

LEGISLATIVE DIGEST

(Revised 7/11/2022)

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

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

Existing Law

The Planning Code establishes zoning controls in the City, including but not limited to height, bulk, density, and permitted uses. The Board of Supervisors has the authority to amend the Planning Code by ordinance, following a process set forth in Section 302 of the code.

Currently, residential density in the City is regulated by two types of controls – numerical and “form-based.” Numerical controls are those that establish a maximum dwelling unit per lot or lot area – for example, three dwelling units per lot in the Residential, House, Three Family, or “RH-3” districts. Districts with “form-based” controls have no density limit; density is only limited by other applicable requirements and limitations of the Planning Code, such as height, bulk, setbacks, open space, and exposure, among others, and the Building Code. Height controls can also regulate residential density, both in form-based and in numerical density districts, as taller buildings can include a greater number of dwelling units.

State law generally prohibits rent control in new construction under the Costa-Hawkins Rental Housing Act (“Costa-Hawkins”) (Cal. Civil Code §1954.50 et seq.). However, Costa-Hawkins contains an exception where an owner agrees by contract to subject units to rent control in consideration for a “direct financial contribution or other forms of assistance [under the state Density Bonus Law].” (Cal. Civil Code §1954.52(b) [“the public assistance exception”].)

Amendments to Current Law

The measure would amend the Charter to establish as City policy that when the City amends the Planning Code to allow for additional residential numerical density or height above that which is allowed as of November 8, 2022, developers relying on that additional density or height must agree to subject the new residential units in the development to rent control. The measure would amend the Administrative Code to implement the policy, and the Planning Code to make conforming amendments to current density definitions.

The measure would amend the Administrative Code by creating a new Chapter 110, which would establish that:

- The City's height limits and numerical density limit (as defined) shall be as set forth in the Planning Code in effect as of November 8, 2022; and
- The Board of Supervisors may approve numerical density or height increases by ordinance, if such ordinance also requires that any property owner choosing to build one or more residential buildings pursuant to the increased density or heights enter into a regulatory agreement subjecting the new units to rent control, pursuant to the public assistance exception to Costa-Hawkins. The rent control provisions could apply no more than twenty years from first certificate of occupancy.

The measure would exempt actions necessary to comply with state law, including the state Density Bonus law and the Housing Element law. Affordable Housing Units would not be subject to rent control.

The measure amends Chapter 56 of the Administrative Code, regarding development agreements, to require that all future development agreements require rent control on new dwelling units. The measure requires the Planning Department, in consultation with the Rent Board, to adopt rules and regulations to ensure that required regulatory agreements are executed within existing permitting processes and do not result in delays. Finally, the measure includes a "conflicting measure" provision, stating that any other measure on the November 8, 2022 ballot that eliminates the City's ability to enter into regulatory agreements under California Civil Code Section 1954.52(b) would be in conflict.

Background Information

The Second Draft amends the originally introduced measure to clarify the definition of Height Increase, clarify that affordable units would not be subject to rent control, clarify that a future ordinance would impose the provisions of the City's Rent Control and Arbitration Ordinance in Administrative Code Chapter 37, and allows a "grace period" by requiring that rent control be imposed after no more than 15 years after certificate of occupancy.

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