

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FOSTER CITY MAKING VARIOUS TEXT AMENDMENTS TO TITLE 17, "ZONING" OF THE FOSTER CITY MUNICIPAL CODE CHAPTER 17.78, "ACCESSORY DWELLING UNITS" AND FINDING THE AMENDMENTS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT - RZ2023-0006

CITY OF FOSTER CITY

WHEREAS, the Planning and Zoning Law authorizes local jurisdictions to act by ordinance to provide for the creation and regulation of accessory dwelling units ("ADUs") and junior accessory dwelling units ("JADUs"); and

WHEREAS, in 2022, the legislature adopted two (2) key ADU bills in 2022: Assembly Bill (AB) 2221 and Senate Bill (SB) 897 that amended Government Code Sections 65852.2, 65852.22. and 65852.23, and Health and Safety Code Section 17980.12; and

WHEREAS, these bills make further revisions to state law, and local jurisdictions need to readopt any local ordinances related to ADUs to include new provisions/clarifications; and

WHEREAS, on June 15, 2023, a Planning Commission Study Session was held to update the public and the Planning Commission on most recent State Laws affecting land uses, including additional revisions to the requirements of accessory dwelling units; and

WHEREAS, Public Resources Code Section 21080.17 says that the California Environmental Quality Act (CEQA) does not apply to the adoption of an ordinance to implement the provisions of Section 65852.2 of the Government Code, which means that adoption of this ordinance to update the Municipal Code to implement State ADU law is statutorily exempt from CEQA; and

WHEREAS, on August 17, 2023, 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-11-23 with the Planning Commission recommending City Council approval of the amendments to Chapter 17.78; and

WHEREAS, on September 6, 2023, 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 September 18, 2023; and

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 implementation of the Housing Element.
4. The proposed Zoning amendments comply with, and are required by, applicable State law, including Government Code Section 65852.2, 65852.22, 68852.23, and the Health and Safety Code Section 17980.12.
5. The proposed amendments will not be detrimental to the public interest, convenience, and general welfare of the City.
6. The proposed amendments are exempt from CEQA Guideline Section 15061(b)(3) and consistent with Public Resources Code Section 21080.17.

Section 2. Amendment. Chapter 17.78 “Accessory Dwelling Units” within Title 17, “Zoning” of the Foster City Municipal Code are hereby amended by repealing the existing Chapters 17.78 in their entireties and replacing those Chapters to read as set forth in the attached Exhibits 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 18th day of September, 2023,
and passed and adopted on the ____ day of October, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

JON FROOMIN, MAYOR

ATTEST:

PRISCILLA SCHAUS, CITY CLERK

EXHIBIT A

Chapter 17.78 Accessory Dwelling Unit Update 2023 Updates

Chapter 17.78

ACCESSORY DWELLING UNITS

Sections:

- 17.78.010 Findings.
- 17.78.020 Purpose.
- 17.78.030 Application.
- 17.78.040 Definitions.
- 17.78.050 Permit application for an accessory dwelling unit.
- 17.78.060 Standards applicable to single-family residence zoning districts.
- 17.78.070 Standards applicable to multifamily residence zoning districts.
- 17.78.080 Parking requirements for accessory dwelling units.
- 17.78.090 Permit issuance.
- 17.78.100 Other provisions.

17.78.010 Findings.

A. The adoption of an accessory dwelling unit ordinance which permits accessory dwelling units by ministerial review in areas zoned to allow residential development is consistent with the goals and policies of the Foster City general plan in that accessory dwelling units would help meet the need for affordable housing. Furthermore, construction of accessory dwelling units is not as costly as new construction, because there are no additional land costs, infrastructure costs are reduced, and an accessory dwelling unit can be added at the cost of an addition to, or remodeling of, the main single-family dwelling.

B. The accessory dwelling unit ordinance is intended to permit accessory dwelling units while maintaining the health, safety and welfare of surrounding residents, the character of existing neighborhoods, and the community as a whole. (Ord. 657 § 4 (Exh. P), 2023)

17.78.020 Purpose.

The purpose of this chapter is to allow accessory dwelling units in areas zoned to allow residential development through ministerial permit procedures in compliance with state laws. (Ord. 657 § 4 (Exh. P), 2023)

17.78.030 Application.

The provisions of this chapter shall apply in zoning districts where residential uses are permitted (with or without a planned development combining district). Accessory dwelling units are not permitted in any other district. (Ord. 657 § 4 (Exh. P), 2023)

17.78.040 Definitions.

A. "Accessory dwelling unit" or "ADU" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a

proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:

1. An efficiency unit.
2. A manufactured home, as defined in Section 18007 of the Health and Safety Code.

B. "Attached accessory dwelling unit" means an ADU that is constructed as a physical expansion (i.e., addition) of an existing single-family residence and shares at least one (1) wall with the single-family residence.

C. "Conversion accessory dwelling unit" means an ADU that is created within existing space, including a portion of a primary dwelling unit or existing non-habitable space in an existing primary or accessory structure.

D. "Detached accessory dwelling unit" means an ADU that is constructed as a separate structure from the primary dwelling unit and does not share any walls with the primary dwelling unit or an existing attached accessory structure.

E. "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.

F. "High-quality transit corridor" means a corridor with fixed route bus service with service intervals no longer than fifteen minutes during peak commute hours.

G. "Infeasible" shall mean when applicable development standards are applied, they would physically preclude development of a proposed ADU up to 800 square feet with at least 4 ft. side and rear yard setbacks.

H. "Junior accessory dwelling unit" or "JADU" means a unit that is no more than five hundred (500) square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.

I. "Living area" means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure or building.

J. "Major transit stop" has the same meaning as defined in Section 21155 of the California Public Resources Code.

K. "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU.

L. "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public. (Ord. 657 § 4 (Exh. P), 2023)

17.78.050 Permit application for an accessory dwelling unit.

The application for an ADU permit shall be made by the owners of the subject property in writing to the building division in the form designated by the building division and shall contain the following:

- A. A completed building permit application form and applicable fee;
- B. Written project description;
- C. Courtesy neighbor notification report in a form designated by building official indicating adjacent property owners have been notified of the new ADU (garage conversions are exempt from notification);
- D. Plans and drawings as required by the building division;
- E. A copy of required deed restriction as included in Section 17.78.100, unless exempt. (Ord. 657 § 4 (Exh. P), 2023)

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:

Option 1

One JADU (up to 500 SF); or

Option 2

One ADU (conversion, attached, or detached); or

Option 3

One (1) JADU (up to 500 SF); and,
One (1) conversion ADU; and,
One (1) newly constructed ADU (up to 800 SF).

Option 4

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

Option 5

One (1) JADU (up to 500 SF); and,
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 65852.22, 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.
- 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. (Ord. 657 § 4 (Exh. P), 2023)

17.78.070 Standards applicable to multifamily residence zoning districts.

The following shall apply to multifamily dwelling lots in R-3, R-4 and R-T (with or without a planned combining district) zoning districts:

A. Conversion ADUs. ADUs are permitted within portions of existing legally permitted multifamily dwelling structures that are not used as livable space including storage rooms, boiler rooms, passageways, attics, basements, and garages, subject to the following requirements:

1. Number of ADUs. At least one ADU within an existing multifamily building and no more than twenty-five percent of the existing multifamily dwelling units shall be permitted.
2. Size. The total floor area of a conversion ADU shall not exceed eight hundred fifty square feet for a studio or one bedroom, or one thousand square feet for an ADU with two or more bedrooms.
3. Existing livable space may not be converted into an ADU.

B. Detached ADUs.

1. Number of ADUs. Up to two (2) detached ADUs are permitted on a multifamily lot with an existing, new, or proposed multifamily building.
2. Size. The total floor area of a detached ADU shall not exceed eight hundred fifty (850) square feet for a studio or one (1) bedroom, or one thousand two hundred (1,200) square feet for an ADU with two (2) or more bedrooms.
3. Setbacks.
 - a. The side and rear setbacks shall be no less than four (4) feet.
 - b. The separation between the detached ADU and the primary dwelling shall be as per California Residential Code.
4. Height.
 - a. Where an ADU is on a lot with an existing or proposed multifamily, multi-story dwelling, it shall not exceed eighteen (18) feet in height.

- b. An ADU may add up to two (2) feet of height to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the multifamily dwelling (for a maximum of twenty (20) feet. (Ord. 657 § 4 (Exh. P), 2023)

17.78.080 Parking requirements for accessory dwelling units.

A. Parking requirements for newly constructed ADUs shall not exceed one (1) parking space per unit or per bedroom, whichever is less. This space may be provided as tandem parking, including on an existing driveway or in setback areas, excluding the non-driveway front yard setback. Exception to the requirement for provision of one parking space may be made per subsection B of this section.

B. Parking is not required in the following instances:

1. The ADU is located within one-half mile walking distance of public transit.
2. When there is an approved car share vehicle for which a Foster City business license has been issued and remains active, located within one block of the accessory dwelling unit.
3. JADU.
4. ADU that only includes a studio with no bedroom.
5. The ADU is located within an architecturally and historically significant area.
6. Where the ADU is part of the proposed or existing primary residence or an accessory structure. (Ord. 657 § 4 (Exh. P), 2023)

17.78.090 Permit process.

A. Pursuant to Government Code Section 65852.2 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 (60) 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 (60) 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. (Ord. 657 § 4 (Exh. P), 2023)

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, an owner-occupancy 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 submitted between January 1, 2020, and December 31, 2024.

- 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 (30) 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 at least four feet setback 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 65852.26. 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.
- K. All JADUs and ADUs shall comply with the current Title 24 California Code of Regulations, as adopted by the city and all related safety codes. (Ord. 657 § 4 (Exh. P), 2023)