



DATE: September 18, 2023

TO: Mayor and Members of the City Council

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

FROM: Sofia Mangalam, Community Development Director
James Atkins, Senior Planner

DEPARTMENT: Community Development

SUBJECT: RZ2023-0006 & RZ2023-0007, AMEND TITLE 17, "ZONING"
CHAPTERS 17.78 ACCESSORY DWELLING UNITS, AND 17.86
DENSITY BONUSES 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 introduce and pass to second reading the ordinances (Attachment 1 & 2) amending Title 17, "Zoning" Chapters 17.78 Accessory Dwelling Units, and 17.86 Density Bonuses and finding the amendments exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline Section 15061(b)(3).

EXECUTIVE SUMMARY

Over the past several years, the California State Legislature has passed specific bills intended to address California's housing crisis by limiting local government discretion over housing development projects in an effort to increase housing supply. In 2022, this trend continued, and the legislature introduced numerous bills related to planning and land use laws, including refinements to Accessory Dwelling Units (ADUs) and Density Bonus law via Assembly Bills (AB) and Senate Bills (SB), including AB 2221, SB 897, AB

682, AB 2334, and AB 1551. In order to comply with recent state legislation, staff prepared draft amendments to Title 17, “Zoning” Chapters 17.78 Accessory Dwelling Units, and 17.86 Density Bonuses.

On August 17, 2023, the Planning Commission held a public hearing to review the draft amendments to Chapters 17.78 Accessory Dwelling Units and 17.86 Density Bonuses. At the meeting, the Commission voted 5-0 to approve resolutions P-11-23 and P-12-23, (Attachment 5 and 6) recommending to the City Council to adopt ordinances amending Title 17, “Zoning” Chapters 17.78 Accessory Dwelling Units, and 17.86 Density Bonuses ([see attachments for the Planning Commission public hearing on August 17, 2023](#)). At the meeting, two (2) Commissioners expressed an interest in the removal of owner-occupied deed restrictions currently included in Chapter 17.78 Accessory Dwelling Units of the Foster City Municipal Code for Council consideration.

BACKGROUND

To ensure that the City of Foster City continues to stay apprised of recent changes in state laws, a Planning Commission study session was held on June 15, 2023, informing the Planning Commission and the public regarding the most recent legislative changes in land use and housing laws including key ADUs and Density Bonus bills ([see attachments for the Study Session on June 15, 2023](#)).

Title 17, Zoning, Chapter 17.78 Accessory Dwelling Units was last amended on January 09, 2023, and Chapter 17.86 Density Bonuses was last amended on November 18, 2013. Further amendments are required to ensure compliance with the State law.

ANALYSIS

Accessory Dwelling Units

Accessory Dwelling Units, more commonly known as ADUs, second units, in-law units, granny flats, or casitas, allow property owners to add additional residential units to their properties with existing or proposed primary dwelling units (both single-family and multifamily homes are eligible). With few exceptions, the City must allow ADUs everywhere residential uses are permitted, and applications to add an ADU must be processed ministerially using applicable, objective standards and without a public hearing. The legislature adopted two (2) key ADU bills in 2022: [AB 2221](#) and [SB 897](#). These bills took effect on January 1, 2023, and amend [Government Code Sections 65852.2](#), [65852.22](#), and [65852.23](#), and [Health and Safety Code Section 17980.12](#). These bills make further revisions to state law, and local jurisdictions need to readopt any local ordinances related to ADUs to include new State law provisions and provide clarifications.

The following points outline the proposed amendments, which include mandatory revisions to comply with updated legal requirements as well as several clarifications to definitions and the general language of the current code:

- Amended **Sections 17.78.010 Findings, 17.78.020 Purpose, and 17.78.030 Application** to clarify that accessory dwelling units are permitted in all areas zoned to allow residential development.
- Amended **Section 17.78.040(A)(1)(2)(3) Definitions**, for ADU and JADU for compliance with Gov. Code §65852.2 and §65852.22.
- Amended **Section 17.78.040(B)(C)(D)(E)(G)(I) Definitions** adding and amending general terms identified in the City's code including:
 - Attached accessory dwelling unit
 - Conversion accessory dwelling unit
 - Detached accessory dwelling unit
 - Efficiency unit
 - Major transit stop
- Amended **Section 17.78.050(C) and (E) Permit application for an accessory dwelling unit** - added that garage conversions are exempt from courtesy neighbor notifications and removed the requirement for homeowners association (HOA) approval letter for all ADUs.
- Added options to **Section 17.78.060(A) Standards applicable to single-family residence zoning districts**, that will determine the maximum number of accessory dwelling units permitted on a single-family residential lot. Under this provision, five (5) options are included:
 - Option 1 - One JADU (up to 500 SF).
 - Option 2 - One ADU (conversion, attached, or detached).
 - 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.
- Amended **Section 17.78.060(B)(1), (4), (5), and (6) Standards applicable to single-family residence zoning districts**, where required development standards for Junior Accessory Dwelling Units (JADUs) must comply with Gov. Code §65852.22.
- Amended **Section 17.78.060(C)(2) & (D)(2) Standards applicable to single-family residence zoning districts**, to allow for accessory dwelling units in front yards when infeasible to locate elsewhere on a single-family residential lot, in compliance with Gov. Code §65852.2.
- Amended **Section 17.78.060(C)(4)(a) & (D)(4)(a) Standards applicable to single-family residence zoning districts**, to allow for heights of accessory dwelling units to range from 16 feet to 25 feet when certain conditions are satisfied.
- Amended **Section 17.78.060(E)(1) & (2) Standards applicable to single-family residence zoning districts**, to clarify development standards for Conversion ADUs.

- Amended **Section 17.78.060(F)(1), (2), and (3) Standards applicable to single-family residence zoning districts**, clarifying development standards for JADUs.
- Amended **Section 17.78.070(B)(1), (3), and (4) Standards applicable to single-family residence zoning districts**, clarifying development standards for Detached ADUs.
- Amended **Section 17.78.080(B) Parking requirements for accessory dwelling units**, adding parking regulations in compliance with Gov. Code §65852.2., to clarify that parking is not required where the ADU is part of the proposed or existing primary residence or an accessory structure.
- Amended **Section 17.78.090(A), (B), and (C) Permit issuance**, renaming to “Permit process”; and, clarifying timelines for approval; and, added included language stating that if an application is denied, the City shall respond with a full set of comments identifying the application’s defects and an explanation as to how it may be remedied; and, added language for a demolition permit to run concurrently with an application for an accessory dwelling unit in compliance with Gov. Code §65852.2.
- Amended **Section 17.78.100(D), (E), (F), and (J) Other provisions**, clarifying lease periods (not less than 30 days); and, added language to ensure compliance with California Fire Code as amended by San Mateo Consolidated Fire Department; fire sprinkler requirements compliance with Title 24 California Code of Regulations.

Subsequent to the June 15, 2023, Planning Commission Study Session, staff drafted amendments to Chapters 17.78 Accessory Dwelling Units and 17.86 Density Bonuses and presented them to the Planning Commission for review on July 20, 2023. The Planning Commission voted 5-0 to approve resolutions recommending that the City Council adopt ordinances amending Title 17, “Zoning” Chapters 17.78 Accessory Dwelling Units, and 17.86 Density Bonuses.

The motion passed with a majority of the Planning Commission supporting the proposed ordinances including two (2) minor changes:

- (1) Add existing options for one JADU and one ADU (attached or detached) from the current code section 17.78.060.A back into the ordinance as these options were inadvertently removed from the draft version of ordinance during text formatting, and
- (2) Add a definition for the word “Infeasible” as it relates to locating an ADU in the front yard of a single-family home.

Two (2) Commissioners asked that the City Council consider the removal of existing language regarding owner-occupancy deed restrictions in Sections 17.78.100(A) & (B). The Commission discussed the matter as positions were taken on deed restrictions potentially being discriminatory as the tenants should be able to occupy the main home or the ADU, while an opposing position focused on protecting the character of single-

family neighborhoods from potentially allowing properties to function as multifamily residential developments. Ultimately, the removal of the existing language regarding owner-occupancy deed restrictions was not supported by a majority of the Planning Commission.

Staff comments: Currently, section 17.78.100(B) and state law does not allow the enforcement of owner-occupancy and the recordation of deed restrictions for ADUs between January 1, 2020, and December 31, 2024, and this language has been retained in the proposed amendments in the ADU ordinance. Also, as noted during the meeting, even if the owner-occupancy deed restriction requirements in Section 17.78.100(A) were removed for ADUs, state law requires owner-occupancy for all single-family residences with Junior ADUs (or JADUs) and the recordation of deed restriction as outlined in Gov Code §65852.22. Thus, staff recommends that the current language is retained as it is.

Density Bonus Law

Density Bonus Law was enacted in 1979 (Gov. Code §§65915 – 65918), allowing developers with five (5) or more homes the right to increase density on a property above the maximum set under a jurisdiction's General Plan. In exchange for the increased density, a certain number of the new dwelling units must be reserved at below-market rate rents or meet other specified criteria, such as housing for seniors. The law also provides rights to housing and mixed-use developments to reduce development costs through the granting of incentives/concessions, achieve permitted densities through waivers of development standards, and reduce parking requirements.

On September 28, 2022, the Governor signed AB 2334, AB 1551, and AB 682, three (3) bills that make various amendments and clarifications to the State Density Bonus Law. The following points outline required amendments, as well as clarifications to definitions and the general language of the current code:

- Amended **Section 17.86.010 Purpose**, clarifying government code sections and implementation of the City's Housing Element.
- Amended **Section 17.86.030 Applicability**, clarifying language, and ensuring compliance with Gov. Code §§65915 – 65918.
- Amended **Section 17.86.040 Application requirements**, and simplified the application requirements, and identified pertinent information to ensure compliance with Gov. Code §§65915 – 65918. This is to help staff with application intake.
- Amended **Section 17.86.060 Incentives**, clarifying language, and ensuring compliance with Gov. Code §§65915 – 65918.
- Amended **Section 17.86.070 Discretionary approval authority retained**, to clarify language.
- Amended **Section 17.86.080 Waivers**, clarifying definition of "waivers".

- Amended **Section 17.86.090 Affordable housing agreement**, adding senior housing agreements, adjusted agreement length from 30 years to 55 years, and added covenant requirements, and recordation with the county recorder's office.
- Amended **Section 17.86.100 Design and quality**, removing language regarding that the requirement regarding the number of bedrooms mix may be waived for certain special groups.

As a means to reduce the number of code amendments required to be made to the City's municipal code due to constant changes in State law, the proposed amendments to the Density Bonus sections are revised to directly defer to State law where the City's regulations are not specific to the City's permissible regulations. Additionally, revisions to these sections have been made to add clarity to requirements for ease of understanding and interpretation.

The proposed amendments are included in Attachments 3 and 4 and include text edits in a strike-through and replace format for review by the City Council. All the proposed amendments to both the ordinances have been reviewed by the City's Attorney's Office for compliance with the state law.

To ensure that the Municipal Code is in sync with state laws, staff recommends that the City Council introduce and pass to second reading the ordinances (Attachment 1 & 2) amending Title 17, "Zoning" Chapters 17.78 Accessory Dwelling Units, and 17.86 Density Bonuses and finding the amendments exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline Section 15061(b)(3).

If introduced for adoption, the Ordinances would be scheduled for a second reading at a future City Council Regular Meeting. Once adopted, the Ordinances would be in effect after 30 days from adoption.

CEQA

The proposed actions would update City's existing Municipal Code to align with the requirements of the most recent updates to the State's laws. The actions would not result in physical changes to the environment. Pursuant to CEQA Guidelines Section 15061(b)(3), the adoption of an ordinances regulating Density Bonus and ADU regulations are exempt.

FISCAL IMPACT

There is no fiscal impact associated with this item.

CITY COUNCIL VISION, MISSION, AND VALUE/PRIORITY AREA

Smart Planning, Development, and the Local Economy

ATTACHMENTS:

- Attachment 1 – Ordinance for Chapter 17.78 Accessory Dwelling Units
- Attachment 2 – Ordinance for Chapter 17.86 Density Bonuses
- Attachment 3 – Revised Section 17.78 Accessory Dwelling Units with Redlines
- Attachment 4 – Revised Section 17.86 Density Bonuses with Redlines
- Attachment 5 – Planning Commission Resolution P-11-23
- Attachment 6 – Planning Commission Resolution P-12-23
- Attachment 7 – Meeting Minutes for August 17, 2023 Planning Commission meeting