

1 [Charter Amendment and Ordinance - Additional Density and Height; Rent Control]

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3 **Describing and setting forth a proposal to the voters at an election to be held on November**
4 **8, 2022, to amend the Charter of the City and County of San Francisco to set forth a**
5 **requirement that when the City amends the Planning Code to allow for additional**
6 **residential numerical density or height, that developers agree to subject the new residential**
7 **units in the development, other than Affordable Housing Units, to rent control; to amend**
8 **the Administrative Code to establish as the residential numerical density and height limits**
9 **those controls in effect as of November 8, 2022, and to allow the Board of Supervisors to**
10 **amend the Planning Code to exceed those limits if the ordinance requires a regulatory**
11 **agreement to subject all dwelling units in development projects, other than Affordable**
12 **Housing Units, to rent control; to require rent control in future development agreements;**
13 **and making findings of compliance with the General Plan and Planning Code, Section**
14 **101.1 and findings of public necessity, convenience, and welfare under Planning Code,**
15 **Section 302; and affirming the Planning Department’s determination under the California**
16 **Environmental Quality Act.**

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18 Section 1. The Planning Department has determined that the actions contemplated in this
19 proposed Charter Amendment comply with the California Environmental Quality Act (California
20 Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of
21 the Board of Supervisors in File No. 220636 and is incorporated herein by reference. The Board
22 of Supervisors affirms this determination.

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24 Section 2. The Board of Supervisors hereby submits to the qualified voters of the City
25 and County, at an election to be held on November 8, 2022, a proposal to amend the Charter of
the City and County, the Administrative Code, and the Planning Code, as follows:

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NOTE: **Unchanged Charter and Code text and uncodified text** are in plain font.
Additions to Charter and Code text are *single-underline italics Times New Roman font*.
Deletions to Charter and Code text are ~~*strike-through italics Times New Roman font*~~.
Asterisks (* * * *) indicate the omission of unchanged Charter subsections.

Section 1. TITLE. This measure shall be known and may be cited as the “Rent Control Housing Initiative of 2022” (the “Initiative”).

Section 2. BACKGROUND, PURPOSE, AND FINDINGS. The People of the City and County of San Francisco hereby find as follows:

(a) Since 1969, California has required that all local governments adequately plan to meet the housing needs of everyone in the community. California’s local governments meet this requirement by adopting housing elements as part of their “general plans,” as required by the state. A general plan serves as a local government’s "blueprint" for how it will grow and develop. In addition, California’s housing-element law acknowledges that the private market cannot adequately address the statewide housing needs unless local governments adopt plans and regulatory systems that provide opportunities for, and do not unduly constrain, housing development. In short, housing policy in California rests largely on the effective implementation of local general plans and, in particular, local housing elements.

(b) On December 16, 2021, the Association of Bay Area Governments adopted the final Regional Housing Needs Allocation (RHNA) Plan for the San Francisco Bay Area: 2023-2031 (“RHNA Plan”). The RHNA Plan states the number of additional housing units needed in each jurisdiction in order to meet the region’s housing demands. The RHNA Plan allocates

1 82,069 new residential units to the City and County of San Francisco (“City”), broken down into
2 tiers of affordability to meet the needs of very low-, low-, and moderate-income San Franciscans.
3 Affordability strata are separated by eligible incomes relative to the Area Median Income
4 (“AMI”) as determined by the U.S. Department of Housing and Urban Development, with very
5 low-income housing corresponding to households making less than 50% of AMI, and moderate-
6 income households making up to 120% of AMI.

7 (c) In furtherance of the imperative to meet San Francisco’s RHNA, the City must
8 update its Housing Element, which is its plan for the next eight years of housing development,
9 and the first such plan in the City that will center on racial and social equity. In the face of
10 widening inequality, and the historic and ongoing displacement of low-income communities and
11 communities of color, San Francisco faces an extraordinary imperative over the next decade to
12 permit more housing, facilitate its construction, and prevent further displacement. The 2022
13 updated Housing Element will analyze housing needs in San Francisco, propose policies that
14 address those needs based on the collective vision and values of local communities, and identify
15 programs that will help implement those policies and a guiding framework for future legislation.

16 (d) While San Francisco’s 2022 updated Housing Element will not modify land use,
17 height, or density controls in San Francisco, its framework for future legislation is anticipated to
18 include significant changes to zoning controls across broad swaths of San Francisco to allow for
19 increased height and density, particularly in well-resourced neighborhoods, which are
20 predominately concentrated in the western half of San Francisco, and along transit corridors.
21 The 2022 updated Housing Element also contemplates extensive public investment in affordable
22 housing, in addition to an ongoing reliance on private development.

23 (e) The California Department of Housing and Community Development recognizes
24 that individuals and families are directly affected by each jurisdiction’s ability to plan for the
25 housing needs of those who will live, work, and play in every community. To meet these

1 challenges, the City must implement a multi-pronged strategy that includes, among other
2 approaches, the development of affordable housing and the expansion of tenant protections to
3 ensure the long-term stability of residents and communities.

4 (f) Rent control is one of the most important tools for individuals, families, and
5 vulnerable communities seeking to establish roots in a community. A recent study performed by
6 the UC Berkeley Urban Displacement Project, “Who Benefits From Tenant Protections?”,
7 identified rent control as among the most effective tools for preventing displacement of
8 residential tenants and for stabilizing neighborhoods and communities. The study also found that
9 combining rent control with just cause eviction protections reduces the rate of displacement for
10 residential tenants, particularly those of lower socio-economic status. This has been particularly
11 true in San Francisco. The City adopted its Rent Ordinance (Chapter 37 of the Administrative
12 Code) in 1979, and the Rent Ordinance has been critical in safeguarding tenants from excessive
13 rent increases and evictions without just cause.

14 (g) The Rent Ordinance exempts units lawfully constructed after June 30, 1979 from
15 rent control, and in 1995, the Legislature enacted the Costa-Hawkins Rental Housing Act
16 (“Costa-Hawkins”), which prohibited the City from changing this rule. But Costa-Hawkins
17 allows a local government to impose rent control on a unit if the owner has agreed to rent control
18 in exchange for direct financial assistance or density exceptions and other zoning modifications.
19 The City has entered into many agreements to subject newly constructed units to rent control.
20 For example, in 2011, the City entered into a Development Agreement with the owners of the
21 152-acre site known as Parkmerced, to subject all of its 3,221 housing units, in a combination of
22 high-rise towers and two-story townhouses, to rent control in exchange for density increases and
23 other zoning modifications. In addition, in 2016, the City enacted Ordinance No. 162-16,
24 authorizing an exception to density limits and certain zoning requirements for the construction of
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1 accessory dwelling units, if the owner of the unit agrees to subject the accessory dwelling unit to
2 rent control.

3 (h) San Francisco’s innovative approach to expanding the application of rent control
4 to new construction is informed by empirical studies demonstrating its clear benefits. A 2018
5 working paper from the National Bureau of Economic Research titled “The Effects of Rent
6 Control Expansion on Tenants, Landlords, and Inequality: Evidence from San Francisco,” found
7 that rent control helps tenants by providing security and enabling them to remain in their
8 apartments longer, compared to those not protected by rent control. Thus, rent control serves as
9 an important policy tool to stabilize communities and prevent displacement.

10 (i) As of 2022, the majority of San Francisco’s rental housing stock is subject to rent
11 control. The City’s Draft 2022 Update to the Housing Element finds that rent control has been
12 critical to protecting low- and moderate-income residents, including many persons of color, from
13 being at risk of eviction or displacement. But despite these benefits, the 2022 Housing Balance
14 Report No. 14, published by the Planning Department, identifies the absence of policies to
15 protect against the removal of residential units from “protected status,” including units subject to
16 the Rent Ordinance. Since 2011, approximately 4,200 units have been removed from protected
17 status, with a relatively even distribution of loss across all eleven Supervisorial Districts.

18 (j) While ample evidence demonstrates the short- and long-term benefits of rent
19 control to tenants and communities facing eviction and displacement, empirical evidence
20 suggests that rent control has not been a constraint on new construction. A 2007 report in the
21 Journal of Urban Economics, “Out of Control: What can we learn from the end of Massachusetts
22 rent control?”, found that rent control had “little effect on the construction of new housing.”
23 Under a “moderate” rent control system like San Francisco’s, where landlords generally can reset
24 the rent to market at the start of new tenancies, developers and housing providers are able to
25 secure financing for their projects using initial market rents to approximate a reasonable return

1 on investment. In a 2009 study of New York’s rent control system titled “Rent Regulation:
2 Myths & Facts,” by Timothy Collins, the former Executive Director and Counsel to the New
3 York City Rent Guidelines Board, Mr. Collins found that “New York’s moderate rent regulations
4 have had few, if any, of the negative side effects so confidently predicted by industry advocates.
5 More important, rent regulations have been the single greatest source of affordable housing for
6 middle- and low-income households.” In “Residential Rent Controls,” a 1988 study for the
7 Urban Land Institute, Anthony Downs, economist and Senior Fellow of the Brookings Institute,
8 found the hypothesis that temperate rent control inhibits new construction “unproven,” and
9 determined that repeated studies of temperate rent controls in the United States fail to provide
10 “any persuasive evidence that temperate rent control ordinance inhibit[s] the construction of new
11 housing.”

12 (k) As the City grows and more residential units are created, it is in the public interest
13 to couple this growth with other policies intended to ensure that new construction does not lead
14 to further loss of rent controlled units and tenant displacement. Allowing an increase in density
15 and height controls to accommodate new housing growth while requiring rent control on new
16 construction would achieve the dual policy goals of adding much-needed housing supply in
17 furtherance of state-mandated goals, while preventing displacement from new construction. This
18 would help ensure that resulting housing would foster the long-term community bonds critical to
19 neighborhood stability and sustainability.

20 (l) While it is in the public interest to couple height and/or density increases with rent
21 control, in some instances, it may also be in the public interest to provide a grace period,
22 sometimes referred to as a stabilization period, prior to the application of rent control to such
23 developments. A grace period could provide additional information to real estate investors,
24 including public pension funds, regarding rates of voluntary tenant turnover and expected rates
25 of return on investments in the rental housing market. Further, it is reasonable for the Board of

1 Supervisors to subsequently consider setting the length and time of any such grace period, within
2 limits, at the time it adopts an ordinance allowing for additional density or height. This would
3 provide decision-makers an opportunity to weigh, in a public process, the benefits and detriments
4 to market investors, on the one hand, and home renters, on the other, of the application of rent
5 control, and to balance those interests in a manner that minimizes incentives to displace tenants
6 and helps stabilize communities.

7 (m) Therefore, it is the policy of the City and County of San Francisco that the
8 maximum building height limits and maximum numerical density limits as they exist on
9 November 8, 2022, shall establish height and numerical density limits, and that these limits may
10 be increased by the Board of Supervisors by ordinance pursuant to their existing legislative
11 authority, in a manner which subjects resulting residential units to rent control.

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13 Section 3. CHARTER AMENDMENT. The Charter of the City and County of San
14 Francisco shall be amended by adding Section 16.132, to read as follows:

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16 **SEC. 16.132. ADDITIONAL RESIDENTIAL DENSITY AND RENT CONTROL.**

17 Numerical density limits and height limits established in the Planning Code as of
18 November 8, 2022 shall not be increased, except as set forth in this Section 16.132. The Board
19 of Supervisors may, by ordinance, adopt a program allowing for greater numerical density,
20 increased height, or both, if such program requires adoption of a regulatory agreement
21 subjecting any new dwelling units, except for any Affordable Units as defined in Planning Code
22 Section 401, as may be amended from time to time, to rent control, pursuant to California Civil
23 Code Section 1954.52(b), as may be amended from time to time. The ordinance may allow for a
24 reasonable grace period, not to exceed 15 years, before subjecting the new dwelling units to rent
25 control. For purposes of this Section 16.132, “numerical density limits” shall mean the

1 maximum number of dwelling units permitted per lot or lot area in zoning districts or areas that
2 establish a maximum dwelling unit density.

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4 Section 4. ADMINISTRATIVE CODE AMENDMENTS. The Administrative Code is
5 hereby revised by adding Chapter 110, consisting of Sections 110.1, 110.2, and 110.3, and by
6 amending Section 56.14 in Chapter 56, to read as follows:

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8 **CHAPTER 110: RESIDENTIAL DENSITY AND RENT CONTROL**

9
10 **SEC 110.1. DEFINITIONS.**

11 For purposes of this Chapter 110, the terms below shall have the following meanings:

12 **Density Increase.** Any action by ordinance that results in an increase of the Numerical
13 Density Limits and/or Height Limits, including the approval of a Development Agreement
14 pursuant to Chapter 56 of the Administrative Code. Density Increase shall not include density
15 allowed pursuant to any existing program authorized by the Planning Code in effect on
16 November 8, 2022, including but not limited to Section 206.

17 **Dwelling Unit.** As defined in Planning Code Section 102.

18 **Height Limit.** The maximum allowable height of a structure, as set forth in the Height
19 Map of the San Francisco Zoning Map, and/or in the Planning Code. If no Height Limit is
20 specified therein, the Height Limit shall be that of the geographically closest zoning district that
21 allows Residential Uses.

22 **Numerical Density Limit.** The maximum number of Dwelling Units permitted per lot or
23 lot area in zoning districts or areas that establish a maximum Dwelling Unit density, as set forth
24 in Section 207 and the density tables of the Planning Code.

1 **Regulatory Agreement.** An agreement between a property owner and the City, as set
2 forth in Section 110.3, and consistent with California Civil Code Section 1954.52(b), as amended
3 from time to time.

4 **Residential Building.** As defined in Planning Code Section 102.

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6 **SEC. 110.2. NUMERICAL DENSITY AND HEIGHT LIMITS.**

7 Except as otherwise required by state law (including but not limited to the Density Bonus
8 Law (Government Code Sections 65915-65918); the Housing Crisis Act of 2019 (Government
9 Code Section 66300); the Accessory Dwelling Unit law (Government Code 65852.2); and the
10 Housing Element law (Government Code Sections 65580 - 65589.11), as these laws may be
11 amended from time to time), the City's Height Limit and Numerical Density Limit shall be as set
12 forth in the Planning Code in effect as of November 8, 2022.

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14 **SEC. 110.3. BOARD OF SUPERVISORS AUTHORITY; RENT CONTROL.**

15 (a) Notwithstanding Section 110.2, the Board of Supervisors may, by ordinance,
16 approve a Density Increase if such ordinance contains a requirement that any property owner
17 choosing to build one or more Residential Buildings pursuant to the Density Increase enter into
18 a Regulatory Agreement subjecting all new Dwelling Units in the resulting Residential
19 Building(s), except for any Affordable Units as defined in Planning Code Section 401, as may be
20 amended from time to time, to the San Francisco Residential Rent Stabilization and Arbitration
21 Ordinance (Chapter 37 of the Administrative Code). Any such ordinance may allow for a
22 reasonable grace period, not to exceed 15 years, before rent control would apply, and shall
23 require that the Regulatory Agreement contain the following:

24 (1) A statement that the units are not subject to the Costa Hawkins Rental
25 Housing Act (California Civil Code Sections 1954.50 et seq.) because, under Section 1954.52(b),

1 the owner has entered into the agreement with the City in consideration for a Density Increase,
2 or other direct financial contribution or other form of assistance specified in California
3 Government Code Sections 65915 et seq. If the ordinance includes a grace period before rent
4 control applies, the statement shall indicate the duration of said grace period.

5 (2) A description of the Density Increase provided to the property owner; and

6 (3) A description of the remedies for breach of the Regulatory Agreement and
7 other provisions to ensure implementation and compliance with the Regulatory Agreement.

8 (b) Any ordinance adopted under subsection (a) shall require the property owner and
9 the Planning Director (or the Director's designee), on behalf of the City, to execute the
10 Regulatory Agreement, which shall be reviewed and approved as to form by the City Attorney's
11 Office. The ordinance shall require that the Regulatory Agreement be executed prior to the
12 City's issuance of the First Construction Document for the project, as that term is defined in
13 Section 107A.13.1 of the San Francisco Building Code, and that following execution of the
14 Regulatory Agreement by all parties and approval by the City Attorney, the Regulatory
15 Agreement or a memorandum thereof shall be recorded by the Office of the Assessor-Recorder
16 against the property and shall be binding on all future owners and successors in interest.

17 (c) The Board of Supervisors may amend this Section 110.3 to modify the
18 requirements or approval process for Regulatory Agreements by ordinance, if the amendments
19 are consistent with the Rent Control Housing Initiative of 2022, adopted by the voters at the
20 November 8, 2022 election.

21 (d) Within 100 days of the effective date of any ordinance adopted pursuant to this
22 Section 110.3, the Planning Department, in consultation with the San Francisco Rent Board,
23 shall adopt rules and regulations to ensure that any Regulatory Agreements are executed within
24 the existing framework for permitting projects, and reduce any unnecessary delays in the
25 permitting process.

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2 **CHAPTER 56: DEVELOPMENT AGREEMENTS**

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4 **SEC. 56.14. DECISION BY BOARD OF SUPERVISORS.**

5 (a) **Action by Board of Supervisors.** The Board of Supervisors shall hold a public
6 hearing on the proposed development agreement approved by the Commission. After the Board
7 of Supervisors completes its public hearing, it may approve or disapprove the proposed
8 development agreement recommended by the Commission. If the Commission disapproves the
9 proposed development agreement, that decision shall be final unless the applicant/developer
10 appeals the Commission's determination to the Board of Supervisors. The applicant/developer
11 may appeal by filing a letter with the Clerk of the Board of Supervisors within 10 days following
12 the ~~Commission's~~ Commission's disapproval of the proposed development agreement. The
13 procedures for the Board's hearing and decision shall be the same as those set forth in ~~City~~
14 Planning Code Sections 308.1(c) and 308.1(d) with respect to an appeal of a Commission
15 disapproval of a ~~City~~ Planning Code amendment initiated by application of one or more
16 interested property owners.

17 (b) **Material Modification of the Commission's Recommended Development**
18 **Agreement.** The Board of Supervisors may adopt a motion proposing a material modification to
19 a development agreement recommended by the Commission, as defined in Section 56.3 herein.
20 In such event, the material modification must be referred back to the Commission for report and
21 recommendation pursuant to the provisions of ~~Subdivision~~ subsection (c) below. However, if the
22 Commission previously considered and specifically rejected the proposed material modification,
23 then such modification need not be referred back to the Commission. The Board of Supervisors
24 may adopt any minor modification to the proposed development agreement recommended by the
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1 Commission which it determines appropriate without referring the proposal back to the
2 Commission.

3 (c) **Consideration of Material Modification By the Commission.** The Commission
4 shall hold a public hearing and render a decision on any proposed material modification
5 forwarded to the Commission by motion of the Board within 90 days from the date of referral of
6 the proposed modification by the Board *of Supervisors* to the Commission; provided, however, if
7 the Commission has not acted upon and returned the proposed material modification within such
8 90-day period, the proposal shall be deemed disapproved by the Commission unless the Board,
9 by resolution, extends the prescribed time within which the Commission is to render its decision.

10 (d) **Effect of Commission Action on Proposed Material Modification.** The Board of
11 Supervisors shall hold a public hearing to consider the Commission's action on the proposed
12 material modification. If the Commission approves the Board's proposed material modification,
13 the Board may adopt the modification to the agreement by majority vote. If the Commission
14 disapproves the Board's proposed material modification, or has previously specifically rejected
15 the proposed material modification, then the Board may adopt the material modification to the
16 development agreement by a majority vote, unless said modification would reclassify property or
17 would establish, abolish, or modify a setback line, in which case the modification may be
18 adopted by the Board only by a vote of not less than of all of the members of said Board.

19 (e) **Consistency With General and Specific Plans.** The Board of Supervisors may not
20 approve the development agreement unless it receives the Commission's determination that the
21 agreement is consistent with the Master Plan, any applicable area or specific plan, and the
22 Priority Policies enumerated in ~~City~~ Planning Code Section 101.1.

23 (f) **Compliance with the Residential Density Limits and Rent Control Initiative.** The
24 Board of Supervisors may not approve the proposed development agreement if it would result in
25 one or more Residential Buildings developed pursuant to a Density Increase, as those terms are

1 defined in Chapter 110 of the Administrative Code, unless the development agreement subjects
2 all new Dwelling Units in the resulting Residential Building(s), except for any Affordable Units
3 as defined in Planning Code Section 401, as may be amended from time to time, to rent control
4 pursuant to Civil Code Section 1954.52(b), as may be amended from time to time.

5 (fg) **Approval of Development Agreement.** If the Board of Supervisors approves the
6 development agreement, it shall do so by the adoption of an ordinance. The Board of
7 Supervisors may not vote on the development agreement ordinance on second reading unless the
8 final version of the development agreement ordinance is available for public review at least two
9 working days prior to the second reading. The development agreement shall take effect upon its
10 execution by all parties following the effective date of the ordinance.

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12 Section 5. PLANNING CODE AMENDMENTS. The Planning Code is hereby
13 amended by revising Section 207, to read as follows:

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15 **SEC. 207. DWELLING UNIT DENSITY LIMITS.**

16 (a) **Applicability.** The density of Dwelling Units permitted in the various Districts shall
17 be as set forth in the Zoning Control Table for the district in which the lot is located. The term
18 “Dwelling Unit” is defined in Section 102 of this Code. There are two types of density districts:

19 (1) Form-Based Density Districts: ~~It~~ These are districts where no density limit
20 is specified, and where density ~~shall~~ is not ~~be~~ limited by lot area but rather by the applicable
21 requirements and limitations set forth elsewhere in this Code. Such requirements and limitations
22 include, but are not limited to, height, bulk, setbacks, open space, exposure and unit mix as well
23 as applicable design guidelines, elements, and area plans of the General Plan and design review
24 by the Planning Department.

1 **(2) Numerical Density Limit Districts:** *These are districts that establish a*
2 *maximum Dwelling Unit per lot or lot area.*

3 **(b) Rules for Calculating Dwelling Unit Density in Numerical Density Limit Districts.**
4 In ~~*districts that establish a maximum dwelling unit density*~~ *Numerical Density Limit Districts*, the
5 following rules shall apply in the calculation of dwelling unit density under this Code:

6 (1) A remaining fraction of one-half or more of the minimum of lot area per
7 Dwelling Unit shall be adjusted upward to the next higher whole number of Dwelling Units.

8 (2) Where permitted by this Code, two or more of the dwelling and other housing
9 uses specified in the Code may be located on a single lot, either in one structure or in separate
10 structures, provided that the specified density limits are not exceeded by the total of such
11 combined uses. Where Dwelling Units and Group Housing are combined, the maximum
12 permitted density for Dwelling Units and for Group Housing shall be prorated to the total lot area
13 according to the quantities of these two uses that are combined on the lot.

14 (3) Where any portion of a lot is narrower than five feet, such a portion shall not
15 be counted as part of the lot area for purposes of calculating the permitted dwelling density.

16 (4) No private right-of-way used as the principal vehicular access to two or more
17 lots shall be counted as part of the lot area of any such lot for purposes of calculating the
18 permitted dwelling unit density.

19 (5) Where a lot is divided by a use district boundary line, the dwelling unit
20 density limit for each district shall be applied to the portion of the lot in that district, and none of
21 the Dwelling Units attributable to the district permitting the greater density shall be located in the
22 district permitting the lesser density.

23 (6) In Neighborhood Commercial Districts, the dwelling unit density shall be at a
24 density ratio not exceeding the number of Dwelling Units permitted in the nearest R District,
25 provided that the maximum density ratio shall in no case be less than the amount set forth in the

1 Zoning Control Table for the district in which the lot is located. The distance to each R District
2 shall be measured either from the midpoint of the front lot line or from a point directly across the
3 street therefrom, whichever permits the greater density.

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6 SECTION 6. ADDITIONAL FINDINGS. The People of the City and County of San
7 Francisco specifically find that, for the reasons set forth in Section 2, this ordinance is consistent
8 with the General Plan and the Priority Policies set forth in Planning Code Section 101.1, and the
9 actions in this ordinance will serve the public necessity, convenience, and welfare pursuant to
10 Planning Code Section 302.

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12 SECTION 7. AMENDMENT. The provisions of this Initiative amending the Charter
13 and the Municipal Code may only be amended by the voters of the City and County of San
14 Francisco except as specifically provided in the terms of the Initiative.

15
16 SECTION 8. CONFLICTS WITH OTHER MEASURES. Any measure on the
17 November 8, 2022 ballot that eliminates the City’s ability to enter into regulatory agreements
18 with property owners pursuant to California Civil Code Section 1954.52(b) is deemed to be in
19 conflict with this Initiative, and this Initiative shall prevail in its entirety if it receives more votes
20 than the other measure.

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