



DATE: August 5, 2024

TO: Mayor and Members of the City Council

VIA: Stefan Chatwin, City Manager
Marlene Subhashini, Assistant City Manager

FROM: Sofia Mangalam, Community Development Director
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DEPARTMENT: Community Development

SUBJECT: AMEND TITLE 17 ZONING CHAPTERS 17.06 ADMINISTRATION, CONSTRUCTION AND ENFORCEMENT, SECTION 17.36 PD PLANNED DEVELOPMENT COMBINING DISTRICT, AND 17.78 ACCESSORY DWELLING UNITS OF THE FOSTER CITY MUNICIPAL CODE (RZ2024-0006) AND FINDING THE AMENDMENTS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO CEQA GUIDELINE SECTION 15061(B)(3)

RECOMMENDATION

It is recommended that the City Council take the following actions: (1) Introduce and pass to second reading the Ordinance (Attachment 1) amending Section 17.06.180 within Chapter 17.06, "Administration, Construction and Enforcement," and Section 17.36.110 within Chapter 17.36, "PD Planned Development Combining District," of Title 17, "Zoning" of the Foster City Municipal Code to allow extensions to planning entitlements, and finding the amendments exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline Section 15061(b)(3); and (2) Introduce and pass to second reading the Ordinance (Attachment 2) amending various sections within Chapter 17.78 "Accessory Dwelling Units," of Title 17 of the Foster City Municipal Code to ensure compliance with changes in state law related to Accessory Dwelling Units and finding the amendments exempt from the California Environmental Quality Act (CEQA) Guidelines Section 15601(b)(3); and (3) Approve Resolution (Attachment 3) adopting pre-approval design program for Accessory Dwelling Units and finding the approval of the program

exempt from the California Environmental Quality Act (CEQA) Guidelines Section 15601(b)(3).

EXECUTIVE SUMMARY

The City's land use and zoning regulations are contained in Title 17 (Zoning) of the Foster City Municipal Code (FCMC). FCMC carries out the policies of the General Plan by providing standards and guidelines for the orderly development of the City. On occasion, refinements to the Code are necessary to reflect changes in state law and address the needs of project applicants during periods of economic hardship and other development related difficulties.

Chapter 17.06, Administration, Construction and Enforcement, includes provisions related to various planning entitlements, including use permits, variance, and architectural reviews. This chapter covers regulations concerning applications, the hearing process, appeals, violations, expiration, and revocation. Section 17.06.180, "Expiration," stipulates that planning entitlements must expire within two years from the date of approval if not utilized. Additionally, Section 17.06.180 prohibits extensions for entitlements unless they are issued in conjunction with a tentative subdivision map for a planned unit development.

Similarly, Chapter 17.36, PD Planned Development Combining District, Section 17.36.110, "Development schedule and extensions," also stipulates that a Use Permit in a PD district must expire within two years from the date of approval but includes a provision allowing extensions if granted by the Planning Commission, with a cumulative total extension period not exceeding two years.

Recently, staff have received extension requests from several applicants whose planning entitlements, such as use permits, were nearing expiration. Applicants have been unable to start their projects due to economic challenges such as securing long-term business loans, extremely high construction costs, high interest rates, and other changing market conditions. However, according to the City's current code, extensions to these entitlements beyond a two-year period are not legally permitted unless they are issued in conjunction with a tentative subdivision map or a use permit in a PD district and granted by the Planning Commission. Consequently, applicants seeking to extend their entitlements often apply for a building permit to maintain an 'active permit' and gain additional time to start their projects.

Therefore, amending the code to include a section allowing extensions for various planning entitlements would provide developers with the additional time needed to address these economic challenges and move forward with their projects. Additionally, the proposed code amendments allowing for extensions would offer a more efficient and less costly alternative than requiring applicants to reapply for a new Use Permit, General Development Plan Amendment, and other planning entitlements which would incur additional fees and extended timelines.

The impetus for staff's recommendation to amend Chapter 17.78, "Accessory Dwelling Units," is due to recent changes in State Law related to Accessory Dwelling Units (ADUs). Recently, four (4) new state laws were passed pertaining to ADUs. These changes include [Assembly Bill \(AB\) 976](#), which authorizes local agencies to require rental terms of 30 days or longer and prohibits local agencies from imposing owner occupancy requirements on ADUs, excluding Junior Accessory Dwelling Units (JADUs). [AB 1033](#) authorizes a local agency to adopt an ordinance allowing the separate conveyance (sale) of the primary dwelling unit and ADUs as condominiums. [AB 1332](#) requires local agencies to develop a program for pre-reviewed plans by January 1, 2025. Additionally, [Senate Bill \(SB\) 447](#) moved previous Government Code sections related to ADUs to new sections to make the regulations easier to read and navigate.

Staff is recommending that the City Council adopt ordinances amending FCMC Chapters 17.06.180 and 17.36.110 to allow extensions to planning entitlements and various sections within Chapter 17.78 to comply with state law changes related to ADUs and approve a resolution adopting pre-approval design program for ADUs.

BACKGROUND

On April 10, 2024, staff reviewed the provisions of Section 17.06.180 Expiration, with the Land Use Subcommittee. Staff noted that the municipal code does not have any provisions for extension beyond two years unless accompanied by a subdivision map. In recent times, staff have received requests for extensions from several applicants who received entitlements for a Use Permit, and/or for building permit applications, which were set to expire. ([see link for April 10, Land Use subcommittee meeting](#), and [Meeting Minutes](#)).

The subcommittee highlighted three (3) potential outcomes upon granting of an extension, including:

- The existing building may still sit there, and the city may receive complaints of the blight.
- The developer clears the land and takes two years to finalize the project, resulting in unsightly construction fencing in the meantime.
- The developer initiates the construction and extends the permit leaving the site under construction for an extended period, e.g., new Family Dental.

The subcommittee suggested that staff should have the authority to require more than a green construction fence and emphasized the need for findings and reasons for an extension request. They were fine with a one-year extension at the Director level unless the Director thinks it should go to the Planning Commission.

Based on the subcommittee's feedback, staff prepared recommendations for the Planning Commission, including a one-year extension, required findings and the ability for the decision-making body (Planning Director or Planning Commission) to modify or

add new conditions of approval to address concerns about blight and unsightly construction.

Subsequently, a Planning Commission Study Session was held on June 6, 2024, informing the Planning Commission and the public regarding staff's recommendation to amend FCMC Chapter 17.06, "Administration, Construction and Enforcement to allow extensions to planning entitlements and to amend FCMC Chapter 17.78, "Accessory Dwelling Units," to ensure compliance with changes in state law related to ADUs. Please click the link for the [June 6, 2024, Study Session meeting materials](#) and [Meeting Minutes](#).

On July 3, 2024, the Planning Commission held a Public Hearing to review the draft amendments to FCMC Chapters 17.06, 17.36, and 17.78. At the meeting, the Commission voted 5-0-0 to adopt Resolution P-15-24 (Attachment 4) recommending that the City Council amend Section 17.06.180 within Chapter 17.06 "Administration, Construction and Enforcement" and Section 17.36.110 within Chapter 17.36, "PD Planned Development Combining District," of Title 17, "Zoning" of the Foster City Municipal Code to allow extensions to planning entitlements and finding the amendments exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline Section 15061(b)(3) and Resolution P-16-24 (Attachment 5) recommending that the City Council adopt an Ordinance amending various sections within Chapter 17.78 "Accessory Dwelling Units," of Title 17, "Zoning" of the Foster City Municipal Code to ensure compliance with changes in state law related to ADUs and finding the amendments exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline Section 15061(b)(3). Please click the link for the [July 3, 2024, Public Meeting materials](#) and [Draft Meeting Minutes](#).

ANALYSIS

Chapter 17.06, Administration, Construction and Enforcement

The City of Foster City's Chapter 17.06 Administration, Construction and Enforcement, includes provisions related to various entitlements, including use permits, variance, etc. The Chapter includes regulations related to applications, hearing process, appeals, violations, expiration and revocation.

Section 17.06.180 Expiration, currently includes language regarding the validity of the entitlements, including:

"Any use permit, variance, or architectural review approval granted in accordance with the terms of this title shall, without further action, become null and void if not used within two years from the date of approval thereof, or within any shorter or longer period of time specifically stated in the conditions of approval."

Additionally, the section currently states:

“No extensions of use permit, variances, or architectural reviews shall be considered or granted, except that use permits and variances issued in conjunction with a tentative subdivision map for a planned unit development would expire no sooner than the approved tentative map, or any extension thereof, whichever occurs later.”

Chapter 17.36 PD Planned Development Combining District

Section 17.36.110 Development schedule and extensions state:

“An approval of a use permit in a PD district shall include a condition of approval that the use permit will expire two years from the date of approval, unless subject to time limits for a tentative map or development agreement. Extensions may be granted at the discretion of the planning commission, not to exceed a cumulative total of two years, in annual extensions not to exceed one year.”

These sections do not provide a mechanism to extend an entitlement beyond its initial two-year period, except when issued in conjunction with a tentative subdivision map for a planned unit development. Staff have received requests for extensions from applicants citing financial hardship and aggressive inflation over the past two (2) years. Applicants noted economic conditions that have created unique hardships for securing tenants and/or financing for construction.

June 6, 2024, Planning Commission Study Session

At the June 6, 2024, Planning Commission Study Session, staff noted that there is no legal mechanism to extend the entitlements beyond the initial two-year period unless the entitlements are issued in conjunction with a tentative subdivision map. In recent times, staff have received requests for extensions from several applicants who received entitlements and were set to expire.

As noted earlier, the applicants cited economic conditions that created unique hardships for securing tenants and/or financing for construction. Without a provision for an extension, some permits have expired without the opportunity for an applicant to extend their discretionary approval. An applicant must resubmit the entirety of their proposed project/permit application documents and plans, as well as repay all of the required fees for the associated project/permit type. It is understood that timing for development is critical, and not providing an allowance for applicants to reasonably extend the time required to vest their approved project/permit with the city through an accepted means can be an undue burden.

While there is no provision in the zoning code that allows an extension of entitlements (except for those entitlements issued in conjunction with a tentative subdivision map), applicants seeking an extension of time have often applied for a building permit to establish the use and then extended the construction period of the building permit to give themselves more time to start the project.

The California Building Code (CBC) includes provisions for the extension of building permits. According to the 2022 California Building Code, a building permit is invalid if work has not started within 180 days of its issuance or if work has been suspended or abandoned for 180 days after it has started. Local building officials may grant extensions of up to 180 days each in writing if a justifiable cause is demonstrated. Staff believes that the ability to grant a reasonable extension of planning entitlements would be a more efficient approach to give applicants more time to commence the project.

Staff researched other cities within San Mateo County regarding their provisions to allow for extensions, including considerations for the length and number of permissible extensions, as well as the fees associated with an extension application. These cities include Belmont, Burlingame, San Bruno, San Carlos, San Mateo, South San Francisco, Menlo Park, Millbrae, and Redwood City. Staff found a wide range of regulations across these cities, covering different durations and limits for extensions, varying approving authority, and fees (refer to Attachment 6 for details). It was noted that most jurisdictions allow for extensions for entitlements.

Staff prepared recommendations for the Planning Commission including a one-year extension at least sixty (60) days prior to expiration of the entitlement by the decision-making body. The Planning Commission deliberated on fees, the number and length of extensions that the City should permit, the appropriate decision-making body, and the threshold for when an applicant must apply for an extension.

The Commission recommended collecting a fee for cost recovery purposes and allowing two (2) one-year extensions, which they deemed a reasonable amount of time for securing financing or meeting project needs rather than a one (1) one-year extension. They also recommended that the Community Development Director should have the authority to approve extensions due to their administrative nature. However, if a request for an extension involves changes to the originally approved project, it would be reviewed and processed according to the current requirements and may be referred back to the original decision-making body for consideration by the Community Development Director.

July 03, 2024, Planning Commission Study Session

Subsequently, staff prepared code amendments based on the Planning Commission's recommendations and presented them at a Public Hearing on July 3, 2024. At the meeting, the Commission voted 5-0-0 recommending that the City Council amend sections 17.06.180 and 17.36.110 as noted below.

Proposed Amendments to Sections 17.06.180 and 17.36.110

Section 17.06.180 Expiration is proposed to be revised as follows (deletions are marked with a strikethrough, and additions are marked with an underline.):

1. Rename Section 17.06.180 Expiration to **17.06.180 Expiration and Extensions**.
2. List subsections beginning with A. Expiration and revise as follows:

A. Expiration.

1. Except as otherwise provided herein, any use permit, variance, or architectural review approval granted in accordance with the terms of this title shall, without further action, become null and void if not used within two years from the date of approval thereof, or within any shorter or longer period of time specifically stated in the conditions of approval. However, within one year of the date on which the use permit, variance, or architectural review approval was originally granted and prior to the improvement or structure being constructed, the decision making body may review all conditions of approval attached to the original approval and, if it so determines, attach new conditions of approval which may be necessary due to receipt by the city of new information or changed circumstances affecting the property and/or project. ~~No extensions of use permit, variances, or architectural reviews shall be considered or granted, except that use permits and variances issued in conjunction with a tentative subdivision map for a planned unit development would expire no sooner than the approved tentative map, or any extension thereof, whichever occurs later.~~ Use permits, variances, or architectural reviews issued in conjunction with a tentative subdivision map would expire no sooner than the approved tentative map, or any extension thereof, whichever occurs later. Extensions of subdivision maps shall be considered in accordance with Title 16 of the Foster City Municipal Code.

B. Extensions.

1. Applications for extensions of time of any use permit, variance, architectural review, or other entitlement not issued in conjunction with tentative subdivision map may be filed prior to the expiration date of the use permit, variance, architectural review, or other entitlement and shall be processed in the following manner:

- a. If the extension request(s) involves no changes to the original project approvals or conditions of the use permit, variance, architectural review or other entitlement, a maximum of two (2) one-year extensions may be granted for projects or entitlements described in this chapter upon written request and payment of the required fee.
- b. Review and approval or denial of the extension of time shall be conducted by the Planning Director based on the findings in section 17.06.180(B)(2).
- c. If the extension request(s) include changes to the project that affect its design or use or would result in changes to the original conditions of approval of the use permit, variance, architectural review, or other entitlement then those requests shall be reviewed and approved or denied by the Planning Commission.

2. Findings required. The decision-making body shall grant an extension if it finds that:

- a. The approved project is still consistent with the City's General Plan and Zoning Ordinance; and,
- b. The extension will not result in any new environmental impacts or an increase in severity of previously identified environmental impacts.

3. In granting an extension pursuant to this subsection, the decision-making body may modify or add new conditions of approval as deemed necessary to address potential impacts as a result of the extension.

To ensure conformance with Section 17.06.180, Section 17.36.110 Development schedule and extensions, is proposed to be revised as follows:

Section 17.36.110 Development schedule and extensions

An approval of a use permit in a PD district shall include a condition of approval that the use permit will expire two years from the date of approval, unless subject to time limits for a tentative map or development agreement. ~~Extensions may be granted at the discretion of the planning commission, not to exceed a cumulative total of two years, in annual extensions not to exceed one year.~~ Extensions may be granted in accordance with Section 17.06.180 Expiration and Extensions.

At a future meeting, Staff will return to the City Council with a recommended fee for extension requests to cover the costs of staff time.

Chapter 17.78 Accessory Dwelling Units

The California State Legislature continues to pass new laws aimed at easing California's housing crisis in an effort to increase the housing supply and streamline the permitting processes. Recently, four (4) new state laws were passed pertaining to ADUs.

1. AB 976, approved by the Governor on October 11, 2023, enacted two substantive changes to ADU law:
 - a. Authorizes a local agency to require rental terms that are 30 days or longer; and,
 - b. Prohibits a local agency from imposing an owner-occupancy requirement on any ADU (not to include JADUs).
2. Historically, the state allowed local agencies to prohibit the separate sale of ADUs from the primary dwelling. AB 1033, approved on October 11, 2023, authorizes a local agency to adopt an ordinance to allow for the separate conveyance (sale) of the primary dwelling unit and accessory dwelling unit or units as condominiums.
3. AB 1332, approved in October of 2023, requires local agencies by January 1, 2025, to develop a program for the preapproval of ADU plans, whereby the local agency

accepts ADU plan submissions for preapproval and approves or denies the preapproval applications.

4. SB 477, approved by the Governor on March 26, 2024, moved the previous Government Codes Sections 65852.150, 65852.2, 65852.22, 65852.23, and 65852.26 outlining state law governing ADUs, into new Government Codes Sections 66310 through 66342. These new sections are designed to make it easier to read and navigate. No substantive changes to the government code were made with this Senate Bill.

June 6, 2024, Planning Commission Study Session

During the Planning Commission Study Session, staff also presented amendments to Sections 17.78.060, 17.78.090, and 17.78.100 to update Government Code sections to new sections, 66310 through 66342, and Section 17.78.090 for adopting a program for pre-reviewed designs for detached ADUs.

The Planning Commission questioned if adopting “pre-reviewed” plans would have any impact on ADU plans being expedited and how they will conform to required development standards such as setbacks. Staff clarified that the pre-reviewed ADU program will not establish an expedited review process, rather, having pre-reviewed plans may likely shorten overall review times conducted by staff as they have already been reviewed. One of the Commissioners inquired whether the Planning Commission will need to review an ADU project if an applicant chooses to use a pre-approved plan but requests a variance due to the inability to comply with developmental standards because of the lot's shape. Staff confirmed that any proposed ADU that does not conform to required development standards would be required to be reviewed by the Planning Commission.

The Planning Commission did not suggest any modifications to staff's recommended amendments for code sections 17.78.060, 17.78.090, and 17.78.100.

Proposed Amendments to Sections 17.78.060, 17.78.090, and 17.78.100

In order to bring the City's ADU ordinance into compliance with the new state laws, staff recommends the following amendments to Chapter 17.78 Accessory Dwelling Units:

Amend code sections 17.78.060, 17.78.090, and 17.78.100 to update Government Code sections to new sections, 66310 through 66342.

17.78.060 B.3

The owner must record a deed restriction as outlined in Government Code Section ~~65852.22~~, [66333](#), which shall run with the land, and shall include both of the following:

- a. A prohibition on the sale of the JADU separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.
- b. A restriction on the size and attributes of the JADU that conforms with this chapter.
- c. If a JADU is rented, the unit shall not be rented for a period of less than thirty consecutive calendar days.

17.78.090 Permit process.

A. Unless otherwise specified in subsection D, pursuant to Government Code Section 65852.2 66317 mandating ministerial approval of ADUs if all of the applicable standards are met, the chief building official or his/her designee shall approve the ADU permit within sixty days of the complete application being submitted. If the ADU or JADU is proposed as part of a new or remodeled primary residence, the sixty-day timeline shall not commence until the primary residence is permitted. The city may review and approve the ADU or JADU in conjunction with the new or remodeled primary residence, but the application to create the ADU or JADU shall be considered without discretionary review or hearing.

D. In conformance with Government Code Section 65852.27, the City shall, by resolution, adopt a program for the preapproval of designs for ADUs, which may be amended from time to time. Any application for an ADU utilizing a design plan for ADUs that has been preapproved pursuant to that program shall be approved or denied within thirty days.

1. The City shall also review accessory dwelling unit plan submissions for preapproval upon an application for such a request and payment of the applicable fee. The City shall approve or deny the preapproval applications, as specified.

17.78.100 Other provisions.

J. Any properties with ADUs built or developed by a nonprofit corporation may qualify to be sold or conveyed separately from the primary residence, pursuant to California Government Code Section 65852.26 66341. A qualified nonprofit corporation is a nonprofit corporation which is organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 of the Revenue and Taxation Code for properties intended to be sold to low-income families who participate in a special no-interest loan program.

Pre-Approval Design Program for ADUs

The proposed amendments to Section 17.78.090 *Permit process* include establishing a program for pre-approval of designs for ADUs in compliance with AB 1332. Exhibit A of Attachment 3 outlines the Pre-Approved ADU Design Program.

Through this program, designers can submit construction documents for review to be part of Foster City's Pre-Approved ADU Design Program. Once reviewed by City staff, the plans will be available for use by property owners and applicants within Foster City. The program is new, and staff has included language stating that it may be amended from time to time by the Community Development Director and the most current version will be posted on the City's website.

Upon approval from the City Council, program details will be posted on the city's website. At a future meeting, Staff will return to the City Council with a fee schedule to cover the costs related to staff's time in reviewing the ADU plans for the program.

California Environmental Quality Act

The proposed amendments to sections 17.06.180 and 17.36.110 have no possibility of having a significant effect on the environment and are exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3).

The proposed amendments to sections 17.78.060, 17.78.090 and 17.78.100 are required to be adopted to comply with changes in state law related to ADUs, which would preempt inconsistent provisions of the Municipal Code if such amendments were not adopted, and therefore the Municipal Code amendments would not result in a direct or indirect foreseeable physical change to the environment and are exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3), Common Sense Exemption.

FISCAL IMPACT

There is no fiscal impact associated with this item. However, staff will return to the City Council at a future meeting with a recommended fee schedule for extension requests and the pre-approved ADU design program to cover the cost of staff time spent.

CITY COUNCIL VISION, MISSION, AND VALUE/PRIORITY AREA

Smart Planning, Development, and the Local Economy

ATTACHMENTS:

Attachment 1 – Ordinance for Chapter 17.06 and Chapter 17.36

Attachment 2 – Ordinance for Chapter 17.78

Attachment 3 – Resolution for Pre-Approval Design Program for ADUs

Attachment 4 – Planning Commission Resolution P-15-24 with redlines

Attachment 5 – Planning Commission Resolution P-16-24 with redlines

Attachment 6 – Extensions for other cities within San Mateo County