ORDINANCE NO. 633

AN ORDINANCE OF THE CITY OF FOSTER CITY APPROVING AMENDMENTS TO CHAPTER 17.16, R-T TOWNHOUSE RESIDENCE DISTRICT; CHAPTER 17.18, R-3 MEDIUM DENSITY MULTIPLE-FAMILY RESIDENCE DISTRICT; AND CHAPTER 17.78, ACCESSORY DWELLING UNITS, TO COMPLY WITH NEW STATE LAWS PERTAINING TO ACCESSORY DWELLING UNITS

CITY OF FOSTER CITY

THE CITY COUNCIL OF THE CITY OF FOSTER CITY DOES FIND AND ORDAIN as follows:

WHEREAS, the Foster City Municipal Code includes provisions regarding Accessory Dwelling Units ("ADUs"), which were last updated in 2017;

WHEREAS, in 2019, the California Legislature passed four bills regarding Accessory Dwelling Units: AB 68, AB 670, AB 881, and SB 13 (the "ADU Bills"), all of which took effect January 1, 2020;

WHEREAS, the ADU Bills amended State requirements related to permitting ADUs, including but not limited to:

- Development standards for ADUs shall not include minimum lot size requirements;
- Local agencies can only preclude ADUs due to inadequate water or sewer, impacts on traffic flow, or public safety impacts;
- Local agencies must allow an ADU of at least 800 square feet in size, 16 feet in height with 4-foot side and rear setbacks regardless of any underlying zoning requirements such as lot coverage, Floor Area Ratio (FAR), open space and minimum lot size;
- Prohibits a local agency from establishing the maximum size of an ADU of less than 850 square feet, or 1000 square feet if the ADU contains more than one bedroom;
- If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling;
- Clarifies that when ADUs are created through the conversion of a garage, carport or covered parking structure, replacement off-street parking spaces cannot be required by the local agency;
- Local agencies must ministerially approve a permit within 60 days of deeming application complete (previously 120 days) or the application is deemed approved;
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- Local agencies must allow Junior ADUs ("JADUs"), which are units that are no more than 500 sq. ft. of converted space entirely within an existing single-family residence;

- A site zoned for single-family use can have both a JADU and a detached ADU in addition to the primary residence;

- Provides for the creation of ADUs in areas zoned to allow single-family or multi-family dwelling residential use;

- Multi-family buildings may convert existing non-habitable space (such as hallways, garages, boiler rooms, etc.) to ADUs up to 25% of the existing number of units and can also add up to two detached ADUs;

- Prohibits local jurisdictions from requiring nonconforming uses be cured as a condition of ministerial approval for JADUs or ADUs;

- Affordable housing developers (only) can sell a deed restricted ADU separately from the main house;

- Limits the ability of Common Interest Developments (HOAs) to prohibit or unreasonably restrict the construction or use of a JADU or an ADU in single-family dwellings;

- Allows owner to delay enforcement of certain building standards up to five years for building requirements that do not violate the Health and Safety Code;

WHEREAS, a Planning Commission Study Session was held to review the changes to State Law pertaining to ADUs and proposed text amendments on June 18, 2020;

WHEREAS, a Public Hearing was held to review the proposed text amendments at a Regular Meeting of the Planning Commission on July 16, 2020;

WHEREAS, the proposed amendments have been determined to be statutorily exempt from the California Environmental Quality Act of 1970 pursuant to CEQA Guidelines Section 15282(h); and

WHEREAS, the City Council wishes to ensure that the City of Foster City remains in compliance with State law.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FOSTER CITY, DOES FIND AND ORDAIN as follows:

Section 1. Section 17.16.020, Permitted Uses, of Chapter 17.16, R-T Townhouse Residence District, of the Foster City Municipal Code is hereby amended to add the following:

17.16.020 Permitted uses.
The following uses shall be permitted in the R-T district:

H. Accessory Dwelling Units in compliance with Chapter 17.78.

Section 2. Section 17.18.020, Permitted Uses, of Chapter 17.16, R-3 Medium Density Multiple-Family Residence District, of the Foster City Municipal Code is hereby amended to add the following:

17.18.020 Permitted uses.

The following uses shall be permitted in the R-3 district:

E. Accessory Dwelling Units in compliance with Chapter 17.78.

Section 3. Chapter 17.78, Accessory Dwelling Units, of the Foster City Municipal Code is hereby amended to read as follows:

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 ADU Regulations applicable to Single-Family Residence Zoning Districts.
17.78.070 ADU regulations applicable to Multi-Family 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 Unit by ministerial review in Residential Zoning Districts is consistent with the goals and policies of the Foster City general plan in that Accessory Dwelling Unit would help meet the need for affordable housing. Furthermore, construction of Accessory Dwelling Unit 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.

17.78.020 Purpose.
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The purpose of this chapter is to allow ADUs in Single-Family Residence and Multi-Family Residence zoning districts through ministerial permit procedures in compliance with State laws.

17.78.030 Application.

The provisions of this chapter shall apply in Residential Zoning Districts (with or without a Planned Development Combining District). ADUs are not permitted in any other district.

17.78.040 Definitions.

A. “Accessory Dwelling Unit” or “ADU” means an attached or a detached residential dwelling unit which 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 primary dwelling is situated. The unit shall be clearly subordinate to the primary dwelling unit on the parcel by size, location, and appearance. An ADU also includes the following:

1. An efficiency unit, as defined in California Health and Safety Code Section 17958.1, except that the efficiency unit shall be required to provide complete cooking and sanitation facilities.

2. A manufactured home, as defined in California Health and Safety Code Section 18007, subject to all provisions of this Chapter.

3. A Conversion ADU or ADU converted from existing spaces, is a unit within an existing permitted, legally constructed space, including a subordinate portion of the primary structure, an attached or detached garage, or other accessory building or accessory structure.

B. “Junior Accessory Dwelling Unit” or “JADU” is defined per California Government Code Section 65852.22, as it may be amended from time to time, and generally means a unit of no more than five hundred (500) square feet, which is located entirely within the walls of an existing or proposed single-family residence, maintains a separate exterior entrance from the main entrance to the single-family residence, maintains an interior connection to the main living area of the single-family residence, either includes separate sanitation facilities or shares sanitation facilities with the existing structure, and includes an efficiency kitchen.

C. “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.

D. “Passageway” means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU.
E. “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.

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 & 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;
D. Plans and drawings as required by the Building Division;
E. A copy of approval from the HOA (if applicable), unless exempt.
F. A copy of required deed restriction as included in the Section 17.78.100, unless exempt.

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. One (1) JADU
   2. One ADU (Attached or Detached) or
   3. One newly constructed, Detached ADU and one JADU.

B. Junior Accessory Dwelling Units.

   1. Owner Occupancy Required. 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.

   2. 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 30 consecutive calendar days.

C. Attached ADUs. One (1) 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 1,200 square feet or fifty percent (50%) of the existing or proposed primary dwelling, whichever is less.

2. Location. Attached ADUs shall not be located in the front yard.

3. Setbacks. The side and rear setbacks shall be no less than four (4) feet.

4. Height.
   
a. A single-story attached ADU shall not exceed sixteen (16) feet in height.
   
b. An attached ADU on the second-story shall not exceed the height of the existing or proposed primary dwelling.

D. Detached ADUs. One (1) 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 1,200 square feet or fifty percent (50%) of the existing or proposed primary dwelling, whichever is less.

2. Location. Detached ADUs shall not be located in the front yard.

   
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 detached ADU shall not exceed sixteen (16) feet in height.

E. Conversion ADUs. One (1) conversion ADU per single-family lot is permitted, subject to the following requirements:

1. Size. The total floor area of detached and attached Conversion ADU may be up to 1,200 square feet as long as it does not exceed fifty percent (50%) of an existing or proposed primary dwelling.

2. Setbacks. No setbacks shall be required for ADU conversions of:
   
a. Existing living space in the primary dwelling.
b. Existing accessory buildings constructed in the same location and to the same dimensions.

c. Existing attached or detached garages in single-family neighborhoods.

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

3. Height. A Conversion ADU shall not alter the height of the existing structure (primary dwelling, accessory building, or garage) that is being converted.

4. 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 comply with the current Uniform Building Code, as adopted by the City and all related safety codes.

2. All JADUs and ADUs shall provide exterior access that is separate from the primary dwelling.

3. Except as specified in this Section 17.78.060, ADUs shall comply with lot coverage, floor area limit, open space 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 that is up to sixteen (16) feet in height.

17.78.070 Standards applicable to Multi-Family Residence Zoning Districts.

The following shall apply to multi-family 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 (1) ADU within an existing multi-family building and no more than twenty-five percent (25%) of the existing multifamily dwelling units shall be permitted.

2. Size. The total floor area of a Conversion ADU shall not exceed 850 square feet for a studio or one-bedroom, or 1,000 square feet for an ADU with two or more bedrooms.

3. Existing livable space may not be converted into an ADU.
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B. Detached ADUs.

1. Number of ADUs. Up to two (2) detached ADUs are permitted on a multifamily lot that has an existing multifamily building.

2. Size. The total floor area of a detached ADU shall not exceed 850 square feet for a studio or one-bedroom, or 1,000 square feet for an ADU with two or more bedrooms.

   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 Building Code.

4. Height. A detached ADU shall not exceed sixteen (16) feet in height.

17.78.080 Parking Requirements for Accessory Dwelling Units.

A. Parking requirements for newly constructed ADUs shall not exceed one 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. The ADU is a Conversion ADU.

3. 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.

4. JADU

5. ADU that only includes a Studio with no bedroom.

17.78.090 Permit Issuance.

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 ADU or JADU is not subject to the 60-day timeline and shall permitted in conjunction with the new or remodeled primary residence.

17.78.100 Other Provisions.
A. Unless exempt from the owner-occupancy requirement per subsection (B), below, 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 (30) 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 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, 2025.

D. Any ADU may be leased to a maximum of two paying guests, for a period not fewer than thirty (30) consecutive days. If an ADU is constructed pursuant to all of the provisions described herein, the primary residence may be leased to a maximum of two paying guests for a period not fewer than thirty (30) consecutive days. In no case, except as specified in subsection (B), above, shall both the primary residence and ADU on a lot be leased simultaneously.

E. 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.

F. ADUs that are seven hundred fifty (750) square feet or smaller are exempt from impact fees.

G. Notwithstanding the provisions of this Section 17.78.100, the requirements for newly constructed ADUs shall not preclude constructing one (1) ADU of at least eight hundred (800) square feet, which is not more than sixteen (16) feet in height, and at least four (4) feet setback from the side and rear property lines.

H. 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.

Section 4. 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 hereby declares that it would 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 may be declared unconstitutional.
Section 5. **Taking Effect.** This Ordinance shall take effect and be in force thirty (30) days from and after its adoption.

Section 6. **Posting.** Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall have it posted in three (3) public places.

Section 7. Within sixty (60) days of its adoption, the City Clerk shall cause a copy of the adopted ordinance to be submitted to the Department of Housing and Community Development, pursuant to California Government Code Section 65852.2(h).

This Ordinance was introduced and read on the 8th day of September, 2020, and passed and adopted on the 5th day of October, 2020, by the following vote:

**AYES:** Councilmembers Awasthi, Froomin, Gehani, Hindi, and Mayor Mahanpour

**NOES:** None

**ABSENT:** None

**ABSTAIN:** None

ATTEST:

CATHERINE MAHANPOUR, MAYOR

PRISCILLA SCHAUS, CITY CLERK
CERTIFICATE OF POSTING

I, Priscilla Schaus, hereby certify as follows:
That I am, and at all time herein mentioned, was the duly acting and qualified City Clerk/District Secretary of the City of Foster City, Foster City, San Mateo County, California.

I further certify to the proper posting of:

Ordinance No. 633, “An Ordinance of the City of Foster City Approving Amendments to Chapter 17.16, R-T Townhouse Residence District; Chapter 17.18, R-3 Medium Density Multiple-Family Residence District; and Chapter 17.78, Accessory Dwelling Units, to Comply with New State Laws Pertaining to Accessory Dwelling Units (First Reading September 8, 2020)”

in the following three public places of the City of Foster City, Foster City, San Mateo County, California:

1. Recreation Center Lobby
   650 Shell Boulevard
2. Council Chambers (not a mandatory posting site)
   620 Foster City Boulevard
3. Foster City Public Library
   1000 E. Hillsdale Boulevard

Executed at the City of Foster City, Foster City, San Mateo County, California this 5th day of October, 2020.

Priscilla Schaus
City Clerk