Health Care Services Master Plan.
20 If the Health Commission finds that the application is inconsistent with the Health Care Services
21 Master Plan, the Health Commission shall make recommendations to achieve consistency. If the
22 Health Commission finds that the application is consistent with the Health Care Services Master Plan,
23 it shall make written findings to this effect. The Health Commission shall submit its recommendations
24 or written findings to the Planning Commission within thirty (30) days after receipt of the application.
25 Prior to the Planning Commission's consideration of the Health Commission's recommendation, the

1 applicant may amend its application in an effort to achieve consistency with the Health Care Services
2 Master Plan.

3 (d) Public Hearing. The Planning Commission shall hold a public hearing to consider
4 public testimony regarding whether the application is consistent with the recommendations of the
5 Health Care Services Master Plan at the same time that it considers the application as a whole. The
6 Planning Commission shall consider the recommendations of the Health Commission when making a
7 final decision whether or not to issue a Consistency Determination, and shall make written findings to
8 this effect. The Planning Commission may only approve an application for which it did not issue a
9 Consistency Determination if countervailing public policy considerations justify approval of the
10 project.

11 (e) City Consideration of Consistency Determination. The Planning Department, the
12 Zoning Administrator and all other involved city agencies shall not approve any permit or entitlements
13 for a medical institution unless the applicant obtained a Consistency Determination from the Planning
14 Department or the Planning Commission, or the Planning Commission found that countervailing public
15 policy considerations justify approval of the application despite its inconsistency with the Health Care
16 Services Master Plan.

17 **SEC. 342.6. APPEALS.**

18 (a) Within thirty (30) days of the issuance or denial of a Consistency Determination by the
19 Planning Commission, any person may file an appeal. If the Board of Supervisors has authority to
20 review the underlying land use approval, the appeal shall be filed with the Board of Supervisors. If the
21 Board of Supervisors does not have authority to review the underlying land use approval, the appeal
22 shall be filed with the Board of Appeals.

23 (b) Appeal to the Board of Supervisors: The Board of Supervisors shall hold a public hearing
24 on an appeal of a Consistency Determination. If the Board of Supervisors, based on all of the
25 information before it, disagrees with the Planning Commission's decision to grant or deny a

1 Consistency Determination, the Board of Supervisors may reverse such decision. The Board of
2 Supervisor's decision shall be final.

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

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

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

15 **SEC. 342.8 PREEMPTION.**

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

22 **SEC. 342.9. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL**
23 **WELFARE.**

24 In undertaking the adoption and enforcement of these sections 342 to 342.10, the City is
25 assuming an undertaking only to promote the general welfare. The City does not intend to impose the

1 type of obligation that would allow a person to sue for money damages for an injury that the person
2 claims to suffer as a result of a City officer or employee taking or failing to take an action with respect
3 to any matter covered by these sections.

4 **SEC. 342.10. SEVERABILITY.**

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

10 Section 3. This Section is uncoded.

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

14
15 APPROVED AS TO FORM:

16 DENNIS J. HERRERA, City Attorney

17
18 By:

19 
ANDREA RUIZ-ESQUIDE
Deputy City Attorney

LEGISLATIVE DIGEST

[Planning Code - Health Care Services Master Plan]

Ordinance amending the San Francisco Planning Code by adding Sections 342 to 342.10 requiring the preparation of a Health Care Services Master Plan identifying the current and projected needs for, and locations of, health care services within San Francisco and recommending how to achieve and maintain appropriate distribution of, and equitable access to, such services; requiring that medical institutions applying for land use approvals obtain a consistency determination from the Planning Commission determining that the proposed use promotes the goals recommended in the Master Plan; providing fees for the consistency determination, and making findings, including findings of consistency with the General Plan and the eight priority policies of Planning Code Section 101.1 and environmental findings.

Existing Law

Currently, there is no requirement that the City engage in a City-wide planning effort regarding institutions that provide health care services. There are planning procedures for individual medical institutions. Under Planning Code Section 304.5, medical institutions need to create institutional master plans (IMPs) and submit them to the Planning Department. The IMPs must describe "the existing and anticipated future development of that institution." The Planning Department holds a hearing on IMPs, but does not have authority to approve or disapprove them. After an IMP has been filed, any entitlements subject to Planning Commission action are subject to a finding that the proposed changes are "as described in the IMP." (Section 304.5(h).) These procedures, however, apply to each medical institution, and do not look at the provision of health care services in the City as a whole.

Amendments to Current Law

This ordinance would require the preparation of a City-wide Health Care Services Master Plan (HCSMP) and mandate that in the future, once the HCSMP has been adopted, when a medical institution applies for a land use approval, the Planning Commission will have to find that the proposed change or development is in conformity with the HSCMP. Each of these components of the ordinance is described in some detail below.

HCSMP: The ordinance applies to medical institutions, defined as "providers of healthcare services hospitals, nursing homes, skilled nursing facilities, in-patient hospices, mental and behavioral health facilities, substance abuse and chemical dependency treatment centers, ambulatory care centers, rehabilitation facilities, free standing imaging centers, surgical centers, birthing centers, clinics, and medical office buildings." This definition is broader than the definition of "Hospital or Medical Center" currently in the Code, which defines medical

institutions as "public or private institutional use[s] which provide[s] medical facilities for inpatient care, medical offices, clinics, and laboratories [and] may also include employee or student dormitories adjacent to medical facilities when the dormitories are operated by and affiliated with a medical institution," and requires that these institutions prepare an IMP. (See Section 790.44). This means that, while the ordinance leaves intact the requirements for IMPs, it applies to a broader group of medical institutions than those that currently prepare IMPs.

The ordinance sets up a process for the creation and update of the HCSMP, including opportunities for public participation. It mandates that the HCSMP contain five components: a Health System Trends Assessment, a Capacity Assessment, a Land Use Assessment, a Gap Assessment, and Recommendations. It gives the Planning Director, in consultation with the Department of Public Health, the authority to prepare rules, regulations, or guidelines to implement and enforce the ordinance, and it authorizes the collection of a consistency determination fee, charged to any medical institutions that apply for a consistency determination.

The ordinance urges the Planning Commission to initiate a General Plan amendment process pursuant to Planning Code Section 340, to bring the HCSMP within the General Plan.

Consistency Determination. The ordinance mandates that upon adoption of the HCSMP, the Planning Department shall review any application for or by a medical institution for a land use approval, in order to make findings that a proposed use is consistent with the HCSMP's recommendations. It creates a process for inconsistent applications to be reviewed by the both the Health and the Planning Commissions, with the ultimate authority over consistency determinations residing in the Planning Commission. The ordinance provides that generally city agencies shall not approve any permit or entitlements for a medical institution unless the applicant obtained a consistency determination from the Planning Department or the Planning Commission, but also grants the Planning Commission some discretion to approve projects that are inconsistent with the HCSMP "if countervailing public policy considerations justify approval of the project."

The ordinance creates an appeal process for any person to appeal the issuance or denial of a consistency determination. If the Board of Supervisors has authority to review the underlying application, then the Board of Supervisors also has authority to review the consistency determination findings. If the Board of Supervisors does not have authority over the underlying application, then the ordinance requires that the appeal be heard by the Board of Appeals.

Background Information

This ordinance responds to the need for more coordinated City-wide planning in the area of health care services.

BOARD of SUPERVISORS



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August 27, 2010

File No. 101057

Bill Wycko
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Mr. Wycko:

On August 3, 2010, Supervisors Mar, Maxwell, Mirkarimi, Avalos, Chiu and Daly introduced the following proposed legislation:

File No. 101057

Ordinance amending the San Francisco Planning Code by adding Sections 342 to 342.10 requiring the preparation of a Health Care Services Master Plan identifying the current and projected needs for, and locations of, health care services within San Francisco and recommending how to achieve and maintain appropriate distribution of, and equitable access to, such services; requiring that medical institutions applying for land use approvals obtain a consistency determination from the Planning Commission determining that the proposed use promotes the goals recommended in the Master Plan; providing fees for the consistency determination, and making findings, including findings of consistency with the General Plan and the eight priority policies of Planning Code Section 101.1 and environmental findings.

The legislation is being transmitted to you for environmental review, pursuant to Planning Code Section 306.7(c).

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, reading "Alisa Somera".

By: Alisa Somera, Committee Clerk
Land Use & Economic Development Committee

Attachment

c: Nannie Turrell, Major Environmental Analysis
Brett Bollinger, Major Environmental Analysis

Non-physical per CEQA
Guidelines Section 15060(c)(2).
A handwritten signature in cursive script, reading "Brett Bollinger".
9/29/10
Approved Planning Dept. Brett Bollinger
2010.0838E