

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF FOSTER CITY AMENDING TITLE 17, "ZONING," BY ADDING A NEW CHAPTER 17.79, TWO-UNIT DEVELOPMENTS AND URBAN LOT SPLITS, IN ACCORDANCE WITH CALIFORNIA SENATE BILL 9 (SB 9) AND FINDING THAT THE PROPOSED AMENDMENTS TO TITLE 17 ARE "NOT A PROJECT" UNDER CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO GOVERNMENT CODE SECTIONS 65852.21(j) and 66411.7(n) - RZ2024-0010

CITY OF FOSTER CITY

WHEREAS, the Housing Element is an integral part of the Foster City General Plan that serves to identify the community's housing needs; state the community's goals and objectives with regard to housing production, rehabilitation, and preservation, and conservation to meet those needs; and define the policies and programs; and

WHEREAS, the Housing Element 2023-31 includes the City's commitment to timeframes for the implementation of Housing Element programs; and

WHEREAS, the program H-D-6-f: SB 9 Objective Design Standards requires the City to amend the Zoning and Subdivision regulations to include objective design standards in compliance with Senate Bill 9 ("SB 9") to allow additional housing units on single-family parcels; and

WHEREAS, SB 9 (Government Code Sections 65852.21 and 66411.7) went into effect on January 1, 2022, and 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; and

WHEREAS, on August 15, 2024, the Planning Commission held a study session to allow the public and the Planning Commission to discuss and review the potential future amendments to the City's Zoning Code for the implementation of SB 9; and

WHEREAS, on September 19, 2024, the Planning Commission conducted a duly and properly noticed public hearing to take public testimony and consider the proposed amendment to Title 17, Zoning, by adding a new Chapter 17.79, Two-Unit Developments and Urban Lot Splits, and the associated California Environmental Quality Act ("CEQA") finding, and after conducting the public hearing, adopted Resolution No. P-22-24 with the Planning Commission recommending that the City Council adopt the new Chapter 17.79 Two-Unit Developments and Urban Lot Splits and CEQA finding; and

WHEREAS, the proposed amendments implement SB 9 and are therefore "not a project" under CEQA pursuant to Government Code Sections 65852.21(j) and 66411.7(n); and

WHEREAS, on October 9, 2024, a Notice of Public Hearing was duly posted for consideration of the amendment to Title 17, Zoning, adding a new Chapter 17.79, and the related CEQA finding, for the City Council public hearing on October 21, 2024; and

WHEREAS, on October 21, 2024, the City Council held a duly noticed public hearing where it carefully reviewed and considered the staff report and all attachments thereto, including the Planning Commission's recommendation regarding the proposed amendment to Title 17 Zoning of the Foster City Municipal Code, adding a new Chapter 17.79, Two-Unit Developments and Urban Lot Splits, as referenced above, as well as the proposed CEQA finding, including any and all timely submitted correspondence, all information submitted at or prior to the public hearing, and all public comment and testimony presented at the public hearing (collectively, the "Record").

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 proposed 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.
3. The proposed amendments are necessary to implement the goals and policies of the General Plan through the implementation of the Housing Element.
4. The proposed amendments will not be detrimental to the public interest, convenience, and general welfare of the City.
5. The proposed amendments are exempt from CEQA pursuant to Government Code Sections 65852.21(j) and 66411.7(n).

Section 2. Title 17, Zoning of the Foster City Municipal Code is hereby amended by adding Chapter 17.79, "Two-Unit Developments and Urban Lot Splits," in Title 17 "Zoning," to read as set forth in the attached Exhibit A, as listed below and attached hereto and incorporated herein by reference:

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 21st day of October 2024, and passed and adopted on the \_\_ day of \_\_\_\_\_, 2024, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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PATRICK SULLIVAN, MAYOR

ATTEST:

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PRISCILLA SCHAUS, CITY CLERK

## EXHIBIT A

A new Chapter 17.79 is hereby added as follows:

### Chapter 17.79

#### TWO-UNIT DEVELOPMENTS AND URBAN LOT SPLITS

##### **17.79.010 Purpose, Objective, and Intent.**

The purpose of this chapter is to provide the application and approval process, as well as objective zoning standards for Two-Unit Developments and Urban Lot Splits as defined herein, to implement the provisions of State law as reflected in Government Code Sections 65852.21 et seq. and 66411.7 et seq., to facilitate the development of new residential housing units consistent with Foster City's General Plan, and to ensure sound standards protecting public health and safety.

In cases of conflict between this chapter and any other provision of this title, the provisions of this chapter shall prevail. To the extent that any provision of this chapter is in conflict with state law, the applicable provision of state law shall control it, but all other non-conflicting provisions of this chapter shall remain in full force and effect.

##### **17.79.020 Applicability.**

The provisions of this chapter shall apply to all single-family residential zone parcels (the R-1 Single-Family Residence District and R-1 Single-Family Residence District/Planned Development R-1/PD).

##### **17.79.030 Definitions**

As used in this chapter, the terms set out below are defined to mean the following:

**“Adjacent Parcel”** means any parcel of land that is 1) touching the parcel at any point; 2) separated from the parcel at any point only by a public right-of-way, private street or way, or public or private utility, service, or access easement; or 3) separated from another parcel only by other real property which is in common ownership or control of the applicant.

**“Car share vehicle”** means a motor vehicle that is operated as part of a regional fleet by a public or private car sharing company or organization and provides hourly or daily service.

**“Common Ownership Or Control”** means property owned or controlled by the same person, persons, or entity, or by separate entities in which any shareholder, partner, member, or family member of an investor of the entity owns ten percent or more of the interest in the property.

**“Department”** means the Community Development Department.

**“Existing Dwelling”** means a primary dwelling or other dwelling unit on a parcel that exists prior to any voluntary demolition or reconstruction or remodel where no more than 50% of the exterior

wall framing has been removed or altered. Any existing dwelling unit where more than 50% of the exterior wall framing has been removed is considered a new dwelling for purposes of this article.

**“Low-Income Household”** has the meaning set forth in Health & Safety Code Section 50079.5.

**“Major Transit Stop”** means a site containing any of the following: (i) an existing rail or bus rapid transit station; (ii) a ferry terminal served by either a bus or rail transit service; or (iii) the intersection of two or more major bus routes with a frequency of service intervals of 15 minutes or less during the morning and afternoon peak commute periods.

**“Moderate Income Household”** has the meaning set forth in Health & Safety Code Section 50093.

**“SB 9 Unit”** means a primary unit that is developed pursuant to the requirements of this Article, applicable Foster City Municipal Code provisions, and [Government Code](#) Sections [65852.21](#) and [66411.7](#), or as may be amended.

**“SB 9 Project or SB 9 Application”** means a project application submitted to the City in accordance with this Chapter, SB 9, and applicable Foster City Municipal Code provisions to do one or more of the following:

1. Split a qualifying single-family residential zoned parcel into two lots; or
2. Develop no more than two primary units on a single lot.

**“Senate Bill 9 or SB 9”** means [Government Code](#) Sections [65852.21](#) and [66411.7](#) and any amendments thereto.

**“Sufficient For Separate Conveyance”** as used in this Chapter, means that each attached or adjacent dwelling unit is constructed in a manner adequate to allow for the separate sale of each unit in a common interest development as defined in Civil Code Section 1351 (including a residential condominium, planned development, stock cooperative, or community apartment project), or into any other ownership type in which the dwelling units may be sold individually.

**“Two-Unit Development”** means a development that proposes no more than two new primary residential units or proposes to add one new primary residential unit to one existing primary residential unit that meets all the criteria and standards set forth in this chapter.

**“Urban Lot Split”** means a subdivision of an existing parcel into no more than two separate parcels that meets all the criteria and standards set forth in this chapter.

**“Very Low-Income Household”** has the meaning set forth in Health & Safety Code Section 50105.

#### **17.79.40 Eligibility.**

An SB 9 Project shall be approved by the Department if the SB 9 Project meets all of the following requirements:

**A. All SB 9 Projects.**

1. The parcel is located within the R-1 Single-Family Residence District or R-1 Single-Family Residence District/Planned Development R-1/PD.
2. The parcel is not located in any of the following:
  - a. Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by an approved local ballot measure.
  - b. Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).
  - c. Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178 of the Government Code, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Public Resources Code Section 4202. This subparagraph does not apply to sites excluded from the specified hazard zones by the city, pursuant to subdivision (b) of Section 51179 of the Government Code, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.
  - d. A hazardous waste site that is listed pursuant to Government Code Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Health and Safety Code Section 25356, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.
  - e. Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2 of the Government Code.
  - f. Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. If a development proponent is able to satisfy all applicable federal qualifying criteria in

order to provide that the site satisfies this subparagraph, the city shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by the city that is applicable to that site. A development may be located on a site described in this subparagraph if either of the following are met (1) the site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the city; or (2) the site meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

- g. Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, the city shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by the city that is applicable to that site.
  - h. Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.
  - i. Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050n) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).
  - j. Lands under conservation easement.
3. The SB 9 Application would not require demolition or alteration of any of the following types of housing:
- a. Housing subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

- b. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.
  - c. Housing that has been 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. The proposal does not allow the demolition of more than 25 percent of the existing exterior structural walls, and the site has not been occupied by a tenant in the last three (3) years.
- 6. The parcel is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Public Resources Code Section 5020.1, or within a site that is designated or listed as a city landmark or historic property or district by local ordinance.
- 7. The SB 9 Project meets all other requirements of this Chapter.

#### **B. Urban Lot Splits.**

In addition to the requirements for all SB 9 Projects, Urban Lot Splits shall meet all of the following eligibility requirements:

- 1. The Urban Lot Split will create no more than two new parcels, and each of the newly-created parcels meets all of the following requirements:
  - a. Is at least 1,200 square feet in size;
  - b. Is at least 40 percent of the lot area of the original parcel; and
  - c. Has access to or adjoins the public right-of-way, sufficient to allow development on the parcel to comply with any property access requirements under the California Fire Code Section 503 and Title 14, California Code Regulations section 1273.00 et seq., when applicable to the parcel.
- 2. The parcel was not established through a prior Urban Lot Split.
- 3. The Urban Lot Split conforms to all applicable objective requirements of the Subdivision Map Act (Government Code Section 66410 et seq.), except as otherwise provided in this Chapter.
- 4. Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent parcel using an Urban Lot Split.



5. The proposed new parcels are intended for exclusively residential use.
6. The Urban Lot Split will not result in a structure being split over the two (2) parcels.
7. The owner of the parcel to be subdivided signs an affidavit under penalty of perjury declaring all of the following to be true:
  - a. The housing units proposed to be demolished or altered have not been occupied by a tenant at any time within three years of the date of the application for an Urban Lot Split.
  - b. The owner of the parcel intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of the approval of the Urban Lot Split. Owner-occupancy is not required if the owner is a community land trust or qualified nonprofit corporation under Sections 214.15 or 402.1 of the Revenue and Taxation Code.
  - c. The owner has not previously subdivided an adjacent parcel using an Urban Lot Split.
  - d. The owner has not previously acted in concert with any person to subdivide an adjacent parcel using an Urban Lot Split. "Acted in concert" means that the owner, or a person acting as an agent or representative of the owner, knowingly participated with another person in a joint activity or parallel action toward a common goal of subdividing the adjacent parcel.

C. Notwithstanding an SB 9 Project's compliance with subsections A and B above, the Department shall deny an SB 9 Application if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed SB 9 Project would have a specific, adverse impact, as defined and determined in Government Code Section 65589.5(d)(2), upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

#### **17.79.050 Processing and Application.**

##### **A. City Processing.**

1. All SB 9 Applications and the required accompanying documents shall be submitted to the Department. The Community Development Director shall immediately transmit a copy of the SB 9 Application and accompanying documents to the applicable city departments, including Public Works, Planning and Building Divisions, and San Mateo Consolidated Fire Department.
2. All SB 9 Applications shall be considered ministerially, without public hearings or discretionary review.
3. A parcel map shall be required for all Urban Lot Splits.

4. All SB 9 Applications shall be approved or denied within sixty (60) calendar days from the date the City receives the completed application.
5. Notwithstanding any other provision herein, SB 9 Projects shall only be subject to objective zoning standards, objective subdivision standards, and objective design review standards that would have the effect of physically precluding the construction of two units on either of the resulting parcels or that would result in a unit size of less than 800 square feet.
6. If it is not feasible to comply with all applicable objective design standards when constructing up to two (2) eight hundred (800) square foot residential units on a property, the applicant shall provide all necessary information requested by the City (e.g., a topographic survey, etc.) to demonstrate that it is infeasible to construct one (1) or both of the two (2) eight hundred (800) square foot residential units while complying with all applicable objective design standards for review by the City. On review of the complete feasibility study, the Community Development Director shall determine which of these objective design standards may be reduced and/or waived to allow for up to two (2) residential units that are no more than eight hundred (800) square feet in size.
7. The Department 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 the Department denies an SB 9 Application, the Department shall, at the time of denial, 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 SB 9 Application can be remedied by the applicant.

**B. Submittal Requirements.**

1. Each SB 9 Application shall include all of the following:
  - a. Application Forms. Completed SB 9 Application forms as prescribed by the Department;
  - b. Property Ownership. Verification of property ownership in the form of a preliminary title report that is no more than a year old, showing the current owner(s) of the property, the names of record owners of the land, and all existing easements and other reservations, restrictions, or covenants;

- c. Legal Description. An accurate legal description of the property and any resultant lots in the case of an Urban Lot Split application;
- d. Checklist Requirements: All information/documents as outlined in the Planning Application and/or Urban Lot Split Submittal Requirements checklists;
- e. Plans. Scaled and accurate plans to include required applicable information as outlined in the Planning Application and/or Urban Lot Split Submittal Requirements checklists;
- f. Additional Affidavit. If any existing housing is proposed to be altered or demolished, the owner of the property shall sign an affidavit in the form approved by the Department, as required by Section 17.79.040(B)(7), and shall provide a comprehensive history of the occupancy of the units to be altered or demolished for the past three (3) years on a form prescribed by the Department.
- g. Recorded Covenant. Prior to the approval and recordation of the parcel map, the applicant shall record a restrictive covenant and agreement in the form prescribed by the Department, which shall run with the land and provide for the following:
  - i. A prohibition against further subdivision of the parcel using the Urban Lot Split procedures as provided for in this section;
  - ii. A limitation restricting the property to residential uses only; and
  - iii. A requirement that any dwelling units on the property may be rented or leased only for a period longer than thirty (30) days.

#### **17.79.060 Objective Development Standards.**

All SB 9 Projects shall comply with the development standards listed in this Section. SB 9 Projects under this chapter shall conform to all objective property development regulations and design review standards of the zone in which the property is located, including, but not limited to, setbacks, building height, building size, structural coverage, and impervious coverage, unless the applicant demonstrates that such zoning or design standard would have the effect of physically precluding the construction of up to two residential units on the parcel, or that would physically preclude either of the two units from being at least 800 square feet in floor area:

##### **A. Two-Unit Development.**

- 1. Number of Units.
  - a. A Two-Unit Development proposed without approval of an Urban Lot Split shall be limited to no more than four (4) total units (including primary units, SB 9 Units, accessory dwelling units, and junior accessory dwelling units) on a single-family lot.

- b. A Two-Unit Development proposed with the approval of an Urban Lot Split shall be limited to no more than two (2) total units (including primary units, SB 9 Units, accessory dwelling units, and junior accessory dwelling units) per created parcel.
- 2. Size. The total floor area of an SB 9 Unit shall not exceed eight hundred square feet (800 SF) or twelve hundred square feet (1,200 SF) if the lot coverage does not exceed the maximum permitted as established by the underlying zoning district.
- 3. Setbacks.
  - a. Front Setback. A minimum setback from the front lot line, as required by the lot's underlying zoning district.
  - b. Side and Rear Setbacks. The side and rear setbacks shall be no less than four (4) feet.
  - c. No setback shall be required for an existing structure that is converted into SB 9 unit or a structure constructed in the same location and to the same dimensions as an existing structure.
- 4. Height. SB 9 Units shall not exceed twenty-five (25) feet in height, or the height requirement for the primary dwelling, whichever is lower. Units shall not exceed two stories in height.
- 5. If attached, SB 9 Units are required to comply with adopted objective design standards for duplexes.
- 6. If the SB 9 Units are configured as a duplex on a parcel, a deed restriction in a form approved by the Department shall be recorded stipulating that the duplex shall be maintained as two (2) separate units.
- 7. All SB 9 Units shall comply with the Foster City Municipal Code and the adopted California Building Code.
- 8. Fire access to all SB 9 Units shall be compliant with the San Mateo Consolidated Fire Department standard specifications and the California Fire Code.
- 9. No SB 9 Unit shall be rented for a period of less than thirty (30) days.
- 10. An SB 9 Unit may be rented separately from the primary dwelling unit.
- 11. Parking. A minimum of one (1) off-street parking space measuring at least ten (10) feet wide by twenty (20) feet deep shall be provided for each SB 9 Unit, except that no parking shall be required when the parcel meets one or both of the following instances:

- a. The parcel is located within one-half mile walking distance of either a high-quality transit corridor, as defined in Public Resources Code Section 21155(b), or a major transit stop, as defined in Public Resources Code Section 21064.3.
- b. There is a car share vehicle located within one (1) block of the parcel.

**B. Urban Lot Split.**

1. Number of parcels. The Urban Lot Split shall create no more than two (2) new parcels.
2. Parcel Size.
  - a. Each newly created parcel shall be of approximately equal area. The smaller parcel shall not be less than forty percent (40%) of the lot area of the original parcel proposed for the Urban Lot Split.
  - b. Each newly created parcel shall be at least 1,200 square feet in gross area.
  - c. Setbacks. No setbacks shall be required for an existing dwelling structure on the parcel from a proposed property line, provided clearance is obtained from the fire marshal.
3. Other provisions.
  - a. Minimum Frontage. Each lot shall maintain a minimum frontage of at least twenty (20) feet on a public or private road. No more than one (1) driveway cut is permitted for each parcel.
  - b. Existing corner parcels shall be split approximately perpendicular to the longest contiguous property line.
  - c. Easements for access and public and private utilities shall be provided for any newly created parcel that does not front on a public or private street.
  - d. Separate utility meters shall be provided for each parcel prior to recordation.
  - e. All newly created parcels shall be connected to the public sewer.
  - f. No dedications of rights-of-way or the construction of offsite improvements for the parcels being created pursuant to this section shall be required as a condition of approval.

**17.79.070 General Provisions.**

- A. Development projects pursuant to this Chapter shall be subject to all impact or development fees related to the development of a new dwelling unit.

- B. The City Council may establish and set by resolution all fees and charges, consistent with Government Code Sections 65852.2 and 65852.22, and related provisions, as may be necessary to effectuate the purpose of this Chapter.