

City of Piedmont
COUNCIL AGENDA REPORT

DATE: November 21, 2022

TO: Mayor and Council

FROM: Sara Lillevand, City Administrator

SUBJECT: Introduction and First Reading of Ordinance 768 N.S. – Amendment of Chapter 17 of the City Code to Regulate Accessory Dwelling Units and Additional Bedrooms in Existing Dwelling Units in Accordance with Recent State Legislation and Declaration of CEQA Exemption

RECOMMENDATION

Approve the first reading of Ordinance 768 N.S. (Attachment 1, pages 11-34), which takes the following actions:

1. Adopts amended Sections 17.20.040, 17.24.040, 17.28.040, 17.50.020, 17.70.010, and 17.90.020 of Chapter 17, Planning and Land Use, of the Piedmont City Code in their entirety; and
2. Adopts an amended Division 17.38, Accessory Dwelling Units, of Chapter 17, Planning and Land Use, of the Piedmont City Code in its entirety (Exhibit A, pages 20-32).
3. Adopts a new Division 17.42, Additional Bedrooms in Existing Dwelling Units, of the Piedmont City Code in its entirety (Exhibit B, pages 33-34)
4. Declares the amendments to Chapter 17 to be exempt from the provisions of the California Environmental Quality Act

EXECUTIVE SUMMARY

The overriding reason that the proposed amendments to the regulations for Accessory Dwelling Units (ADUs) in Chapter 17 of the Municipal Code are being proposed for adoption is to bring the City Code into compliance with State laws that will become effective on January 1, 2023. More information on the State laws is provided in the Relevant Government Code section on pages 2 and 3 of this agenda report.

New state legislation places further limits on a local jurisdiction's ability to regulate ADUs and Junior Accessory Dwelling Units (JADUs). The recommended revisions to Piedmont's ADU ordinance would ensure consistency with new requirements being imposed under state laws as follows:

- a. The City may only impose objective standards on all ADUs.
- b. Currently, Piedmont caps the height of an ADU at 16 feet. But under new state laws the maximum height limitations will vary depending on the type of ADU:

- A *detached* ADU that is on a lot with a single-family or multi-family dwelling may be up to 18 feet in height by right, and the ADU may be up to two feet taller (for a maximum of 20 feet) if necessary to match the roof pitch of the ADU to that of the main house.
 - If a detached ADU is on a lot with an existing or proposed multi-family, multistory dwelling, the ADU may be up to 18 feet in height.
 - An *attached* ADU may now be up to 25 feet high or as high as allowed for a primary dwelling under the underlying zone, whichever is lower.
- c. Under current City Code requirements ADUs are not allowed in the street yard setback. But under new state laws, an ADU up to 800 square feet can be constructed in the street yard setback if it is determined by the City that an 800 square-foot ADU cannot be constructed anywhere else on the property and outside the 4-foot side and rear yard setbacks.
 - d. Construction of an ADU is prohibited from triggering a requirement that fire sprinklers be installed in any existing primary dwelling.
 - e. If the City denies an ADU application, the City must notify the applicant in writing within 60-days of receiving a complete application and provide a full set of comments with a list of items that are defective or deficient and a description of how the application can be remedied. Whereas currently City is required to only act on an application within 60-days of receiving a complete application.
 - f. ADUs can be sold separately if certain conditions are met.

In addition, Assembly Bill 916 (2022) enacts a new Government Code section 65850.02, which states that local jurisdictions cannot adopt or enforce an ordinance requiring a public hearing as a condition of reconfiguring existing space to increase the bedroom count within an existing dwelling unit. To bring Piedmont’s Code into conformance with this state law, the proposed ordinance creates a new City Code division 17.42 Additional Bedrooms in Existing Dwelling Units.

The new division 17.42 provides a ministerial process with no public hearings for applications for issuance of an Additional Bedroom Permit and sets standards for approval.

BACKGROUND

Relevant California Government Code

Governor Gavin Newsom signed into law AB 345 in 2021. It allows separate conveyance for ADUs developed by qualifying non-profits for purposes of providing low income housing, and requires the City to permit it regardless of whether the City has any regulations on the subject. The Governor signed AB 2221 and SB 897 in September 2022. These bills made substantive revisions to ADU law¹, particularly Government Code Sections 65852.2, 65852.22 and 65852.26. The legislation includes a mandate that cities with accessory dwelling unit (“ADU”) ordinances that are inconsistent with the State laws apply the State standards for ADU and JADU approval. In effect, a local jurisdiction’s ADU ordinance that is inconsistent with State law is null and void. The State law also authorizes local agencies to enact certain standards of approval of ADUs and

¹ All references to the “State laws” are to Cal. Gov. Code § 65852.2, § 65852.22 and § 65852.26, which were revised and added by SB 897, AB2221 and AB 345.

JADUs. It is highly recommended that the City adopt a new ADU ordinance that accommodate the new State minimum standards and re-adopts the City's local standards that are consistent with the State laws.

In addition, Governor Newsom signed AB 916 into law, creating a new Government Code Section 65850.02. This State law prohibits a local jurisdiction from adopting or enforcing an ordinance that requires a public hearing as a condition of reconfiguring existing space to increase the bedroom count within an existing dwelling unit. This law applies to all dwelling types (i.e., single-family, multi-family, ADUs). As detailed in the section below, the ordinance under consideration provides a ministerial review process for adding no more than two additional bedrooms within existing dwelling units when specific standards are met.

Current City Code Regulation of ADUs

The City adopted the current regulations for accessory dwelling units in January 2020. To summarize:

- All ADU permits are reviewed ministerially.
- The current regulations require that an ADU application (ADU permit application plus a building permit application) shall either be approved or denied within 60 days of being deemed complete.
- A lot can have one ADU and one JADU in addition to the primary dwelling unit.
- The minimum floor area of an ADU is 150 square feet.
- All ADUs must have a separate exterior entrance from that of the main unit.
- New construction ADUs must have 4-foot side and rear yard setbacks.
- New ADUs are not allowed to be constructed in a street yard setback.
- All JADUs must have an owner occupancy deed restriction.
- The maximum building height (average) of a new ADU is 16 feet.
- ADUs constructed within an existing structure are not required to correct any existing non-conformities (e.g., setbacks).
- The design of the proposed accessory dwelling unit must meet applicable design criteria in the Piedmont Design Guidelines.
- ADUs larger than 800 square feet must meet the zoning requirements of the underlying zone.
- To incentivize the construction of lower-income units, the City allows 1-bedroom ADUs larger than 850 square feet and up to a max of 1,000 square feet, and 2-bedroom ADUs larger than 1,000 square feet provided that the owner agrees to a 10-year deed restriction requiring occupancy of the ADU by a lower income household.
- No parking requirement.

While most of the current regulations would still apply with the adoption of the proposed ordinance, the new state laws necessitate updates and revisions as detailed below.

PROPOSED REVISIONS TO CITY CODE

ADUs

City staff, with the advice of the City Attorney's Office, has developed recommended revisions to the following divisions of the City Code so that the Code is consistent with newly enacted State laws related to accessory dwelling units:

- 17.20 Zone A: Single family residential
- 17.24 Zone C: Multi-family residential
- 17.28 Zone E: Single family residential estate
- 17.50 Non-conforming uses and structures
- 17.70 Variances
- 17.90 Definitions & Measurements

The recommended revisions to the Code divisions listed above are provided in a strikethrough format presented in Attachment 1, pages 11-34. The following list highlights the more substantive changes:

1. New ADU construction up to 800 square feet in size is allowed in the street yard setback if the Planning and Building Director determines that the ADU cannot be constructed anywhere else on the property and outside the 4-foot side and rear yard setbacks. No change to 4-foot side and rear yard setbacks were made under this law. This change applies to all zones within the City boundaries. Sections 17.20 (Zone A), 17.24 (Zone C) and 17.28 (Zone E) have been updated to reflect this change. Sections 17.22 (Zone B) and 17.26 (Zone D) have language that refers to Zone A for setback and other requirements.
2. If a nonconforming ADU complies with objective design standards and other existing conditions listed in Section 17.50.020.3, exterior and material modifications are allowed.
3. Because taller ADU construction is allowed under new State laws, a definition to clarify how to measure ADU height (average) is added to Section 17.90.020. The average height is calculated based on the footprint of the ADU.

The recommended revisions to City Code division 17.38 Accessory Dwelling Units are provided in a strikethrough format presented in Exhibit A to the ordinance (see pages 20-32 of this agenda report. Listed below are the more substantive changes to this division.

4. Two new sections under division 17.38 are added:
 - **17.38.090 Removal of Owner Occupancy Restrictions.** This is an incentive offered by the City to those ADUs approved prior to 2020 that were required to have an owner occupancy deed restriction (recorded with the County Recorder's office). The incentive allows for the removal of the owner occupancy deed restriction if the owners agree to a new 15-year deed restriction requiring that either the ADU or the primary dwelling unit be occupied by a very low-income tenant.

- **17.38.100 Separate Conveyance.** The City shall allow an accessory dwelling unit to be sold or conveyed separately from the primary residence to a qualified buyer if all of the criteria listed under Government Code Section 65852.26 are met (See attachment 2 for the content of §65852.2).
5. Section 17.38.060 has been updated to reflect the modifications made to the development standards for an ADU and a JADU as described below:
- Size (17.38.060.B.1.): The floor area of a detached ADU shall not exceed 1,200 square feet.
 - Height (17.38.060.B.4. and 17.38.060.D.2.b.): The maximum height of a detached ADU is 18 feet but an additional height of two feet is allowed to accommodate a ADU roof pitch that is aligned with the roof pitch of the primary dwelling unit. The maximum height of an attached ADU is 25 feet or the height limitations for a primary dwelling unit of the underlying zoning district, whichever is lower.
 - Street Yard Setback (17.38.060.B.6.c.): This is an addition within this section due to the change under new State laws. An ADU of 800 square feet or less can be constructed in the street yard setback but outside the 4-foot side and rear yard setbacks, if it is determined by the Director or the Director's designee, that the ADU cannot be constructed anywhere else on the property.
 - Fire Sprinkler (17.38.060.B.6.c. and 17.38.060.C.2.a): Construction of an ADU or JADU cannot trigger a requirement that fire sprinklers be installed in the existing primary residence. However, if the ADU or JADU is part of a larger remodel or addition to the main house, excluding the area of the ADU or JADU, the remodel or addition can trigger fire sprinkler installation in the primary residence, as specified in the building code.
 - Deed recording (17.38.060.C.3.a.): The section has been amended to reflect that the City shall record a deed restriction with the County Recorder Office.

In addition to the substantive changes listed above, various edits and formatting are proposed to improve clarity and legality.

Additional Bedrooms within Existing Dwelling Units

Currently, a project to make interior modifications with no changes to the exterior of a residential building requires a building permit, but no planning permit. The exception to this is proposed construction that increases the number of bedrooms but does not provide the required conforming parking spaces. In this scenario, a variance from the parking requirements must be considered by the Planning Commission at a public hearing. Exterior changes to a residential building require a design review permit that, depending on the scope, is reviewed either by staff or the Planning Commission.

This process will remain available to project applicants, but the recommended new City Code division 17.42 Additional Bedrooms in Existing Dwelling Units provides a ministerial process for reconfiguring existing living area to increase the number of bedrooms subject to specific standards. The new division provides a ministerial process for the review of such permits, subject to the following standards provided in City Code section 17.42.040:

The Director may not approve an application for additional bedroom permit unless the project conforms to all of the following standards:

- A. The application proposes no more than two additional bedrooms within an existing dwelling unit. Area within an existing dwelling unit shall not include garages, carports, porches, decks, or crawl spaces.
- B. The additional bedrooms shall be created solely within existing space of the dwelling unit and no additional expansions of existing space are proposed to be added to the building (e.g., attic dormers and other structural protrusions).
- C. The project meets the requirements of division 17.30 Parking of this Code.
- D. Exterior design modifications (e.g., window and door changes) necessary to meet the health and safety requirements of Chapter 8 Building, Construction & Fire Prevention of this Code conform to the standards the City of Piedmont Design Guidelines.

The intent of the new code provisions in division 17.42 is to comply with State law while continuing the City's on-site parking requirements, zoning and design standards.

ANALYSIS

ADUs

The changes to Government Code Section 65852.2 governing accessory dwelling units, the amendment of Government Code section 65852.22 governing junior accessory dwelling units and Government Code section 65852.26 governing separate sale of certain accessory dwelling units resulting from the enactment of SB 897, AB 2221 and AB 345 further limits the City's ability to regulate ADUs. The potential impacts resulting from the state laws and code changes are described below.

Additional Housing Units

The intent of the new state laws is to increase the number of housing units by facilitating the development of new accessory dwelling units. In Piedmont it is expected that the revisions to the City Code to bring it into conformance with state laws will result in an increase in the number of accessory dwelling units approved annually. The additional units should help the City meet the goals of the General Plan Housing Element and its Regional Housing Needs Allotment (RHNA) for market rate housing. The suggested code provision allowing the removal of existing owner occupancy deed restrictions in exchange for a low-income occupancy deed restrictions is intended to help the City meet Housing Element goals for low-income housing.

Density

State law provides that accessory dwelling units are considered an accessory use, shall not be considered to exceed any allowable density for a lot on which it is located, and shall be deemed consistent with the general plan by operation of state law.

Setbacks

Existing state law and city codes provide that ADUs are permitted in existing structures located within side and rear setbacks, and within new structures setback four feet from side and rear property lines. New law will provide that an ADU of floor area up to 800 square feet can be constructed in the street yard setback if it is determined by staff that the ADU cannot be constructed anywhere else on the property and outside the four-foot side and rear yard setbacks.

Design Review

Staff recommends that the Design Guidelines related to ADUs be revised to contain only criteria that are objective. The law defines “objective standards” as a standard that involves “no personal or subjective judgment by a public official” and that is “uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” Staff intends to introduce draft objective design standards for discussion by the Planning Commission at their regular meeting in December. The goal is to hold public review of the objective design standards leading toward their adoption in early 2023

Compliance with City of Piedmont General Plan Housing Element

The proposed revisions to the regulations for accessory dwelling units comply with the 5th Cycle Housing Element of the Piedmont General Plan. However, the changes will make it easier to achieve Program 1.C, which seeks to maintain zoning regulations that support the development of market rate accessory dwelling units in Piedmont neighborhoods, while making it more difficult to achieve the goal of Policy 3.1, which seeks to continue incentive-based programs such as reduced parking requirements and more lenient floor area standards to encourage the creation of rent restricted accessory dwelling units for low and very low income households.

The majority of the 5th Cycle General Plan Housing Element for 2015-2023 (separately available on the City’s website) is devoted to ADUs (referred to as *second units* in the Element) because, as a built-out city, ADUs are the main means by which the City has been able to provide new housing units, either market rate or affordable. Housing Element policies and programs that relate to ADUs include the following:

Policy 1.2: Housing Diversity. Continue to maintain planning, zoning and building regulations that accommodate the development of housing for all income levels.

Policy 1.5: Second Units. Continue to allow second units (in-law apartments) “by right” in all residential zones within the City, subject to dimensional and size requirements, parking standards, and an owner occupancy requirement for either the primary or secondary unit. Local standards for second units may address neighborhood compatibility, public safety, and other issues but should not be so onerous as to preclude the development of additional units.

Policy 1.6: Second Units in New or Expanded Homes. Strongly encourage the inclusion of second units when new homes are built and when existing homes are expanded.

Program 1.C: Market Rate Second Units. Maintain zoning regulations that support the development of market rate second units in Piedmont neighborhoods.

Policy 3.1: Rent-Restricted Second Units. Continue incentive-based programs such as reduced parking requirements and more lenient floor area standards to encourage the creation of rent restricted second units for low and very low income households.

Policy 3.2: Occupancy of Registered [Permitted] Units. Encourage property owners with registered [permitted] second units to actively use these units as rental housing rather than leaving them vacant or using them for other purposes.

Policy 3.3: Conversion of Unintended Units to Rentals. Encourage property owners with “unintended second units” to apply for City approval to use these units as rental housing. “Unintended” second units include spaces in Piedmont homes (including accessory structures) with second kitchens, bathrooms, and independent entrances that are not currently used as apartments.

Policy 3.4: Legalization of Suspected Units. Work with property owners who may be operating second units without City approval to legalize these units. Where feasible and consistent with the health and safety of occupants, consider planning and building code waivers to legalize such units, on the condition that they are rent and income restricted once they are registered.

Policy 3.5: Second Unit Building Regulations. Maintain building code regulations which ensure the health and safety of second unit occupants and the occupants of the adjacent primary residence.

Policy 4.4: Updating Standards and Codes. Periodically update codes and standards for residential development to reflect changes in state and federal law, new technology, and market trends.

Policy 5.2: Second Units, Shared Housing, and Seniors. Encourage second units and shared housing as strategies to help seniors age in place. Second units and shared housing can provide sources of additional income for senior homeowners and housing resources for seniors seeking to downsize but remain in Piedmont.

Please note that the City is currently working on a Draft Housing Element for the 6th housing cycle (2023-2031). After its adoption, the City Code’s ADU regulations will be evaluated for compliance with the 6th Cycle Housing Element and updated, if necessary.

Additional Bedrooms within Existing Dwelling Units

As noted in the 5th Cycle Housing Element (2015-2023):

The U.S. Census defines an “overcrowded” housing unit as one with more than one person per room. Given the relatively large size of Piedmont residences, there are very few homes in the City which meet this definition. The 2000 Census identified only 12 overcrowded

units in Piedmont, representing less than 0.3% of the City's housing stock. The 2013 American Communities Survey indicates there are no housing units in the city with more than 1.0 persons per household today, indicating there are no overcrowded units.

Although overcrowding may not be a significant problem in Piedmont, the 5th Cycle Housing Element Chart 3.4 indicates that 49 percent of Piedmont's housing stock consists of units with three or fewer bedrooms. The new Code division 17.42 may facilitate the addition of bedrooms within the living areas of these smaller homes, and make them affordable to larger families.

Parking requirements would remain unchanged with the adoption of the regulations provided in division 17.42 and would not create new obstacles to housing.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

The adoption of the proposed revisions to Chapter 17 is a project within the meaning of the California Environmental Quality Act ("CEQA"), however, the proposed City Code amendments related to ADUs are statutorily exempt from CEQA pursuant to Public Resources Code section 21080.17 and CEQA Guidelines section 15282(h) which exempts adoption of ordinances implementing state law regarding accessory dwelling units. The proposed City Code amendments included in division 17.42 are categorically exempt from CEQA because it can be seen with certainty that there is no possibility that the adoption of division 17.42 may have a significant effect on the environment. (Public Resources Code section 21065; CEQA Guidelines, 14 Cal. Code of Regs. Sections 15061(b)(3), 15378.)

CITY CHARTER

The modifications to the City Code are in conformance with the City Charter, including section 9.02. No zones have been reduced or enlarged, and no zones have been reclassified. City Charter provisions are expressly referred to in City Code division 17.02.C.

CITY ATTORNEY REVIEW

The proposed modifications to the City Code, the ordinance and the CEQA determinations have been reviewed and approved by the City Attorney.

PUBLIC PARTICIPATION

During the meeting at which the Planning Commission and City Council consider the changes and documents discussed in this report, the public will have the opportunity to address the Commission and Council directly. In addition, members of the public may submit written comments to the Commission and Council in advance of their respective meetings. In addition, notice of this agenda item was placed in local news outlets. This report, information on the proposed changes to the regulations for accessory dwelling units and additional bedrooms in existing dwelling units, and methods to submit comments on the proposed ordinance can be found on the City's website at: <https://piedmont.ca.gov/>

PLANNING COMMISSION RECOMMENDATION

On November 14, 2022, the Planning Commission received information on the proposed ordinance, received two written comments via email, heard testimony from the public, held a thorough discussion of the proposed code amendments, and voted (3-1) to recommend the City Council adopt the proposed code revisions.

During their discussion, Commissioners questioned the need for the 25 feet height limit for attached ADUs and expressed concerns regarding allowing ADU construction in the street yard setback and the applicability of objective design standards on such ADUs. Commissioner Zucker disagreed with staff's interpretation of Assembly Bill 916. Director of Planning and Building Kevin Jackson responded to the Commissioner's concerns and enquiries and stated that these changes are in response to the new state laws and that the interpretation of the law, and the drafting of the City Code revisions was completed with the advice of the City Attorney. The video of the meeting is available on the City website (link available at the end of this page).

CONCLUSION

The recommended code revisions will ensure the City's regulations for accessory dwelling units and additional bedrooms in existing dwelling units remain in compliance with state laws while preserving – to the extent possible –the City's ability to regulate the design of ADUs and JADUs.

Should the Council approve a first reading of the recommended ordinance on November 21, 2022, a second reading could occur as soon as December 5, 2022, and the Code amendments would go into effect thirty days after that.

By: Kevin Jackson, Director of Planning & Building
Gopika Nair, Associate Planner

ATTACHMENTS:

	<u>Pages</u>	
1	11-34	Ordinance No. 768 N.S. amending regulations related to ADUs and adding division 17.42 Additional Bedrooms within Existing Dwelling Units
2	35-36	California Government Code Section 65852.26

Separate and available on the City website:

- [Video of November 14, 2022 Planning Commission Meeting](#)
- [City of Piedmont 2015-2023 Housing Element](#)
- [Piedmont City Code Chapter 17, Planning and Land Use](#)

ORDINANCE NO. 768 N.S.

AN ORDINANCE TO MODIFY CHAPTER 17 OF THE CITY CODE TO REGULATE ACCESSORY DWELLING UNITS AND ADDITIONAL BEDROOMS IN EXISTING DWELLING UNITS IN ACCORDANCE WITH RECENT STATE LEGISLATION

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

SECTION 1 – BACKGROUND AND INTENT

Existing Piedmont City Code provisions in Chapter 17 regulate accessory dwelling units within the City. It is the intent of the City Council of the City of Piedmont to modify existing provisions of Chapter 17 of the City Code to regulate accessory dwelling units in accordance with state law, specifically Senate Bill 897, Assembly Bill 2221, and Government Code Section 65852.26.

In addition, existing Piedmont City Code provisions in Chapter 17 regulate on-site parking requirements relative to the number of bedrooms in a dwelling unit and provides a discretionary process to project applicants seeking a variance from these provisions. It is the intent of the City Council of the City of Piedmont to include new provisions in Chapter 17 of the City Code to provide a ministerial process with no public hearing for the addition of no more than two bedrooms in existing dwelling units in accordance with Assembly Bill 916 and Government Code Section 65850.02.

SECTION 2 – CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The adoption of the proposed revisions to Chapter 17 is a project within the meaning of the California Environmental Quality Act (“CEQA”), however, the proposed City Code amendments related to ADUs are statutorily exempt from CEQA pursuant to Public Resources Code section 21080.17 and CEQA Guidelines section 15282(h) which exempts adoption of ordinances to implement Government Code section 65852.2 regarding accessory dwelling units. The proposed City Code amendments included in division 17.42 are categorically exempt from CEQA because it can be seen with certainty that there is no possibility that the adoption of division 17.42 may have a significant effect on the environment. (Public Resources Code section 21065; CEQA Guidelines, 14 Cal. Code of Regs. Sections 15061(b)(3), 15378.)

SECTION 3 – AMENDMENT TO SECTION 17.20.040

Section 17.20.040 of the Piedmont City Code is hereby amended in its entirety to read as follows:

“17.20.040 Regulations.

In Zone A:

	Zone A requirements
Lot area	Minimum 8,000 square feet, subject to exception for accessory dwelling unit construction set forth in division 17.38.

Frontage, on public or private street	Minimum 60 feet.
Lot coverage; Landscaping	Maximum 40% by primary and accessory structures, subject to exception for accessory dwelling unit construction set forth in division 17.38. (A site feature is not calculated in the lot coverage if (1) the feature is not more than 7 feet height and (2) the total of all site features is 400 square feet or less.) Minimum 30% landscaping, subject to exception for accessory dwelling unit construction set forth in division 17.38.
Structure height	Maximum 35 feet, except accessory dwelling units shall be subject to restrictions set forth in division 17.38.
Street yard setback	Minimum 20 feet for primary or accessory structure, <u>subject to exception for accessory dwelling unit construction set forth in division 17.38.</u> No minimum setback for a site feature, but a site feature may require a design review permit under division 17.66.
Side yard and rear yard setback	Minimum 5 feet for a primary or accessory structure, but 20 feet in a street-facing yard, except that a set-back of only four feet is required for a new structure to be used as an accessory dwelling unit, <u>and no setback is required for conversions of an existing structure to an accessory dwelling unit or portion thereof in the same location and same dimensions.</u> ** However, an accessory structure may be located anywhere within the side and rear setback areas except that it: (a) must be located within 35 feet of the rear lot line; (b) must be located at least 5 feet from a habitable structure on an abutting property, and, for a corner lot, at least 5 feet from a side lot line of an abutting property to the rear; (c) may not exceed 15 feet in height; and (d) may not be habitable. A site feature proposed within these distances may require a design review permit under division 17.66.
Floor area ratio*	Subject to exception for accessory dwelling unit construction set forth in division 17.38: 55% of the lot area if the parcel is 5,000 square feet or less. 50% of the lot area if the parcel is 5,001 square feet to 10,000 square feet. 45% of the lot area if the parcel is more than 10,000 square feet.

* In order to encourage development within the existing building envelope instead of building outwards or upwards, the floor area ratio standard is not applied to finishing an area into habitable space if: (1) there is no expansion of the exterior building envelope; and (2) the owner has not obtained a final inspection within the prior three years on a building permit issued for an expansion of the building envelope.

** Pursuant to Government Code section 65852.2(a)(1)(D)(vii)."

SECTION 4 – AMENDMENT TO SECTION 17.24.040

Section 17.24.040 of the Piedmont City Code is hereby amended in its entirety to read as follows:

“17.24.040 Regulations.

A. In Zone C, for multi-family residential use:

	Zone C requirements
Lot area	Minimum 10,000 square feet, subject to exception for accessory dwelling unit construction set forth in division 17.38.
Frontage, on public or private street	Minimum 90 feet
Lot coverage; Landscaping	Maximum 50% of the total by primary and accessory structures, subject to exception for accessory dwelling unit construction set forth in division 17.38. Minimum 30% landscaping, or 20% by landscaping for a project in which at least 20% of the units are affordable, as defined by the California Department of Housing and Community Development, subject to exception for accessory dwelling unit construction set forth in division 17.38.
Structure height	Maximum 35 feet, except accessory dwelling units shall be subject to restrictions set forth in division 17.38.
Street yard setback	Minimum 20 feet for primary or accessory structure, <u>subject to exception for accessory dwelling unit construction set forth in division 17.38.</u> Site feature of any height may require a design review permit under division 17.66.
Side yard and rear yard setback	Minimum 5 feet for primary or accessory structure, except that a setback of only four feet is required for a new structure to be used as an accessory dwelling unit. <u>*and no setback is required for conversions of an existing structure to an accessory dwelling unit or portion thereof in the same location and same dimensions.*</u> <u>If the existing multi-family dwelling has a rear or side setback of less than four feet, no modification of the existing multifamily dwelling shall be required for construction of an accessory dwelling unit.**</u> However, an accessory structure may be located anywhere within the side and rear setback areas except that it: (a) must be located within 35 feet of the rear lot line; (b) must be located at least 5 feet from a habitable structure on an abutting property, and, for a corner lot, at least 5 feet from a side lot line of an abutting property to the rear; (c) may not exceed 15 feet in height; and (d) may not be habitable.

	A site feature proposed within these distances may require a design review permit under division 17.66.
Floor area ratio	Subject to exception for accessory dwelling unit construction set forth in division 17.38: Maximum 55% of the lot area if the parcel is 5,000 square feet or less. Maximum 50% of the lot area if the parcel is 5,001 square feet to 10,000 square feet. Maximum 45% of the lot area if the parcel is more than 10,000 square feet.

* Pursuant to Government Code section 65852.2(a)(1)(D)(vii).

** Pursuant to Government Code section 65852.2(e)(1)(D)(ii).”

SECTION 5 – AMENDMENT TO SECTION 17.28.040

Section 17.28.040 of the Piedmont City Code is hereby amended in its entirety to read as follows:

“17.28.040 Regulations.

In Zone E:

	Zone E requirements
Lot area	Minimum 20,000 square feet, subject to exception for accessory dwelling unit construction set forth in division 17.38.
Frontage, on public or private street	Minimum 120 feet.
Lot coverage; landscaping	Subject to exception for accessory dwelling unit construction set forth in division 17.38: Maximum 40% by primary and accessory structures. (A site feature is not calculated in the lot coverage if (1) the feature is not more than 7 feet height and (2) the total of all site features is 400 square feet or less.) Minimum 40% landscaping.
Structure height	Maximum 35 feet, except accessory dwelling units shall be subject to restrictions set forth in division 17.38.
Street yard setback	Minimum 20 feet for primary and accessory structure, <u>subject to exception for accessory dwelling unit construction set forth in division 17.38.</u> No minimum setback for a site feature, but a site feature may require a design review permit, under division 17.66.
Side yard and rear yard setback	Minimum 20 feet for primary or accessory structure, except that a set-back of only four feet is required for a new structure to be used as an accessory dwelling unit, <u>and no setback is required for</u>

	<p><u>conversions of an existing structure to an accessory dwelling unit or portion thereof in the same location and same dimensions.**</u></p> <p>However, an accessory structure not to be used as an accessory dwelling unit may be located anywhere within the side and rear setback areas except that it: (a) must be located within 35 feet of the rear lot line; (b) must be located at least 5 feet from a habitable structure on an abutting property, and, for a corner lot, at least 5 feet from a side lot line of an abutting property to the rear; (c) may not exceed 15 feet in height; and (d) may not be habitable. These distance requirements for an accessory structure also apply to a garage or carport attached to a primary structure.</p> <p>No minimum setback for a site feature, but a site feature may require a design review permit under division 17.66.</p>
<p>Floor area ratio*</p>	<p>Subject to exception for accessory dwelling unit construction set forth in division 17.38:</p> <p>55% of the lot area if the parcel is 5,000 square feet or less.</p> <p>50% of the lot area if the parcel is 5,001 square feet to 10,000 square feet.</p> <p>45% of the lot area if the parcel is more than 10,000 square feet.</p>

* In order to encourage development within the existing building envelope instead of building outwards or upwards, the floor area ratio standard is not applied to finishing an area into habitable space if: (1) there is no expansion of the exterior building envelope; and (2) the owner has not obtained a final inspection within the prior three years on a building permit issued for an expansion of the building envelope.

** Pursuant to Government Code section 65852.2(a)(1)(D)(vii).”

SECTION 6 – AMENDMENT TO DIVISION 17.38

Division 17.38 Accessory Dwelling Units of the Piedmont City Code is hereby amended in its entirety to read as set forth in Exhibit A, attached.

SECTION 7 – ADDITION OF DIVISION 17.42

Division 17.42 Additional Bedrooms in Existing Dwelling Units of the Piedmont City Code is hereby added in its entirety to read as set forth in Exhibit B, attached.

SECTION 8 – AMENDMENT TO SECTION 17.50.020

Section 17.50.020 of the Piedmont City Code is hereby amended in its entirety to read as follows:

“17.50.020 Nonconforming structure.

A. General. A structure that was lawfully erected but which does not conform to the currently applicable zoning requirements prescribed in the zone district is a nonconforming structure. It may be used and maintained except as otherwise provided in this section. A nonconforming structure is also subject to the California Building Code adopted by the city under chapter 5.

B. Regulations. The following regulations apply to a nonconforming structure:

1. Maintenance and repair. Routine maintenance and repairs may be performed on a nonconforming structure.
2. No alteration or enlargement. A nonconforming structure may not be altered, partially demolished, or enlarged unless required by law, or unless the alteration or enlargement conforms to the standards of the zoning district. An existing nonconforming structure may be altered or enlarged without variance as long as the alteration or enlargement does not relate to or involve the nonconformity. If an alteration or enlargement does relate to or involve a nonconformity of a non-conforming structure, a variance is required under division 17.70.

In this section, *reconstruction* means rebuilding all or a portion of an improvement in a way that differs from the prior construction, including but not limited to differences in design or materials or both. *Replacement* means rebuilding all or a portion of an improvement to be exactly the same as what was replaced.

3. Accessory dwelling unit. Regarding a nonconforming accessory dwelling unit, exterior design and material modifications beyond those authorized under division 17.38 are permitted if:

- a. ~~they make the accessory dwelling unit architecturally consistent with the primary unit and compliant with the current building code;~~
- ba. ~~they~~ such modifications comply with objective standards in the Piedmont Design Guidelines; and
- eb. there is no increase in the size or change to the location of the accessory dwelling unit, no increase in structure coverage or decrease in landscape coverage related to the accessory dwelling unit, ~~and no increase in the number of bedrooms.~~

4. Destruction; replacement. If a nonconforming primary structure is demolished or destroyed for any reason to the extent of more than 70% of the structure then, and without further action by the City Council, the structure and the land on which the structure was located are subject to the current regulations of the zone in which the structure is located, except as to lot area and lot frontage.

This subsection 4 does not apply to:

- a. a garage, pool house, exempt accessory dwelling unit under section 17.38.030, or accessory structure, and any of those may be replaced as it was, within two years, without increasing the degree of nonconformity, and without a variance under division 17.70.

- b. a deck, balcony, porch, or site feature, and any of those may be replaced as it was, within one year, without increasing the degree of nonconformity, and without a variance under division 17.70.

If a nonconforming primary structure has been demolished or destroyed less than 70%, reconstruction must be completed within two years from the date of issuance of the building permit. If a property owner of a non-conforming structure has received permission to demolish or destroy less than 70% of the structure, but during renovation, more that 70% is destroyed or demolished, the project approval terminates and the property is subject to current zoning regulations as set forth in the paragraph above.

The percentage of physical building destruction or demolition is determined by the Building Official.

If the nonconforming structure is not rebuilt within the time period allowed under this subsection 4, the nonconforming rights terminate.”

SECTION 9 – AMENDMENT TO SECTION 17.70.010

Section 17.70.010 of the Piedmont City Code is hereby amended in its entirety to read as follows:

“17.70.010 General; Exceptions.

A. General. The city may approve a variance from the provisions of this chapter, except for those features set forth in subsection B, which do not require a variance.

B. Exceptions.

1. These features do not require a variance: fence, retaining wall, or site feature.
2. A variance is not required to replace a nonconforming:
 - a. garage, pool house, exempt accessory dwelling unit, or accessory structure, which is destroyed, and any of those may be replaced as it was, within two years, without increasing the degree of nonconformity, and without a variance under this division; (See section 17.50.020 B.4.)
 - b. deck, balcony, porch, or site feature, which is destroyed, and any of those may be replaced as it was, within one year, without increasing the degree of nonconformity, and without a variance under this division. (See section 17.50.020 B.4.)
3. If a proposed improvement of an existing structure is subject only to a design review permit except that a feature of the improvement requires a variance, the city may approve it without the need for a variance if: (1) the extent of the nonconformity is unchanged or

reduced; and (2) the proposal meets the design review permit requirements of section 17.66.050, Standards. (See section 17.66.020 F.)

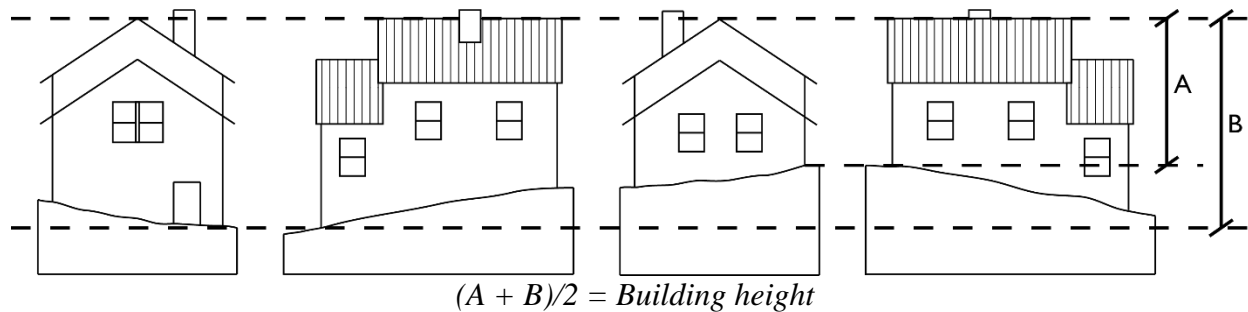
4. A variance shall not be required to construct an accessory dwelling unit meeting the standards of ~~section 17.38.060 Cdivision 17.38.” A variance shall also not be required from any floor area ratio, lot coverage, or landscaping requirement imposed under divisions 17.20 through 17.28, in conjunction with an approval for an accessory dwelling unit permit or building permit for an 800 square foot accessory dwelling unit that is 16 feet in height or less with at least four-foot side and rear yard setbacks, and that is constructed in compliance with all other development standards in division 17.38.”~~

SECTION 10 – AMENDMENT TO SECTION 17.90.020

The definition of Building Height contained in Section 17.90.020 of the Piedmont City Code is hereby amended in its entirety to read as follows:

“17.90.020 Measurements

Building height is measured from the average level of the highest and lowest point of that portion of the ground covered by the footprint of the building to the highest point of the roof edge, penthouse, mechanical equipment, or parapet wall. *Building height* is not measured to the highest point of a chimney or communications antenna.



Building height of an accessory dwelling unit is measured from the average level of the highest and lowest point of that portion of the ground covered by the footprint of the accessory dwelling unit to the highest point of the roof edge, mechanical equipment, or parapet wall. Building height of an accessory dwelling unit is not measured to the highest point of a chimney or communications antenna.”

SECTION 11 – 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 12 – CODIFICATION

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

SECTION 13 – POSTING, EFFECTIVE DATE, AND SUBMISSION

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 is directed to submit a copy of this ordinance to the Department of Housing and Community Development in the manner required by law.

[END OF ORDINANCE]

DIVISION 17.38

ACCESSORY DWELLING UNITS

Sections

17.38.010	Purpose and intent
17.38.020	Definitions
17.38.030	Legal accessory dwelling units; Non-conforming accessory dwelling units; Requirements for rented accessory dwelling units
17.38.040	Permit requirement
17.38.050	Permit application and review procedures
17.38.060	Zoning regulations; Accessory dwelling unit development standards; Junior accessory; dwelling unit development standards; Projects subject to state mandated approval
17.38.070	Accessory dwelling unit size exception
17.38.080	Enforcement
<u>17.38.090</u>	<u>Removal of Owner Occupancy Restrictions</u>
<u>17.38.100</u>	<u>Separate conveyance</u>

17.38.010 Purpose and intent.

The State Legislature has declared that accessory dwelling units are a valuable form of housing in California. Accessory dwelling units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices, and within existing neighborhoods. Homeowners who create accessory dwelling units benefit from added income, and an increased sense of security. (Gov't. Code § 65852.150.)

The city has a long history of various types of accessory dwelling units. By enacting this division 17.38, the City Council intends to:

- A. Establish the requirements for accessory dwelling units and junior accessory dwelling units in the city, consistent with California Government Code section 65852.2 and 65852.22;
- B. Encourage the use of existing accessory dwelling units and the construction of new accessory dwelling units, consistent with this Division;
- C. Help achieve the goals and policies of the General Plan Housing Element by encouraging a mix of housing types affordable to all economic segments of the community; and
- D. Clarify the requirements for the various kinds of accessory dwelling units in the city.

17.38.020 Definitions.

In this division 17.38, the following definitions apply, in addition to the definitions set forth in division 17.90:

Accessory dwelling unit means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and located on the same lot as a proposed or existing primary residence, which may be a single or multi-family dwelling, and has a separate, exterior entrance than that of the primary residence. It includes

permanent provisions for living, sleeping, eating, cooking, and sanitation. Permanent cooking facilities include installed cooktops, preparation sink, space for a refrigerator, food preparation counter and storage cabinets. It may include (1) an efficiency unit, as defined in Health and Safety Code section 17958.1 and (2) a manufactured home as defined in Health and Safety Code section 18007. (Formerly called *second dwelling unit*. See section 17.38.030 for types of accessory dwelling units and permits.)

Affordable housing definitions:

Affordable Rent Level means that the accessory dwelling unit household's monthly cost of rent, plus the cost of electricity, gas, water and sewer service, and garbage collection ("utilities") is 30% or less than the upper limit of the annual gross household income, divided by 12, for a specified income category and household size as last published by the California Department of Housing and Community Development (HCD). The City shall determine maximum affordable rent levels for rent-restricted accessory dwelling units following the annual publication of the State Income Limits by HCD. In determining rent levels, the household size for rent-restricted accessory dwelling units shall be: studio, 1 person; one-bedroom, 2 persons; two-bedroom, 3 persons; and, three-bedroom, 4 persons. The cost of utilities for the accessory dwelling unit shall be included in the affordable rent level. For rent-restricted accessory dwelling units where utilities are separately metered and billed, and where the accessory dwelling unit household is responsible for the costs of that household's use of utilities, the maximum rent shall be set at 90% of the affordable rent level. (California Health and Safety Code section 50053)

Affordable unit means a dwelling unit for sale or rent that meets the California State Department of Housing and Community Development standards of income eligibility and affordable rent levels for Alameda County. (Health and Safety Code sections 50052.5(h) and 50053.)

Gross Household Income means the total monies earned or received by all occupants of an accessory dwelling unit age 18 and over, including: wages and all types of compensation, before any payroll deductions; spousal and child support; social security, retirement, disability, insurance, and other types of periodic payments; unemployment compensation and other payments in-lieu of earnings; welfare and other public assistance; interest, dividends and other payments generated from any real or personal property; net business income; and, any other type of payment determined to qualify as income by the U.S. Department of Housing and Urban Development (HUD) and as published in HUD's Housing Choice Voucher Program Guidebook. The annual gross household income is calculated by multiplying the monthly amounts earned or received at the time of certification by 12 and adjusting for anticipated payments and changes in amounts over the next 12 months.

Household means those persons who collectively occupy a housing unit. A household shall include any child or dependent, as defined Internal Revenue Code section 152, who is under the age of 18 or who is under the age of 24 and is a full-time student.

Household Size means the number of persons in a household.

Household, Extremely Low Income means a household with an annual gross household income of 30% or less than the Alameda County median annual gross household income for that household size as last published by HCD. (Health and Safety Code section 50079.5.)

Household, Low Income means a household with an annual gross household income between 50% and 80% of the Alameda County median annual gross household income for that household size as last published by HCD. (Health and Safety Code section 50079.5.)

Household, Moderate Income means a household with an annual gross household income between 80% and 120% of the Alameda County median annual gross household income for that household size as last published by HCD. (Health and Safety Code section 50093)

Household, Very Low Income means a household with an annual gross household income between 30% and 50% of the Alameda County median annual gross household income for that household size as last published by HCD. (Health and Safety Code section 50079.5.)

Junior accessory dwelling unit means a unit that is no more than 500 square feet in size and contained within a single-family residence, with a separate entrance. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure, but shall include an efficiency kitchen that provides for a cooking facility with appliances, including a permanently installed cooktop, a preparation sink, space for a refrigerator, and a food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

Primary unit means a principal, permitted single-family or multi-family dwelling.

17.38.030 Legal accessory dwelling units; Non-conforming accessory dwelling units; Requirements for rented accessory dwelling units.

A. Legal accessory dwelling units.

The following are kinds of legal accessory dwelling units and permits. Each may be used and rented (subject to the business tax for rental property):

1. Accessory dwelling unit permit. An accessory dwelling unit or junior accessory dwelling unit permitted under an accessory dwelling unit permit is a legally existing accessory dwelling unit. (This includes an accessory dwelling unit approved subject to a variance and an accessory dwelling unit approved subject to exceptions and rent-restrictions, both under section 17.38.070.) If the unit is rent-restricted, then a tenant must be qualified by income level under the permit conditions of approval and the terms of the recorded declaration.

2. Second unit permit. A second unit permit issued before December 31, 2016 is a legal accessory dwelling unit.
3. Conditional use permit second unit. Between January 19, 1994 and July 1, 2003, second units were approved by conditional use permit. A second unit permitted under a conditional use permit during that period of time is a legal accessory dwelling unit.
4. Exempt accessory dwelling unit. If an accessory dwelling unit was established before 1930, and the City has confirmed the exempt status in writing, the accessory dwelling unit is a legally existing accessory dwelling unit.
5. Temporary use permit second unit. A temporary use permit second unit approved by the City between May 6, 1987 and July 1, 2003, under former Chapter 17D, is a legal accessory dwelling unit (and the temporary nature now recognized as permanent).

Any accessory dwelling unit or junior accessory dwelling unit that is not established pursuant to one of the above categories shall not be a legal accessory dwelling unit—, except as may be specifically permitted under Government Code section 65852.23.

- B. Non-conforming accessory dwelling units. A legal, non-conforming unit may not be modified or expanded except in compliance with division 17.50, Nonconforming buildings and uses.
- C. Requirements for legal accessory dwelling units that are rented. If an accessory dwelling unit is rented to a tenant, these additional requirements apply:
 1. Business tax. An accessory dwelling unit that is rented is subject to an annual business tax for rental property, under City Code chapter 10.
 2. Rent restrictions. An accessory dwelling unit that has rent restrictions under the conditions of approval and recorded declaration(s) must be rented in accordance with those limitations. (See section 17.38.070.)

17.38.040 Permit requirement.

- A. Accessory dwelling unit permit. An accessory dwelling unit permit is required for construction of an accessory dwelling unit or junior accessory dwelling unit or the modification of exterior features, size, or height of an existing accessory dwelling unit or junior accessory dwelling unit.
- B. Building permit. A building permit shall be required for construction or modification of an accessory dwelling unit or junior accessory dwelling unit as set forth in the California Residential Code and other building standards adopted by the City.

17.38.050 Permit application and review procedures.

- A. Application.

1. Application. An owner may apply for an accessory dwelling unit permit (or other city approval) by submitting a complete application to the Director on a form provided by the city.

2. Application fee. The owner shall pay an application fee in the amount established by City Council resolution.

B. Ministerial review. The Director shall review each application ministerially to determine if the development standards in section 17.38.060 are met, and shall within 60 days of a completed application approve or deny the application, except if the application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with an application to create a new primary single-family or multi-family dwelling on the lot, the Director shall delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until permits for the new single-family or multi-family dwelling are approved. The Director will review the application without notice or public hearing. The time period for review may be tolled at the request of the applicant.

C. Decision and conditions. The Director shall render a decision in writing and shall state the reasons for approval or denial. The decision of the Director shall be final.

17.38.060 Zoning regulations; Accessory dwelling unit development standards; Junior accessory dwelling unit development standards; Projects subject to state mandated approval.

A. Zoning regulations. A proposed accessory dwelling unit must comply with the zoning regulations for the district in which is it located, subject to the requirements or exclusions in this section. (See divisions 17.20 through 17.28.)

B. Accessory dwelling unit development standards. An accessory dwelling unit shall comply with all of the following development standards, except the Director may grant an exception to the unit maximum size restriction under section 17.38.070.

1. Size. An attached accessory dwelling unit may not exceed 50% of the existing living area up to a maximum of 850 square feet, or 1,000 square feet if the accessory dwelling unit will include more than one bedroom, except where a restriction to 50% of existing living area would result in a maximum size of less than 800 square feet, an attached accessory dwelling unit of no more than 800 square feet shall be permitted, subject to the zoning regulations and development standards in this section. A detached accessory dwelling unit may not exceed 850 square feet, or 1,000 square feet if the accessory dwelling unit will include more than one bedroom. The minimum floor area for an accessory dwelling unit shall be 150 square feet. The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.

2. Access. The accessory dwelling unit must have independent, exterior access.

3. Subdivision. No subdivision of land is authorized that would result in an accessory dwelling unit being located on a separate parcel, unless each parcel meets all of the zoning requirements for the zoning district in which it is located.

4. Building Height. A detached accessory dwelling unit shall not exceed a building height of ~~16-18~~ feet. An additional height of two feet for a detached accessory dwelling unit shall be allowed to accommodate a roof pitch that is aligned with the roof pitch of the primary dwelling unit. An attached accessory dwelling unit shall not exceed a building height of 25 feet or the height limitations for a primary dwelling unit of the underlying zoning district, whichever is lower.

5. Design Criteria. The design of the structure(s) housing the proposed accessory dwelling unit must meet applicable objective design criteria in the Piedmont Design Guidelines and any additional design guidelines applicable to accessory dwelling units approved by City Council resolution.

6. Limitations on city's approval. Under Government Code section 65852.2, the following limitations apply to any city approval:

a. Parking. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the City shall not require the replacement of offstreet parking spaces. (Gov't. Code §65852.2 (a)(1)(D)(xi).)

b. Side and Rear Setbacks. No setback is required to construct an accessory dwelling unit within an existing structure that is converted to an accessory dwelling unit or a new structure constructed in the same location and the same dimension as an existing structure. If an accessory dwelling unit is not converted from an existing structure, the minimum setback is four feet from the side and rear lot line. (Gov't. Code §65852.2 (a)(1)(D)(vii).)

c. Street Yard Setback. Accessory dwelling units of 800 square feet or less can be constructed in the street yard setback only if it is determined by the Director that there is no other configuration on the property that would allow for the construction of an 800 square foot accessory dwelling unit outside the four feet side and rear setbacks and in compliance with all other standards in this section, including height limits. (Gov't. Code §65852.2 (c)(2)(C).)

d. Fire sprinklers. Accessory dwelling units shall not be required to have fire sprinklers if they are not required for the primary residence. The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in any other existing dwelling. Fire sprinklers shall be considered “required for the primary dwelling unit” in any of the following circumstances:

i. When fire sprinklers are currently installed in the primary dwelling unit; or

ii. When fire sprinklers will be installed in a new primary dwelling unit constructed concurrently with an accessory dwelling unit. ~~;~~ ~~or~~

~~iii. When fire sprinklers will be installed in an existing primary dwelling unit as the result of an addition to the primary dwelling unit, including an addition for the purpose of establishing an accessory dwelling unit, which addition triggers any requirement for retroactive installation of fire sprinklers in the primary dwelling unit.~~

(Gov't. Code §65852.2 (a)(1)(D)(xii), Gov't. Code §65852.2 (e)(3).)

~~de.~~ Passageway. No passageway will be required. (Gov't. Code §65852.2 (a)(1)(D)(vi).)

~~ef.~~ Minimum lot area or lot size. Notwithstanding anything in divisions 17.20 through 17.28, no minimum lot area or lot size shall be imposed with respect to the approval of permits for an accessory dwelling unit. (Gov't. Code §65852.2(a)(1)(B).)

~~fg.~~ Floor Area Ratio, Lot Coverage, and Landscaping.

i. Lot coverage. An accessory dwelling unit eight hundred (800) square feet in floor area or less, shall have no maximum lot coverage. Maximum lot coverage for an accessory dwelling unit greater than eight hundred (800) square feet in floor area shall be that of the underlying zoning district.

ii. Landscaping. An accessory dwelling unit eight hundred (800) square feet in floor area or less, shall have no minimum landscape area. Minimum landscape area for an accessory dwelling unit greater than eight hundred (800) square feet in floor area shall be that of the underlying zoning district.

iii. Floor Area Ratio. An accessory dwelling unit eight hundred (800) square feet in floor area or less, shall have no maximum floor area ratio requirement. Maximum floor area ratio for an accessory dwelling unit greater than eight hundred (800) square feet in floor area shall be that of the underlying zoning district. (Gov't. Code §65852.2(c)(1)(C).)

~~gh.~~ Certificate of Occupancy. The building official shall not issue a certificate of occupancy for an accessory dwelling unit before issuance of a certificate of occupancy for the primary dwelling or multi-family dwelling.

~~hi.~~ Nonconforming Zoning Conditions. The City shall not require as a condition for approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit the correction of nonconforming zoning conditions, or building code violations, or unpermitted structures that do not present a threat to public health and safety and that are not affected by the construction of the junior accessory dwelling unit.

ij. Utility Connections. For an accessory dwelling unit described in section 17.38.060.D.1, the accessory dwelling unit shall not be required to install a new or separate utility connection directly between the accessory dwelling unit and the utility, and the accessory dwelling unit shall not be subject to a related connection fee or capacity charge, unless the accessory dwelling unit is constructed concurrently with a new single-family dwelling.

C. Junior accessory dwelling unit development standards.

1. General provisions. The following provisions shall apply to junior accessory dwelling units:

a. A junior accessory dwelling shall not be constructed unless a single-family dwelling unit exists on a site and such single-family dwelling unit has been constructed lawfully, or the junior accessory dwelling unit is proposed as part of the construction of the single-family dwelling unit. A junior accessory dwelling unit shall be a permitted use in any lot zoned to allow a single-family residential use.

b. No lot shall contain more than one (1) junior accessory dwelling unit.

c. A junior accessory dwelling unit shall be constructed within the existing space of the proposed or existing single-family dwelling ~~or accessory structure~~, however, an expansion of not more than one hundred fifty (150) square feet beyond the same physical dimensions of the existing space of a single-family dwelling shall be permitted for purposes of accommodating ingress and egress. For purposes of this provision, enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence.

d. A junior accessory dwelling unit shall not be sold or otherwise conveyed separate from the single-family dwelling unit.

e. A junior accessory dwelling unit shall have an exterior point of access directly into the junior accessory dwelling unit that is separate and independent from the single-family dwelling unit.

f. A building permit shall be required to construct a junior accessory dwelling unit or to establish a junior accessory dwelling unit within the existing space of a single-family dwelling. Occupancy of a junior accessory dwelling unit shall be prohibited until the junior accessory dwelling unit receives a successful final inspection pursuant to a valid building permit and receives a certificate of occupancy issued on or after the date of the successful final inspection.

g. A junior accessory dwelling unit that shares a bathroom with the existing or proposed single-family dwelling unit shall provide an interior entry to the existing or proposed single-family dwelling unit's "main living area".

2. Development standards. The following provisions shall apply to junior accessory dwelling units:

- a. A junior accessory dwelling unit shall not be considered a separate or a new dwelling unit for purposes of applying building or fire codes. Installation of fire sprinklers in a junior accessory dwelling unit of any type shall be required only if they are required for the primary dwelling unit. Fire sprinklers shall be considered "required for the primary dwelling unit" under the circumstances as specified in section 17.38.060.B.6.~~ed~~.
- b. The minimum floor area for a junior accessory dwelling unit shall be 150 square feet.
- c. The maximum floor area for a junior accessory dwelling unit shall not exceed five-hundred square feet. If the sanitation facility is shared with the remainder of the single-family dwelling, it shall not be included in the square footage calculation for the junior accessory dwelling unit.
- d. Setbacks for a junior accessory dwelling unit constructed with a new single-family dwelling shall be that of the underlying zoning district. No setback shall be required for a junior accessory dwelling unit contained within the existing space of a single-family dwelling or accessory structure. However, as permitted in this section, an expansion to an accessory structure of up to one hundred fifty (150) square feet to accommodate ingress and egress may be constructed only if the following setbacks are maintained:
 - i. ~~i.~~ a street yard~~front~~ setback accordance with the applicable zoning district.
 - ii. a minimum side yard setback of four feet.
 - iii. a minimum rear yard setback of four feet.
- e. No parking shall be required for a junior accessory dwelling unit.
- f. No lot coverage or landscaping requirement shall apply to a junior accessory dwelling unit.
- g. No height restriction shall apply to a junior accessory dwelling unit.
- h. A junior accessory dwelling unit shall not be required to install a new or separate utility connection directly between the junior accessory dwelling unit and the utility.
- i. A junior accessory dwelling unit may be constructed on a site that does not meet the minimum lot or parcel size requirements or minimum dimensional requirements of the underlying zoning district, provided that it is constructed in compliance with all building standards and other standards of this division.

j. An expansion to an accessory structure of up to one hundred fifty (150) square feet to accommodate ingress and egress for a proposed junior accessory dwelling unit must meet applicable design criteria in the Piedmont Design Guidelines and any additional design guidelines applicable to accessory dwelling units approved by City Council resolution.

3. Use Restrictions. The following restrictions shall apply to junior accessory dwelling units:

a. The ~~property owner~~City shall record a deed restriction with the County Recorder Office ~~and file a copy of the recorded deed restriction with the City~~. The deed restriction shall prohibit the sale or other conveyance of the junior accessory dwelling unit separate from the single-family dwelling; specify that the deed restriction runs with the land and is therefore enforceable against future property owners; and restrict the size and features of the junior accessory dwelling unit in accordance with this section.

b. The site's owner may at any time offer for rent either the single-family dwelling unit or the junior accessory dwelling unit. The site's owner shall be required to reside in the single-family dwelling unit as its primary residence at any time while the junior accessory dwelling unit is occupied by a tenant.

c. A site's owner shall not allow occupancy of a junior accessory dwelling unit by a tenant for any reason, with or without payment of rent, unless the site owner maintains occupancy of the primary dwelling unit as its primary residence.

d. Owner-occupancy shall not be required if the owner is a government agency, land trust, or housing organization.

e. A junior accessory dwelling unit may be rented but shall not be used for rentals of a term less than thirty (30) consecutive days.

D. Projects subject to state mandated approval. Notwithstanding anything in this code to the contrary, the Director and Building Official shall ministerially approve permits required to create any of the following within a residential or mixed-use zone:

1. One accessory dwelling unit ~~or~~ and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

a. The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

- b. The accessory dwelling unit has exterior access that is separate from the exterior entrance proposed or existing single-family dwelling.
- c. The side and rear setbacks are sufficient for fire and safety.
- d. The junior accessory dwelling unit complies with the requirements of Government Code Section 65852.22.

2. One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling, subject to the following requirements:

~~a.~~ a.—A total floor area limitation of not more than 800 square feet.

b. A height limitation of ~~16-18~~ feet, plus for single family residential zoned lots an additional two feet to accommodate a roof pitch that is aligned with the roof pitch of the existing or proposed main house.

The new construction detached accessory dwelling unit in this subsection may be combined with a junior accessory dwelling unit as described in subparagraph 1 above.

3. Not more than two detached accessory dwelling units that are located on a lot that has an existing multi-family dwelling, subject to a height limit of ~~16-18~~ feet and four-foot rear yard and side yard setbacks. If the existing multi-family dwelling has a rear or side setback of less than four feet, modification of the existing multifamily dwelling is not required as a condition of constructing the accessory dwelling unit.

4. Conversion of portions of existing multi-family dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, into new accessory dwelling units, provided that each unit shall comply with state building standards for dwellings. The number of new accessory dwelling units authorized for conversion under this subsection shall not exceed 25 percent of the existing dwelling units in the multi-family dwelling structure or one new accessory dwelling unit, whichever is greater.

17.38.070 Unit size exception.

A. Exception to unit size. The Director shall approve an exception to the maximum unit size set forth in section 17.38.060 B.1 for an accessory dwelling unit upon request of an applicant in accordance with the requirements of this section. If an exception is granted, the accessory dwelling unit shall be subject to all the requirements set forth below.

IF THE UNIT INCLUDES:	EXPANSION UP TO 1,000 SQUARE FEET	EXPANSION TO 1,200 SQUARE FEET
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One bedroom or less	Imposition of covenants requiring an affordable rent level to households of low income	Imposition of covenants requiring an affordable rent level to households of very low income
More than one bedroom	N/A	Imposition of covenants requiring an affordable rent level to households of very low income

B. Additional requirements. If an accessory dwelling unit permit with a unit size exception is approved, it is subject to the following additional requirements.

1. Rent restriction.

a. Declaration of rent restrictions. The accessory dwelling unit permit with a unit size exception shall have a condition describing the type of rent restriction applicable to the property. The rent-restriction shall be recorded in the county recorder's office, as a declaration of rent restrictions (in a form provided by the city), and will remain in effect for ten years. The ten-year period of rent restriction begins either: (a) on the date of recordation or date of final building inspection, whichever is later; or (b) according to the terms of the conditions of approval or a recorded declaration.

If, after ten years, the termination of the recorded declaration is not automatic (by its terms), the city will record a document terminating the declaration of rent restrictions, upon the written request of the property owner.

b. Affordable rent certification. An owner who has executed a declaration must submit to the city an accessory dwelling unit affordable rent certification: (i) on an annual basis, by each December 31 and as part of the annual city business license application and renewal; and (ii) upon any change in occupancy of the accessory dwelling unit. The accessory dwelling unit affordable rent certification must be on a form provided by the city and must specify whether or not the accessory dwelling unit is being occupied; the rent charged; the utilities that are included in the cost of rent; the household size of the accessory dwelling unit; the names and ages of the accessory dwelling unit occupants; the gross household income of the accessory dwelling unit household; and other information as determined appropriate by the city.

17.38.080 Enforcement.

Enforcement of notices to correct a violation of any provision of any building standard for any accessory dwelling unit shall comply with Section 17980.12 of the Health and Safety Code.

17.38.090 Removal of Owner Occupancy Restrictions.

A. The Director shall be authorized to remove any previously imposed owner-occupancy requirements imposed via deed restriction on any accessory dwelling unit previously permitted, by recording any appropriate documents rescinding the restriction, ~~restriction~~ if the following criteria are met:

- i. the applicant shall provide a copy of the original recorded deed restriction.
- ii. the applicant agrees to an imposition of covenants either on the accessory dwelling unit or on the primary dwelling unit requiring an affordable rent level to households of very low-income for a period of 15 years, which shall be recorded in the county recorder's office, as a declaration of rent restrictions (in a form provided by the city), and will remain in effect for fifteen years. The fifteen-year period of rent restriction shall begin on the date set forth in the recorded declaration.

If, after fifteen years, the termination of the recorded declaration is not automatic (by its terms), the city will record a document terminating the declaration of rent restrictions, upon the written request of the property owner.

B. A property owner that receives removal of owner occupancy restrictions shall comply with certification requirements related to affordable rent set forth in section 17.38.070 B.1.b.

This section does not apply to owner-occupancy deed restrictions imposed on Junior Accessory Dwelling Units.

17.38.100 Separate Conveyance

The City shall allow an accessory dwelling unit to be sold or conveyed separately from the primary residence to a qualified buyer if all of the criteria listed under Government Code Section 65852.26 are met.

DIVISION 17.42 ADDITIONAL BEDROOMS IN EXISTING DWELLING UNITS

Sections

17.42.010	Purpose and intent
17.42.020	Permit requirement
17.42.030	Permit application and review procedures
17.42.040	Standards

17.42.010 Purpose and intent.

The State Legislature has declared that local jurisdictions cannot adopt or enforce an ordinance requiring a public hearing as a condition of reconfiguring existing space to increase the bedroom count within an existing dwelling unit. (Gov't. Code § 65850.02.)

The regulations in this division are intended to establish a ministerial process with no public hearings for projects proposing additional bedrooms as provided in Government Code 65850.02.

17.42.020 Permit requirement.

- C. Additional bedroom permit. Construction of not more than two additional bedrooms within an existing dwelling unit shall be permitted upon issuance of an additional bedroom permit by the Director, as provided in this Division.
- D. Building permit. A building permit shall also be required for modifications of a dwelling unit as set forth in the California Residential Code and other building standards adopted by the City.

17.42.030 Permit application and review procedures.

A. Application.

1. Application. An owner may apply for permits to construct additional bedrooms in an existing dwelling unit by submitting a complete application to the Director on a form provided by the city.

2. Application fee. The owner shall pay an application fee in the amount established by City Council resolution.

B. Ministerial review. The Director shall review each application ministerially to determine if the development standards in section 17.42.040 are met. The Director will review the application without notice or public hearing.

C. Decision and conditions. The Director shall render a decision in writing and shall state the reasons for approval or denial. The decision of the Director shall be final.

Addition of Division 17.42 Additional Bedrooms in Existing Dwelling Units

17.42.040 Standards.

The Director may not approve an application for additional bedroom permit unless the project conforms to all of the following standards:

- A. The application proposes no more than two additional bedrooms within an existing dwelling unit. Area within an existing dwelling unit shall not include garages, carports, porches, decks, or crawl spaces.
- B. The additional bedrooms shall be created solely within existing space of the dwelling unit and no additional expansions of existing space are proposed to be added to the building (e.g., attic dormers and other structural protrusions).
- C. The project meets the requirements of division 17.30 Parking of this Code.
- D. Exterior design modifications (e.g., window and door changes) necessary to meet the health and safety requirements of Chapter 8 Building, Construction & Fire Prevention of this Code conform to the standards the City of Piedmont Design Guidelines.

State of California

GOVERNMENT CODE

Section 65852.26

65852.26. (a) Notwithstanding clause (i) of subparagraph (D) of paragraph (1) of subdivision (a) of Section 65852.2, a local agency shall allow an accessory dwelling unit to be sold or conveyed separately from the primary residence to a qualified buyer if all of the following apply:

(1) The accessory dwelling unit or the primary dwelling was built or developed by a qualified nonprofit corporation.

(2) There is an enforceable restriction on the use of the land pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation that satisfies all of the requirements specified in paragraph (10) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code.

(3) The property is held pursuant to a recorded tenancy in common agreement that includes all of the following:

(A) The agreement allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling that each qualified buyer occupies.

(B) A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the accessory dwelling unit or primary dwelling if the buyer desires to sell or convey the property.

(C) A requirement that the qualified buyer occupy the accessory dwelling unit or primary dwelling as the buyer's principal residence.

(D) Affordability restrictions on the sale and conveyance of the accessory dwelling unit or primary dwelling that ensure the accessory dwelling unit and primary dwelling will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.

(E) If the tenancy in common agreement is recorded after December 31, 2021, it shall also include all of the following:

(i) Delineation of all areas of the property that are for the exclusive use of a cotenant. Each cotenant shall agree not to claim a right of occupancy to an area delineated for the exclusive use of another cotenant, provided that the latter cotenant's obligations to each of the other cotenants have been satisfied.

(ii) Delineation of each cotenant's responsibility for the costs of taxes, insurance, utilities, general maintenance and repair, improvements, and any other costs, obligations, or liabilities associated with the property. This delineation shall only be binding on the parties to the agreement, and shall not supersede or obviate the liability, whether joint and several or otherwise, of the parties for any cost, obligation, or liability associated with the property where such liability is otherwise established by law or by agreement with a third party.

(iii) Procedures for dispute resolution among the parties before resorting to legal action.

(4) A grant deed naming the grantor, grantee, and describing the property interests being transferred shall be recorded in the county in which the property is located. A Preliminary Change of Ownership Report shall be filed concurrently with this grant deed pursuant to Section 480.3 of the Revenue and Taxation Code.

(5) Notwithstanding subparagraph (A) of paragraph (2) of subdivision (f) of Section 65852.2, if requested by a utility providing service to the primary residence, the accessory dwelling unit has a separate water, sewer, or electrical connection to that utility.

(b) For purposes of this section, the following definitions apply:

(1) “Qualified buyer” means persons and families of low or moderate income, as that term is defined in Section 50093 of the Health and Safety Code.

(2) “Qualified nonprofit corporation” means a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 of the Revenue and Taxation Code for properties intended to be sold to low-income families who participate in a special no-interest loan program.

(Amended by Stats. 2021, Ch. 343, Sec. 3. (AB 345) Effective January 1, 2022.)