

ORDINANCE NO. 749 N.S.

AN ORDINANCE AMENDING CHAPTER 1, ARTICLE 2 CODE ENFORCEMENT
AND CHAPTER 6, ABATEMENT OF NUISANCES RELATING TO APPEALS OF
ENFORCEMENT ACTIONS FOR BUILDING STANDARDS CODE VIOLATIONS

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

SECTION 1. BACKGROUND

The State Housing Law, Health & Safety Code section 17910 et seq., provides statewide construction and occupancy standards for buildings used for habitation, and incorporates into state law the State Building Standards Code and other rules and regulations promulgated by the Department of Housing and Community Development related to standards for human habitation. Pursuant to Health & Safety Code section 17920.5 and 17920.6, the City shall have a “local appeals board” to hear appeals regarding building requirements of the City, and a “housing appeals board” to consider appeals regarding the use, maintenance, and change of occupancy of hotels, motels, lodginghouses, apartments and dwellings as well as related accessory structures, including requirements governing their alteration, additions, repair, demolition, and moving of such buildings. As part of Ordinance No. 748 N.S., the City Council of the City of Piedmont designated in the 2019 Building Standards Code that the Planning Commission of the City of Piedmont would serve as the body authorized to hear such appeals. This ordinance amends those provisions of Chapter 1 and Chapter 6 concerning appeals of administrative citations and orders to abate to authorize the appeal to the Planning Commission instead of an administrative hearing officer where the violation involves a violation of a building standard or the State Housing Law.

SECTION 2. AMENDMENT OF SECTION 1.8

Section 1.8 of the City Code is hereby amended to read in its entirety as follows:

“SEC. 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, animal control officer, employee, or contractor designated by the City Administrator for enforcing the Piedmont City Code.

“Hearing Officer” means either a person designated by the City Administrator to preside over the appeal of the administrative citation or the board of appeals, as further specified in Section 1.15.

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“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; (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; and (7) any person owning, having an interest in, or having control or custody or possession of any animal, which is the subject of a code violation. If the responsible person is a minor or incompetent, the parents or guardians of such minor persons shall be deemed responsible persons.”

SECTION 3. AMENDMENT OF SECTION 1.15

Section 1.15 of the City Code is hereby amended to read in its entirety as follows:

“SEC. 1.15 HEARING OFFICER

Where a violation concerns the application of building standards published in the California Building Standards Code, as may be further amended under this City Code, or housing standards under the State Housing Law, or any applicable rule or regulation adopted by the Department of Housing and Community Development pursuant to State Housing Law, including standards relating to the use, maintenance, and change of occupancy of buildings and structures and requirements governing alteration, additions,

repair, demolition, and moving of such buildings and structures, a person requesting an administrative hearing shall be entitled to have the appeal of that violation considered before the board of appeal, and the board of appeal shall serve as the Hearing Officer. In accordance with the Health and Safety Code sections 17920.5 and 17920.6, the board of appeals is designated as the City of Piedmont Planning Commission.

For an appeal concerning any violation that does not involve the application of building standards or State Housing Law as described above, a person shall not be entitled to appeal before the board of appeal and the City Administrator shall designate an individual hearing officer to serve as 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 of a violation.

Where the City Compliance Officer has issued a notice of violation or initiated an enforcement action that includes multiple violations, some of which would entitle an appellant to a hearing before the board of appeal, the person requesting the hearing may waive the right to have board of appeal consider those violations and may instead elect to have a single hearing on all violations before an individual selected by the City Administrator to serve as the Hearing Officer.”

SECTION 4. AMENDMENT OF SECTION 1.18

Section 1.18 of the City Code is hereby amended to read in its entirety as follows:

“SEC. 1.18 DECISION ON APPEAL

A. After considering all of the testimony and evidence submitted at the hearing, the Hearing Officer shall thereafter issue a decision to uphold, modify or dismiss the administrative citation and shall specify the reasons for that decision. The decision of the Hearing Officer shall be based on the record, and identify the factual and legal basis of the decision.

B. The Hearing Officer may uphold or reduce the amount of the fine taking any or all of the following factors into consideration:

1. The duration of the violation;
2. The frequency, recurrence, and number of violations, related or unrelated, by the same responsible person;
3. The seriousness of the responsible person;
4. The good faith efforts of the responsible person to come into compliance;
5. The economic impact of the violation on the community;
6. Such other factors as justice may require.

C. If the Hearing Officer is appointed by the City Administrator, the Hearing Officer shall issue a decision in writing which shall be filed with the City Clerk within thirty (30) days of the conclusion of the hearing. A copy of the written 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. If no written decision is prepared, the City Clerk shall cause a notice of decision to be prepared and mailed to each responsible person appearing at the hearing.

D. The Hearing Officer’s decision shall be final. 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.”

SECTION 5. AMENDMENT OF SECTION 6.3

Section 6.3 of the City Code is hereby amended to read in its entirety as follows:

“SEC. 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 either a person designated by the City Administrator to preside over the appeal of matters related to the administrative abatement of nuisances or the board of appeals, as further specified in 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.

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“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.”

SECTION 6. AMENDMENT OF SECTION 6.7

Section 6.7 of the City Code is hereby amended to read in its entirety as follows:

“SEC. 6.7 HEARING OFFICER

Where a notice and order to abate concerns the application of building standards in the California Building Standards Code, as may be further amended under this City Code, or housing standards under the State Housing Law, or any applicable rule or regulation adopted by the Department of Housing and Community Development pursuant to State

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Housing Law, including standards relating to the use, maintenance, and change of occupancy of buildings and structures and requirements governing alteration, additions, repair, demolition, and moving of such buildings and structures, a person requesting an administrative hearing shall be entitled to have the appeal of that violation considered before the board of appeal, and the board of appeal shall serve as the Hearing Officer. In accordance with the Health and Safety Code sections 17920.5 and 17920.6, the board of appeals is designated as the City of Piedmont Planning Commission.

For an appeal of a notice and order to abate that does not involve the application of building standards or State Housing Law as described above, a person shall not be entitled to appeal before the board of appeal and the City Administrator shall designate an individual hearing officer to serve as 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 of a violation.

Where the City Compliance Officer has issued a notice and order to abate or initiated an enforcement action that includes multiple violations, some of which would entitle an appellant to a hearing before the board of appeal, the person requesting the hearing may waive the right to have board of appeal consider those violations and may instead elect to have a single hearing on all violations before an individual selected by the City Administrator to serve as the Hearing Officer.”

SECTION 7. AMENDMENT OF SECTION 6.10

Section 6.10 of the City Code is hereby amended to read in its entirety as follows:

“SEC. 6.10 DECISION ON APPEAL

A. After considering all of the testimony and evidence submitted at the hearing, the Hearing Officer shall thereafter issue a decision to uphold, modify or dismiss the determinations of the City Compliance Officer and shall specify the reasons for that decision. The decision of the Hearing Officer shall be based on the record. 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 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. If the Hearing Officer is appointed by the City Administrator, the Hearing Officer shall issue a decision in writing which shall be filed with the City Clerk within thirty (30) days of the conclusion of the hearing. A copy of the written 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. If no written decision is prepared, the City Clerk shall cause a notice of decision to be prepared and mailed to each responsible person appearing at the hearing.

C. The Hearing Officer’s decision shall be final. Any appeal of the decision is governed by Code of Civil Procedure Section 1094.6, as may be amended from time to time.”

SECTION 8. SEVERABILITY

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

SECTION 9. POSTING, FILING, AND EFFECTIVE DATE

This Ordinance shall be posted at City Hall after its second reading by the City Council for at least 30 days and shall become effective 30 days after the second reading. The City Clerk shall cause a copy of this Ordinance to be filed with the California Building Standards Commission in the manner required by law.

SECTION 10. CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City Council finds and determines that enactment of this ordinance is exempt from environmental review pursuant to Title 14 California Code of Regulations, section 15061(b)(3).



I certify that the foregoing ordinance was passed and adopted as a part of the consent calendar by Resolution 17-2020 at the regular meeting of the City Council of the City of Piedmont on April 6, 2020, by the following vote:

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

Attest: _____
John O. Tulloch, City Clerk