

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 c~~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.**

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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 ~~strike-through normal~~.

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

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

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(a) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this  
23 ordinance will serve the public necessity, convenience and welfare, for the reasons set forth in  
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1 Planning Commission Resolution No. 18202, and incorporates such reasons by this reference  
2 thereto. A copy of said resolution is on file with the Clerk of the Board of Supervisors in File  
3 No. 101057.

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

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

13 Section 2. The San Francisco Planning Code is hereby amended by adding Sections  
14 342 to 342.10, to read as follows:

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

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

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

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

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

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

16           5.6. The attempt by the City to fill the policy gap by passing Ordinance Number 279-  
17 07, requiring Implementation of Ordinance 279-07, requiring the Department of Public Health  
18 to analyze the relationship between the City's long term health care needs and facility  
19 planning for medical institutions, has revealed the need for a City-wide Health Care Services  
20 Master Plan so that the Planning Department has a tool to analyze individual institutional  
21 planning against a more comprehensive City plan. submission of Institutional Master Plans,  
22 revealed the need to balance individual institutional planning with a city-wide plan within which  
23 plans of individual institutions can be assessed for their relation to city-wide public policy goals  
24 and the impacts in neighborhoods and the City as a whole.

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1           6.7.    *A Health Care Services Master Plan will provide the Health Commission, the Planning*  
2 *Commission and Board of Supervisors with information and public policy recommendations to guide*  
3 *their decisions to promote the City's land use and policy goals developed in such Plan, such as*  
4 *distribution and access to health care services.*

5           7.8.    *A Health Care Services Master Plan will also provide the Health Commission, the*  
6 *Planning Commission and Board of Supervisors with information essential to disaster planning for the*  
7 *City.*

8           8.9.    *The San Francisco Department of Public Health is particularly well situated to create a*  
9 *Health Care Services Master Plan, as it can draw upon the innovative work of Building a Healthier*  
10 *San Francisco, including "The Living Community Needs Assessment" which is an up-to-date, web-*  
11 *based, compilation of data about community health in neighborhoods throughout the City.*

12           **SEC. 342.1.   DEFINITIONS.**

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

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

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

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

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

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

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

20 (1) Health System Trends Assessment: The Health Care Services Master Plan shall describe  
21 and analyze trends in health care services with respect to the City, including but not limited to: disease  
22 and population health status; governmental policy (at the national, state, regional levels); disaster  
23 planning; clinical technology; communications technology; payment for services; sources and uses of  
24 capital for investment in services; organization and delivery of services; workforce; community

1 obligations of providers, and any other trends that, in the discretion of the Department of Public  
2 Health, may affect availability, location, access and use of services in the City.

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

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

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

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

3 (56) 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 Uses medical institutions within the City in a manner that is consistent with the character,  
7 needs and infrastructure of the different neighborhoods, and that promotes and protects the public  
8 health, safety, 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 ~~twelve (12)~~ nine (9) months of the effective date of this  
13 ordinance, which 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

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

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

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

21 **SEC. 342.4. CONSISTENCY DETERMINATION FEE.**

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

9 **SEC. 342.5. CONSISTENCY DETERMINATION.**

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

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

8 (c) Inconsistent Applications. If the Planning Department finds that an  
9 application appears to be on balance inconsistent with the recommendations of the Health Care  
10 Services Master Plan, it shall submit the application to the Health Commission. The Health  
11 Commission shall review the application at a public hearing and issue written recommendations  
12 concerning whether the applicant's proposal is consistent with the recommendations of the Health  
13 Care Services Master Plan. If the Health Commission finds that the application is inconsistent with the  
14 Health Care Services Master Plan, the Health Commission shall make recommendations to achieve  
15 consistency. If the Health Commission finds that the application is consistent with the Health Care  
16 Services Master Plan, it shall make written findings to this effect. The Health Commission shall submit  
17 its recommendations or written findings to the Planning Commission within thirty (30) days after  
18 receipt of the application. Prior to the Planning Commission's consideration of the Health  
19 Commission's recommendation, the applicant may amend its application in an effort to achieve  
20 consistency with the Health Care Services Master Plan.

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

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

16 **SEC. 342.6. APPEALS.**

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

1 information before it, disagrees with the Planning Commission's decision to grant or deny a  
2 Consistency Determination, the Board of Supervisors may reverse such decision. The Board of  
3 Supervisor's decision shall be final.

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

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

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

16 **SEC. 342.8 PREEMPTION.**

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

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

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

6            **SEC. 342.10. SEVERABILITY.**

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

12            Section 3. This Section is uncodified.

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

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

19 By: \_\_\_\_\_  
20 ANDREA RUIZ-ESQUIDE  
21 Deputy City Attorney

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