



DATE: October 21, 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
Leila J. Moshref-Danesh, Legal Counsel

DEPARTMENT: Community Development

SUBJECT: AMENDING TITLE 17, "ZONING" OF THE FOSTER CITY MUNICIPAL CODE, ADDING A NEW CHAPTER 17.79 TWO-UNIT DEVELOPMENTS AND URBAN LOT SPLITS, IN ACCORDANCE WITH CALIFORNIA SENATE BILL (SB) 9

RECOMMENDATION

It is recommended that the City Council introduce by title only and waive further reading of amending Title 17, "Zoning" of the Foster City Municipal Code, adding a new Chapter 17.79 Two-Unit Developments and Urban Lot Splits, in accordance with California Senate Bill (SB) 9 and finding the proposed amendments to Title 17 are "not a project" under the California Environmental Quality Act (CEQA) pursuant to Government Code Sections 65852.21(j) and 66411.7(n).

EXECUTIVE SUMMARY

Foster City's [Housing Element 2023-31](#) includes goals, policies, and programs to provide additional housing in a way that is balanced with the community's desires to retain the aspects of Foster City that make it a great place to live, work and play. The Housing Element Programs include the City's commitment to timeframes for implementation. The Annual Progress Report to the California Department of Housing and Community Development (HCD), due by April 1 of each year, reports on progress in implementation of these Programs.

One of the Housing Element Programs to be addressed in 2024 is H-D-6-f:

H-D-6-f: Senate Bill (SB) 9 Objective Design Standards - Amend the Zoning and Subdivision regulations to include objective design standards in compliance with SB 9 to allow additional housing units on single-family parcels.

Responsible Agency: Community Development Department, Planning Commission, City Council

Timeframe: Amend zoning regulations by December 2024

Funding Source: General Plan Maintenance Fund

On [September 19, 2024](#), the Planning Commission held a public hearing to review the draft Ordinance amending Title 17, “Zoning” of the Foster City Municipal Code, adding a new Chapter 17.79 Two-Unit Developments and Urban Lot Splits, in accordance with California Senate Bill (SB) 9. At the meeting, the Planning Commission voted 4-0-1 (Absent: Venkat) to adopt Resolution P-22-24 (Attachment 2), recommending that the City Council amend Title 17, “Zoning” of the Foster City Municipal Code, adding a new Chapter 17.79 Two-Unit Developments and Urban Lot Splits, in accordance with California Senate Bill (SB) 9 and finding the proposed amendments to Title 17 are “not a project” under the California Environmental Quality Act (CEQA) pursuant to Government Code Sections 65852.21(j) and 66411.7(n). with a proposed change to the draft Section 17.79.060.A.4, allowing the height of all SB 9 units to be up to 25 feet or the height requirement for the primary dwelling, whichever is lower, as included in Exhibit A of the Resolution.

The draft Ordinance is attached as Exhibit A, Attachment 1 for the City Council’s consideration.

BACKGROUND

Senate Bill (SB) 9 (Atkins)

SB 9, signed into law by Governor Newsom on September 16, 2021, allows property owners within a single-family residential zone to build two primary units and/or to subdivide a lot into two parcels for a maximum of four primary units on two parcels. SB 9 went into effect on January 1, 2022.

On [February 22, 2022](#), the City Council, via City Resolution No. 2022-17, adopted “Interim Guidance Rules and Regulations for SB 9 Projects” to assist staff in processing SB 9 applications until the permanent SB 9 ordinance was adopted. The interim guidance mirrored state law requirements.

The Foster City Municipal Code (FCMC) has two (2) single-family residential zoning districts: the R-1 Single-Family Residence District and the R-1/PD Single-Family Residence/Planned Development Combining District. These districts also permit Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs).

SB 9 law requires a ministerial review of the following development activities in single-family residential zones, including:

- **Two-unit housing development** – Two (2) primary dwellings on an eligible single-family residential parcel (whether the proposal adds up to two (2) new housing units or adds one (1) new unit to one (1) existing unit).
- **Urban lot split** – A one-time subdivision of an existing single-family residential parcel into two (2) parcels. This would allow up to four (4) primary units (where a project proposes both a two-unit development and an urban lot split, a jurisdiction can choose to allow only four (4) units total (including ADUs and JADUs).

Previous Meetings

- [Planning Commission Study Session August 15, 2024](#)

A study session on August 15, 2024, provided the Planning Commission and the public an opportunity to review and provide input on the SB 9 requirements. The staff report noted provisions of SB 9 law, including the review process, findings of denial, CEQA, lot split, parking, short-term rentals, HOAs, etc. Staff also presented a few areas of discretion for regulations pertaining to SB 9, including the size, height, front yard, and setbacks, and sought policy direction from the Planning Commission.

At the meeting, one of the Commissioners noted a preference for SB 9 units up to 1,200 square feet, to which staff recommended applying maximum ground coverage requirements of 50% to SB 9 units of 1,200 square feet. In simpler words, an SB 9 unit of 1,200 square feet is allowed if the ground coverage does not exceed 50%, including the primary dwelling. Please click the link for the [Meeting Minutes](#).

- [Land Use Subcommittee Meeting September 11, 2024](#)

On September 11, 2024, staff discussed Housing Element 2023-31 implementation programs for the year 2024, including Program H-D-6-f SB 9 Objective Design Standards. The Subcommittee did not have any comments.

- [Planning Commission Public Hearing September 19, 2024](#)

Based on the discussion and feedback from the Planning Commission at the August 15 Study Session, staff drafted the SB 9 Ordinance and presented it to the Planning Commission on September 19, 2024. At the meeting, the Planning Commission made a motion to approve the resolution P-22-24, recommending that the City Council adopt an Ordinance adding a new Chapter 17.79, Two-Unit Developments and Urban Lot Splits, with a proposed change to the draft Section 17.79.060.A.4, allowing the height of all SB 9 units to be up to 25 feet or the height requirement for the primary dwelling, whichever, is lower.

ANALYSIS

Table 1 below includes the provisions of the new Chapter 17.79, Two-Unit Developments and Urban Lot Splits, with the following provisions:

Proposed Section	Provisions
17.79.010 Purpose, Objective, and Intent	This section states that the purpose of this chapter is to implement the provisions of state law.
17.79.020 Applicability	This section includes the zoning districts to which these provisions apply, including R-1 and R-1/PD.
17.79.30 Definitions	Includes definitions for “Adjacent parcel,” “Car share vehicle,” “Common ownership or control,” “Department,” “Existing dwelling,” “Lower-income household,” “Major Transit Stop,” “Moderate income household,” “SB 9 Unit”, “SB 9 Project or SB 9 Planning Application”, “Senate Bill 9 or SB 9”, “Sufficient for separate conveyance,” “Two-Unit Development,” “Urban Lot Split,” “Very low-income household.”
17.79.040 Eligibility	<p>A. All SB 9 Projects</p> <ol style="list-style-type: none"> 1. The parcel is located within R-1 and R-1/PD zoning districts. 2. The parcel is not located in farmland, wetlands, a very high fire hazard severity zone, a hazardous waste site, a delineated earthquake fault zone, a special flood hazard area, a regulatory floodway, lands identified for conservation, Habitats for protected species, or lands under conservation easement. 3. The SB 9 application does not include demolition of housing subject to a recorded covenant, ordinance, or law that restricts rents to moderate, low, or very low income, any form of rent or price control, and occupied by a tenant in the last three years. 4. The parcel is not a parcel on which an owner of residential real property has exercised the owner’s rights under Government Code Section 7060 et seq. to withdraw accommodations from rent or lease within 15 years before the date that the applicant submits an SB 9 Application. 5. Does not involve the demolition of more than 25 percent of the existing exterior walls. 6. Not located within a historic district or property included on the State Historic Resources Inventory. 7. The SB 9 Project meets all other requirements of this Chapter.

	<p>B. Urban Lot Splits</p> <ol style="list-style-type: none"> 1. The parcel is at least 1,200 square feet, 40% of the original parcel, and has access to or adjoins the public right-of-way to comply with the Fire Code and California Code 2. The parcel was not established through a prior lot split. 3. Conforms to provisions of the Subdivision Map Act. 4. The owner has not previously subdivided an adjacent parcel using an Urban Lot Split. 5. New parcels are for residential use only. 6. The owner is required to sign an affidavit. <p>C. For denial of an SB 9 application, the building official makes written findings.</p>
<p>17.79.050 Processing and Application</p>	<p>This section includes information on the processing and Submittal requirements of SB 9 applications.</p> <p>A. City processing</p> <ol style="list-style-type: none"> 1. SB 9 applications shall be submitted to the Community Development Department and transmitted to other applicable city departments for review. 2. All SB 9 applications shall be considered ministerial. 3. A parcel map is required for Urban lot Splits. 4. All SB 9 applications shall be approved or denied within 60 days. 5. SB 9 Projects shall only be subject to objective zoning, subdivision, and design review standards that would physically preclude the construction of 2 units on either of the resulting parcels or that would result in a unit size of less than 800 square feet. 6. If two (2) 800 square foot SB 9 units are not feasible, the Director shall review which standards may be reduced or waived. 7. SB 9 applications shall not require the correction of nonconforming zoning conditions. 8. The Department shall not reject an application solely because it proposes adjacent or connected structures, provided that the structures meet building code safety standards and are sufficient for separate conveyance. 9. The Department shall condition approval on the dedication of any easements deemed necessary for the provision of public services to the proposed parcels and any easements deemed necessary for access to the public right-of-way. 10. If an SB 9 application is denied, it shall be accompanied by a list of comments, including defective and deficient items that can be remedied by the applicant.

	<p>B. Submittal Requirements: Application form, Verification of Property Ownership, Legal Description of the property and resultant lots for Urban Lot Split, Checklist requirements, Plans per checklists, Additional Affidavits showing occupancy for the past 3 years, Recorded covenant prohibiting further subdivision for Urban Lot Split application, restriction on residential use, and short-term rentals.</p>
<p>17.79.060 Objective Development Standards.</p>	<p>A. Two-Unit Developments</p> <ol style="list-style-type: none"> 1. Number of Units – Total four (4) units per lot, including ADUs (2 primary units) and a total of two (2) units on a newly created parcel. 2. Size – 800 square feet or 1,200 square feet, provided the lot coverage requirement is met. 3. Setbacks: The front setback is as per the underlying zoning district, and the side and rear setbacks are 4 feet. No setback is required for converting an existing structure into an SB 9 unit. 4. Height – 25 feet. 5. Attached SB 9 units shall comply with standards for duplexes. 6. Duplex SB 9 units shall record a deed that the duplex will be maintained as two (2) separate units. 7. All SB 9 units shall comply with the Foster City Municipal Code and Building Code. 8. All SB 9 units shall comply with the California Fire Code. 9. No short-term rentals are allowed. 10. SB 9 units may be rented separately. 11. Parking – One (1) parking space for each SB 9 unit, and no parking is required if the parcel is within ½-mile of a high-quality transit corridor or there is a car share vehicle within one block of the parcel. <p>B. Urban Lot Split</p> <ol style="list-style-type: none"> 1. Number of parcels – no more than two (2) new parcels. 2. Parcel size—The smaller parcel shall be at least 40% of the original parcel or a minimum of 1,200 square feet. 3. Other provisions: Minimum frontage of 20 feet on a public or private road with no more than one (1) driveway cut; separate utility meters for each parcel and connected to a public sewer; and no dedications of rights-of-way or the construction of offsite improvements as a condition of approval.

17.79.70 General provisions	This section discusses fees for developing a new unit and states that the Department shall not require the correction of nonconforming zoning conditions.
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To support the processing of the SB 9 applications, staff has prepared drafts of the application form, checklists, affidavits, and other necessary documents (Attachment 3). Once the Ordinance is in effect, staff will make these documents available for applicants to use on the city website.

Staff would also like to note the provisions of [SB 450](#) that were signed into law on September 19, 2024, which updates certain provisions of the SB 9 law as follows:

- Requires 60-Day Application Processing for Duplexes and Urban Parcel Splits:
 - Requires an application for a proposed housing development containing no more than two residential units or a proposed urban lot split to be approved or denied within 60 days of a local agency receiving a completed application. If the local agency has not either approved or denied the application within 60 days, the application shall be deemed approved.
 - Requires the local permitting agency, if it denies the application, to return a full set of written comments to the applicant within 60 days with a list of defective or deficient items and a description of how the application may be remedied.
- Modifications to Two-Unit Development Provisions:
 - Deletes the existing prohibition (Sec. 65852.21 (e)(5)) on an applicant demolishing more than 25 percent of the existing exterior structural walls unless it is either allowed by a local ordinance or the site has not been occupied by a tenant in the last three years.
 - Prohibits a local agency from imposing objective zoning, subdivision, and design review standards that do not apply uniformly to development within the underlying zone.
- Modifications to Urban Lot Split Provisions:
 - Narrows the existing authority of a local agency to impose objective zoning, subdivision, and design review standards to a proposed urban lot split and stipulates that they must be related to the design or to improvements to a parcel consistent with:
 - The existing prohibition on local agencies requiring dedications of right-of-way or the construction of offsite improvements for the parcels being created. (Sec. 65852.21 (b)(3)).

- The authority of local agencies to require any of the following for proposed urban lot split parcels:
 - Easements to provide public services and facilities.
 - Access to the public right-of-way.
 - Off-street parking of up to one space per unit. This requirement does not apply for parcels within one-half mile of a major transit stop or high-quality transit corridor or if there is a car-share vehicle within one block of the parcel. (Sec. 65852.21(e)).
- Deletes the ability of a local building official to deny a parcel split based on a specific, adverse impact on the “physical environment.” The removal of this provision narrows the authority to deny a proposed lot split to specific adverse impacts on public health and safety.

These provisions will go into effect on January 1, 2025, and will warrant a few revisions to the proposed Ordinance. Staff will consult with the City Attorney’s office and return to the Planning Commission and City Council at a future date in 2025.

California Environmental Quality Act

The proposed amendments to Title 17 are “not a project” under the California Environmental Quality Act (CEQA) pursuant to Government Code Sections 65852.21(j) and 66411.7(n).

FISCAL IMPACT

There is no fiscal impact related to this item except for the staff time spent on the preparation of the Ordinance.

CITY COUNCIL VISION, MISSION, AND VALUE/PRIORITY AREA

Smart Planning, Development, and the Local Economy

ATTACHMENTS:

Attachment 1 – Ordinance with Exhibit A

Attachment 2 – Planning Commission Resolution P-22-24

Attachment 3 – SB 9 Application Supporting Documents