

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FOSTER CITY 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) PURSUANT TO CEQA GUIDELINE SECTION 15061(B)(3) - RZ2024-0006

CITY OF FOSTER CITY

WHEREAS, the California State Legislature continues to pass new laws aimed at easing California's housing crisis by continuing to limit local government discretion over housing development projects and are intended increase the housing supply and several state laws were passed pertaining to ADUs; and

WHEREAS, Assembly Bill (AB) 1332 requires local agencies to develop a program for the preapproval of ADU plans by January 1, 2025; and

WHEREAS, AB 1332 requires local agencies to approve or disapprove an application for a detached ADU within 30 days from the date the local agency receives a completed application if the application complies with Government Code Section 65852.27(b); and

WHEREAS, Senate Bill (SB) 477 moved Government Code Sections 65852.150, 65852.2, 65852.22, 65852.23, and 65852.26 relating to ADUs into a single chapter (Chapter 13, commencing with Section 66310) within Division 1 of Title 7 of the Government Code; and

WHEREAS, SB 477 also makes non-substantive changes and reorganizes various provisions relating to the creation and regulation of accessory dwelling units and junior accessory dwelling units; and

WHEREAS, the city desires to amend Sections 17.78.060, 17.17.090, and 17.78.100 within Chapter 17.78 to comply with state law; and

WHEREAS, on July 3, 2024, the Planning Commission conducted a duly and properly noticed public hearing to take public testimony and consider a Resolution regarding the amendments to Chapter 17.78, and after conducting the public hearing, adopted Resolution No. P-16-24 with the Planning Commission recommending City Council approval of the amendments to Chapter 17.78; and

WHEREAS, on July 24th, 2024, a public hearing notice was published posted in three public places, and mailed pursuant to California Code Section 65090 for the City Council public hearing on August 5th, 2024.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF FOSTER CITY DOES ORDAIN AS FOLLOWS:

Section 1. The City Council does hereby find and determine based upon the aforementioned Record as follows:

1. The foregoing Recitals are true and correct and are incorporated herein by this reference; and
2. The ordinance making text amendments to Title 17 would be exempt under the “common sense” exception (14 Cal. Code Regs. § 15061(b)(3)) because it can be seen with certainty that there is no possibility that this action may have a significant effect on the environment; and
3. The amendments are internally consistent with all other provisions of the General Plan and do not conflict with any of the previously adopted goals, policies, or programs of the General Plan; and
4. The amendments are necessary to implement the goals and policies of the General Plan through implementation of the Housing Element; and
5. The amendments will not be detrimental to the public interest, convenience, and general welfare of the City.

Section 2. Amendment. Sections 17.78.060, 17.78.090, and 17.78.100 within Chapter 17.78 “Accessory Dwelling Units” of Title 17, “Zoning” of the Foster City Municipal Code are hereby repealed and replaced in their entirety to read as follows:

“17.78.060 Standards applicable to single-family residence zoning districts.

The following shall apply to single-family lots in R-1, R-2 and R-1/PD zoning districts:

A. Number of Units. A single-family lot with a primary dwelling unit may have:

1. Option 1. One JADU (up to 500 SF); or
2. Option 2. One ADU (conversion, attached, or detached); or
3. Option 3
 - a. One (1) JADU (up to 500 SF); and,

- b. One (1) conversion ADU; and,
- c. One (1) newly constructed ADU (up to 800 SF).

4. Option 4

- a. One (1) JADU (up to 500 SF); and,
- b. One (1) newly constructed ADU over 800 square feet

5. Option 5

- a. One (1) JADU (up to 500 SF); and
- b. One (1) conversion ADU.

B. Junior Accessory Dwelling Units.

1. The number of JADUs shall be limited to one (1) unit per residential lot zoned for single-family residences that includes a proposed or existing single-family residence.
2. The property owner must reside in either the remaining portion of the primary dwelling unit or the JADU. Owner occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.
3. The owner must record a deed restriction as outlined in Government Code Section 66333, which shall run with the land, and shall include 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.
4. A JADU shall be constructed within the walls of the proposed or existing single-family residence, including attached garages.
5. JADUs shall include a separate entrance from the main entrance to the proposed or existing single-family residence. If a permitted JADU does not include a separate bathroom, the permitted JADU shall include a separate entrance from the main entrance to the structure, with an interior entry to the main living area.

6. The JADU shall include an efficiency kitchen, which shall include all of the following:

- a. A cooking facility with appliances.
- b. A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

C. Attached ADUs. One attached ADU per single-family lot is permitted, subject to the following requirements:

- 1. Size. The total floor area of an attached ADU shall be not more than one thousand two hundred (1,200) square feet or fifty (50) percent of the existing or proposed primary dwelling, whichever is less.
- 2. Location. Attached ADUs shall not be located in the front yard unless development of an eight hundred (800 sq. ft.) square foot ADU is otherwise infeasible.
- 3. Setbacks. The side and rear setbacks shall be no less than four (4) feet.
- 4. Height.
 - a. An attached ADU shall not exceed twenty-five (25) feet in height, or the height requirement for the primary dwelling, whichever is lower.
 - b. ADUs shall not exceed two (2) stories in height.

D. Detached ADUs. One newly constructed detached ADU per single-family lot is permitted, subject to the following requirements:

- 1. Size. The total floor area of a detached ADU shall not exceed one thousand two hundred (1,200) square feet or fifty (50) percent of the existing or proposed primary dwelling, whichever is less.
- 2. Location. Detached ADUs shall not be located in the front yard unless development of an eight hundred (800 sq. ft.) square foot ADU is otherwise infeasible.
- 3. Setbacks.
 - a. The side and rear setbacks shall be no less than four feet.
 - b. The separation between the detached ADU and the primary dwelling shall be as per California Residential Code.
- 4. Height. A detached ADU shall not exceed sixteen (16) feet in height, except in the following cases:

- a. A height of eighteen (18) feet is permitted when an ADU is located within one-half mile walking distance of a major transit stop or a high-quality transit corridor, as defined in this code section; and, and additional two (2) feet of height to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary dwelling unit.

E. Conversion ADUs. One conversion ADU per single-family lot is permitted, subject to the following requirements:

1. Setbacks. No setbacks shall be required for ADU conversions located within the existing living area or an existing accessory structure, or an ADU that replaces an existing structure and is located in the same location and to the same dimensions as the structure being replaced. A legal accessory building (including a detached garage) may be converted into an ADU provided the side and rear setbacks are sufficient for fire safety.

Notwithstanding the provisions of this section, conversion ADUs shall provide sufficient side and rear setbacks for fire safety.

2. Height. A conversion ADU shall not alter the height of the existing structure (single-family dwelling, accessory building, or garage) that is being converted.

3. Other Standards.

- a. Conversion ADUs in existing accessory structures may expand the existing dimensions of the structure no more than one hundred fifty (150) square feet to accommodate ingress/egress. Any such expansion shall count towards the size of the ADU.

F. Additional Requirements.

1. All JADUs and ADUs shall provide exterior access that is separate from the proposed or existing single-family dwelling.
2. Except as specified in this section, ADUs shall comply with lot coverage, open space, front setbacks, minimum lot size, and other zoning standards applicable to the primary dwelling, except in no event shall the application of any of these standards preclude at least an eight hundred (800) square foot ADU.

17.78.090 Permit process.

- A. Unless otherwise specified in subsection D, pursuant to Government Code Section 66317 mandating ministerial approval of JADUs and 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.

B. If the city disapproves an application for an ADU or JADU, the building division shall return, in writing, a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.

C. A demolition permit for a detached garage that is to be replaced with an ADU must be reviewed with the application for the ADU and issued at the same time.

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.

A. Unless exempt from the owner-occupancy requirement per subsection B of this section, prior to obtaining a building permit for an ADU, a deed restriction, approved by the city attorney, shall be recorded with the county recorder's office, which shall include the pertinent restrictions and limitations of an ADU identified in this section including but not limited to: prohibition of the sale of the ADU separate from the sale of the single-family residence; restrictions on the size and attributes of the ADU; and prohibitions on rentals less than thirty consecutive days. Said deed restriction shall run with the land, and shall be binding upon any future owners, heirs, or assigns.

B. Owner Occupancy. Notwithstanding the foregoing or any other provision of this chapter, no owner-occupancy requirement shall be enforced and no deed restriction shall be required for ADU permit applications.

C. Delay in Enforcement of Unpermitted ADUs. For any unpermitted or substandard ADU built before January 1, 2020, upon an owner's request, the city's chief building official shall delay enforcing any building standards if the building official determines that the unpermitted ADU meets health and safety standards. This provision shall sunset on January 1, 2030; however, any delay that was approved by the enforcement agency before January 1, 2030, shall be valid for the full term of the delay.

D. Any ADU may be leased for a period not fewer than thirty consecutive days.

E. Fire flow and fire department access must comply with the California Fire Code as amended by the San Mateo consolidated fire department, or an alternate means shall be proposed.

F. Fire Sprinklers.

1. An ADU shall not be required to provide fire sprinklers if they are not required for the primary residence and may employ alternative methods for fire protection.

2. The construction of an ADU shall not trigger a requirement of fire sprinklers to be installed in the existing primary dwelling.

G. ADUs that are seven hundred fifty square feet or smaller are exempt from impact fees.

H. Notwithstanding the provisions of this section, the requirements for newly constructed ADUs shall not preclude constructing one ADU of at least eight hundred square feet, which is not more than sixteen feet in height, and set back at least four feet from the side and rear property lines.

I. Notwithstanding any other provision of this code, an applicant shall not be required to correct nonconforming conditions on the subject property as a condition of obtaining permits to construct an ADU or JADU.

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 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."

Section 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council does hereby declare that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 4. Taking Effect. This Ordinance shall take effect and be in force thirty (30) days from and after its adoption.

Section 5. Posting. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall have it posted in three (3) public places designated by the City Council.

This Ordinance was introduced and read on the 5th day of August, 2024, and passed and adopted on the ____ day of ____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

PATRICK SULLIVAN, MAYOR

ATTEST:

PRISCILLA SCHAUS, CITY CLERK