

ORDINANCE 735 N.S

AN ORDINANCE UPDATING THE ADMINISTRATIVE CITATION AND NUISANCE
ABATEMENT PROVISIONS OF THE CITY CODE TO BRING THEM IN TO
CONFORMANCE WITH CURRENT BEST PRACTICES

The City Council of the City of Piedmont hereby ordains as follows:

SECTION 1 INTENT

It is the intent of the City Council of City of Piedmont in adopting this ordinance to bring the administrative citation and nuisance abatement provisions of the City Code into conformance with current best practices in code enforcement used in cities throughout the Bay Area and California.

SECTION 2 ADMINISTRATIVE CITATION

Article II of Chapter 1 of the Piedmont City Code is hereby amended in its entirety to read as set forth in Exhibit A, attached.

SECTION 3 NUISANCE ABATEMENT

Chapter 6 of the Piedmont City Code is hereby amended in its entirety to read as set forth in Exhibit B, attached.

SECTION 4 SEVERABILITY

The provisions of this Ordinance are severable and if any provision, clause, sentence, word or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, sections, words or parts thereof of the Ordinance or their applicability to other persons or circumstances.

SECTION 4 CODIFICATION

The City Clerk is directed to codify this ordinance in a manner which best reflects the legislative intent of the City Council in enacting it.

SECTION 5 POSTING AND EFFECTIVE DATE

This Ordinance shall be posted at City Hall after its second reading by the City Council for at least thirty (30) days and shall become effective thirty (30) days after such second reading.

I certify that the foregoing ordinance was passed and adopted as a part of the consent calendar by Resolution 72-17 at the regular meeting of the City Council of the City of Piedmont on October 16, 2017, by the following vote:

Ayes:	Andersen, Cavanaugh, King, McBain, Rood
Noes:	None
Absent:	None

Attest: _____
John O. Tulloch, City Clerk

ARTICLE II: CODE ENFORCEMENT

1.7 CODE VIOLATIONS

- A. It is unlawful for any person to violate any provision or to fail to comply with any requirement the Piedmont City Code, or any City ordinance. Each and every day, or portion thereof, during which a violation is committed, continued, or permitted by any person, shall be a separate violation. Each responsible person determined to be responsible for a violation shall be jointly and severally liable for a code violation.

- B. In addition to administrative citations, as set forth below, the City may enforce any code violation by any one or more of the following methods at the City's discretion:
 - 1. Criminal penalty
 - 2. Civil injunction
 - 3. By the denial of permits or the forfeiture or revocation of permits
 - 4. Public nuisance abatement (per Chapter 6 of the Piedmont City Code)
 - 5. Any other legal means available

- C. The remedies provided for in this article are cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

1.8 DEFINITIONS

For the purposes of this article, the following definitions shall apply:

“Administrative citation” means a citation for a money fine issued to a responsible person in accordance with this article.

“City Compliance Officer” means the City officer, employee, or contractor designated by the City Administrator for enforcing the Piedmont City Code.

“Hearing Officer” means a person designated by the City Administrator to serve as the presiding officer for hearings on matters related to an administrative citation, subject to the requirements of Section 1.15.

“Notice of violation” means written notice of a code violation issued to a responsible person in accordance with this article.

“Owner” means the record owner of real property according to Alameda County’s latest equalized property tax assessment roll or the person who owns or is in control of personal property.

“Person” means and includes a natural person or legal entity, and the owners, majority stockholders, corporate officers, trustees, and general partners of a legal entity.

“Property” means any real or personal property located within the City and any improvement, structure, building or portion thereof located on real property.

“Responsible person” means the owner or any person or persons in charge of the property on which a violation of the Piedmont City Code exists, or the person or persons responsible for an event or incident that constitutes a violation of the Piedmont City Code, and shall include, but is not limited to, any of the following: (1) a person who, by action or inaction (whether acting alone or with one or more other persons), causes, maintains, permits, or allows a code violation; (2) a person whose agent, employee, or independent contractor, by action or inaction, causes, maintains, permits, or allows a code violation; (3) an owner of real property on which a code violation occurs; (4) a lessee or sub-lessee with the current right of possession of real property on which a code violation occurs; (5) the person or persons in charge of the property where the violation occurs; and (6) the owners, majority stockholders, corporate officers, trustees, general partners and any other person with the legal authority to act for a legal entity that is a responsible person under subsections (1) through (5) above. If the responsible person is a minor or incompetent, the parents or guardians of such minor persons shall be deemed responsible persons.

1.9 ADMINISTRATIVE CITATION.

Whenever a City Compliance Officer determines that a code violation has occurred, the City Compliance Officer shall have the authority to issue an administrative citation to any responsible person. An administrative citation shall not be issued unless a prior written notice of violation has been provided to the responsible person or persons by the City Compliance Officer.

Notwithstanding the requirements of this section, a City Compliance Officer shall have the authority to issue an administrative citation to any responsible person without providing prior written notice when:

1. The violation requires immediate correction, due to an immediate danger to public health or safety; or
2. The responsible person has been given prior written notice of violation or an administrative citation for a violation of the same section of the Piedmont City Code within one year of the date of the new violation.

1.10 NOTICE OF VIOLATION FORMAT.

- A. A notice of violation issued by the City Compliance Officer shall substantially comply with the following format:

[Name and address of responsible person]

NOTICE OF VIOLATION

NOTICE IS HEREBY GIVEN that you have been identified as the party responsible for a violation of the Piedmont City Code. The violation is on property commonly known as [insert address or other legal property description] and more specifically described by the Alameda County Assessor as [APN # _____].

The City Compliance Officer has observed the following conditions, which constitute a violation of the Piedmont City Code: [description of violation]

The observed conditions violate the following provisions of the Piedmont City Code: [cite code section]

YOU ARE HEREBY ORDERED TO REMEDY SAID VIOLATION within [reasonable time to remedy violation, not less than ten (10) days] calendar days from the issuance date of this order. The issuance date is specified below. You may remedy the violation by [desired action which, if taken, will adequately remedy the situation].

FAILURE TO REMEDY THE VIOLATION WITHIN THE SPECIFIED TIME WILL RESULT IN THE ISSUANCE OF A FINE IN THE AMOUNT OF [amount of fine]. Each day for which the violation remains after the specified date shall constitute a new violation and may result in additional fines without further notice. Nonpayment of the fines may result in additional administrative penalties and costs, as well as a lien being assessed on your property, to be collected by the County Auditor along with municipal taxes and other assessments. [Optional: The City will seek to recover its attorneys' fees as a result of any administrative proceeding resulting from this violation.]

If you have any questions regarding this matter, you may direct them to the City Compliance Officer issuing this notice at the address or telephone number listed below.

ISSUANCE DATE: _____

[Insert: name, title, address and telephone number of the City Compliance Officer issuing this notice.]

- B. A Notice and Order to Abate substantially complying with the format set forth in Section 6.5 of the Piedmont City Code shall have the same force and effect as a notice of violation for the purposes of this article.
- C. The City Compliance Officer shall maintain records detailing the instance or instances of the violation(s), including such information as photographic evidence, a chronological account of inspections made, identification of conditions noted, and witness statements, if any, all of which support the issuance

of the notice of violation. The records shall be made available upon request to the responsible person.

1.11 ADMINISTRATIVE CITATION FORMAT.

- A. If a responsible person fails to remedy a violation within the time period allotted in a notice of violation, the City Compliance Officer may issue an administrative citation. An administrative citation shall substantially comply with the following format:

[Name and address of responsible person]

ADMINISTRATIVE CITATION

On [Issuance Date of notice of violation] the City of Piedmont issued you a notice of violation naming you as the responsible person for a violation of the Piedmont City Code, and ordering you to remedy the violation. The violation is on property commonly known as [insert address or other legal property description] and more specifically described by the Alameda County Assessor as [APN #].

The City Administrator or his/her designee has observed the following conditions, which constitute a violation of the Piedmont City Code: [description of nuisance]

The observed conditions violate the following provisions of the Piedmont City Code: [cite code section]

THE AMOUNT SET FORTH AS THE FINE FOR SUCH A VIOLATION OF THE CITY CODE IS \$_____. Each day for which this violation goes unremedied shall constitute a new violation and a new fine of \$_____ without additional notice.

YOU ARE HEREBY ORDERED TO IMMEDIATELY REMEDY THE VIOLATION AND PAY THE FINE AMOUNT WITHIN 30 DAYS. Failure to make the full payment may result in additional fines, penalties, and costs. Nonpayment of the fines may also result in a lien being assessed on your property, to be collected by the County Auditor along with municipal taxes and other assessments. [Optional: The City will seek to recover its attorneys' fees as a result of any administrative or court proceeding resulting from this violation.]

Payment must be submitted to the City Clerk at the following address:

City Clerk
City of Piedmont
120 Vista Avenue
Piedmont, CA 94611

Payment of the fine shall not excuse or discharge any continuation or repeated occurrence of the code violation that is the subject of this administrative citation.

YOU ARE FURTHER PROHIBITED FROM CONTINUING OR REPEATING THE VIOLATION. Failure to remedy the violation or repeated occurrences will result in additional fines.

YOU MAY APPEAL THIS ADMINISTRATIVE CITATION, but any such appeal must be brought within ten calendar days of the issuance date of this administrative citation. The appeal must be in writing; specify the reasons for the appeal; contain your name, address, and telephone number; be accompanied by an appeal fee of _____ dollars (\$_____) and advanced payment of the fine amount listed above; and be submitted to the City Clerk.

One who is legally indigent may apply for a waiver of the appeal fee and advanced payment of the fine. Upon timely receipt of the appeal and accompanying fee and fine payment, or waiver, the City Clerk will cause the matter to be set for hearing and notify you of the date and location of the hearing.

FAILURE TO FILE A TIMELY APPEAL SHALL BE CONSTRUED AS A WAIVER OF THE RIGHT TO AN APPEAL AND A FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES.

If you have any questions regarding this matter, you may direct them to the City Compliance Officer issuing this citation at the address or telephone number listed below.

ISSUANCE DATE: _____

(Insert: name, title, address, and telephone number of the City Compliance Officer issuing this notice.)

1.12 AMOUNT OF FINES.

- A. The amounts of the fines for code violations imposed pursuant to this article shall be set forth in the schedule of fines established by resolution of the City Council.
- B. The schedule of fines may specify any increased fines for repeat violations of the same code provision by the same person within a specified monthly period from the date of an administrative citation.
- C. The schedule of fines shall specify the amount of any late payment penalties imposed for the payment of a fine after its due date.

1.13 PAYMENT OF THE FINE.

- A. The fine shall be paid to the City within thirty (30) days from the date of the administrative citation.
- B. Payment of a fine under this article shall not excuse or discharge any continuation or repeated occurrence of the code violation that is the subject of the administrative citation.

- C. Fines shall continue to accrue for each day during the course of any appeal except that late payment penalties shall not accrue during the course of an appeal. Fines due after an appeal shall be paid to the City within thirty (30) days from the date of the final decision.

1.14 APPEAL AND HEARING REQUEST.

- A. Any recipient of an administrative citation may appeal. The appeal must be in writing, be delivered to the City Clerk within ten calendar days of the issuance date of the administrative citation, specify the grounds upon which the appeal is taken, and contain the name, address, and telephone number of the appellant.
- B. The appeal shall be accompanied by an appeal application fee and advanced payment of the fine amount. If the Hearing Officer finds there is no violation or the appellant was not the responsible person, the appeal fee and advanced payment of the fine amount shall be promptly refunded to the appellant without the payment of any interest that could have accrued.
- C. The appeal application fee shall be set by resolution of the City Council.
- D. Failure to submit the completed fee waiver forms or pay the appeal fee and make advanced payment of the fine amount shall cause the appeal request to be automatically denied.
- E. Upon the filing of a timely and complete appeal, the matter will be set for hearing. The City Clerk will notify the parties in writing of the date, time, and location of the hearing at least ten (10) days prior to the hearing date.
- F. Records of the City Compliance Officer concerning the notice of violation and administrative citation prepared pursuant to Section 1.10(C), if intended to be submitted to the Hearing Officer for consideration at the hearing, shall be copied and served on the person requesting the hearing at least seven (7) days prior to the date of the hearing.
- G. Failure to file a timely appeal shall be construed as a waiver of the right to an appeal and a failure to exhaust administrative remedies.
- H. At any time the City Compliance Officer may choose to withdraw a previously issued notice of violation or administrative citation.

1.15 HEARING OFFICER.

For each appeal of an administrative citation, the City Administrator shall designate the Hearing Officer for the appeal. The Hearing Officer shall not be the City Compliance Officer who issued the notice of violation that is the subject of the appeal. The employment, performance evaluation, compensation, and benefits of the Hearing Officer shall not be directly

or indirectly conditioned upon the Hearing Officer upholding or denying any appeal to a notice of violation.

1.16 HARDSHIP WAIVER.

- A. Any person who intends to request a hearing to contest an administrative citation and who is financially unable to pay the appeal application fee and fine amount in advance as required, may request a hardship waiver. A request for a hardship waiver shall be submitted to the City Clerk along with advanced prepayment of the fine amount and the appeal application fee, within ten calendar days of the issuance date of the administrative citation.
- B. The City Clerk may approve a hardship waiver only if the applicant has submitted a sworn affidavit demonstrating his or her inability to pay the application fee and make advanced prepayment of the fine amount, together with any supporting documents or materials that demonstrate proof of enrollment in a State of California public assistance program, such as Medi-Cal, to the satisfaction of the City Clerk.
- C. Within ten days of submission of the request for a hardship waiver and supporting documents, the City Clerk shall issue a written determination to approve or not approve the hardship waiver. If the City Clerk approves the hardship waiver, the application fee and advanced prepayment of the fine amount shall be refunded at the time of the written decision. The written determination of the City Clerk shall be final and shall be served upon the person who applied for the hardship waiver.

1.17 HEARING PROCEDURE.

- A. The hearing date shall be no sooner than ten (10) days and no more than sixty (60) days from when the notice of the hearing is given to the party contesting the administrative citation.
- B. The appellant shall be given the opportunity to (1) testify and present witnesses; (2) introduce relevant evidence; (3) cross-examine and/or rebut any witness testifying in support of the declaration of the code violation; and (4) be represented by anyone who is designated by the appellant.
- C. The City Compliance Officer will bear the burden of proving by a preponderance of the evidence that the responsible person violated the Piedmont City Code. The California Evidence Code shall not apply to the administrative hearing. All relevant evidence may be considered, and the Hearing Officer has the discretion to exclude evidence found to be irrelevant or redundant.
- D. The administrative citation and any additional records submitted by the City Compliance Officer shall constitute prima facie evidence of the respective facts contained in those documents.

- E. The Hearing Officer may continue the hearing and request additional information from the City Compliance Officer or the appellant prior to issuing a written decision.
- F. If the responsible person fails to appear at the hearing, the Hearing Officer shall automatically uphold the determination of the City Compliance Officer set forth in the administrative citation. The failure of any recipient of an administrative citation to appear at the appeal hearing shall constitute a failure to exhaust his or her administrative remedies.

1.18 DECISION ON APPEAL.

- A. After considering all of the testimony and evidence submitted at the hearing, the Hearing Officer shall, within thirty (30) days, issue a written decision to uphold, modify or dismiss the administrative citation and shall list in the decision the reasons for that decision.
- B. In the written decision, the Hearing Officer may uphold or reduce the amount of the fine taking any or all of the following factors into consideration:
 - i. The duration of the violation;
 - ii. The frequency, recurrence, and number of violations, related or unrelated, by the same responsible person;
 - iii. The seriousness of the responsible person;
 - iv. The good faith efforts of the responsible person to come into compliance;
 - v. The economic impact of the violation on the community;
 - vi. Such other factors as justice may require.
- C. The decision of the Hearing Officer shall be in writing, be based on the record, and include a statement of the factual and legal basis of the decision. The decision of the Hearing Officer shall be filed with the City Clerk within thirty (30) days of the conclusion of the hearing. A copy of the decision shall be sent by first-class mail to the appellant at the address specified in the appeal, and by mail to each responsible person appearing at the hearing.
- D. The Hearing Officer's decision is final on the date the decision is filed with the City Clerk. If the responsible person wishes to appeal further, the responsible person must initiate legal action in accordance with Government Code Section 53069.4(b) by filing a petition with the Superior Court within twenty (20) days of the date of the Hearing Officer's decision.

1.19 RECOVERABLE ADMINISTRATIVE COSTS.

- A. The Hearing Officer may assess administrative costs against the violator when the Hearing Officer determines that a violation has occurred and that compliance was not achieved. Recoverable administrative costs shall include, but not be limited to, the following:

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1. Any applicable fines and collection costs.
2. Any time spent by a City employee for activities related to the code violation, including, but not limited to, inspections and re-inspections, abatement actions, police services, administration, bookkeeping and accounting, legal services, supervision, preparing for and attending hearings. Costs based on time spent by City employees or contractors shall include salary, benefits, and overhead;
3. Any fees incurred by the City in employing contractors for activities related to the code violation, including but not limited to, inspections and re-inspections, abatement actions, police services, administration, bookkeeping and accounting, legal services, supervision, preparing for and attending hearings;
4. Costs related to the enforcement including, but not limited to, cost of abatement, notices, administrative costs, and court costs;

B. In in any action, administrative proceeding, or special proceeding, the prevailing party shall be entitled to recover its reasonable attorneys' fees, but only if the City elects in writing, at the initiation of the action or proceeding, to seek recovery of its own attorneys' fees. In no event shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding. The City may recover its attorneys' fees in the same manner as other costs pursuant to this article.

1.20 FAILURE TO PAY ADMINISTRATIVE FINES, PENALTIES AND COSTS.

Failure to pay the assessed administrative fines, penalties and/or recoverable costs specified in a Hearing Officer's decision may be enforced as:

- (a) A personal obligation of the responsible person; and/or
- (b) If the violation is in connection with real property, a lien upon the real property in accordance with this article, which shall remain in effect until all of the administrative fines, penalties, and recoverable costs are paid in full; and/or
- (c) A criminal misdemeanor; and/or
- (d) Any other available legal means.

1.21 RECOVERY OF ADMINISTRATIVE CITATION FINE(S), PENALTIES, AND COSTS.

- A. The procedures set forth in this section for the recovery of citation fines, penalties, and recoverable costs are adopted pursuant to Government Code Section 53069.4 which allows the City Council to establish a procedure to govern the collection of administrative fines, penalties, and recoverable costs. It is intended that persons violating the code, and not the taxpayers, bear the financial costs of the City's code enforcement efforts.
- B. The City may collect the assessed administrative fines, penalties, and recoverable costs by use of all available legal means, including recordation of a lien pursuant to the provisions of this article.

1.22 LIEN PROCEDURE.

- A. Whenever the amount of any fines, penalties, and/or recoverable cost imposed pursuant to this article in connection with real property have not been satisfied in full within sixty (60) days after imposition of the fine, administrative penalty, and/or recoverable cost becomes final, unless tolled by a timely request for judicial review pursuant to Government Code Section 53069.4 or reversed by court order, this obligation may constitute a lien against any real property involved where any violation was determined to concern the condition of that real property.
- B. The lien provided herein shall have no force and effect until recorded with the County Recorder. Once recorded, the administrative order shall have the force and effect and priority of a judgment lien governed by the provisions of Code of Civil Procedure Section 697.340 and may be extended as provided in Code of Civil Procedure Sections 683.110 through 683.220.
- C. Interest shall accrue on the principal amount of the judgment remaining unsatisfied pursuant to law.
- D. Prior to recording any such lien the following must occur:
 - 1. A report shall be prepared and filed with the City Clerk stating the amounts due and owing.
 - 2. The City Clerk shall fix a time, date, and place for hearing such report and any protests or objections thereto by the City Council.
 - 3. A written notice to be served on each property owner whose interest is disclosed by the current County equalized assessment roll not less than ten (10) days prior to the time set for the hearing.
 - 4. The City Council shall adopt a resolution approving the amount of the lien at least thirty (30) days prior to recordation.

1.23 PUBLIC HEARING AND PROTESTS OF PROPOSED LIENS.

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- A. Any person owning a legal or equitable interest in real property proposed to be subject to a lien pursuant to this article may file a written protest with the City Clerk and/or may protest orally at the City Council hearing.
- B. Each written protest or objection must contain a description of the property in which the protesting party has a legal or equitable interest and the grounds of such protest or objection. The grounds for protest or objection, and any evidence or testimony submitted in support or in opposition to the imposition of a lien, shall be limited to whether the amount of any fine, administrative penalty, and/or administrative cost imposed was satisfied in full within the time allowed by law and/or was successfully challenged by a timely writ of mandate.
- C. The City Council, after the hearing, shall adopt a resolution confirming, discharging, or modifying the amount of the lien based upon evidence produced at the hearing.

1.24 RECORDING OF LIEN.

Thirty (30) days following the adoption of a resolution by the City Council imposing a lien, the City Clerk may file the same as a judgment lien in the Office of the County Recorder of Alameda County. The lien may carry such additional administrative fines, penalties, and recoverable costs as set forth by resolution of the City Council.

1.25 SATISFACTION OF LIEN.

Once payment in full is received by the City for outstanding penalties and costs, the City Clerk shall either record a notice of satisfaction or provide any property owner or financial institution having a legal or equitable interest in the property with a notice of satisfaction so they may record this notice with the Office of the County Recorder. Such notice of satisfaction shall cancel the City's lien.

1.26 METHOD OF SERVICE.

Unless otherwise provided by this article, all notices or documents served pursuant to this article shall be served by one or more of the methods described below:

- A. Certified Mail. Certified mail shall be addressed to the owner at the address shown on the last equalized assessment roll or as otherwise known, and addressed to anyone known to the City Compliance Officer to be in possession of the property at the street address of the property being abated or a responsible person. Simultaneously, the notice of violation must be sent by regular mail. Service is deemed completed on the day the notice is sent Certified and regular mail. Where a notice of violation or administrative citation is served by certified mail, the issuance date listed in the notice of violation or administrative citation shall be the date the document is sent by certified and regular mail.
- B. Personal Service. Personal service is deemed complete on the date the notice is personally served. Where a notice of violation or administrative citation is served

by personal service, the issuance date listed in the notice of violation or administrative citation shall be the date the document is personally served.

- C. Posting and Publishing. Where the owner's address is unknown, service may be accomplished by posting and publication. Posting of the notice and order shall be conspicuously on or in front of the property. If the property has no frontage, posting shall be on the portion of the property nearest to a street, highway, or road, or most likely to give actual notice to the owner. Within five (5) days of posting the notice on or in front of the property, the notice shall be published in a newspaper of general circulation within the City of Piedmont. The failure of a person to receive a properly addressed service shall not affect the validity of the proceedings. Service is deemed complete on the day the notice is posted on or in front of the property. Where a notice of violation or administrative citation is served by posting and publishing, the issuance date listed in the notice of violation or administrative citation shall be the date the document is published.

6.1 PURPOSE.

It is declared to be in the public interest to promote the health, safety, and welfare of the residents of the City by providing procedures for the enforcement of the Piedmont City Code and for the abatement of nuisances.

6.2 APPLICABILITY.

Whenever a public nuisance is declared, it may be abated in accordance with the procedures provided in this chapter. The procedures set forth in this chapter are not exclusive but are in addition to any other remedies, including, but not limited to, criminal penalties, civil injunction, administrative citations pursuant to Chapter 1 of the Piedmont City Code, denial of permits or the forfeiture or revocation of permits, and any other legal means available. The seeking of other remedies shall not preclude the simultaneous commencement of proceedings pursuant to this chapter.

6.3 DEFINITIONS.

For purposes of this chapter, the following definitions shall apply:

“City Compliance Officer” means the contractor, officer or employee designated by the City Administrator for enforcing the Piedmont City Code.

“Graffiti” means any unauthorized inscription, word, figure, mark, or design that is written, marked, etched, scratched, drawn, or painted on any real or personal property, or other inscribed material which remains on the exterior of any building, fence or other structure for at least seventy-two (72) hours and is visible from a public street, alley or any adjoining property.

“Hearing Officer” means the City Administrator or a person designated by the City Administrator to serve as the presiding officer for hearings on matters related to the administrative abatement of nuisances, subject to the requirements of Section 6.7.

“Notice and order to abate” means the written notice and order to abate given by the City Compliance Officer in accordance with this chapter.

“Owner” means the record owner of real property according to Alameda County’s latest equalized property tax assessment roll or on the supplemental roll, whichever is more current, or the person who owns or is in control of any personal property.

“Person” means and includes a natural person or legal entity, and the owners, majority stockholders, corporate officers, trustees and general partners of a legal entity.

“Property” means any real or personal property located within the City and any improvement, structure, or portion thereof, located on real property.

“Responsible person” means the owner or any person or persons in charge of the property on which a violation of the Piedmont City Code exists, or the person or persons

responsible for an event or incident that constitutes a violation of the Piedmont City Code, and shall include, but is not limited to, any of the following: (1) a person who, by action or inaction (whether acting alone or with one or more other persons), causes, maintains, permits, or allows a code violation; (2) a person whose agent, employee, or independent contractor, by action or inaction, causes, maintains, permits, or allows a code violation; (3) an owner of real property on which a code violation occurs; (4) a lessee or sub-lessee with the current right of possession of real property on which a code violation occurs; (5) the person or persons in charge of the property where the violation occurs; and (6) the owners, majority stockholders, corporate officers, trustees, general partners and any other person with the legal authority to act for a legal entity that is a responsible person under subsections (1) through (5) above. If the responsible person is a minor or incompetent, the parents or guardians of such minor persons shall be deemed responsible persons.

“Unreasonable state of partial construction” means any unfinished building or structure: (i) which has been under construction more than one (1) year or where no substantial work has occurred for more than six (6) months; and (ii) because of the incomplete construction or exterior finish, the building or structure substantially detracts from the safety of the immediate neighborhood or otherwise adversely affects neighboring properties.

“Weeds” means weeds, as defined by Government Code Section 39561.5 or successor statutes, growing in or on streets, sidewalks, and private property in the City.

6.4 UNLAWFUL ACTIVITIES.

It is unlawful for any responsible person by action or inaction (whether acting alone or with one or more other persons) to cause, maintain, permit, or allow a nuisance. The following conditions or actions constitute a nuisance subject to abatement pursuant to this chapter:

- A. Anything declared by state law, judicial action or resolution of the City Council to be a nuisance and not otherwise described as a nuisance in this chapter;
- B. Rubbish, refuse, unsightly accumulations of dirt, sand, gravel, and the like on parkways, sidewalks, streets or private property in the City. Garbage cans must be reasonably screened from view, except when temporarily placed near a public street to be emptied;
- C. Any structure, other improvement, activity, use, or act on private or public property which is in violation of the provisions of the Piedmont City Code;
- D. Any violation of a permit issued by the City or conditions of development approval;
- E. Tangible personal property not intended for outdoor use (including but not limited to broken or discarded furniture, household equipment, and furnishings, or shopping carts) which is stored on property so as to be visible from a public street or public space;

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- F. Overgrown vegetation that is likely to harbor rats, vermin or other rodents; obstruct the view of drivers on public streets or private driveways; impede, obstruct or deny pedestrian or other lawful travel on sidewalks, walkways, or other public rights-of-way; or provide concealment or shelter to trespassers;
- G. Dead, decayed, diseased or hazardous vegetation visible from a public street or public space;
- H. Packing boxes, cardboard boxes, lumber, trash, barrels, drums, salvage materials, vehicle parts or other debris kept on the property for more than sixty days, and visible from a public street or public space;
- I. Conditions dangerous to persons on the property, including but not limited to abandoned, broken, neglected or hazardous equipment, machinery, appliances, refrigerators, freezers, and hazardous pools, ponds, and excavations;
- J. Vehicles in residential zoning districts which are wrecked, inoperable or in a state of partial repair, when visible from a public space;
- K. Vehicles in commercial zoning districts which are wrecked, inoperable or in a state of partial repair, when visible from a public space, unless located at an operational service station which is conducting repairs on the vehicle or at a commercial vehicle storage facility;
- L. Buildings which appear to be abandoned, partially destroyed, left in an unreasonable state of partial construction or have been declared substandard or dangerous by the Director of Public Works;
- M. Buildings with windows and doors containing broken or missing glass panes, except where covered by plywood or other material pursuant to a City permit. Plywood or other material used to cover such window and door space for more than two (2) weeks shall be painted in a color or colors compatible with the remainder of the building;
- N. Building exteriors, walls, fences, driveways, sidewalks or walkways which present a public safety hazard, such as cracked, uneven or broken sidewalks;
- O. Construction equipment of any type or description, including scaffolding, parked or stored on property when it is visible from a public street or other public space, except during excavation, construction or demolition operations covered by an active building permit which are in progress on the property or an adjoining property;
- P. Construction or grading (ongoing or completed) without proper approvals and permits, and construction not conforming to or in excess of approvals and permits obtained;

Exhibit B to Ordinance 735 N.S.

- Q. Obstruction of watercourses, including but not limited to uneven, cracked or broken curb, gutter, ditches, and stormwater conveyance systems;
- R. The unpermitted release, discharge, placement, spill or deposit of any hazardous substance or waste on private or public property;
- S. The unpermitted release, discharge, placement, spill or deposit of materials, hazardous or otherwise, in or on City streets, the public right-of-way, storm drains or creeks;
- T. Conditions creating or contributing to a substantial likelihood of an unpermitted release, discharge, placement, spill or deposit of materials, hazardous or otherwise, in or on City streets, the public right-of-way, storm drains or creeks, as determined by the Director of Public Works;
- U. Conditions that support the development, attraction or maintenance of vectors;
- V. Storage of mobilehomes, trailers, boats, camp cars, and recreational vehicles at a residence unless adequately screened from view from a street or other property, not including boats, mobilehomes, and trailers stored on paved or graveled driveway;
- W. Boats, trailers, or mobile homes which are not currently registered with the Department of Motor Vehicles located on a paved or graveled driveway for a period in excess of sixty (60) days;
- X. Placement of personal property or sports equipment, such as basketball standards, soccer goals, and skate ramps, in the public right of way on arterials or major collector streets, or in a manner that blocks the public right of way;
- Y. Weeds;
- Z. Property with inadequate landscaping, turf or plant material which causes excessive dust for an unreasonable period of time;
- AA. Graffiti;
- BB. Maintenance of property so out of harmony or conformity with the maintenance standards of adjacent properties as to cause substantial diminution of the enjoyment and use of such adjacent properties;
- CC. Exterior lighting causing detrimental light pollution, glare onto a neighboring property, or unsafe conditions on public roadways.

6.5 NOTICE OF PUBLIC NUISANCE AND ORDER TO ABATE.

- A. Whenever a City Compliance Officer determines that a nuisance exists, the officer shall have the authority to give a written notice and order to abate to the owner and/or responsible person with content substantially similar to the following form:

[Name and address of responsible person]

NOTICE AND ORDER TO ABATE.

NOTICE IS HEREBY GIVEN that you have been identified as the responsible person for a condition constituting a nuisance in violation of the Piedmont City Code. The violation must be abated. The public nuisance is on property commonly known as [insert address or other legal property description] and more particularly described by the Alameda County Assessor as [APN #].

The City Administrator or his/her designee has observed the following conditions, which constitute a violation of the Piedmont City Code: [description of nuisance]

The observed conditions violate the following provisions of the Piedmont City Code: [cite code section(s)]

YOU ARE HEREBY ORDERED TO ABATE SAID PUBLIC NUISANCE within [insert reasonable period not less than fifteen days] calendar days from the issuance of this order. The issuance date is specified below. You may abate the nuisance by [insert desired action which, if taken, will adequately remedy the situation].

FAILURE TO REMEDY THE VIOLATION WITHIN THE SPECIFIED TIME WILL RESULT IN FURTHER ACTION BY THE CITY which may include all or some of the following:

- A. Administrative Citations. Failure to remedy the nuisance within the specified time may result in the issuance of fines. Each day for which the nuisance remains after the specified date shall constitute a new violation and may result in additional fines without further notice. Nonpayment of the fines may result in additional penalties and costs being assessed and in a lien being assessed on your property, to be collected by the County Auditor along with municipal taxes and other assessments. This notice and order to abate shall have the same force and effect as a Notice of Violation pursuant to Section 1.10 of the Piedmont City Code.
- B. Abatement by the City via public employees, private contractor, or other means. The cost of said abatement, if not paid to the City, may be levied and assessed against the property as a special assessment lien.
- C. A civil action brought by the City to enjoin the nuisance.

[Optional: The City will seek to recover its attorneys' fees as a result of any administrative or court proceeding resulting from this nuisance.]

YOU MAY APPEAL THIS ORDER OF ABATEMENT, but any such appeal must be brought within ten calendar days of the issuance date of this notice and order to abate. The appeal must be in writing; specify the reasons for the appeal; contain your name, address, and telephone number; be accompanied by an appeal fee of _____ dollars (\$ _____); and be submitted to the City Clerk at the following address:

City Clerk
City of Piedmont
120 Vista Avenue
Piedmont, CA 94611

One who is legally indigent may apply for a waiver of the appeal fee. Upon timely receipt of the appeal and accompanying fee, or waiver, the City Clerk will cause the matter to be set for hearing and notify you of the date and location of the hearing.

THE FAILURE TO FILE A TIMELY AND COMPLETE APPEAL OF A NOTICE AND ORDER TO ABATE SHALL BE DEEMED TO BE A FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES.

If you have any questions regarding this matter, you may direct them to the City Compliance Officer issuing this notice at the address or telephone number listed below.

ISSUANCE DATE: _____

[Insert: name, title, address, and telephone number of the City Compliance Officer issuing this notice.]”

- B. The City Compliance Officer shall maintain records detailing the instance or instances of the violation(s), including such information as photographic evidence, a chronological account of inspections made, identification of conditions noted, and witness statements, if any, all of which support the issuance of the notice and order to abate. The records shall be made available upon request to the responsible person.

6.6 APPEAL AND HEARING REQUEST.

- A. Any recipient of a notice and order to abate may appeal. The appeal must be in writing, be delivered to the City Clerk within ten calendar days of the issuance date of the notice and order to abate, specify the grounds upon which the appeal is taken, and contain the name, address, and telephone number of the appellant.
- B. The appeal shall be accompanied by an appeal application fee. If the Hearing Officer finds there is no violation or the appellant was not the responsible party, the appeal fee shall be refunded to the appellant without the payment of any interest that could have accrued.
- C. The appeal application fee shall be set by resolution of the City Council.

- D. Failure to submit the completed fee waiver forms or pay the appeal fee shall cause the appeal request to be automatically denied. Enforcement of the order to abate may then proceed as if no appeal request had been submitted.
- E. Upon the filing of a timely and complete appeal, including payment of the appeal fee or submission and approval of completed fee waiver forms, the matter will be set for hearing. The City Clerk will notify the parties in writing of the date, time, and location of the hearing at least ten (10) days prior to the hearing date. Further abatement action by the City shall be stayed until the appeal decision is issued.
- F. Records of the City Compliance Officer concerning the notice and order to abate prepared pursuant to Section 6.5(B), if intended to be submitted to the Hearing Officer for consideration at the hearing, shall be copied and served on the person requesting the hearing at least seven (7) days prior to the date of the hearing.
- G. The failure to file a timely and complete appeal of a notice and order to abate shall be deemed to be a failure to exhaust administrative remedies.
- H. At any time the City Compliance Officer may choose to withdraw a previously issued notice and order to abate.

6.7 HEARING OFFICERS.

For each appeal of a notice and order to abate, the City Administrator shall designate the Hearing Officer for the appeal. The Hearing Officer shall not be the City Compliance Officer who issued the notice and order to abate that is the subject of the appeal. The employment, performance evaluation, compensation, and benefits of the Hearing Officer shall not be directly or indirectly conditioned upon the Hearing Officer upholding or denying any appeal to a notice and order to abate.

6.8 HARDSHIP WAIVER.

- A. Any person who intends to request a hearing to contest a notice and order to abate and who is financially unable to pay the appeal application fee as required in Section 6.6(B) may request a hardship waiver. A request for a hardship waiver shall be submitted to the City Clerk along with advanced prepayment of the appeal application fee, within ten calendar days of the issuance date of the notice and order to abate.
- B. The City Clerk may approve a hardship waiver only if the applicant has submitted a sworn affidavit demonstrating his or her inability to pay the application fee, together with any supporting documents or materials that demonstrate proof of enrollment in a State of California public assistance program, such as Medi-Cal, to the satisfaction of the City Clerk.
- C. Within ten days of submission of the request for a hardship waiver and supporting documents, the City Clerk shall issue a written determination to approve or not approve the hardship waiver. If the City Clerk approves the hardship waiver, the

application fee shall be refunded at the time of the written decision. The written determination of the City Clerk shall be final and shall be served upon the person who applied for the hardship waiver.

6.9 HEARING PROCEDURE.

- A. A hearing shall be set for a date that is not less than ten (10) or more than sixty (60) calendar days from the date the appeal is filed.
- B. The appellant shall be given the opportunity to (1) testify and present witnesses; (2) introduce relevant evidence; (3) cross-examine and/or rebut any witness testifying in support of the declaration of a public nuisance; and (4) be represented by anyone who is designated by the appellant.
- C. The City Compliance Officer will bear the burden of proving by a preponderance of the evidence that the responsible person violated the Piedmont City Code. The California Evidence Code shall not apply to the administrative hearing. All relevant evidence may be considered, and the Hearing Officer has the discretion to exclude evidence found to be irrelevant or redundant.
- D. The notice and order to abate and the records submitted by the City Compliance Officer shall constitute prima facie evidence of the respective facts contained in those documents.
- E. The Hearing Officer may continue the hearing and request additional information from the City Compliance Officer or the appellant before issuing a written decision.
- F. If the responsible person fails to appear at the hearing, the Hearing Officer shall automatically uphold the determination of the City Compliance Officer set forth in the notice and order to abate. The failure of the responsible person to appear at the hearing shall constitute a failure to exhaust their administrative remedies.

6.10 DECISION ON APPEAL.

- A. After considering all of the testimony and evidence submitted at the hearing, the Hearing Officer shall, within thirty (30) days of the conclusion of the hearing, issue a written decision to uphold, modify or reverse the determinations of the City Compliance Officer. If the Hearing Officer decides that the notice and order should be enforced, the owner or responsible person shall comply with the order within such period of time as may be prescribed by the Hearing Officer, and in the absence of any prescribed time, within 10 calendar days from the date of mailing of the final decision. The decision may direct the City Compliance Officer to proceed and perform the work of abatement if not performed by the responsible person within a prescribed period of time.
- B. The decision of the Hearing Officer shall be in writing, be based on the record, and include a statement of the factual and legal basis of the decision. The

decision of the Hearing Officer shall be filed with the City Clerk within thirty (30) days of the conclusion of the hearing. A copy of the decision shall be sent by first-class mail to the appellant at the address specified in the appeal, and by mail to each responsible person appearing at the hearing.

- C. The Hearing Officer's decision is final on the date the decision is filed with the City Clerk. Any appeal of the decision is governed by Code of Civil Procedure Section 1094.6, as may be amended from time to time.

6.11 ABATEMENT BY CITY.

- A. Upon the failure, neglect or refusal of a responsible person to properly comply with the notice and order to abate within the prescribed time period, the City Compliance Officer may cause to be done whatever work is necessary to abate the public nuisance.
- B. It is unlawful for any person to interfere with the performance of the duties herein specified for the City Compliance Officer or any authorized officer or employee thereof, or to refuse to allow any such officer or employee or approved private contractor, to enter upon any premises for the purpose of abating a public nuisance or to interfere in any manner whatsoever with said officers, employees, or contractors in the work of abatement.
- C. An account of the cost of abatement shall be kept for each separate assessor's parcel involved in the abatement.

6.12 RECOVERABLE COSTS.

- A. When the City has completed the work of abatement, or has paid for the work, the total abatement costs shall be charged to the owner of the property. Total abatement costs shall include without limitation:
 - 1. Any time spent by a City officer and employee for activities related to the code violation, including, but not limited to, inspections and re-inspections, abatement actions, police services, administration, bookkeeping and accounting, legal services, supervision, preparing for and attending hearings. Costs based on time spent by City officers and employees shall include salary, benefits, and overhead;
 - 2. Any fees incurred by City to employ contractors for activities related to the code violation, including but not limited to, inspections and re-inspections, abatement actions, police services, administration, bookkeeping and accounting, legal services, supervision, preparing for and attending hearings;
 - 3. Costs related to the enforcement including, but not limited to, cost of abatement, notices, administrative costs, and court costs;

4. Any applicable fines, late payment charges, and collection costs.
- B. In any action, administrative proceeding, or special proceeding, the prevailing party shall be entitled to recover its reasonable attorneys' fees, but only if the City elects in writing, at the initiation of the action or proceeding, to seek recovery of its own attorneys' fees. In no event shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding. The City may recover its attorneys' fees in the same manner as other costs pursuant to this article.
- C. The total abatement costs shall be included in a bill and sent by certified mail to the address of the responsible party listed on the last equalized assessment roll or on the supplemental roll, whichever is more current. Simultaneously, the bill may be sent by regular mail. If the bill sent by certified mail is returned unsigned, then service is deemed effective pursuant to regular mail. The bill shall inform the owner that failure to pay the bill within sixty (60) calendar days from the date of mailing may result in a lien upon the property.

6.13 FAILURE TO PAY RECOVERABLE COSTS.

If a responsible person fails to pay the total abatement costs assessed, the obligation may be enforced by the City as:

- A. A personal obligation of the responsible party; and/or
- B. If the nuisance is in connection with real property, a lien upon the real property in accordance with this article, which shall remain in effect until all of the administrative fines, penalties, and recoverable costs are paid in full; and/or
- C. A criminal misdemeanor and/or
- D. Any other available legal means.

6.14 LIEN PROCEDURE.

- A. Whenever the recoverable costs imposed pursuant to this chapter in connection with the abatement of a nuisance concerning the condition of real property have not been satisfied in full within sixty (60) days, this obligation may constitute a lien against any real property involved.
- B. The lien provided herein shall have no force and effect until recorded with the County Recorder. Once recorded, the administrative order shall have the force and effect and priority of a judgment lien governed by the provisions of Code of Civil Procedure Section 697.340 and may be extended as provided in Code of Civil Procedure Sections 683.110 through 683.220.
- C. Interest shall accrue on the principal amount of the judgment remaining unsatisfied pursuant to law.

- D. Prior to recording any such lien the following must occur:
1. A report shall be prepared and filed with the City Clerk stating the amounts due and owing.
 2. The City Clerk shall fix a time, date, and place for hearing such report and any protests or objections thereto by the City Council.
 3. A written notice to be served on each property owner whose interest is disclosed by the current County equalized assessment roll not less than ten (10) days prior to the time set for the hearing.
 4. The City Council shall adopt a resolution approving the amount of the lien at least thirty (30) days prior to recordation.

6.15 PUBLIC HEARING AND PROTESTS OF PROPOSED LIENS.

- A. Any person owning a legal or equitable interest in real property proposed to be subject to a lien pursuant to this article may file a written protest with the City Clerk and/or may protest orally at the City Council hearing.
- B. Each written protest or objection must contain a description of the property in which the protesting party has a legal or equitable interest and the grounds of such protest or objection. The grounds for protest or objection, and any evidence or testimony submitted in support or in opposition to the imposition of a lien, shall be limited to whether the amount of any fine, administrative penalty, and/or administrative cost imposed was satisfied in full within the time allowed by law and/or was successfully challenged by a timely writ of mandate.
- C. The City Council, after the hearing, shall adopt a resolution confirming, discharging, or modifying the amount of the lien based upon evidence produced at the hearing.

6.16 RECORDING OF LIEN.

Thirty (30) days following the adoption of a resolution by the City Council imposing a lien, the City Clerk may file the same as a judgment lien in the Office of the County Recorder of Alameda County. The lien may carry such additional recoverable costs as set forth by resolution of the City Council.

6.17 SATISFACTION OF LIEN.

Once payment in full is received by the City for outstanding penalties and costs, the City Clerk shall either record a notice of satisfaction or provide any property owner or financial institution having a legal or equitable interest in the property with a notice of satisfaction so they may record this notice with the Office of the County Recorder. Such notice of satisfaction shall cancel the City's lien.

6.18 SUMMARY ABATEMENT.

- A. Notwithstanding any provisions of this chapter, the City may summarily abate a nuisance if the City Compliance Officer determines that the nuisance constitutes an immediate threat to public health and safety.
- B. If a nuisance is summarily abated, the City Compliance Officer shall keep an account of the recoverable costs of abatement pursuant to Section 6.12, and bill the property owner for the cost of abatement. The bill shall be sent by certified mail to the last known address of the property owner. Simultaneously, the bill may be sent by regular mail. If the bill sent by certified mail is returned unsigned, then service is deemed effective pursuant to regular mail.
- C. The property owner may contest the validity of the summary abatement by submitting an appeal to the City Clerk. The appeal and hearing procedures set forth in Section 6.6 through 6.10 of this chapter shall apply to an appeal of a bill for summary abatement performed by the City.
- D. If the bill is not paid within sixty (60) days from the date of mailing, the City Compliance Officer may proceed to obtain a special assessment and lien against the owner's property in accordance with the procedures set forth in this chapter.

6.19 TREBLE ABATEMENT COST FOR REPEAT PUBLIC NUISANCE.

Upon entry of a second or subsequent civil or criminal judgment within a two-year period finding that an owner of property is the responsible person for a condition that may be abated in accordance with this chapter, except for conditions abated pursuant to Health and Safety Code Section 17980 related to substandard buildings, the court may order the owner to pay treble the costs of the abatement.

6.20 METHOD OF SERVICE.

Unless otherwise provided by this article, all notices served pursuant to this chapter shall be served by one or more of the methods described below:

- A. **Certified Mail.** Certified mail shall be addressed to the owner at the address shown on the last equalized assessment roll or as otherwise known, and addressed to anyone known to the City Compliance Officer to be in possession of the property at the street address of the property being abated or a responsible person. Simultaneously, the notice and order to abate must be sent by regular mail. Service is deemed completed on the day the notice is sent certified and regular mail. Where a notice and order to abate is served by certified mail, the issuance date listed in the notice and order to abate shall be the date the notice is sent by certified and regular mail.
- B. **Personal Service.** Personal service is deemed complete on the date the notice is personally served. Where a notice and order to abate is served by personal

service, the issuance date listed in the notice and order to abate shall be the date the notice is personally served.

- C. Posting and Publishing. Where the owner's address is unknown, service may be accomplished by posting and publication. Posting of the notice and order shall be conspicuously on or in front of the property. If the property has no frontage, posting shall be on the portion of the property nearest to a street, highway, or road, or most likely to give actual notice to the owner. Within five (5) days of posting the notice on or in front of the property, the notice shall be published in a newspaper of general circulation within the City of Piedmont. The failure of a person to receive a properly addressed service shall not affect the validity of the proceedings. Service is deemed complete on the day the notice is posted on or in front of the property. Where a notice and order to abate is served by posting and publishing, the issuance date listed in the notice and order to abate shall be the date the notice is published.