

BOARD of SUPERVISORS



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MEMORANDUM

TO: Trent Rhorer, Executive Director, Human Services Agency
Dr. Grant Colfax, Director, Department of Public Health
Shireen McSpadden, Executive Director, Department of Disability and Aging Services

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: May 19, 2021

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Mandelman on May 11, 2021:

File No. 210535

Ordinance amending the Planning Code to eliminate the requirement of Conditional Use Authorization for Residential Care Facilities for seven or more people in Residential, House (RH) Districts; require Conditional Use Authorization for a change of use or demolition of a Residential Care Facility, and consideration of certain factors in determining whether to grant Conditional Use Authorization; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, the eight priority policies of Planning Code, Section 101.1, and public necessity, convenience, and general welfare findings pursuant to Planning Code, Section 302.

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: erica.major@sfgov.org.

cc: Elizabeth LaBarre, Human Services Agency
Greg Wagner, Department of Public Health
Dr. Naveena Bobba, Department of Public Health
Sneha Patil, Department of Public Health
Arielle Fleisher, Department of Public Health
Shireen McSpadden, Department of Disability and Aging Services
Bridget Badasow, Department of Disability and Aging Services

1 [Planning Code - Conditional Use Authorization Requirements Regarding Residential Care
2 Facilities]

3 **Ordinance amending the Planning Code to eliminate the requirement of Conditional**
4 **Use Authorization for Residential Care Facilities for seven or more people in**
5 **Residential, House (RH) Districts; require Conditional Use Authorization for a change**
6 **of use or demolition of a Residential Care Facility, and consideration of certain factors**
7 **in determining whether to grant Conditional Use Authorization; affirming the Planning**
8 **Department’s determination under the California Environmental Quality Act; and**
9 **making findings of consistency with the General Plan, the eight priority policies of**
10 **Planning Code, Section 101.1, and public necessity, convenience, and general welfare**
11 **findings pursuant to Planning Code, Section 302.**

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

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

20 Section 1. Land Use and Environmental Findings.

21 (a) The Planning Department has determined that the actions contemplated in this
22 ordinance comply with the California Environmental Quality Act (California Public Resources
23 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
24 Supervisors in File No. ____ and is incorporated herein by reference. The Board affirms this
25 determination.

1 (b) On _____, the Planning Commission, in Resolution No. _____,
2 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
3 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The
4 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
5 the Board of Supervisors in File No. _____, and is incorporated herein by reference.

6 (c) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this
7 ordinance will serve the public necessity, convenience, and welfare for the reasons set forth in
8 Planning Commission Resolution No. _____, recommending approval of the proposed
9 designation.

10
11 Section 2. General Findings.

12 (a) Residential Care Facilities, as defined in Planning Code Sections 102 and
13 890.50(e) and established with or without the benefit of any permits required under City law,
14 provide lodging, board, and care for 24 hours or more to persons in need of specialized aid by
15 State-licensed personnel, and include board and care homes, family care homes, long-term
16 nurseries, orphanages, rest homes, or homes for the treatment of addictive, contagious, or
17 other diseases, or psychological disorders.

18 (b) San Francisco has the highest percentage of seniors and adults with disabilities of
19 any urban area in California, and the number of seniors is steadily increasing, especially those
20 over the age of 85.

21 (c) Over 40% of San Francisco's seniors live without adequate support networks, in
22 part because their families cannot find affordable housing in the City or because they do not
23 have children. This problem is especially acute among LGBTQ seniors.

24 (d) In January 2019, the San Francisco Long-Term Care Coordinating Council's
25 Assisted Living Workgroup issued a report regarding affordable assisted living in the City,

1 which is on file with the Clerk of the Board of Supervisors in File No. _____, and which
2 found:

3 (1) As of August 2018, there were 101 assisted living facilities with a total of
4 2,518 assisted living beds and since 2012, the City had lost 43 assisted living facilities which
5 had provided 243 assisted living facility beds;

6 (2) The number of assisted living facilities in the City has decreased, and the
7 decrease has primarily occurred through the closure of small facilities, particularly the board
8 and care homes with six or fewer beds, which are generally more affordable than other
9 facilities;

10 (3) Assisted living facilities in the City face economic challenges, such as slim
11 profit margins and difficulty in finding employees, which make it difficult for them to continue to
12 operate; and

13 (4) There is unmet need for affordable assisted living facility placements, and as
14 of January 2019, available waitlist data indicated that at least 103 persons require such
15 placements.

16 (e) In October 2019, the City adopted Resolution No. 430-19, which imposed interim
17 controls for an 18-month period to require Conditional Use Authorization and specified
18 findings for a proposed change of use from a Residential Care Facility.

19 (f) The Planning Department issued a report dated January 29, 2021, which found
20 that, since the effective date of Resolution No. 430-19 on October 11, 2019:

21 (1) Two Conditional Use applications had been filed for the removal of a
22 Residential Care Facility, one seeking to convert a previously closed facility with five assisted
23 living beds into a single-family home, and the second to convert a closed facility with six
24 assisted living beds into two residential units; and
25

1 (2) Residential Care Facilities are considered an Institutional Use that is
2 permitted in Residential zoning districts, with the exception of the RH-1 and RH-2 zoning
3 districts, where new Residential Care Facilities of seven or more beds are conditionally
4 permitted; are not permitted in PDR districts; are not permitted on the ground floor in the North
5 Beach and Folsom Street Neighborhood Commercial Districts and Regional Commercial
6 Districts, and are conditionally permitted on the upper floors in those districts; and are
7 conditionally permitted in the Pacific Avenue Neighborhood Commercial District.

8 (g) The circumstances that caused the City to adopt the interim controls continue to
9 exist, with preliminary data provided by the Human Services Agency showing the loss of an
10 additional 11 assisted living facilities from January 2019 to January 2021, accounting for a
11 loss during that period of 226 assisted living facility beds in facilities with fewer than 100 beds.

12 (h) In April 2021, the City adopted Resolution No. 139-21, which extended the interim
13 controls for an additional 6-month period to require Conditional Use Authorization and
14 specified findings for a proposed change of use from a Residential Care Facility through
15 October 11, 2021.

16
17 Section 3. The Planning Code is hereby amended by adding Section 202.11 and
18 revising Sections 209.1 and 303, to read as follows:

19 * * * *

20 **SEC. 202.11. LIMITATION ON CHANGE IN USE OR DEMOLITION OF RESIDENTIAL CARE**
21 **FACILITY.**

22 Notwithstanding any other provision of this Article 2, a change in use or demolition of a
23 Residential Care Facility use, as defined in Section 102, shall require Conditional Use authorization
24 pursuant to Section 303, including the specific conditions in that Section for conversion of such a use.
25 This Section 202.11 shall not authorize a change in use if the new use or uses are otherwise prohibited.

1 **SEC. 209.1. RH (RESIDENTIAL, HOUSE) DISTRICTS.**

2 **Table 209.1**

3 **ZONING CONTROL TABLE FOR RH DISTRICTS**

4

Zoning Category	§ References	RH-1(D)	RH-1	RH-1(S)	RH-2	RH-3
* * * *						
NON-RESIDENTIAL STANDARDS AND USES						
* * * *						
Institutional Use Category						
Institutional Uses*	§ 102	NP	NP	NP	NP	NP
****	****	****	****	****	****	****
Residential Care Facility	§ 102	P (3)	P (3)	P (3)	P (3)	P
****	****	****	****	****	****	****

19 * Not listed below.

20 * * * *

21 (3) ~~[Note deleted] C required for seven or more persons.~~

22 * * * *

1 **SEC. 303. CONDITIONAL USES.**

2 * * * *

3 (aa) Change in Use or Demolition of Residential Care Facility. With respect to a change of
4 use from or demolition of a Residential Care Facility, as defined in Sections 102 and 890.50(e) of the
5 Planning Code, including a Residential Care Facility established with or without the benefit of any
6 permits required under the Municipal Code, in addition to the criteria set forth in subsections (c) and
7 (d) of this Section 303, the Commission shall take into account the following factors when considering
8 a Conditional Use Authorization for the change of use or demolition of a Residential Care Facility:

9 (1) Information provided by the Department of Public Health, the Human Services
10 Agency, the Department of Disability and Aging Services, the Golden Gate Regional Center, and/or the
11 San Francisco Long-Term Care Coordinating Council with regard to the population served, nature and
12 quality of services provided, and capacity of the existing Residential Care Facility;

13 (2) Data on available beds at licensed Residential Care Facilities within a one-mile
14 radius of the site, and assessment from any of the above agencies regarding whether these available
15 beds are sufficient to serve the need for residential care beds in the neighborhoods served by the
16 Residential Care Facility proposed for a change of use or demolition, and in San Francisco;

17 (3) Whether the Residential Care Facility proposed for a change of use or demolition
18 will be relocated or its capacity will be replaced at another Residential Care Facility Use, and whether
19 such relocation or replacement is practically feasible; and

20 (4) Whether the continued operation of the existing Residential Care Facility by the
21 current operator is practically feasible and whether any other licensed operator or any of the above
22 agencies has been contacted by the applicant seeking the change of use or demolition, or has expressed
23 interest in continuing to operate the facility.

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

5
6 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
7 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
8 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
9 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
10 additions, and Board amendment deletions in accordance with the “Note” that appears under
11 the official title of the ordinance.

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

15 By: /s/ Victoria Wong
16 VICTORIA WONG
17 Deputy City Attorney

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LEGISLATIVE DIGEST

[Planning Code - Conditional Use Authorization Requirements Regarding Residential Care Facilities]

Ordinance amending the Planning Code to eliminate the requirement of Conditional Use Authorization for Residential Care Facilities for seven or more people in Residential, House (RH) Districts; require Conditional Use Authorization for a change of use or demolition of a Residential Care Facility, and consideration of certain factors in determining whether to grant Conditional Use Authorization; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, the eight priority policies of Planning Code, Section 101.1, and public necessity, convenience, and general welfare findings pursuant to Planning Code, Section 302.

Existing Law

Planning Code Section 209.1 currently requires conditional use authorization for Residential Care Facilities in Residential, House (RH) Districts for seven or more persons.

The Planning Code does not currently require conditional use authorization for a change of use or demolition of a Residential Care Facility.

Amendments to Current Law

This ordinance would amend Section 209.1 to eliminate the requirement of conditional use authorization for Residential Care Facilities in Residential, House (RH) Districts for seven or more persons.

This ordinance would add Section 202.11 to require conditional use authorization for a change in use or demolition of a Residential Care Facility, and would also amend Section 303 to require consideration of the following factors when considering conditional use authorization:

(1) Information provided by the Department of Public Health, the Human Services Agency, the Department of Disability and Aging Services, the Golden Gate Regional Center, and/or the San Francisco Long-Term Care Coordinating Council with regard to the population served, nature and quality of services provided, and capacity of the existing Residential Care Facility;

(2) Data on available beds at licensed Residential Care Facilities within a one-mile radius of the site, and assessment from any of the above agencies regarding whether these available beds are sufficient to serve the need for residential care beds in the neighborhoods

served by the Residential Care Facility proposed for a change of use or demolition, and in San Francisco;

(3) Whether the Residential Care Facility proposed for a change of use or demolition will be relocated or its capacity will be replaced at another Residential Care Facility Use, and whether such relocation or replacement is practically feasible; and

(4) Whether the continued operation of the existing Residential Care Facility by the current operator is practically feasible and whether any other licensed operator or any of the above agencies has been contacted by the applicant seeking the change of use or demolition, or has expressed interest in continuing to operate the facility.

Background Information

In October 2019, the City adopted Resolution No. 430-19 to impose interim controls for a change of use of Residential Care Facilities. In December 2019, the City adopted Resolution 539-19 to modify those interim controls. In March 2021, the City adopted Resolution No. 139-21 to extend and further modify those interim controls.

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