

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

2

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 as City**

5 **policy a 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 to rent control; to amend the Administrative Code to establish as**

8 **the residential numerical density and height limits those controls in effect as of November**

9 **8, 2022, and to allow the Board of Supervisors to amend the Planning Code to exceed those**

10 **limits if the ordinance requires a regulatory agreement to subject all dwelling units in**

11 **development projects to the additional density or height to rent control; to require rent**

12 **control in future development agreements; and making findings of compliance with the**

13 **General Plan and Planning Code, Section 101.1 and findings of public necessity,**

14 **convenience, and welfare under Planning Code, Section 302; and affirming the Planning**

15 **Department’s determination under the California Environmental Quality Act.**

16

17 Section 1. The Planning Department has determined that the actions contemplated in this

18 proposed Charter Amendment comply with the California Environmental Quality Act (California

19 Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of

20 the Board of Supervisors in File No. ___ and is incorporated herein by reference. The Board of

21 Supervisors affirms this determination.

22

23 Section 2. The Board of Supervisors hereby submits to the qualified voters of the City

24 and County, at an election to be held on November 8, 2022, a proposal to amend the Charter of

25 the City and County, the Administrative Code, and the Planning Code, as follows:

1 NOTE: **Unchanged Charter and Code text and uncodified text** are in plain
2 font.
3 **Additions to Charter and Code text** are *single-underline italics Times*
4 *New Roman font*.
5 **Deletions to Charter and Code text** are *strike-through italics Times New*
6 *Roman font*.
7 **Asterisks (* * * *)** indicate the omission of unchanged Charter
8 subsections.

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

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

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

22 (b) On December 16, 2021, the Association of Bay Area Governments adopted the
23 final Regional Housing Needs Allocation (RHNA) Plan for the San Francisco Bay Area: 2023-
24 2031 (“RHNA Plan”). The RHNA Plan states the number of additional housing units needed in
25 each jurisdiction in order to meet the region’s housing demands. The RHNA Plan allocates
82,069 new residential units to the City and County of San Francisco (“City”), broken down into

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

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

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

22 (e) The California Department of Housing and Community Development recognizes
23 that individuals and families are directly affected by each jurisdiction’s ability to plan for the
24 housing needs of those who will live, work, and play in every community. To meet these
25 challenges, the City must implement a multi-pronged strategy that includes, among other

1 approaches, the development of affordable housing and the expansion of tenant protections to
2 ensure the long-term stability of residents and communities.

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

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

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

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

16 (j) While ample evidence demonstrates the short- and long-term benefits of rent
17 control to tenants and communities facing eviction and displacement, empirical evidence
18 suggests that rent control has not been a constraint on new construction. A 2007 report in the
19 Journal of Urban Economics, “Out of Control: What can we learn from the end of Massachusetts
20 rent control?”, found that rent control had “little effect on the construction of new housing.” A
21 more recent 2018 study by the Rosen Consulting Group, “The Effect of Rent Control on New
22 Housing Supply: A Bay Area Case Study,” found there was no statistically significant difference
23 in the rate of housing production between jurisdictions with rent control statutes or ordinances
24 and those without. Under a “moderate” rent control system like San Francisco’s, where
25 landlords generally can reset the rent to market at the start of new tenancies, developers and

1 housing providers are able to secure financing for their projects using initial market rents to
2 approximate a reasonable return on investment.

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

11 (l) Therefore, it is the policy of the City and County of San Francisco that the maximum
12 building height limits and maximum numerical density limits as they exist on November, 8,
13 2022, shall establish height and numerical density limits, and that these limits may be increased
14 by the Board of Supervisors by ordinance pursuant to their existing legislative authority, in a
15 manner which subjects resulting residential units to rent control.

16
17 Section 3. CHARTER AMENDMENT. The Charter of the City and County of San
18 Francisco shall be amended by adding Section 16.132, to read as follows:

19
20 **SEC. 16.132. ADDITIONAL RESIDENTIAL DENSITY AND RENT CONTROL.**

21 It is the declared purpose and intention of the people of the City and County that
22 numerical density limits and height limits established in the Planning Code as of November 8,
23 2022 shall be not be increased, except as set forth in this Section 16.132. The Board of
24 Supervisors may, by ordinance, adopt a program allowing for greater numerical density,
25 increased height, or both, if such program requires adoption of a regulatory agreement

1 subjecting any new dwelling units to rent control, pursuant to California Civil Code Section
2 1954.52(b), as it may be amended from time to time. For purposes of this Section 16.132,
3 “numerical density limits” shall mean the maximum number of dwelling units permitted per lot
4 or lot area in zoning districts or areas that establish a maximum dwelling unit density.

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

9
10 **CHAPTER 110: RESIDENTIAL DENSITY AND RENT CONTROL**

11
12 **SEC 110.1. DEFINITIONS.**

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

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

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

20 **Height Limit.** As set forth in the Height Map of the San Francisco Zoning Map.

21 **Numerical Density Limit.** The maximum number of Dwelling Units permitted per lot or
22 lot area in zoning districts or areas that establish a maximum Dwelling Unit density, as set forth
23 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.

5
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.

13
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) to rent control pursuant to California Civil Code Section 1954.52(b), as amended
20 from time to time. Any such ordinance shall require that the Regulatory Agreement contain the
21 following:

22 (1) A description of the Density Increase provided to the property owner; and

23 (2) A description of the remedies for breach of the Regulatory Agreement and
24 other provisions to ensure implementation and compliance with the Regulatory Agreement.

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

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

CHAPTER 56: DEVELOPMENT AGREEMENTS

* * * *

SEC. 56.14. DECISION BY BOARD OF SUPERVISORS.

18 (a) **Action by Board of Supervisors.** The Board of Supervisors shall hold a public
19 hearing on the proposed development agreement approved by the Commission. After the Board
20 of Supervisors completes its public hearing, it may approve or disapprove the proposed
21 development agreement recommended by the Commission. If the Commission disapproves the
22 proposed development agreement, that decision shall be final unless the applicant/developer
23 appeals the Commission's determination to the Board of Supervisors. The applicant/developer
24 may appeal by filing a letter with the Clerk of the Board of Supervisors within 10 days following
25 the ~~Com-mission's~~ Commission's disapproval of the proposed development agreement. The

1 procedures for the Board's hearing and decision shall be the same as those set forth in ~~City~~
2 Planning Code Sections 308.1(c) and 308.1(d) with respect to an appeal of a Commission
3 disapproval of a ~~City~~ Planning Code amendment initiated by application of one or more
4 interested property owners.

5 **(b) Material Modification of the Commission's Recommended Development**

6 **Agreement.** The Board of Supervisors may adopt a motion proposing a material modification to
7 a development agreement recommended by the Commission, as defined in Section 56.3 herein.
8 In such event, the material modification must be referred back to the Commission for report and
9 recommendation pursuant to the provisions of ~~Subdivision~~ subsection (c) below. However, if the
10 Commission previously considered and specifically rejected the proposed material modification,
11 then such modification need not be referred back to the Commission. The Board of Supervisors
12 may adopt any minor modification to the proposed development agreement recommended by the
13 Commission which it determines appropriate without referring the proposal back to the
14 Commission.

15 **(c) Consideration of Material Modification By the Commission.** The Commission

16 shall hold a public hearing and render a decision on any proposed material modification
17 forwarded to the Commission by motion of the Board within 90 days from the date of referral of
18 the proposed modification by the Board of Supervisors to the Commission; provided, however, if
19 the Commission has not acted upon and returned the proposed material modification within such
20 90-day period, the proposal shall be deemed disapproved by the Commission unless the Board,
21 by resolution, extends the prescribed time within which the Commission is to render its decision.

22 **(d) Effect of Commission Action on Proposed Material Modification.** The Board of

23 Supervisors shall hold a public hearing to consider the Commission's action on the proposed
24 material modification. If the Commission approves the Board's proposed material modification,
25 the Board may adopt the modification to the agreement by majority vote. If the Commission

1 disapproves the Board's proposed material modification, or has previously specifically rejected
2 the proposed material modification, then the Board may adopt the material modification to the
3 development agreement by a majority vote, unless said modification would reclassify property or
4 would establish, abolish, or modify a setback line, in which case the modification may be
5 adopted by the Board only by a vote of not less than of all of the members of said Board.

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

10 (f) **Compliance with the Residential Density Limits and Rent Control Initiative.** The
11 Board of Supervisors may not approve the proposed development agreement if it would result in
12 one or more Residential Buildings developed pursuant to a Density Increase, as those terms are
13 defined in Chapter 110 of the Administrative Code, unless the development agreement subjects
14 all new Dwelling Units in the resulting Residential Building(s) to rent control pursuant to Civil
15 Code Section 1954.52(b), as amended from time to time.

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

22
23 Section 5. PLANNING CODE AMENDMENTS. The Planning Code is hereby
24 amended by revising Section 207, to read as follows:
25

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

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

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

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

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

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

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

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

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

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

8 (6) In Neighborhood Commercial Districts, the dwelling unit density shall be at a
9 density ratio not exceeding the number of Dwelling Units permitted in the nearest R District,
10 provided that the maximum density ratio shall in no case be less than the amount set forth in the
11 Zoning Control Table for the district in which the lot is located. The distance to each R District
12 shall be measured either from the midpoint of the front lot line or from a point directly across the
13 street therefrom, whichever permits the greater density.

14 * * * *

15
16 SECTION 6. ADDITIONAL FINDINGS. The People of the City and County of San
17 Francisco specifically find that, for the reasons set forth in Section 2, this ordinance is consistent
18 with the General Plan and the Priority Policies set forth in Planning Code Section 101.1, and the
19 actions in this ordinance will serve the public necessity, convenience, and welfare pursuant to
20 Planning Code Section 302.

21 SECTION 7. AMENDMENT. The provisions of this Initiative amending the Charter
22 and the Municipal Code may only be amended by the voters of the City and County of San
23 Francisco except as specifically provided in the terms of the Initiative.
24
25

