

[Charter Amendment - San Francisco Housing Trust Fund and Housing Production Incentive Act]

CHARTER AMENDMENT

PROPOSITION _____

Charter Amendment (Second Draft) to amend the Charter of the City and County of San Francisco by adding Section 16.110 to: 1) create a San Francisco Housing Trust Fund by setting aside general fund revenues beginning in FY2013-2014 and ending in FY2043-2044 to create, acquire, and rehabilitate affordable housing and promote affordable home ownership programs in the City; and 2) lower and stabilize the impacts of affordable housing regulatory impositions on private residential projects; and to authorize the development of up to 30,000 units of affordable rental units in the City.

The Board of Supervisors hereby submits to the qualified voters of the City and County, at an election to be held on November 6, 2012, a proposal to amend the Charter of the City and County by adding Section 16.110 to read as follows:

NOTE: Additions are *single-underline italics Times New Roman*; deletions are ~~*strike-through italics Times New Roman*~~.

Section 1. The San Francisco Charter is hereby amended by adding Section 16.110, to read as follows:

SEC. 16.110. HOUSING TRUST FUND.

(a) Creation of Fund. There is hereby established a Housing Trust Fund to support creating, acquiring and rehabilitating affordable housing and promoting affordable home ownership programs in the City, as provided in this Section.

(b) Definitions. For purposes of this Section:

(1) "Affordable Housing Fee" shall mean a fee calculated by the Mayor's Office of Housing as the difference between the affordable sales price of a housing unit of a certain

bedroom size and the cost of developing a comparable housing unit. The Mayor's Office of Housing shall index the fee annually based on the annual percent change in the Construction Cost Index for San Francisco as published by Engineering News-Record or a similar index selected by the Mayor's Office of Housing.

(2) "Appraised Value" of a housing unit shall mean the Fair Market Value determined through the following appraisal process. For purposes of determining the Appraised Value, the owner shall select and pay for an appraiser who is a member of the American Institute of Real Estate Appraisers (an "MAI member") or a member of the Society of Real Estate Appraisers (a "SRPA member"), or any equivalent designations. The City may, at its sole expense, select an appraiser to conduct an additional appraisal of the housing unit. If the two appraisers do not agree on the Appraised Value of the housing unit, then the Fair Market Values stated in the appraisals will be averaged to determine the Appraised Value of the housing unit for purposes of this Section. If the City does not choose to select an appraiser to conduct an additional appraisal, then the Fair Market Value stated in the appraisal prepared on behalf of the owner shall be the Appraised Value of the housing unit for purposes of this Section.

(3) "Area Median Income" or "AMI" shall mean the unadjusted area median income levels as calculated by the Mayor's Office of Housing using data from the Department of Housing and Urban Development on an annual basis for the San Francisco area, adjusted solely for Household size, but not high housing cost area.

(4) "Basic On-Site Inclusionary Requirement" shall mean 12% of the units in the principal project affordable to a Household whose initial household income does not exceed 90% of San Francisco Area Median Income for ownership units and 55% for rental units, or an on-site requirement with an equivalent Inclusionary Housing Cost Obligation.

(5) "Fair Market Value" shall mean the value of a housing unit that would be agreed to by a seller who is willing to sell but under no particular urgent necessity or obligation to sell, and a buyer who is ready, willing and able to buy but under no particular or urgent

necessity to buy, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available. The owner and the City, acting through the Mayor's Office of Housing, may determine the Fair Market Value by mutual agreement without obtaining an appraisal. If the owner and the City are unable to agree on a Fair Market Value, then the Fair Market Value shall be the Appraised Value.

(6) "General Fund Discretionary Revenues" shall mean revenues that the City receives and deposits in its treasury, that are unrestricted, and that the City may appropriate for any lawful City purpose.

(7) "Household" shall mean any person or persons who reside or intend to reside in the same housing unit.

(8) "Mayor's Office of Housing" shall mean the Mayor's Office of Housing or any successor City agency.

(9) "Other Affordable Housing Fees" shall mean the cost to a developer, as such cost is adjusted annually by the City using an index selected by the City, of complying with affordable housing fees or exactions imposed by the City, excluding fees imposed under Planning Code Section 415.

(10) "Planning Code Section 415" shall mean San Francisco Planning Code Section 415 as of July 1, 2012, together with the defined terms in Section 401 as of that same date, and any successor legislation adopted consistent with this Section 16.110.

(11) "Inclusionary Housing Cost Obligation" shall mean an obligation equal to the percentage of below market rate housing units required under Planning Code Section 415 multiplied by the then-current Affordable Housing Fee required per unit. For purposes of calculating the cost burden of any legislative change, the Mayor's Office of Housing shall use the average citywide unit mix for projects subject to Planning Code Section 415 within the past five years as applied to a hypothetical project of 100 units. For purposes of calculating the cost burden imposed by a condition of approval for a particular project, the Mayor's Office of

Housing shall use the actual unit mix and unit count proposed in the development project subject to the condition of approval.

(12) "San Francisco Median Income" shall mean the median income for the City and County of San Francisco as calculated by the Mayor's Office of Housing using data from the United States Department of Housing and Urban Development ("HUD") and adjusted for Household size or, if data from HUD is unavailable, calculated by the Mayor's Office of Housing using other publicly-available and credible data and adjusted for Household size.

(c) Funding.

(1) In the Fiscal Year 2013-2014 budget, the City shall appropriate to the Housing Trust Fund \$20 million.

(2) For the next 11 fiscal years, in each of the annual budgets for Fiscal Year 2014 2015 through Fiscal Year 2024-2025, the City shall appropriate to the Housing Trust Fund an amount increasing by \$2.8 million per year, until the annual appropriation required by this Section reaches \$50.8 million in the Fiscal Year 2024-2025 budget.

(3) In the annual budgets for Fiscal Year 2025-2026 through Fiscal Year 2042-43, the City shall appropriate to the Housing Trust Fund an amount equal to the prior year's appropriation, adjusted by the percentage increase or decrease in General Fund Discretionary Revenues budgeted for the year compared to the prior year's original budgeted amount of General Fund Discretionary Revenues.

(4) Should the City adopt a fixed two-year budget under Charter Section 9.101, the adjustment for the Housing Trust Fund appropriation for the two years of the two-year budget shall be based on the amount of General Fund Discretionary Revenues estimated for the two-year period included in the budget.

(5) During Fiscal Years 2025-2026 through 2042-2043, if the Controller submits a revised estimate of General Fund Discretionary Revenues for a given Fiscal Year or two-year budget period that is lower than the amount originally budgeted for that period, then the Board

may, by ordinance, reduce the appropriation to the Housing Trust Fund for that budget period in an amount that does not exceed the amount proportionate to the percentage shortfall in the discretionary revenue projection.

(6) The Controller's method of calculating the amount of and changes in General Fund Discretionary Revenues shall be consistent from fiscal year to fiscal year and with the Controller's method for calculating those figures under Charter Sections 8A.105, 16.108, and 16.109. The Controller shall correct errors in the estimate of discretionary revenues for a fiscal year through an adjustment to the next fiscal year's estimate.

(7) The Controller shall set aside and maintain the amounts appropriated to the Housing Trust Fund under this Section, together with any interest earned thereon, and any amount unexpended or uncommitted at the end of the fiscal year shall be carried forward to the next fiscal year and, subject to the budgetary and fiscal limitations of this Charter, shall be appropriated for the purposes specified in this Section.

(d) **Uses of the Housing Trust Fund.** The City may disburse monies from the Housing Trust Fund through loans, grants or other types of payments, on terms determined by the Mayor's Office of Housing in its sole discretion. Any repayment of any loan or grant that the City receives, or any interest from any loan that the City receives, will be returned to the Housing Trust Fund. The City, acting through the Mayor's Office of Housing, shall disburse the monies from the Housing Trust Fund for the following eligible expenditures:

(1) The creation, acquisition, and rehabilitation of rental and ownership housing affordable to Households earning up to 120% of the Area Median Income, including, without limitation, the acquisition of land for such purpose.

(2) No later than July 1, 2018, the City shall appropriate \$15 million from the Housing Trust Fund to a program that provides loans to Households earning up to 120% of the Area Median Income for use as a down payment on the purchase of a housing unit ("the Down

Payment Assistance Loan Program”). As soon as is practical, the Mayor’s Office of Housing shall develop and implement a manual for the Down Payment Assistance Loan Program.

(3) No later than July 1, 2018, the City shall appropriate up to \$15 million from the Housing Trust Fund to a program that provides funds to Households earning up to 120% of Area Median Income for use as assistance to reduce the risk to current occupants of a loss of housing (the “Housing Stabilization Program”). As soon as is practical, the Mayor’s Office of Housing shall implement and develop a manual for the Housing Stabilization Program.

(4) The City may use monies in the Housing Trust Fund to operate and administer the Infrastructure Grant Program as described in subsection (e). The City may not allocate to the Infrastructure Grant Program in any fiscal year an amount exceeding the greater of \$2 million or 10% of the amount appropriated to the Housing Trust Fund for that fiscal year under subsection (c).

(5) In any fiscal year, the City may allocate a sufficient amount from the Housing Trust Fund to pay for all legally permissible administrative costs, including, without limitation, legal costs, associated with any use of the Housing Trust Fund.

(e) **Complete Neighborhoods Infrastructure Grant Program.** After conferring with the Director of Planning, the Director of the Mayor’s Office of Housing shall design and administer a Complete Neighborhoods Infrastructure Grant Program (“Infrastructure Grant Program”). The purpose of the Infrastructure Grant Program is to accelerate the build-out of the public realm infrastructure needed to support increased residential density in the City’s neighborhoods.

The City may use monies from the Infrastructure Grant Program only for “public facilities” as defined in the Community Facilities District law (Cal. Govt. Code §§ 53311 et seq., as amended), and shall give priority to the use of such monies by residential development project sponsors, community-based organizations, and City departments that will leverage in-kind agreements for public realm improvements associated with their proposed residential development projects, or for City-administered programs that will leverage additional local,

state or federal infrastructure funds. The City shall use the Infrastructure Grant Program monies in coordination with such other public and private monies to finance and construct projects including enhanced pedestrian streetscape features, small-scale open space improvements consistent with the City's Better Streets Plan as adopted by Board of Supervisors Ordinance No. 310-10, including any subsequent amendments or successor legislation, and any infrastructure priorities or plans adopted as part of any Area Plan of the City's General Plan.

(f) **Bonding Authority.** Notwithstanding the limitations set forth in Sections 9.107, 9.108, and 9.109 of this Charter, upon recommendation of the Mayor, the Board of Supervisors may authorize the issuance, without limitation, of revenue bonds, lease financing, notes, or other evidences of indebtedness or other obligations ("Debt Obligations"), the proceeds of which are to be used for creating, acquiring, and rehabilitating rental and ownership housing affordable to Households earning up to 120% of the Area Median Income, including, without limitation, the acquisition of land for such purpose. Such Debt Obligations shall be secured by and/or repaid from any available funds pledged or appropriated by Board of Supervisors ordinance for such purpose, which amount may include funds in the Housing Trust Fund allocated under subsection (c). Debt Obligations authorized hereby shall be issued in accordance with the Mayor's Office of Housing policies, and upon the terms and conditions as the Board of Supervisors shall approve. Funds appropriated to pay debt service on the Debt Obligations in such fiscal year under the terms of this Section shall be set aside in an account for such use until such payment is made.

(g) **On-Site Inclusionary Affordable Housing Requirements.**

(1) **Application.** This subsection (g) shall not apply to: any residential projects subject to a development agreement approved by the City under California Government Code Section 65864; any project exempt from the provisions of Section 415 et seq. under Section 415.3 as it exists on July 1, 2012; the requirements of a redevelopment plan for a redevelopment project area; or any project in which the City has a proprietary interest.

(2) Reduction of Current On-Site Inclusionary Affordable Housing

Requirement. *Beginning on the effective date of this Section, the City shall reduce by 20% the on-site inclusionary housing obligation for all projects subject to the on-site Inclusionary affordable housing requirements of Planning Code Section 415 et seq., including any on-site requirements found in other sections of the Planning Code including, but not limited to, Planning Code Sections 415.6, 419, 424, 249.33, 827(b)(1) and any other Municipal Code sections that refer to Planning Code Section 415 et seq. or its predecessor, from the requirements of Section 415 and other related sections as they exist as of July 1, 2012. Notwithstanding the foregoing, in no event shall the on-site inclusionary housing obligation for any project be reduced below the Basic Inclusionary Housing Requirement.*

(3) City's Right Of First Offer For Additional On-Site Units. *In addition to the on-site below market rate inclusionary units otherwise required under Planning Code Section 415, beginning on the effective date of this Section, any sponsor of a project subject to this Section and Section 415 that meets its obligation by providing on-site units must give the City before the initial sale of an individual unit a right of first offer to negotiate a purchase at a price no greater than Fair Market Value or otherwise secure the right to designate at least an additional 8% of the project's total housing units as on-site below market rate inclusionary housing units subject to Planning Code Section 415.*

(4) Application to Previously Approved Projects.

(A) *This subsection (g) does not apply to projects that received a reduction in on-site inclusionary housing requirements through subsection (g)(2) above.*

(B) *Sponsors of projects that already have received their first construction document as defined in Section 107A.13.1 of the San Francisco Building Code as of January 1, 2013 may not receive a reduction in any on-site below market rate requirement applicable to the subject property under this subsection (g).*

(C) Sponsors of projects that have not received their first construction document as defined in Section 107A.13.1 of the San Francisco Building Code by January 1, 2013 may apply to the Planning Commission for a modification of their existing conditions of approval to reduce any on-site below market rate inclusionary requirements by 20% consistent with subsection (g)(2), or change their election so that they will provide on-site rather than off-site below market rate units or Affordable Housing Fee payments.

Project sponsors seeking to amend their conditions of approval to benefit from the 20% reduction must demonstrate to the Planning Commission that the proposed reduction will enable the project to obtain financing and commence construction within a one-year time period following Planning Commission's approval of the proposed reduction. The Planning Commission shall include a condition of approval to require that the project sponsor obtain its first construction document within one year of the approval. If the project sponsor does not obtain its first construction document within one year, then the conditions of approval existing before the modification shall apply.

Any sponsor of a project receiving a modification of its conditions of approval under this subsection (g)(4)(C) must offer additional units to the City under the provisions of subsection (g)(3) above.

The Planning Commission may not make modifications under this subsection (g)(4)(C) after January 1, 2016.

(h) Capping The Relative Cost Burden of Future Inclusionary or Affordable Housing Requirements.

(1) Application. This subsection (h) shall apply as follows:

(A) This subsection shall apply only to private residential projects or the private residential portion of a mixed-use project, and not commercial projects; and

(B) This subsection shall not apply to a project located in any of the following:

(i) An area subject to a development agreement under California Government Code Sections 65864 et seq., as amended, or any successor legislation;

(ii) A redevelopment project area or an infrastructure financing district in which property tax increment is allocated to fund affordable housing;

(iii) A Special Use District established in the Planning Code which enables (1) a 20% or greater increase in height and bulk over base zoning, (2) a 50% or greater increase in residential densities over base zoning, or (3) changes from uses that prohibit residential development to uses that permit residential uses. Notwithstanding the foregoing, should a project sponsor seek to develop a project in accordance with zoning in place immediately before the establishment of the Special Use District, this subsection (h) shall apply;

(iv) Any New Plan Areas That Result in an Upzoning; provided, however, that in setting affordable housing exaction increases within a New Plan Area, the City shall consider any financial feasibility analysis approved by the Controller's Office. For purposes of this subsection (h)(1)(B)(iv), "New Plan Areas That Result in an Upzoning" shall mean any proposal for a zoning change initiated by the City in a contiguous area of 40 acres or more that receive upzoning after November 6, 2012, in the form of (1) a 20% or greater net increase in height and bulk over base zoning or (2) a 50% or greater net increase in residential densities over base zoning;

(v) A project that is subject to State law affordable housing requirements or incentives, including but not limited to the State Density Bonus Law, and California Debt Limit Allocation Committee tax-exempt bond financing; or

(vi) A project in which the City has a proprietary interest.

(2) **Inclusionary Housing Cost Obligation.** As of the effective date of this Section, the City may not adopt any new land use legislation or administrative regulation, including a Planning Code amendment, or impose any new condition of approval on the issuance of a discretionary permit, that would require an increase in the project sponsor's

Inclusionary Housing Cost Obligation beyond that required as of the effective date of this Section.

(3) **Other Fees Related to Affordable Housing Fee.** As of the effective date of this Section, the City may not adopt any new land use legislation or administrative regulation, including a Planning Code amendment, or impose any new condition of approval on the issuance of a discretionary permit, that would increase any Other Affordable Housing Fees beyond that required as of the effective date of this Section.

(4) **Remedy.** Any challenge to the validity of any legislation or final administrative order or decision on the grounds that such legislation, order or decision increases the project sponsor's Relative Inclusionary Housing Cost Obligation or imposes Other Affordable Housing Fees will be subject to the requirements of California Code of Civil Procedure Sections 1085 and 1094.5, respectively. Any such challenge may be brought only after a project sponsor has exhausted all available administrative remedies, and shall be subject to all applicable statutes of limitations, including without limitation those set forth in California Code of Civil Procedure Section 1094.5 and California Government Code Sections 65009 and 66499.37.

(i) **Legislation.** The City shall enact any legislation necessary to implement subsections (g) and (h) as soon as practicable after the effective date of this Section, but no later than January 1, 2014. Before the adoption of such legislation, the Mayor's Office of Housing, with consultation as necessary with the Planning Department, shall implement the provisions of subsections (g) and (h) administratively and shall issue any necessary guidance.

(j) **Disclaimer.** Nothing in this Section shall be construed to limit or restrict the ability of the City to adopt any fees or exactions related to public benefits other than affordable housing, including, but not limited to, transit infrastructure, streetscape, public realm improvement, or child care fees.

(k) **Term.** Except as provided in subsection (l) below, this Section shall become inoperative on July 1, 2043, and after such date shall have no further force or effect and shall be repealed.

(l) **Early Termination.** At any time before January 1, 2013, the Mayor, after consulting with his or her Budget Director and the Controller, and after taking into account the City's projected revenues and expenditures in the City's financial plans, may terminate implementation of this Section by issuing a written notice to the Board of Supervisors and the Controller. The termination shall be irrevocable and apply to the entire Section 16.110. Upon the Mayor's signing of the notice, this Section shall become inoperative and after such date shall have no force or effect and shall be repealed.

Section 2. **Article 34 Authorization.** Consistent with Article 34 of the California Constitution, the voters authorize private sponsors with financial assistance from any public body to develop, construct or acquire up to 30,000 dwelling units of low rent housing projects within the City and County of San Francisco for the purpose of providing rental housing for persons and families of low and moderate income. This authorization shall not be affected by the early termination of Section 16.110 under subsection (l) of that Section.

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

By: _____
THOMAS J. OWEN
Deputy City Attorney