



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Change

HEARING DATE: OCTOBER 28, 2010

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Project Name: **Amendments to the Planning Code:
Adding Sections 342 to 342.10 – Health Care Services Master Plan**

Case Number: 2010.0838T [Board File No. 10-1057]
Initiated by: Supervisor Campos / Introduced August 3, 2010
Staff Contact: Elizabeth Watty, Planner

Elizabeth.Watty@sfgov.org, 415-558-6620

Reviewed By: AnMarie Rodgers, Manager of Legislative Affairs
anmarie.rodgers@sfgov.org, 415-558-6395

90-day Deadline: November 2, 2010

Recommendation: **Recommend Approval of the Proposed Ordinance with Modifications as Proposed by Supervisor Campos and with Additional Modifications as Proposed by the Planning Department**

Since the Introduction of the draft Ordinance on August 3, 2010, the Department has received a letter (Exhibit C of this report) from the Supervisor indicating his desire to amend the draft Ordinance, along with a copy of his intended amendments. This case report responds to and analyzes the amended Ordinance that the Supervisor intends to introduce on November 1, 2010 at the Land Use & Economic Development Committee.

PLANNING CODE AMENDMENT

The draft Ordinance, as proposed for amendment on November 1, would amend the Planning Code by doing the following:

1. Adding Sections 342 to 342.10 requiring:
 - a. The preparation of a Health Care Services Master Plan that identifies the current and projected needs for, and locations of, health care services within San Francisco, and recommends how to achieve and maintain appropriate distribution of, and equitable access to, such services;
 - b. That any change of use to a Medical Use that will occupy a space exceeding 6,000 square feet of occupied floor area, or an expansion of any existing Medical Use by at least 3,000 square feet of occupied floor area shall obtain a Consistency Determination from the Planning Department or Planning Commission, finding that the proposed or expanded use promotes the goals recommended in the Master Plan; and
 - c. That any Medical Use filing an Application for a Consistency Determination shall pay fees for time and material costs incurred to prepare the Consistency Determination.

The Way It Is Now:

Currently, there is no comprehensive document that deals with the distribution of or access to healthcare in San Francisco. With the elimination of the West Bay Health Systems Agency in 1981, there is no longer a routine or comprehensive analysis of health service resources, needs, trends, and local impacts conducted for changes to or within Medical Uses.

In 2007, Planning Code Section 304.5 (Institutional Master Plans) was amended¹ to require a qualified health planner be retained by the Department of Public Health to analyze the relationship between the City's long-term health care needs and facility planning for medical institutions as part of the Institutional Master Plan (IMP) review and requirement process. This analysis is currently done without the guidance of any comprehensive citywide Health Care Master Plan and is only completed with the creation or update of an Institution's IMP.

The Way It Would Be:

The proposed Ordinance (as described in Exhibit C) would: (1) require the creation of a Health Care Services Master Plan; and (2) would require any change of use to a Medical Use or an expansion of an existing Medical Use over a certain size, to seek a determination with the Planning Department to determine whether or not such a project is, or is not, consistent with that Health Care Services Master Plan. Specifically, it would do the following:

Substance of Ordinance

1. Require that the Planning Department and Health Department create a Health Care Services Master Plan, with very specific components, within 12 months of the adoption of this Ordinance and that said Master Plan would be subject to strict deadlines for adoption by joint hearing of the Planning and Health Commissions and then by the Board of Supervisors.
2. Define "Medical Use" as those uses listed under Planning Code Sections 209.3(a), 217(a) and (c), 790.44, 890.44, 790.114, and 890.114; excluding any housing operated by a medical provider or any massage use.
3. Require any change of use to a Medical Use that is over 6,000sf in occupied floor area to file an application with the Planning Department for a "Consistency Determination".
4. Require that any expansion of an existing Medical Use by 3,000sf of occupied floor area to file an application with the Planning Department for a "Consistency Determination".
5. Require projects in the "pipeline" at the time the Plan is adopted to receive a Consistency Determination.
6. Require updates of the Health Care Services Master Plan every three years (or sooner if deemed necessary by the Planning or Health Departments).

Process for Consistency Determination

1. If a project were deemed "Consistent", the Planning Department would:
 - a. Post the written determination on the Planning Department's website for 15 days. If no substantive arguments were made, the decision would become final (no appeal

¹ Ordinance No. 279-07, Board File No. 070678, Approved on 12/18/2007.

opportunities). If substantive arguments were made, the Planning Department would follow the process outlined below for Inconsistent Applications.

2. If a project were deemed "Inconsistent", the Planning Department would:
 - a. Forward the Application to the Health Commission. The Health Commission would issue written findings to the Planning Commission within 30 days after receipt of the Inconsistent Application. The Planning Commission would then hold a public hearing within 30 days after receiving the findings from the Health Commission, or at the same time that any associated entitlements would be heard by the Planning Commission. The Planning Commission would make the final decision as to the issuance of a Consistency Determination. It could only approve an associated entitlement for which it did not issue a Consistency Determination if countervailing public policy considerations justified its approval.
3. Appeal Process:
 - a. If the Application was determined to be Consistent by the Planning Department and there were no substantive arguments made within 15 days of the determination being posted on the Department's website, the decision would be final. There would be no ability to appeal the Consistency Determination to any appellant body.
 - b. If the Consistency Determination was made by the Planning Commission (whether or not the decision is consistent or inconsistent), the appeal process would follow the process for any associated entitlement. If there were no associated entitlements, the appeal of the Consistency Determination would be to the Board of Appeals.

REQUIRED COMMISSION ACTION

The proposed Resolution is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

RECOMMENDATIONS

The Planning Department is recommending that the Planning Commission adopt the following changes:

1. **Increase the Medical Use size threshold to 10,000 gross square feet (gsf) of new space, or an addition of 5,000gsf.** 10,000gsf is a threshold already used by the Planning Department for several other purposes. The upper size limit for the Class 3 CEQA exemption (Section 15303 of the CEQA Guidelines), which is the exemption for new construction and conversion of small structures, is 10,000sf. Beyond 10,000sf, a project requires a more involved level of CEQA review. In addition, under the revised development review procedures that are being developed as part of the "Preliminary Project Assessment", 10,000sf would be one of the size thresholds that "triggers" the additional assessment process. Lastly, gross floor area calculations are much simpler and more straight-forward than occupied floor area calculations. It will make implementation of this legislation much simpler if the "trigger" is made in terms of gross, rather than occupied, floor area.
2. **Include a Mechanism for Cost Recovery for the Master Planning Process.** A previous version of the draft Ordinance charged an impact fee on medical service providers to go towards the development and upkeep of this Plan. The Department believes this to be crucial. Health care

planners have advised that the potential plan will need to be an agile document to stay abreast of technological changes in health care. Under this Ordinance, the Plan is mandated to be updated every 3 years. This will be costly. Even the smallest plans produced by the Planning Department that involved a public process have cost more than \$150,000-\$200,000 to produce. The joint Planning Department and Health Department process for producing the Plan could be costly. Furthermore, the amount of CEQA review for the Plan will depend on the nature of the final document. While it is difficult to determine what level of CEQA review would be needed prior to the completion of the document, from the detailed language describing the Plan components in the draft Ordinance, it seems likely that an Environmental Impact Report (EIR) would be required. Production of an EIR could double the budget needed for this project. We recommend the legislation accompany funding to cover the production and maintenance costs of this Plan, either by including a surcharge on medical uses to or by providing sufficient funding to both departments for this purpose.

3. **Simplify the Proposed Content for the Health Care Services Master Plan.** Strike the language in Planning Code Section 342.2 that goes into great detail about the required components of the Health Care Services Master Plan, and replace it with a general description of what should be included in the Master Plan. This allows for the contents of the Plan to be developed by the Planning and Health Departments with public input, rather than mandating the inclusion of certain topics. The Planning Department believes that allowing greater flexibility in the creation of the Master Plan contents will enable the document to be drafted in a clear, concise, and implementable manner that is consistent with input to be provided during the public process by both professional health planners and the public.
4. **If possible, make DPH the lead City agency for Consistency Determinations.** The Planning Department believes that the Department of Public Health is better equipped to determine whether or not a new or expanded Medical Use is consistent with the Health Care Master Plan, rather than land use/planning professionals in the Planning Department. In fact, the Ordinance itself notes that the Department of Public Health is well situated to create the Master Plan, as it can draw upon the work of "Building a Healthier San Francisco", and the "Living Community Needs Assessment".
5. **Exempt "Pipeline" projects.** Change the language in Planning Code Section 342.5 to state that pipeline projects will not be required to obtain a consistency determination. Only after the adoption of the HCSMP will the filing of a Medical Use project's first entitlement or permit require a Consistency Determination. This will ease anxiety for project sponsors who submitted projects years back and may fear being asked to undergo an additional process at this stage of their review.
6. **Amend other relevant Planning Code Sections to Cross Reference this Section 342.** Planning Code Sections 209.3 (a), 217 (a) & (c), Article 7, and Article 8 should be amended to cross reference the requirements for a Consistency Determination. This will improve implementation success.

With these aforementioned amendments (1-6 above), the Department recommends that the Commission recommend *approval* of the proposed Resolution and adopt the attached Draft Resolution to that effect.

BASIS FOR RECOMMENDATION

The Planning Department has been working with Supervisor Campos' office on amendments to this Ordinance in order to ensure an easily implementable Ordinance; to eliminate additional process for very small projects; and to facilitate an equitable analysis of medical uses citywide. The Supervisor's Office has been amenable to many of the Department's suggestions, and the Department believes that the Ordinance may provide needed balance to the provision of health care in San Francisco.

The Planning Department believes that the creation of a Healthcare Services Master Plan would be a very useful tool for the Planning Department and Planning Commission when making land use decisions about medical facilities. The importance of this Plan underscores the need for it to be done well. Although the Department thinks it would have been more helpful to have created the Master Plan first without a prescribed timeframe with implementation processes developed thereafter, the Department is confident that the amended Ordinance can be implemented by the Planning Department in an effective manner, particularly with the additional six amendments as recommended above.

The substantive changes recommended by the Planning Department – as discussed in detail above – would result in fewer small medical projects being delayed due to this additional process, while ensuring that larger medical facilities will have an additional analysis performed to determine the citywide health care impacts of the proposed project.

In summary, the Planning Department supports the proposed Ordinance as amended and with additional modifications, as outlined above and incorporated in the draft Resolution.

ENVIRONMENTAL REVIEW

The proposal to amendments to the Planning Code would result in no physical impact on the environment. The proposed amendment is exempt from environmental review under Section 15060(c)(2) of the CEQA Guidelines.

The creation of the Health Care Services Master Plan will, however, require its own environmental review process.

PUBLIC COMMENT

As of the date of this report, the Planning Department has not received any letters in support or opposition to the proposal from the public.

RECOMMENDATION:	Recommend Approval with modifications
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Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Draft Board of Supervisors Ordinance (Introduced version)
- Exhibit C: Letter from Supervisor Campos with proposed amendments



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Draft Resolution

HEARING DATE: OCTOBER 28, 2008

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90-Day Deadline: November 2, 2010

Recommendation: **Recommend Approval of the Proposed Ordinance with Modifications as Proposed by Supervisor Campos and with Additional Modifications as Proposed by the Planning Department**

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT WITH MODIFICATIONS AN ORDINANCE THAT WOULD (1) AMEND 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; (2) REQUIRE THAT ANY CHANGE OF USE TO A MEDICAL USE, AS DEFINED, THAT WILL OCCUPY A SPACE EXCEEDING 6,000 SQUARE FEET OF OCCUPIED FLOOR AREA, OR AN EXPANSION OF ANY EXISTING MEDICAL USE BY AT LEAST 3,000 SQUARE FEET OF OCCUPIED FLOOR AREA OBTAIN A CONSISTENCY DETERMINATION STATING THAT THE PROPOSED OR EXPANDED MEDICAL USE PROMOTES THE GOALS RECOMMENDED IN THE MASTER PLAN; AND (3) PROVIDE FEES FOR TIME AND MATERIAL COSTS INCURRED TO PREPARE THE CONSISTENCY DETERMINATION; MAKE FINDINGS, INCLUDING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE SECTION 101.1 AND ENVIRONMENTAL FINDINGS.

PREAMBLE

Whereas, on August 3, 2010, Supervisor Campos introduced a proposed Ordinance under Board File Number 10-1057 that would amend the Planning Code to add 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, equitable access, high quality of care, and affordable cost of such services;

requiring that medical institutions applying for land use related approvals obtain a Consistency Determination from the Planning Commission determining that the proposed use promotes the goals recommended in the Master Plan; and providing fees for the consistency determination; and

Whereas, on October 18, 2010, Supervisor Campos submitted to the Planning Department a copy of his intended amendments to this Ordinance that he plans to introduce at the Land Use Committee hearing on November 1, 2010, which include the following revisions:

- (1) to change the definition used in the legislation to be a "Medical Use", which includes existing Planning Code definitions only;
- (2) to increase the time frame in which the Master Plan shall be drafted to 12 months rather than nine;
- (3) to clarify that updates to the Plan may be initiated sooner than every three years if deemed necessary by the Planning or Health Commissions, but no later than every three years;
- (4) to change the method for requiring a Consistency Determination from when any land use entitlement is required to when there is a change in use to a Medical Use that occupies a space over 6,000gsf or to when an existing Medical Use expands by more than 3,000gsf; and
- (5) to clarify that the Planning Department can charge a Time and Materials fee to cover the costs to prepare a Consistency Determination;

Whereas, on October 28, 2010, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance;

Whereas, the proposed Planning Code changes have been determined to be categorically exempt from environmental review under Section 15060(c)(2) of the California Environmental Quality Act; and

Whereas, the Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented by Department staff, and other interested parties; and

Whereas, the all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

Whereas, the Commission has reviewed the proposed Ordinance (as initiated) and the list of amendments proposed by Supervisor Campos that will be amended into the Ordinance at the Land Use Committee hearing; and

MOVED, that the Commission hereby recommends that the Board of Supervisors *approve the proposed Ordinance with Modifications as Proposed by Supervisor Campos and the Planning Department* and adopts the attached Draft Resolution to that effect. Specifically, the Commission recommends the following modifications:

1. Increase the size "trigger" to 10,000 gross square feet (gsf) of new space, or an addition of 5,000gsf.

2. Eliminate the detail prescribed in this Ordinance for the content of the Health Care Services Master Plan. Strike the language in Section 342.2 that details the required components of the Health Care Services Master Plan, and replace it with the following:

SEC. 342.2 HEALTH CARE SERVICES MASTER PLAN: COMPONENTS:

The Department of Public Health and the Planning Department shall work together to prepare a Health Care Services Master Plan that promotes an equitable and efficient distribution of healthcare services in the City; the elimination of healthcare service gaps and medically underserved areas; the placement of Medical Uses within the City in a manner that is consistent with the character, needs and infrastructure of the different neighborhoods; and that promotes and protects the public's health, safety, convenience and general welfare.

3. Include a Mechanism for Cost Recovery for the Master Planning Process.
4. If possible, make DPH the lead City agency for Consistency Determinations.
5. Exempt projects from the Consistency Determination review process if they have already filed for their first application or permit with the City prior to the adoption of the Health Care Services Master Plan.
6. Amend Planning Code Sections 209.3 (a), 217 (a) & (c), Article 7, and Article 8 to cross reference the requirements for a Consistency Determination.

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. A citywide Health Care Services Master Plan is needed in San Francisco in order to understand the healthcare access and delivery components of medical facilities' development projects. Depending on the Master Plan's specificity, the Plan could become a very useful tool for the Planning Commission when reviewing new or expanding medical facilities throughout San Francisco. In order to make this Plan a useful and implementable tool, the contents of the Plan outlined in this Ordinance should be less specific so to allow for a larger dialogue about the scope and structure of the Plan.
2. The Planning Department has been working with Supervisor Campos' office on amendments to this Ordinance in order to ensure an easily implementable Ordinance; to eliminate additional process for very small projects; and to facilitate an equitable analysis of medical facilities citywide. The Supervisor's Office has been amenable to many of the Department's suggestions, and the Department believes that the Ordinance – with amendments – may provide needed balance to the provision of health care in San Francisco.
3. The Ordinance should be amended to include a 10,000/5,000gsf threshold for new and expanding Medical Uses, respectively; rather than a 6,000/3,000 occupied sf threshold, since 10,000gsf is a

threshold already used by the Planning Department for several other purposes (whereas 6,000 occupied square feet is more of an arbitrary number). The upper size limit for the Class 3 CEQA exemption (Section 15303 of the CEQA Guidelines), which is the exemption for new construction and conversion of small structures, is 10,000sf. Beyond 10,000sf, projects require more involved CEQA review. Furthermore, gross floor area calculations are much simpler and more straight-forward than occupied floor area calculations. Increasing the trigger to 10,000gsf will make implementation of this legislation more successful.

4. The Planning Commission believes that the Department of Public Health is better equipped to determine whether or not a new or expanded medical facility is consistent with the Health Care Master Plan, rather than land use professionals in the Planning Department. In fact, the Ordinance itself notes that the Department of Public Health is well situated to create the Master Plan, as it can draw upon the work of “Building a Healthier San Francisco”, and the “Living Community Needs Assessment”.
5. This legislation should include a funding source for the creation of the prescribed Health Care Services Master Plan and its associated environmental review, as well as for the required 3 year (or more frequent) updates. The lack of a funding source is of great concern to the Planning Commission.
6. The Planning Commission is concerned that the prescribed 12 month timeline to create a draft of the Health Care Services Master Plan will not be sufficient, given the associated time and cost for creating such a large comprehensive policy document. Furthermore, the environmental review alone may take more than 12 months, as the Plan will most likely require the preparation of an Environmental Impact Report.
7. The language in the proposed Section 342.5 should be changed to state that pipeline projects will not be required to obtain a consistency determination. Only after the adoption of the HCSMP will the filing of a project’s first entitlement or permit require the filing of a Consistency Determination Application. This will ease anxiety for project sponsors who have submitted projects years back and may fear being asked to undergo an additional process at this stage of their review.

8. **General Plan Compliance.** The proposed Ordinance is, on balance, consistent with the following Objectives and Policies of the General Plan:

COMMERCE & INDUSTRY ELEMENT

Objectives and Policies

OBJECTIVE 1:

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

Policy 1.1

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

Creation of a Health Care Services Master Plan will provide an additional tool to discourage development that has substantial undesirable consequences while it would encourage development that provides substantial net benefits.

OBJECTIVE 2:

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1

Maintain a favorable social and cultural climate in the city in order to enhance its attractiveness as a firm location.

Creation of a Health Care Services Master Plan will provide a tool to better plan the development of health care facilities citywide, enabling a greater distribution of and access to health care for residents of San Francisco. Furthermore, the Ordinance has been drafted in such a manner so not to create substantial additional "process" for medical providers wishing to locate or expand their facilities in San Francisco.

OBJECTIVE 3:

PROVIDE EXPANDED EMPLOYMENT OPPORTUNITIES FOR CITY RESIDENTS, PARTICULARLY THE UNEMPLOYED AND ECONOMICALLY DISADVANTAGED.

Policy 3.4:

Assist newly emerging economic activities.

San Francisco has long been recognized as a regional center for health services. The Ordinance includes provisions mandating periodic updates to address technological advances, trends, and changes within the medical industry. The Plan will provide guidance as to where these emerging medical industries should locate their facilities within the City.

OBJECTIVE 4:

IMPROVE THE VIABILITY OF EXISTING INDUSTRY IN THE CITY AND THE ATTRACTIVENESS OF THE CITY AS A LOCATION FOR NEW INDUSTRY.

Policy 4.1:

Maintain and enhance a favorable business climate in the City.

Policy 4.2:

Promote and attract those economic activities with potential benefit to the City.

San Francisco has long been recognized as a regional center for health care services. The creation of a Health Care Services Master Plan will provide a tool for existing and new medical facilities contemplating relocating or expanding their services within the City by indicating whether or not the scope of a given project is justified in the Plan. Although this tool will primarily be used as a tool for policy makers, it will also be a helpful tool for businesses by providing guidance in advance of substantial investment in a particular facility or property.

OBJECTIVE 6:

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

Policy 6.1

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the City's Neighborhood Commercial Districts, while recognizing and encouraging diversity among the districts.

Policy 6.2

Promote economically vital Neighborhood Commercial Districts which foster small business enterprises and entrepreneurship and which are responsive to economic and technological innovation in the marketplace and society.

The creation of a Health Care Services Master Plan will provide an additional tool for policy makers when determining whether or not an entitlement request may be justified. In all Neighborhood Commercial Districts, and most Mixed-Use Districts, only those projects already necessitating a Conditional use permit would be subject to a Consistency Determination under this Ordinance. This would provide an additional analysis for larger development projects in Neighborhood Commercial Districts that are already undergoing a discretionary process.

OBJECTIVE 7:

ENHANCE SAN FRANCISCO'S POSITION AS A NATIONAL AND REGIONAL CENTER FOR GOVERNMENTAL, HEALTH, AND EDUCATIONAL SERVICES.

Policy 7.2

Encourage the extension of needed health and educational services, but manage expansion to avoid or minimize disruption of adjacent residential areas.

Policy 7.3

Promote the provision of adequate health and educational services to all geographical districts and cultural groups in the City.

San Francisco has long been recognized as a regional center for health care services. These services are projected to be among the fastest growing employment sectors of the San Francisco economy in future years. New employment opportunities are expected to be available at all occupational levels, from highly skilled professional positions to semi-skilled service positions due to improved technology and expanded federal funding.

During the last decade the delivery capability of medical services has increased significantly. Newly emerging medical centers and clinics have clustered around hospital facilities which are expanding themselves. Because health services provide valuable services to residents and constitute a significant share of employment opportunities to local residents, it is important to preserve the vitality of this sector. However, future growth must be managed to achieve equitable distribution of benefits to all geographical and cultural sub-populations of the city and to minimize associated adverse effects on surrounding areas. The creation of a Health Care Services Master Plan will give policy makers a health planning tool to use when making decisions about medical facility development.

COMMUNITY FACILITIES ELEMENT

Objectives and Policies

PUBLIC HEALTH CENTERS

OBJECTIVE 7:

DISTRIBUTION THROUGHOUT THE CITY OF DISTRICT PUBLIC HEALTH CENTERS TO MAKE THE EDUCATIONAL AND PREVENTIVE SERVICES OF THE DEPARTMENT OF PUBLIC HEALTH CONVENIENT TO THE PEOPLE, THEREBY HELPING TO ACHIEVE THE GOALS OF THE PUBLIC HEALTH PROGRAM IN SAN FRANCISCO.

Adoption of this Ordinance will enable the creation of one centralized document that addresses and analyzes Public health facilities, not-for-profit health facilities, as well as private health facilities in context with one-another. No such document currently exists, meaning that currently there is no health care planning document to guide development specifically for health care facilities, which have unique and complex issues. The creation of a Health Care Services Master Plan will be a useful planning tool when reviewing new or expanding medical facilities throughout San Francisco.

COMMUNITY SAFETY ELEMENT

Objectives and Policies

OBJECTIVE 3:

ENSURE THE PROTECTION OF LIFE AND PROPERTY FROM DISASTERS THROUGH EFFECTIVE EMERGENCY RESPONSE. PROVIDE PUBLIC EDUCATION AND TRAINING ABOUT EARTHQUAKES AND OTHER NATURAL DISASTERS AND HOW INDIVIDUALS, BUSINESSES AND COMMUNITIES CAN REDUCE THE IMPACTS OF DISASTERS.

Adoption of this Ordinance will provide the Health Commission, Planning Commission and Board of Supervisors with information essential to disaster planning in San Francisco.

9. The proposed replacement project is generally consistent with the eight General Plan priority policies set forth in Section 101.1 in that:

- A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

The proposed Ordinance will not affect neighborhood serving retail uses.

- B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

The proposed Ordinance will not affect any existing housing but will enhance the existing neighborhood character by requiring an analysis of potential land use burdens caused by medical facilities locating or expanding in different neighborhoods, and an analysis of the potential for displacement of other neighborhood-serving uses that may occur as a result of the placement or expansion of these facilities in different neighborhoods.

- C) The City's supply of affordable housing will be preserved and enhanced:

The proposed Ordinance will have no adverse effect on the City's supply of affordable housing.

- D) The commuter traffic will not impede MUNI transit service or overburden our streets or neighborhood parking:

The proposed Ordinance will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking, and has been exempt from environmental review. This Ordinance does, however, require the creation of a Health Care Services Master Plan, which will be subject to its own environmental review at a later date.

- E) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

The proposed Ordinance would not adversely affect the City's industrial and service sectors from displacement due to commercial office development as it deals with the creation and subsequent implementation of a plan that deal specifically with medically-related uses, not commercial uses.

- F) The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

The proposed Ordinance would help prepare the health care industry in San Francisco against injury and loss of life in an earthquake.

- G) That landmark and historic buildings will be preserved:

The proposed Ordinance would not adversely affect landmark and historic buildings.

- H) Parks and open space and their access to sunlight and vistas will be protected from development:

Sunlight to the City's parks and open spaces would not be affected by creation and subsequent implementation of a Health Care Services Master Plan as it would not include any changes to the existing zoning controls or height limits.

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on October 28, 2010.

Linda D. Avery
Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: October 28, 2010

1 [Health Care Services Master Plan]

2

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 **land use approvals obtain a consistency determination from the Planning Commission**
 9 **determining that the proposed use promotes the goals recommended in the Master**
 10 **Plan; providing fees for the consistency determination, and making findings, including**
 11 **findings of consistency with the General Plan and the eight priority policies of Planning**
 12 **Code Section 101.1 and environmental findings.**

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

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

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

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

24

25

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

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

10 Section 2. The San Francisco Planning Code is hereby amended by adding Sections
11 342 to 342.10, to read as follows:

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

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

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19 Health and Health Commission shall provide for the preservation, promotion and protection of the
20 physical and mental health of the inhabitants of the City and County of San Francisco.

21 3. Section 4.105 of the Charter provides that the Planning Commission create and
22 maintain a General Plan consisting of goals, policies and programs for the future development of the
23 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 establishment
7 of a competitive marketplace for health services as state policy through state legislation resulted in the
8 loss of routine and comprehensive analysis of health service resources, needs, trends, local impacts and
9 related information in the City to guide decisions by medical institutions and governmental land use
10 decisions. This loss of information promoted decisions, both private and public, that could favor short
11 term individual developments over long term, City-wide public policy goals.

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

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

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1 San Francisco, including "The Living Community Needs Assessment" which is an up-to-date, web-
2 based, compilation of data about community health in neighborhoods throughout the City.

3 **SEC. 342.1. DEFINITIONS.**

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

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

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

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

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

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

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

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

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15 and projected capacities of existing medical institutions in San Francisco, including public and private
16 facilities and community-based organizations. The capacity assessment shall describe, analyze, and
17 project resources available for emergency services, including trauma services; acute hospital services,
18 including beds and services that require specialized facility accommodations; ambulatory care services
19 including primary care; specialty physician services; hospital-based and free-standing urgent care
20 services; rehabilitation, long term care and home health services; and behavioral health services
21 including psychiatric emergency, mental health and substance abuse services. In addition, the capacity
22 assessment shall quantify "surge capacity" needs in the event of a disaster.

23 (3) Land Use Assessment: The Health Care Services Master Plan shall assess the supply,
24 need and demand for medical institutions in the different neighborhoods of the City; the potential

1 effects or land use burdens of locating such services in particular neighborhoods; and the potential for
2 displacement of other neighborhood-serving uses that may occur as a result of the placement of
3 medical institutions.

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

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

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

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

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

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

6 (d) Public Hearing: After the close of the written public comment period, the Health
7 Commission and Planning Commission shall hold a joint public hearing on the draft Health Care
8 Services Master Plan. The Commissions shall set the time and date for the hearing within a reasonable
9 period, but in no event shall the hearing date be more than thirty (30) days after the close of the written
10 public comment period. The Commissions may recommend approval or may request additional
11 information or revisions in the Health Care Services Master Plan. If the Health Commission or
12 Planning Commission requests significant or material additional information or revisions for the
13 Health Care Services Master Plan, then the Health Commission and Planning Commission shall hold
14 additional public hearings to consider such changes, either jointly or separately.

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

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

1 **SEC. 342.4. CONSISTENCY DETERMINATION FEE.**

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

6 **SEC. 342.5. CONSISTENCY DETERMINATION.**

7 (a) Upon adoption of the Health Care Services Master Plan, the Planning Department shall
8 review any application for or by a medical institution for a land use approval, in order to make findings
9 that a proposed use is consistent with the most recently updated Health Care Services Master Plan's
10 recommendations.

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

22 (c) Inconsistent Applications. If the Planning Department finds that an
23 application appears to be inconsistent with the recommendations of the Health Care Services Master
24 Plan, it shall submit the application to the Health Commission. The Health Commission shall review
25

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

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

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

1 **SEC. 342.6. APPEALS.**

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

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

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

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

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

24 **SEC. 342.8 PREEMPTION.**

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

7 **SEC. 342.9. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL**
8 **WELFARE.**

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

14 **SEC. 342.10. SEVERABILITY.**

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

20 Section 3. This Section is uncodified.

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

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

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4 By: _____
5 ANDREA RUIZ-ESQUIDE
6 Deputy City Attorney

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To: Members of the Planning Commission

From: Supervisor David Campos

Re: Planned amendments to the Health Care Services Master Plan Ordinance

Date: October 18, 2010

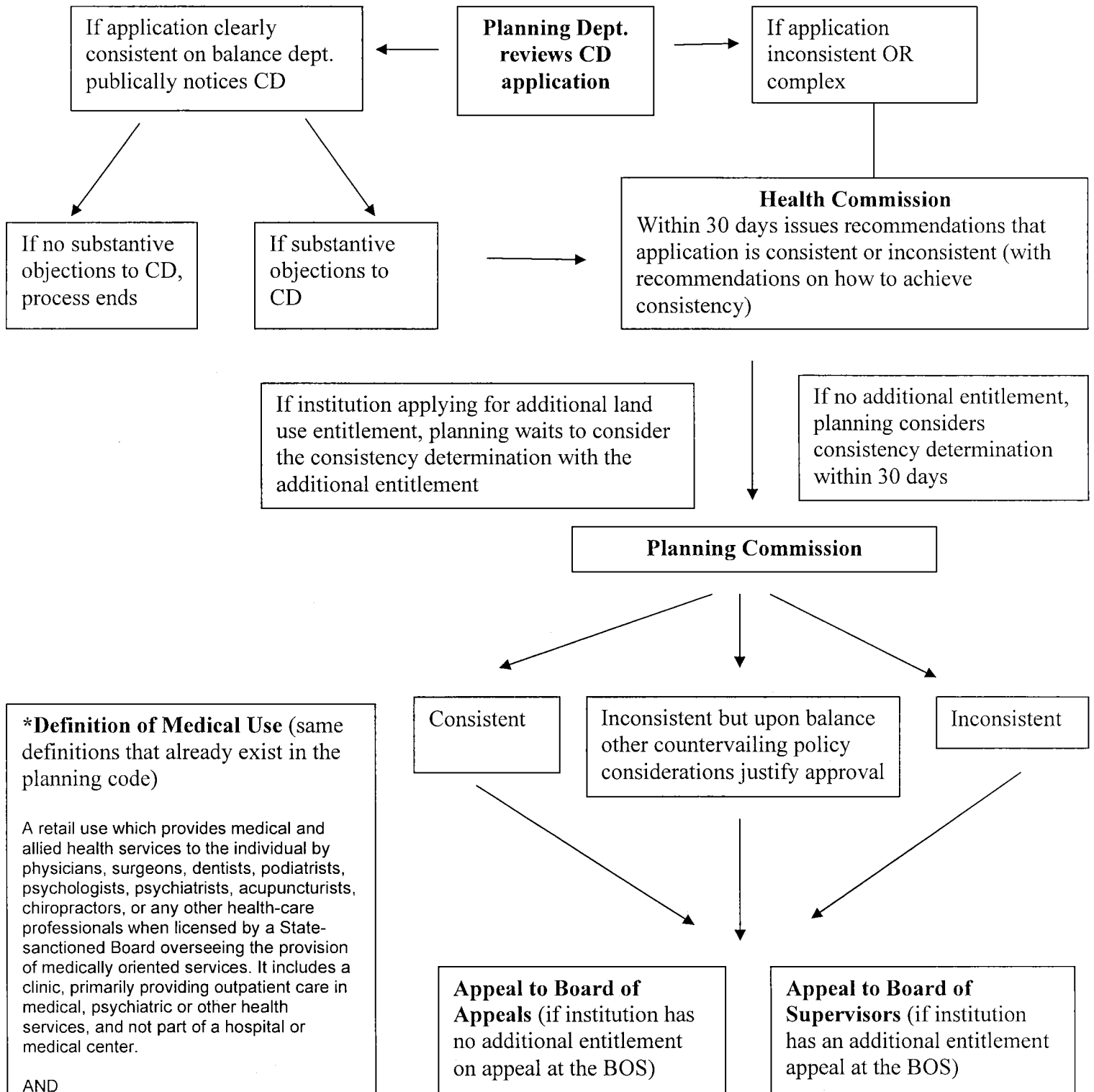
On August 3, 2010, I introduced legislation (#101057) at the Board of Supervisors to create a Health Care Services Master Plan for the City and County of San Francisco, and to require that any medical institutions seeking land use entitlements from the City obtain a Consistency Determination certifying that the proposed entitlements meet the recommendations of the Health Care Services Master Plan.

Since introduction of the legislation, I have worked closely with Planning Department Staff to make amendments to the legislation that will ensure the greatest ease and practical implementation of the legislation. When you hear the legislation at your October 28, 2010 hearing, please consider the following substantive amendments that I plan to make to Ordinance #101057 when it is heard in the Land Use & Economic Development Committee, which I understand will take place on November 1, 2010. I am also attaching a draft copy of the legislative text reflecting the amendments, as well as a chart that illustrates the Consistency Determination process.

Substantive Amendments to Health Care Services Master Plan Legislation

- I have replaced the definition of "Medical Institution" with a definition of "Medical Use," to mirror definitions of "Medical Service" and "Hospital or Medical Center" that already exist elsewhere in the Planning Code and facilitate implementation of the ordinance.
- I have increased the period of time for the Health and Planning Departments to draft the Health Care Services Master Plan from nine months to twelve months.
- I have clarified that while the Planning and Health Departments are required to update the Health Care Services Master Plan every three years, either Department may initiate an update at any time that it deems necessary.
- I have amended the "trigger" requiring an entity to obtain a Consistency Determination. Under the legislation as introduced, any medical institution requiring a land use entitlement would have needed a Consistency Determination. Under these proposed amendments, only changes of use to a "Medical Use" as defined in the legislation, that would occupy 6,000 square feet of occupied floor area, or expansions of an existing "Medical Use" that would add at least 3,000 square feet of occupied floor area, are required to file a Consistency Determination Application with the Planning Department.
- I have clarified that the fee the Department can charge to recover time and materials costs for preparing a Consistency Determination encompasses time and materials costs incurred by other departments, including the City Attorney's Office.

Application by operator of a Medical Use* that would occupy 6,000 square feet of occupied floor area or that would expand an existing Medical Use by at least 3,000 square feet of occupied floor area



***Definition of Medical Use** (same definitions that already exist in the planning code)

A retail use which provides medical and allied health services to the individual by physicians, surgeons, dentists, podiatrists, psychologists, psychiatrists, acupuncturists, chiropractors, or any other health-care professionals when licensed by a State-sanctioned Board overseeing the provision of medically oriented services. It includes a clinic, primarily providing outpatient care in medical, psychiatric or other health services, and not part of a hospital or medical center.

AND

A public or private institutional use which provides medical facilities for inpatient or outpatient care, medical offices, clinics, and laboratories.

[Health Care Services Master Plan.]

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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 any change of use to a Medical Use, as defined, that will occupy a space exceeding 6,000 square feet of occupied floor area, or an expansion of any existing Medical Use by at least 3,000 square feet of occupied floor area~~ land-use approvals obtain a Consistency Determination from the Planning Commission or the Planning Department determining that the proposed use or expansion promotes the goals recommended in the Master Plan; providing fees for time and material costs incurred to prepare 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 ~~striketrough 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

Supervisors Campos, Mar, Maxwell, Mirkarimi, Avalos, Chiu
BOARD OF SUPERVISORS

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

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

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. _____.

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.

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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.

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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
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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.

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7 based, compilation of data about community health in neighborhoods throughout the City.

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

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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, 790.44,~~
17 ~~890.114, 890.44, 209.3(a), 217(a) and (c) of the Planning Code, excluding any housing~~
18 ~~operated by a medical provider or any massage use providers of healthcare services, such as~~
19 ~~hospitals, nursing homes, skilled nursing facilities, in-patient hospices, mental and behavioral~~
20 ~~health facilities, substance abuse and chemical dependency treatment centers, ambulatory~~
21 ~~care centers, rehabilitation facilities, free standing imaging centers, surgical centers, birthing~~
22 ~~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,
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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 contain all of the following components:

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

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

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

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

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

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

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

23 (a) Timing for Health Care Services Master Plan Completion: The Department of Public
24 Health, or its designated consultant, shall work with the Planning Department to complete a draft
25

1 Health Care Services Master Plan within ~~twelve (12)~~ ~~nine (9)~~ months of the effective date of this
2 ordinance, which time may be extended upon request and by approval of the Board of Supervisors.

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

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

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

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

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

10 **SEC. 342.4. CONSISTENCY DETERMINATION FEE.**

11 The Planning Department may charge and collect from the a Medical Use medical
12 institution requiring a Consistency Determination pursuant seeking a land use approval
13 subject to these sections 342 to 342.10 a fee for the preparation of the required Consistency
14 Determination, in an amount that does not exceed the actual cost of preparation. This fee shall
15 be sufficient to recover actual costs that the Department incurs and shall be charged on a time
16 and materials basis. The Department also may charge for any time and materials costs that
17 other agencies, boards, commissions, or departments of the City, including the City Attorney's
18 Office, incur in connection with the processing of the Consistency Determination. Upon
19 request of the Medical Use, the Department shall provide in writing an estimate of the fee to
20 be charged, and the basis for the fee. This fee shall be payable at the time the Consistency
21 Determination Application 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, any change of use to a
24 Medical Use, as defined in Section 342.1(a) that would occupy 6,000 sf of occupied floor area,
25 or any expansion of an existing Medical Use that would add at least 3,000 sf of occupied floor

1 area shall file a Consistency Determination Application with the Planning Department. The
2 Planning Department shall make findings that the proposed or expanded Medical Use is
3 consistent with the most recently updated Health Care Master Plan recommendations. the
4 Planning Department shall review any application for or by a medical institution for a land use
5 approval, in order to make findings that a proposed use is consistent with the most recently
6 updated Health Care Services Master Plan's recommendations.

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

19 (c) Inconsistent Applications. If the Planning Department finds that an
20 application appears to be on balance inconsistent with the recommendations of the Health Care
21 Services Master Plan, it shall submit the application to the Health Commission. The Health
22 Commission shall review the application at a public hearing and issue written recommendations
23 concerning whether the applicant's proposal is consistent with the recommendations of the Health
24 Care Services Master Plan. If the Health Commission finds that the application is inconsistent with the
25 Health Care Services Master Plan, the Health Commission shall make recommendations to achieve

1 consistency. If the Health Commission finds that the application is consistent with the Health Care
2 Services Master Plan, it shall make written findings to this effect. The Health Commission shall submit
3 its recommendations or written findings to the Planning Commission within thirty (30) days after
4 receipt of the application. Prior to the Planning Commission's consideration of the Health
5 Commission's recommendation, the applicant may amend its application in an effort to achieve
6 consistency with the Health Care Services Master Plan.

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

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

1 **SEC. 342.6. APPEALS.**

2 (a) Within thirty (30) days of the issuance or denial of a Consistency Determination by the
3 Planning Commission, any person may file an appeal. If the Board of Supervisors has authority to
4 review ~~the any associated underlying land use approval entitlements,~~ the appeal of the
5 Consistency Determination shall be filed with the Board of Supervisors. If the Board of Supervisors
6 does not have authority to review any associated entitlement~~the underlying land use approval,~~ the
7 appeal shall be filed with the Board of Appeals.

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

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

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

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

25 **SEC. 342.8 PREEMPTION.**

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

7 **SEC. 342.9. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL**
8 **WELFARE.**

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

14 **SEC. 342.10. SEVERABILITY.**

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

20 Section 3. This Section is uncodified.

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

24
25 APPROVED AS TO FORM:

Supervisors Campos, Mar, Maxwell, Mirkarimi, Avalos, Chiu
BOARD OF SUPERVISORS

DENNIS J. HERRERA, City Attorney

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By: _____
ANDREA RUIZ-ESQUIDE
Deputy City Attorney