

City of Piedmont
CITY COUNCIL AGENDA REPORT

DATE: February 17, 2026

TO: City Council

FROM: Rosanna Bayon Moore, City Administrator

SUBJECT: Consideration of Approval of Second Reading and Adoption of Ordinance 788 N.S. Amending the Zoning Ordinance, City Code Chapter 17. (CEQA Review: Consistent with Environmental Impact Report (EIR) for the Housing Element Implementation Project (SCH 2022020362), Exempt under CEQA Guidelines Section 15061(b)(3) and 15183)

RECOMMENDED ACTION

Approve the second reading of Ordinance 788 N.S., Attachment A, amending Chapter 17 of the Piedmont City Code to bring the City Code into compliance with the Objective Design Standards and updates clarifying maximum retaining wall height for SB 9 projects and clarifying locations where parking is prohibited on single family parcels in zones A and E.

BACKGROUND

On February 2, 2026, the City Council approved a first reading and introduced Ordinance 788 N.S., amending the Piedmont City Code Chapter 17 divisions 17.20 Zone A: Single Family Residential, 17.28 Zone E: Estate Residential, 17.30 Parking, 17.32 Fences; Trash Enclosures; Corner Obstructions, 17.34 Landscaping, 17.38 Accessory Dwelling Units, 17.46 Wireless Communication Facilities, 17.54 Urban Lot Splits and Two-Unit Housing Developments (SB 9), and 17.67 Ministerial Design Review Permit, to bring the City Code into compliance with the Objective Design Standards and updates clarifying maximum retaining wall height for SB 9 projects and clarifying locations where parking is prohibited on single family parcels in zones A and E.

Additionally, on February 2, 2026, the City Council found that the proposed amendments are exempt under CEQA Guidelines Sections 15061(b)(3), the common-sense exception that CEQA applies only to projects which have the potential for causing a significant effect on the environment and 15183, projects consistent with a community plan, general plan or zoning.

The City received a public comment on February 4, 2026, which is provided as Attachment B at the end of this report.

A second and final reading is required for adoption. Once approved, this ordinance will become effective thirty days later, or on March 19, 2026.

Prepared by: Gopika Nair, Senior Planner

ATTACHMENTS AND RELEVANT DOCUMENTS

Pages

- | | | |
|---|-------|--|
| A | 3-20 | Ordinance 788 N.S. amending City Code Chapter 17 |
| B | 21-37 | Public Comment Letter Received February 4, 2026 |

Piedmont City Code Chapter 17, Planning and Land Use:

https://piedmont.ca.gov/government/charter_city_code

Draft Objective Design Standards- Public Review Draft Posted on November 7, 2025:

https://piedmont.ca.gov/services_departments/planning_building/general_plan_other_policy_documents/objective_design_standards_for_1-4_unit_buildings

January 12, 2026, Planning Commission Public Hearing Meeting Video:

https://piedmont.granicus.com/player/clip/3125?view_id=9&redirect=true

January 12, 2026, Planning Commission Public Hearing Staff Report:

<https://piedmont.ca.gov/common/pages/GetFile.ashx?key=aJFCAdVv>

February 2, 2026, City Council Public Hearing Staff Report

<https://piedmont.ca.gov/common/pages/GetFile.ashx?key=Be1CAbgT>

February 2, 2026, City Council Public Hearing Meeting Video:

https://piedmont.granicus.com/player/clip/3129?view_id=9&redirect=true

ORDINANCE NO. 788 N.S.

AN ORDINANCE AMENDING SECTIONS OF DIVISIONS 17.20 ZONE A: SINGLE FAMILY RESIDENTIAL, 17.28 ZONE E: ESTATE RESIDENTIAL, 17.30 PARKING, 17.32 FENCES; TRASH ENCLOSURES; CORNER OBSTRUCTIONS, 17.34 LANDSCAPING, 17.38 ACCESSORY DWELLING UNITS, 17.46 WIRELESS COMMUNICATION FACILITIES, 17.54 URBAN LOT SPLITS AND TWO-UNIT HOUSING DEVELOPMENTS (SB 9), AND 17.67 MINISTERIAL DESIGN REVIEW PERMIT; AND ADDING A SECTION TO DIVISION 17.30 PARKING OF CHAPTER 17 OF THE PIEDMONT CITY CODE TO INCORPORATE OBJECTIVE DESIGN STANDARDS AND UPDATES CLARIFYING MAXIMUM RETAINING WALL HEIGHT FOR SB 9 PROJECTS AND LOCATIONS WHERE PARKING IS PROHIBITED ON SINGLE FAMILY RESIDENTIAL PROPERTIES IN ZONES A AND E

WHEREAS, the proposed amendments are consistent with the proposed Objective Design Standards, and other updates propose clarifying maximum retaining wall height for SB 9 projects and locations where parking is prohibited on single family residential properties in zones A and E; and

WHEREAS, On February 20, 2024, the City of Piedmont adopted a program-level Environmental Impact Report (EIR) for the Housing Element Implementation Project (SCH 2022020362) in accordance with the California Environmental Quality Act (CEQA). The proposed amendments to Piedmont City Code Chapter 17 are consistent with and fall within the scope of this adopted Housing Element Implementation EIR. The EIR comprehensively analyzed the potential environmental impacts of implementing Housing Element programs, including Program 4.M (Facilitating Multi-Family and Residential Mixed-Use Projects by Right Subject to Objective Standards) and Program 1.J (SB 9 Facilitation Amendments), both of which are directly addressed by these code amendments. Furthermore, the consideration of Objective Design Standards and related amendments to the City Code and Design Guidelines are exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15061(b)(3), the common-sense exception that CEQA applies only to projects which have the potential for causing a significant effect on the environment and 15183, projects consistent with a community plan, general plan or zoning. Other amendments recommended by staff and unrelated to the ODS relating to clarifying the maximum retaining wall height for SB 9 projects and updating the locations where parking is prohibited on single family residential properties in Zone A and E are also exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15601(b)(3), the common-sense exception, due to the fact that the proposed amendments are aesthetic in nature, do not increase development capacity, and do not authorize any specific development, as future projects will still be subject to site-specific environmental review; and

WHEREAS, the Planning Commission has held a duly noticed public hearing and has taken public testimony on the proposed amendments to City Code Chapter 17 on January 12, 2026, consistent with existing City Code section 17.72.040 and recommended adoption of the proposed amendments to the Zoning Ordinance; and

WHEREAS, the City Council has held a duly noticed public hearing and took public testimony on the proposed amendments to City Code Chapter 17 on February 2, 2026, consistent with existing City Code section 17.72.050.

NOW, THEREFORE, the City Council of the City of Piedmont hereby ordain, based on the oral and written staff report, all oral and written comments received and all other evidence in the record, as follows:

SECTION 1 – BACKGROUND AND INTENT

Piedmont's 6th Cycle Housing Element requires the City to implement key programs that establish and update objective design standards (ODS) to ensure that the City is able to retain some local control over developments that the City is required to approve ministerially, and comply with state law. The City has previously adopted ODS for accessory dwelling units and multi-family/mixed-use projects, and this ordinance adopts ODS for one-to-four-unit residential developments in single-family zones (A and E) to streamline SB 9 projects (Housing Element Program 1.J) and updating existing standards for accessory dwelling units (ADUs) multi-family/mixed-use projects to expedite approvals under state laws such as SB 35 and SB 330 (Housing Element Program 4.M).

SECTION 2. Findings. The City Council hereby makes the following findings:

- A. The above recitations are true and correct and incorporated herein by reference.
- B. On February 20, 2024, the City of Piedmont adopted a program-level Environmental Impact Report (EIR) for the Housing Element Implementation Project (SCH 2022020362) in accordance with the California Environmental Quality Act (CEQA). The proposed amendments to Piedmont City Code Chapter 17 are consistent with and fall within the scope of this adopted Housing Element Implementation EIR. The EIR comprehensively analyzed the potential environmental impacts of implementing Housing Element programs, including Program 4.M (Facilitating Multi-Family and Residential Mixed-Use Projects by Right Subject to Objective Standards) and Program 1.J (SB 9 Facilitation Amendments), both of which are directly addressed by these code amendments. Furthermore, the consideration of Objective Design Standards and related amendments to the City Code and Design Guidelines are exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15061(b)(3), the common-sense exception that CEQA applies only to projects which have the potential for causing a significant effect on the environment and 15183, projects consistent with a community plan, general plan or zoning. Other amendments clarifying the maximum retaining wall height for SB 9 projects and updating the locations where parking is prohibited on single family residential properties in Zone A and E are also exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15601(b)(3), the common-sense exception that the proposed amendments are aesthetic in nature, do not increase development capacity, and do not authorize any specific development. Future projects will still be subject to site-specific environmental review.
- C. The proposed revisions implement amendments related to objective design standards in

compliance with state law, and include revisions that clarify the maximum height of retaining walls allowed for SB 9 projects and locations where parking is prohibited on single-family residential parcels in Zones A and E. Pursuant to City Code Section 17.72.040(C), the amendments are consistent with Housing Element Programs 1.J and 4.M, the Piedmont General Plan, as recommended to be amended, the purposes of Chapter 17, and the provisions in City Charter Section 9.02.

D. The proposed amendments further public health, safety, and welfare of the community.

SECTION 3 – AMENDMENT OF SUBSECTION 17.20.040.A

Subsection 17.20.040.A of Section 17.20.040 [Regulations] of the City Code is amended in its entirety to read as follows:

“A. The following development standards apply to the development of all uses in Zone A, except those listed in Section 17.20.040.B:

	Zone A requirements
Lot area	Minimum 8,000 square feet, subject to exception for accessory dwelling unit construction set forth in division 17.38 or for a lot split under SB 9 set forth in division 17.54.
Frontage, on public or private street	Minimum 60 feet, subject to an exception for a lot split under SB 9 as set forth in division 17.54.
Lot coverage; Landscaping	Maximum 40% lot coverage for 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, subject to exception for accessory dwelling unit construction set forth in division 17.38. However, structure to support pedestrian and vehicular access, such as retaining walls and driveway bridges, not taller than 8 feet, shall be allowed in the street yard setback.

	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, unless the yard is street facing, in which case the minimum is 20 feet, except that a setback of only 4 feet is required for a new structure to be used as an accessory dwelling unit, 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.** 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 dwelling unit developed under SB 9 is subject to a 4 foot side and rear setback. 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 or for a dwelling unit developed under SB 9 set forth in division 17.54: 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.

* 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. (Ordinance 772 N.S., 03/2024)

** Pursuant to Government Code section 65852.2(a)(1)(D)(vii). (Ord. 747 N.S., 02/2020, Ord. 768 N.S., 01/2023, Ord. 772 N.S., 03/2024)

Please refer to division 17.54 for standards for a lot split and two-unit housing developments performed under SB 9.”

SECTION 4 – AMENDMENT OF SUBSECTION 17.28.040.A

Subsection 17.28.040.A of Section 17.28.040 [Regulations] of the City Code is amended in its entirety to read in its entirety as follows:

“A. The following development standards apply to the development of all uses in Zone E, except those listed in Section 17.28.040.B.:

	Zone E requirements
Lot area	Minimum 20,000 square feet, subject to exception for accessory dwelling unit construction set forth in division 17.38 or for a lot split under SB 9 set forth in division 17.54
Frontage, on public or private street	Minimum 120 feet, subject to an exception for a lot split under SB 9 as set forth in division 17.54
Lot coverage; landscaping	Subject to exception for accessory dwelling unit construction set forth in division 17.38: Maximum 40% lot coverage for 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, subject to exception for accessory dwelling unit construction set forth in division 17.38. However, structure to support pedestrian and vehicular access, such as retaining walls and driveway bridges, no taller than 8 feet, shall be allowed in the street yard setback. 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, unless the yard is street facing, in which case the minimum is 20 feet, except that a setback of only 4 feet is required for a new structure to be used as an accessory dwelling unit, 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.** 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. No minimum setback for a site feature, but a site feature may require a design review permit under division 17.66.

	A dwelling unit developed under SB 9 is subject to a 4 foot side and rear setback.
Floor area ratio*	Subject to exception for accessory dwelling unit construction set forth in division 17.38, or for a dwelling unit developed under SB 9 set forth in division 17.54: 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.

* 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). (Ord. 743 N.S., 05/2018, Ord. 747 N.S., 02/2020, Ord. 768 N.S., 01/2023, Ord. 772 N.S., 03/2024)

Please refer to division 17.54 for standards for a lot split and two-unit housing developments performed under SB 9.”

SECTION 5 – AMENDMENT OF SUBSECTION 17.30.010.B.1

Subsection 17.30.010.B.1 of Section 17.30.010 [Single family residential and similar use] of the City Code is amended to in its entirety to read as follows:

“1.General.

Dwelling Unit	Minimum number of off-street, covered, non-tandem parking spaces
Accessory dwelling unit (division 17.38)	0*
New primary unit** 800 square feet or less	1
New primary unit** greater than 800 square feet	2
Primary unit that exceeds FAR, lot coverage or structure height of the underlying zone	1 additional parking space; for a maximum total of 3 parking spaces.
SB-9 development (division 17.54)	1 per primary unit. If the parcel is located within one-half mile walking distance of either a high-quality transit corridor as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop as defined in Section 21064.3 of the Public Resources Code,

	then parking is not required for the new primary unit. Additional parking spaces for a unit can be stacked or tandem.
--	---

* Under Government Code section 65852.2, the city may not require parking for an accessory dwelling unit located within 1/2 mile of public transit, and all Piedmont properties are within 1/2 mile.

** primary unit refers to single family residence, small and large family day care homes, manufactured and mobile homes, low barrier navigation centers, supportive and transitional housing, residential care facilities or group homes that provide licensable services for up to 6 residents, residential care facilities or group homes that do not provide licensable services, and employee housing for up to 6 employees.”

SECTION 6 – ADDITION OF SUBSECTION 17.30.030.C

Subsection 17.30.030.C is added to Section 17.30.030 [Commercial use and mixed-use residential/commercial (Zone D)] of the City Code to read as follows:

“C. Shared Parking: At least 80% of the total residential parking spaces within a mixed-use development parking arrangement (parking garage or surface parking) shall be dedicated to residential uses. The remaining residential parking spaces can be shared between commercial and residential uses.”

SECTION 7 – AMENDMENT OF SECTION 17.30.040

Section 17.30.040 [Location of Parking Spaces] of the City Code is amended to read in its entirety as follows:

“17.30.040 Location of parking spaces.

A. Parking for a permitted use in any zone must be located: (1) on the same lot as the permitted use; and (2) not within the street setback in Zones A, B and E. Parking for a conditional use in any zone will be provided as required by the conditional use permit authorizing the use.

B. In Zones A and E, the parking of vehicles between the street-facing façade of a building and a lot line is prohibited, except for the parking of vehicles on driveways, parking pads and within parking structures.”

SECTION 8– AMENDMENT OF SECTION 17.32.010

Section 17.32.010 [Fence, wall, retaining wall, terracing] of the City Code is amended to read in its entirety as follows:

“17.32.010 Fence, wall, retaining wall, terracing.

A fence, wall, retaining wall, or terracing is subject to these height limit and design review permit requirements:

	Height, measured from existing or proposed grade; Design review permit requirement
Retaining wall, with or without guardrail	Maximum 30 inches. (No design review permit required.) If more than 30 inches, requires a design review permit under division 17.66.
Fence, wall, or a combination of either with a retaining wall within 24 inches	
Within street setback	Requires a design review permit under division 17.66 for any height.
Other areas	If 6 feet or less: exempt from design review permit. If more than 6 feet high, requires a design review permit, under division 17.66. If more than 8 feet high, requires a design review permit, under division 17.66, with notification requirements of division 17.62. Up to 8 feet tall allowed in Zones C and D when property line is shared with single-family uses or lots in in all zones.
Retaining wall under SB 9 for Zones A and E	
Within street setback	Up to 8 feet tall to support pedestrian and vehicular egress and ingress needs such as driveways and entry pathways.
Other Areas	Maximum of 5 feet.
Trash enclosure	(See general requirements in subsection B.1, below.)
Within street setback	No building permit or design review permit required if the enclosure complies with section 17.32.020, subsections A and B below. Otherwise requires design review permit under division 17.66.
Other areas	No building permit or design review permit required if the enclosure complies with section 17.32.020 B below.
Terracing	Design review is not required if a series of one or more retaining walls and fences, at least 24 inches apart, on a single slope is designed so that no single wall or fence exceeds the height limits in this subsection.

SECTION 9– AMENDMENT OF SECTION 17.34.040

Section 17.34.040 [Requirements] of the City Code is amended to read in its entirety as follows:

“17.34.040 Requirements.

The minimum dimensions and areas for landscaping are set forth in the regulations for each zoning district.

A residential property owner must landscape all required street setback areas, except for areas paved for ingress and egress. This requirement does not apply to a mixed use or multifamily development.”

SECTION 10– AMENDMENT OF SUBSECTION 17.38.060.B.5

Subsection 17.38.060.B.5 of Section 17.38.060 [Zoning regulations; Accessory dwelling unit development standards; Junior accessory dwelling unit development standards; Projects subject to state mandated approval] of the City Code is amended to read in its entirety as follows:

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

SECTION 11– AMENDMENT OF SUBSECTION 17.38.060.C.2.j

Subsection 17.38.060.C.2.j of Section 17.38.060 [Zoning regulations; Accessory dwelling unit development standards; Junior accessory dwelling unit development standards; Projects subject to state mandated approval] of the City Code is amended to read in its entirety as follows:

“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 Objective Design Standards. This 150-square-foot of expansion can include removal of an uncovered parking space.”

SECTION 12– AMENDMENT OF SUBSECTION 17.38.075.A

Subsection 17.38.075.A of Section 17.38.075 [Pre-Approved Plans Incentive] of the City Code is amended to read in its entirety as follows:

“A. The Director may authorize an applicant’s use of floor plans and elevations, owned by the City of Piedmont, and approved by the City Council, Chapter 3.4 of the Piedmont Objective Standards, to obtain Planning Division approval of an Accessory Dwelling Unit Permit if all of the following findings are made:

1. The design unit meets the requirements of section 17.38.060.
2. The roofing material and exterior siding material of the proposed unit are the same as that of the primary residence.
3. The plans are the same as those in Chapter 3.4 of the Piedmont Objective Design Standards with only a 3 percent variation or less in any one dimension.

If the approval is granted, the applicant must agree to the imposition of a rent restrictions on the unit requiring that any rent for the unit be affordable to households of very low income, and the accessory dwelling unit shall be subject to all the requirements set forth below.”

SECTION 13– AMENDMENT OF SUBSECTION 17.38.075.B

Subsection 17.38.075.B of Section 17.38.075 [Pre-Approved Plans Incentive] of the City Code is amended to read in its entirety as follows:

“B. Additional requirements. If an accessory dwelling unit permit using City-owned plans in Chapter 3.4 of the Piedmont Objective Design Standards is approved, it is subject to the following additional requirements.

1. Rent restriction.

- a. Declaration of rent restrictions. The accessory dwelling unit permit constructed using City-owned plans shall be subject to declaration of rent restrictions (in a form provided by the city), which shall be recorded in the county recorder's office, as a declaration of rent restrictions, 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 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.”

SECTION 14– AMENDMENT OF SUBSECTION 17.46.050.B.1.d

Subsection 17.46.050.B.1.d of Section 17.46.050 [Permit; Application] of the City Code is amended to read in its entirety as follows:

“d. all applicable documents outlined in the submittal checklist in section 8.03.04 of the Piedmont Design Guidelines titled Submittal Checklist.”

SECTION 15– AMENDMENT OF SUBSECTION 17.46.050.B.2

Subsection 17.46.050.B.2 of Section 17.46.050 [Permit; Application] of the City Code is amended to read in its entirety as follows:

“2. Application for location on city property. An applicant for a wireless communication facility proposed to be located on city property or in a public right-of-

way must submit a Letter of Authorization signed by the City of Piedmont City Council and all documents listed in Chapter 8 of the Piedmont Design Guidelines.”

SECTION 16– AMENDMENT OF SUBSECTION 17.46.070.C

Subsection 17.46.070.C of Section 17.46.070 Standards, of the City Code is amended to read in its entirety as follows:

“C. Term of permit. A wireless communication facility permit is valid for an initial period of ten years as specified in the Piedmont Design Guidelines unless: (i) a longer period is required by state or federal law; or (ii) a shorter time is required as a condition of approval for particular circumstances set forth in the decision, particularly with respect to public safety or substantial land use reasons under California Government Code section 65964(b). The Director may administratively extend a permit upon verification of continued compliance with this division 17.46 and any conditions of approval.”

SECTION 17– AMENDMENT OF SUBSECTION 17.46.080.A.1

Subsection 17.46.080.A.1 of Section 17.46.080 [Review Body; Findings] of the City Code is amended to read in its entirety as follows:

“1. Permit and Reviewing Body.

Location	Type of WCF	Design Standards Criteria	Type of Permit Required
WCF in the Right-of-Way	6409 Collocation	Meets the design criteria outlined in Design Guidelines Section 8.02.03	Building Permit
			Encroachment Permit
	Small Cell or DAS Application	Meets the Design Guidelines Section 8.02.03	Building Permit
			Encroachment Permit
		Does not meet the Design Guidelines	WCF Planning Permit, Review by Planning Commission
	Collocation (not under 6409) with existing structure		Building Permit
			Encroachment Permit
			WCF Planning Permit, Review by Director

WCF On Public or Private Property	New structure		WCF Planning Permit, Review by Planning Commission Building Permit
	Collocation (not under 6409) with existing structure		WCF Planning Permit, Review by Director Building Permit
	6409 Collocation	Meets Design Guidelines in Section 8.02.04	Building Permit

SECTION 18– AMENDMENT OF SUBSECTION 17.46.080.B.1.c

Subsection 17.46.080.B.1.c of Section 17.46.080 [Review Body; Findings] of the City Code is amended to read in its entirety as follows:

“c. The proposed design is consistent with the Piedmont Design Guidelines.”

SECTION 19– AMENDMENT OF SUBSECTION 17.46.080.B.2.b

Subsection 17.46.080.B.2.b of Section 17.46.080 [Review Body; Findings] of the City Code is amended to read in its entirety as follows:

“b. Modification. The Director may consider and grant, modify and grant or deny a modification to an existing wireless communications facility if the modification meets the requirements of section 6409. In determining whether to approve the requested modification the Director shall approve if the project meets the criteria outlined in section 8.03.03 of the Piedmont Design Guidelines titled 6409 (a) Eligible Facilities Request Checklist.”

SECTION 20– AMENDMENT OF SUBSECTION 17.54.040.B

Subsection 17.54.040.B of Section 17.54.040 [Permit Application and Review Procedures] of the City Code is amended to read in its entirety as follows:

“B. Ministerial Review. The Director shall review each application ministerially to determine if the development standards in section 17.54.050 are met for an urban lot split or the development standards in section 17.54.060 are met for a two-unit housing development. The Director will review the application without notice or public hearing, and shall approve the application if the application meets the applicable requirements of the division and Piedmont Objective Design Standards Chapter 2: One to Four Residential Unit Developments.”

SECTION 21– AMENDMENT OF SECTION 17.54.050

Section 17.54.050 [Urban Lot Split Standards] of the City Code is amended to read in its entirety as follows:

“17.54.050 Urban Lot Split Standards

The Director may not approve an application for an urban lot split permit unless the project conforms to all of the standards listed below and in Chapter 2 of the Piedmont Objective Design Standards. A waiver may be granted for an exception to the standards as provided in section 17.54.080.

A. Size Requirements

1. The parcel subdivides an existing parcel to create no more than two new parcels of approximately equal lot area provided that one parcel shall not be smaller than 40 percent of the lot area of the original parcel proposed for subdivision.
2. The newly created parcels are no smaller than 1,200 square feet.

B. Location Requirements

1. The parcel is not located in an area identified in subparagraphs (B) to (K) of paragraph (6) of subdivision (a) of Section 65913.4 of the Government Code.
 - a. The parcel is not located within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.
 - b. The parcel is not located on a hazardous waste site, as defined by Government Code Section 65913.4(a)(6)(H).
 - c. The parcel is not located within a special flood hazard area subject to inundation by the one percent annual chance flood (one hundred (100)- year flood) as defined by Government Code Section 65913.4(a)(6)(G).
 - d. The property is not located within a regulatory floodway, as defined by Government Code Section 65913.4(a)(6)(H).
2. The proposed urban lot split would not require demolition or alteration of the housing types listed in Government Code section 66411.7(a)(3)(D)(i)-(iv) nor the following types of housing:
 - a. Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

- b. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.
 - c. A parcel or parcels on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 of the California Government Code (commencing with Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.
 - d. Housing that has been occupied by a tenant in the last three years.
- 3. The parcel is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.
 - 4. The parcel has not been established through prior exercise of an urban lot split as provided for in this division.
 - 5. Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent parcel using an urban lot split as provided for in this division.

C. Lot Configuration

- 1. Access to Public Right-of-Way. The new parcel shall have vehicular access to the public right-of-way, either through direct lot frontage or an easement through the existing parcel.
- 2. Existing Dwelling Unit. If an urban lot split is proposed for a property with an existing dwelling unit, the split must result in the existing dwelling unit being completely located on one parcel. There shall be no existing or proposed structure in the setback along the new lot line for the lot on which the existing house remains. The lot on which the existing primary residence remains shall comply with the underlying zoning regulations such that no nonconformity is introduced, and no existing nonconformity is increased by the subdivision.
- 3. Lot Frontage. The lot shall have a minimum frontage of 60 feet, unless the frontage requirement precludes the development of two lots containing an 800 square foot primary structure. A new lot may be accessed via an easement across a pre-existing lot that contains street frontage.
- 4. Flag Lots. Flag lots are not permitted under an urban lot split permit. If a new parcel is created without direct access to the public right-of-way, an easement shall be provided through the original lot. The easement shall meet the following requirements:
 - a. The easement shall have a minimum width of 12 feet.
 - b. The easement shall provide access for utilities to be connected to the public right-of-way.

5. The side line of all lots shall be at right angles to the street which the lot faces, or approximately radial to the center of the curvature, if the street is curved. Side lines of lots shall be approximately radial to the center of the curvature of a cul-de-sac on which the lot faces.
6. For a newly created lot that is located in both Piedmont and Oakland, the applicant shall obtain all the required permits in both jurisdictions.
7. Lots of an unusual shape, as defined in section 17.54.030, are not permitted.
8. Access to the new lot shall meet the driveway width, slope standards, and other standards for vehicular access outlined in Chapter 2.5 of the Piedmont Objective Design Standards.

D. Utilities

1. The new parcel shall have separate utilities, including but not limited to electric, gas, water, and sewer. The new parcel shall adhere to the standards outlined in the Piedmont Public Works Standards.
2. Utility easements shall be recorded prior to final map recordation.”

SECTION 22– AMENDMENT OF SECTION 17.54.060

Section 17.54.060 [Two-Unit Housing Development Standards] of the City Code is amended to read in its entirety as follows:

“17.54.060 Two-Unit Housing Development Standards

The Director may not approve an application for a two-unit housing development permit unless the project conforms to all of the standards listed below and Chapter 2 of the Piedmont Objective Design Standards. A waiver may be granted for an exception to the standards as provided in section 17.54.080.

A. Size.

- a. The SB 9 unit is no more than 800 square feet in size.
- b. For an SB 9 unit that exceeds the 800 square foot size limit, the SB 9 unit shall meet the floor area ratio criteria for the underlying zoning district, unless the development falls under section E below.

B. Height. The maximum height of a new SB 9 unit shall meet the requirements of the underlying zoning district.

C. Setbacks.

- a. The side and rear setback is four feet for an SB 9 unit in any zone.
- b. The street-side setback, including for corner lots, is 20 feet.
- c. For the development of a new SB 9 unit within an existing structure that does not meet the four-foot setback requirement, the new unit is allowed to keep the nonconforming

condition so long as the nonconformity is not increased within the setback area. The converted structure must be in the same footprint and dimensions as the existing non-conforming structure.

D. Parking. New SB 9 units are required to have at least one parking space that meets the parking regulations in Section 17.30.040 and Section 17.30.050 of the Piedmont City Code. If the parcel is located within one-half mile walking distance of either a high-quality transit corridor as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop as defined in Section 21064.3 of the Public Resources Code, then parking is not required for the new SB 9 unit. Additional parking spaces for a unit can be stacked or tandem.

E. Lot Coverage.

- a. When a two-unit housing development is proposed on a new lot created pursuant to the urban lot split provisions specified in this division, the new SB 9 unit(s) shall conform to the structure coverage, landscape coverage, and floor area ratio of the underlying zoning district.
- b. When a new SB 9 unit is constructed on a lot with an existing dwelling unit, the floor area ratio may exceed the code required maximums so long as structure and landscape coverage conform to the requirements of the underlying zoning district.

F. Path of Travel. The path of travel to the new SB 9 unit shall be clearly marked by providing an address marker visible from the street and at the main entry door to the new unit. If needed, path lights shall also be installed. The path of travel shall have a minimum width of 3 feet.”

SECTION 23– AMENDMENT OF SECTION 17.54.080

Section 17.54.080 [Waivers from Standards] of the City Code is amended to read in its entirety as follows:

“17.54.080 Waivers from Standards

A. An applicant may request a waiver from the development standards provided in this division and Chapter 2 of the Piedmont Objective Standards if the following criteria are met:

1. Application. The applicant requests an exception as a part of the application materials.
2. Approval Authority. The exception request shall be submitted to the Director for review. The Director shall determine if the exception meets the standards for approval.
3. Standards for Approval. An exception from a development standard shall be granted if the standard would have the effect of physically precluding: (1) an urban lot split of a vacant parcel where the resulting lot size is 1,200 square feet or more for both parcels; (2) an urban lot split of a parcel with existing development, where the resulting lot size is 1,200 square feet or more for both parcels, and the urban lot split does not increase any nonconformity with underlying zoning regulations for the parcel with existing development; or (3) the

construction of up to two units that are 800 square feet in floor area or less, each.

Waivers from objective zoning standards shall not be granted if the floor area and/or structure coverage of each new housing development would exceed 800 square feet. The city shall determine the extent of relief necessary to allow two 800 square foot units. Waivers from zoning standards for accessory structures, such as decks and garages, shall be only for the minimum size structure required to serve each housing unit according to state law and Chapter 8 Building Code standards. A waiver cannot be approved for an application that proposes new construction within the four-foot side and rear setbacks.”

SECTION 24– AMENDMENT OF SUBSECTION 17.67.020.A

Subsection 17.67.020.A of Section 17.67.020 [Implementation] of the City Code is amended to read in its entirety as follows:

“A. Piedmont Objective Design Standards. The City Council has adopted the Piedmont Objective Design Standards that are available online and at City Hall. The Piedmont Objective Design Standards are for the review of projects that meet the requirements for ministerial review. The Piedmont Objective Design Standards are one of the criteria for the applicant and Director in determining whether a specific project conforms to section 17.67.060 Standards; Findings.”

SECTION 25– AMENDMENT OF SUBSECTION 17.67.030.A

Subsection 17.67.030.A of Section 17.67.030 [Permit Required] of the City Code is amended to read in its entirety as follows:

“A. Permit required. A ministerial design review permit is required for any development which meets the eligibility criteria for ministerial review under State law, subject to review under Chapter 17 division 17.38, (2) Two-unit housing developments and/or urban lot splits, which are subject to review under Chapter 17 division 17.54, and (3) other ministerial projects including certain multifamily and mixed-use developments as required by law;”

SECTION 26– AMENDMENT OF SECTION 17.67.060

Section 17.67.060 Standards; Findings, of the City Code is amended in its entirety to read as follows:

“17.67.060 Standards; Findings.

The Director may not approve a permit application as provided under section 17.67.030.A unless the Director first finds that the design of the project conforms to all of the following standards:

- A. The proposed development meets the criteria for ministerial approval under State law.
- B. The proposed development meets applicable design standards as provided in the Piedmont Objective Design Standards, as they may be amended from time to time by the City Council.

- C. The proposed development complies with zoning ordinance regulations for the zone in which the project site is located.”

SECTION 27 – CONFLICTS

If a previous City Council ordinance or resolution is in conflict with this ordinance, that ordinance or resolution is superseded, and the provisions of this ordinance prevail.

SECTION 28 – 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 29 – CODIFICATION

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

SECTION 30 – 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]

From: Gary Z.

Sent: Wednesday, February 4, 2026 9:55 AM

To: Rosanna Bayon Moore <rbayonmoore@Piedmont.ca.gov>; City Clerk <CityClerk@piedmont.ca.gov>; City Council <CityCouncil@piedmont.ca.gov>

Subject: FORMAL OBJECTION TO PROCEDURAL DEFECTS AND ASSERTION OF UNENFORCEABILITY Matter: Resolutions passed on February 2, 2026,

[EXTERNAL] This email originated from an external source. Please use judgment and caution when opening attachments, clicking links, or responding.

To the City Clerk, City Attorney, and Piedmont City Council:

I am writing to formally challenge the validity of the procedures used during the City Council meeting on February 2, 2026. This letter serves as a contemporaneous record of significant administrative and procedural defects that, under California law, render the resulting resolution void and currently unenforceable.

I. Unlawful Mischaracterization of the Administrative Record Prior to the final action, I submitted a substantive, multi-page appeal and extensive technical follow-on correspondence to the entire Council, the City Administrator, and the Planning Director. I object to the City's unlawful characterization of these materials during the hearing as merely "two comments by one individual." This reductionist labeling is a factual misrepresentation that stripped my evidence of its technical weight. A resolution cannot be valid if it is based on a record that intentionally minimizes or ignores substantive evidence submitted to the decision-makers.

II. Violation of Due Process and the Brown Act (Late Material) During the hearing, staff introduced five slides containing substantive changes to the resolution that were not included in the posted agenda or public packet. I strongly contest the characterization of these changes as "non-substantive." By introducing new material "on the fly" and voting on it immediately, the City violated the Brown Act's 72-hour notice requirement and denied the public a meaningful opportunity to analyze or respond to the new language.

III. Inadequacy of Public Records and Present Flux As of this date, the official minutes for the February 2nd meeting have not been published, and the public video broadcast of the proceedings is of such poor quality that the five slides in question are illegible and the deliberations are unclear. Because the official record is currently in a state of flux and fails to provide a transparent account of the Council's actions, there is no verifiable, lawful basis for the resolution's implementation.

IV. Assertion of Unenforceability Due to the aforementioned procedural defects and the violation of fundamental due process, I hereby assert that any such resolution passed on February 2, 2026, is not legally enforceable. An agency's action is void if it fails to comply with mandatory notice and hearing procedures. Until these defects are cured through a re-noticing of the item and a proper hearing based on an accurate and complete record, any attempt by the City to enforce the provisions of this resolution will be considered an ultra vires act.

Demand for Cure I demand that the City Council:

1. Stay the implementation of the resolution immediately.
2. Correct the Draft Minutes to accurately reflect my multi-page appeal and the technical nature of my submissions.

3. Re-notice and Re-hear the matter to allow for the legally required 72-hour public review of the five slides and substantive changes introduced at the last minute.

Please confirm receipt and ensure this communication is included in the official correspondence file for the next City Council meeting. I reserve all rights to pursue judicial relief, including a Petition for Writ of Mandate and a request for injunctive relief.

Sincerely,
Gary Zalewski

----- Forwarded message -----

From: **Gary Z.**

Date: Mon, Feb 2, 2026 at 4:31 PM

Subject: Re: Brown Act, Due Process, and State Housing Law Violations and Legal Risk Associated with Proposed Objective Design Standards

To: <rbayonmoore@piedmont.ca.gov>, <BAndersen@piedmont.ca.gov>, <CMccarthy@piedmont.ca.gov>, <JLong@piedmont.ca.gov>, <TRamsey@piedmont.ca.gov>, <LPlimier@piedmont.ca.gov>, <CityClerk@piedmont.ca.gov>, <kjackson@piedmont.ca.gov>

ADDITIONAL COMMENTS - FEB 2, City Council Meeting

Peer-reviewed research by economists at University of Chicago and UC Berkeley found that housing restrictions in the bay area and NYC alone reduced U.S. economic growth by 36% and cost the average worker about \$8,775 per year in lost wages. Their conclusion is straightforward: limiting housing supply functions economically like a cartel.

City of Piedmont's proposed ordinances—layering hundreds of standards, prolonged approvals, and discretionary barriers onto what state law requires to be ministerial—produce the same effect: constrained housing supply, higher prices, and costs shifted onto working families..

<https://garryslist.org/posts/nimbys-stole-8-775-from-every-american-worker>

On Mon, Feb 2, 2026 at 12:21 PM Gary Z. wrote:

To: City Council, City of Piedmont

From: Gary Zalewski

Date: February 2, 2026

Re: Brown Act, Due Process, and State Housing Law Violations and Legal Risk Associated with Proposed Objective Design Standards - Public Comments Feb 2, 2026 Council Meeting

I. Purpose

This memorandum provides formal notice that the proposed Objective Design Standards ("Standards"), the manner in which they have been circulated and revised, and the City's current application and processing practices collectively present significant procedural and substantive legal defects.

These defects implicate:

- The Brown Act
- Constitutional due process
- State housing law (SB 9, ADU statute, Permit Streamlining Act, and related preemption principles)

Proceeding to adopt the Standards without curing these issues—and before guidance is received from California Department of Housing and Community Development (“HCD”)—creates substantial and avoidable litigation exposure and risks loss of local land-use control.

II. Brown Act and Public Access Deficiencies

A. Broken or inaccessible links to governing documents

Agenda materials must be readily accessible at the time of posting. Broken or incomplete links prevent meaningful review and violate the transparency requirements of the Brown Act. When the public cannot access the operative standards, notice is ineffective.

B. Failure to timely post Planning Commission minutes (Jan. 22)

As of February 2, the January 22 Planning Commission minutes have not been posted. The Council is therefore being asked to act without an official public record of the Commission’s discussion, findings, or vote. Acting without those minutes deprives the public and the Council of the full record and undermines informed decision-making.

III. Due Process Failures

A. Undisclosed or unclear revisions

Material revisions to the Standards appear between meetings without a consolidated or redlined comparison. Due process requires clear notice of what text is under consideration. Rolling or silent edits prevent meaningful public participation and invalidate the hearing process.

B. Incomplete administrative record

The Council must receive the complete administrative record, including written objections and correspondence already in the City’s possession. Selective transmission or omission of known materials prevents fair consideration and exposes any decision to procedural challenge.

C. Post-comment changes without renewed notice

Where substantive changes occur after public comment, additional notice and opportunity to comment are required. Advancing directly to adoption despite material revisions risks procedural invalidity.

IV. Substantive Defects in the Standards

A. Not ministerial as required by state law

SB 9 and ADU projects must be reviewed ministerially using objective, binary criteria. The proposed Standards introduce layered interpretation, subjective determinations, and discretionary design judgment. Any scheme dependent on staff interpretation or qualitative evaluation is incompatible with a ministerial approval framework and is preempted by state law.

B. “Living document” / moving target structure

Labeling the Standards as a “living document” subject to continual revision creates regulatory instability. Applicants cannot comply with rules that change mid-process. State law requires predictability and fixed standards at the time of application completeness or vesting—not evolving criteria.

V. Conflict with Piedmont’s Prolonged and Legally Non-Compliant Application Process

The City’s existing application framework is not merely slow—it is structurally inconsistent with state housing law and already frustrates the streamlined, ministerial approval system required for SB 9 and ADU housing.

In practice, the City:

- Requires extensive studies, drawings, and materials not mandated by statute
- Conditions “complete” status on discretionary or design-oriented items
- Applies local civil code, zoning, and architectural requirements that are preempted by state housing law
- Uses completeness review as leverage to compel redesign rather than to confirm objective sufficiency

Government Code § 65943 limits completeness review to objective determination of whether required submittals are present. It does not authorize discretionary screening, iterative redesign demands, or expansion of submission requirements.

Yet applicants routinely must spend months satisfying non-statutory demands before the City will acknowledge completeness. Achieving “complete” status often requires approximately six months of professional work and expense—frequently exceeding 20% of total construction budgets—before ministerial review even begins.

This front-loaded burden operates as a financial and procedural barrier to housing production and directly contradicts the Legislature’s mandate that these projects proceed by right, without discretionary gatekeeping.

Layering continuously revised or “living” Standards onto this already over-inclusive and prolonged process compounds the defect. Applicants are forced to chase moving requirements while incurring escalating cost and delay. The result is not streamlined review, but indefinite deferral.

A system that:

1. Demands non-statutory materials,
2. Withholds completeness through discretionary judgment, and
3. Changes the governing standards mid-process

is legally incompatible with a ministerial framework and exposes the City to preemption, invalidation of conditions, and state enforcement.

VI. Legal and Practical Risks of Immediate Adoption

Adopting the Standards now, particularly before HCD review, exposes the City to:

- Brown Act challenges
 - Due process claims
 - Housing law preemption actions
 - Invalidation of unlawful conditions or denials
 - Attorney’s fees under prevailing-party statutes
 - Loss of local regulatory authority
 - Builder’s Remedy exposure, under which non-compliant zoning and development standards may be rendered unenforceable for qualifying housing proposals
- In short, adopting legally vulnerable standards may result in fewer—not greater—local controls.

VII. Requested Actions

To reduce exposure and ensure lawful administration, I respectfully request that the Council:

1. Continue the item
2. Restore full public access to all materials
3. Post and include the January 22 minutes
4. Provide a consolidated redline of all revisions
5. Confirm the complete administrative record is transmitted and indexed

6. Obtain and consider HCD guidance before any vote
7. Ensure any adopted standards are strictly objective, binary, and ministerial

VIII. Conclusion

The present process combines inaccessible materials, incomplete records, shifting rules, and discretionary standards layered onto an already overreaching application system. That combination is procedurally defective and substantively preempted by state housing law. Proceeding under these conditions creates avoidable legal risk and potential loss of local control. A brief pause to correct these issues and obtain HCD guidance will protect both the City and the public interest.

Respectfully submitted,

Gary Zalewski

On Sat, Jan 31, 2026 at 5:58 PM Gary Z. wrote:

I am forwarding my timely filed appeal and written legal objections regarding the Planning Commission's approval and recommendation of the proposed Objective Design Standards and related code amendments for inclusion in the complete administrative record before the City Council. These materials were submitted within the statutory appeal period and identify substantive legal and due-process concerns that must be transmitted to and considered by the Council as part of its review. As the current City Council packet does not appear to clearly include or index these materials, I am resubmitting them to ensure the record is complete, as assembling and transmitting the full administrative record is a basic responsibility of the Planning Director's office.

The standards reflect a deeply flawed and legally vulnerable approach that is inconsistent with state law and imposes needless cost and complexity. The City should reconsider and correct this framework before adoption; these concerns have already been referred to the California Department of Housing and Community Development for compliance review. What is needed is not more regulation, but clearer procedures and lawful, ministerial implementation.

----- Forwarded message -----

From: **Gary Z.**

Date: Thu, Jan 29, 2026 at 5:35 PM

Subject: Re: APPEAL

To: Kevin Jackson <kjackson@piedmont.ca.gov>

Dear Mr. Jackson,

I am well aware of the process for submitting public comments. My question, however, was whether you, as the Planning & Building Director, intend to fulfill your administrative responsibility to include the written objections already in the City's possession as part of the formal administrative record for the February 2, 2026, City Council meeting.

The materials submitted on January 22, 2026, constitute formal legal notice and substantive objections regarding the lawfulness of the proposed resolutions and the underlying procedural defects. These documents are already part of the City's files related to these items. It is a matter

of fundamental due process and administrative integrity that the decision-making body be provided with the complete record of objections.

Please provide a direct response as to whether these existing materials will be included, indexed, and transmitted to the City Council by staff, or if it is your position that the City may selectively exclude known legal objections from the record unless they are resubmitted under a specific subject line.

Regards,

Gary Zalewski

On Thu, Jan 29, 2026 at 5:08 PM Kevin Jackson <kjackson@piedmont.ca.gov> wrote:
Good afternoon Mr. Zalewski,

If you would like for your January 22nd email to be included in the record of proceedings, you simply need to send it to citycouncil@piedmont.ca.gov with the phrase "public comment" in the subject line.

[Piedmont City Council Agenda, February 2, 2026](#)

Sincerely,

Kevin Jackson, AICP Planning & Building Director
City of Piedmont, [120 Vista Avenue, Piedmont, CA 94611](#)
Tel: (510) 420-3039 Fax: (510) 658-3167

After the completion of a [User Fee Study](#), the City Council adopted an updated fee schedule for Piedmont's Planning & Building Department to right-size fees to the service provided. [The Updated Fee Schedule](#) will become effective January 1, 2026.

Receive Planning & Building Department news emails by subscribing at: <https://lp.constantcontactpages.com/su/rMGm1oM/PiedmontPlanBuild>

From: Gary Z.
Sent: Thursday, January 29, 2026 2:11 PM
To: Kevin Jackson <kjackson@piedmont.ca.gov>
Subject: Re: APPEAL

[EXTERNAL] This email originated from an **external source**. Please use judgment and caution when opening attachments, clicking links, or responding.

Mr. Jackson,
Even assuming arguendo that the City does not process my January 22, 2026 submission as a perfected appeal under Chapter 17.78, the document remains a written objection and legal notice

already in the City's possession regarding the Planning Commission's actions and recommendations.

Please confirm that this submission will be included, identified, and transmitted as part of the administrative record to the City Council for its February 2, 2026 consideration of the referenced items.

Regards,
Gary Zalewski

On Thu, Jan 29, 2026 at 12:50 PM Kevin Jackson <kjackson@piedmont.ca.gov> wrote:
Good afternoon Mr. Zalewski,

Below I have copied Piedmont City Code section 17.78.020 and highlighted the provision that clearly requires the submission of an appeal fee along with an appeal application stating the grounds for appeal.

17.78.020 Application.

A person wishing to file an appeal must submit an application, stating the grounds for appeal, within ten calendar days after the date of the decision. The request must be filed with the City Clerk, and accompanied by the appeal fee.

Again, the 1/22/2026 email you sent City Clerk Anna Brown stating grounds for an appeal of recommendations the Planning Commission made to the City Council at the Commission's regular meeting on January 12, 2026, regarding the adoption of objective design standards, the adoption of revised design guidelines, and Ordinances amending City Code Chapter 17 is not a valid appeal because the required fee was not timely submitted. Additionally, challenging the appeal fee is not a proper basis for failing to comply with Piedmont City Code section 17.78.020.

The Piedmont City Council adopted the current fee schedule for the Piedmont Planning & Building Department at their duly noticed public hearing on September 15, 2026. The adopted fee schedule (effective January 1, 2026) includes an appeal fee of \$5,866.

- [Agenda, Piedmont City Council September 15, 2025](#)
- [September 15, 2025, Council Agenda Report: Consideration of an Updated Fee Schedule and Cost Recovery Policy for the Piedmont Planning & Building Department](#)
- [Minutes of September 15, 2025, City Council meeting](#)
- [Video of September 15, 2025, City Council meeting](#)

Should you wish to submit your 1/22/2026 email, subject APPEAL, as comments on the upcoming 2/2/2026 City Council agenda item for the consideration of recommended City Code revisions, City of Piedmont Objective Design Standards, and revised City of Piedmont Design Guidelines, please follow the instructions for the submission of written comments provided on the [City Council Meeting Information and Agendas webpage](#).

Sincerely,

Kevin Jackson, AICP Planning & Building Director
City of Piedmont, [120 Vista Avenue, Piedmont, CA 94611](#)

Tel: (510) 420-3039 Fax: (510) 658-3167

After the completion of a [User Fee Study](#), the City Council adopted an updated fee schedule for Piedmont's Planning & Building Department to right-size fees to the service provided. [The Updated Fee Schedule](#) will become effective January 1, 2026.

Receive Planning & Building Department news emails by subscribing at: <https://lp.constantcontactpages.com/su/rMGm1oM/PiedmontPlanBuild>

From: Gary Z.
Sent: Thursday, January 29, 2026 1:17 AM
To: Kevin Jackson <kjackson@piedmont.ca.gov>
Subject: Re: APPEAL

[EXTERNAL] This email originated from an external source. Please use judgment and caution when opening attachments, clicking links, or responding.

Good morning Mr. Jackson,

Thank you for your response.

For clarity of the record, my January 22, 2026 submission was intentionally tri-focused, with each purpose independent and legally operative.

First — Timely Appeal of the Planning Commission's Action (10-Day Window; Fee Disputed). The submission was filed within the ten-day appeal period following the Planning Commission's action approving the referenced resolutions and forwarding them to the City Council for consideration. The submission was intended to appeal that Planning Commission action, including its approval, findings, and procedural handling of the resolutions, and to preserve all rights associated with that appeal. The submission expressly disputed the applicability and lawfulness of any appeal fee, without conceding that payment of such a fee is required to perfect or maintain the appeal. Nothing in the submission should be construed as a waiver, abandonment, or limitation of the appeal of the Planning Commission's action.

Second — Legal Objections Asserted Both as Part of and Independent of the Appeal. In addition to initiating an appeal, the same submission also asserted formal written legal objections and statutory notice regarding substantial statutory, procedural, and due-process defects in the City's current practices and in the Planning Commission's actions and recommendations. Those objections were asserted as part of the appeal and also in an independent legal capacity, such that they do not depend on the perfection, acceptance, processing, or outcome of the appeal, including the payment of any disputed fee. The objections were intended to operate concurrently as appellate issues, as formal legal notice, and as preservation of rights, regardless of how the City elects to characterize or process the appeal.

Third — City Council Review and Consideration of Appealed Actions.

Because the Planning Commission's approval and forwarding of the resolutions constitutes an action subject to City Council review, and because the City Council is the decision-making body with authority to consider, modify, or reject the appealed actions and proposed resolutions, the submission was also intended to invoke City Council review of those matters. The appeal materials and objections were submitted for consideration by the City Council as part of its evaluation of whether to adopt, amend, or reject the proposed resolutions and ordinances. Accordingly, those materials must be included in and considered as part of the complete administrative record before the City Council for its February 2, 2026 meeting.

Where Planning Commission actions or recommendations are forwarded to the City Council, staff is responsible for transmitting the complete administrative record relevant to those items, including timely appeal materials and written objections already in the City's possession. Consideration by the City Council is not contingent on resubmittal by the appellant or objector, appearance, duplication, or payment of a disputed appeal fee.

Given the volume of materials associated with the referenced items—including prior instances in which hundreds of pages of resolutions and supporting documents were transmitted to decision-makers—mere physical inclusion within a large compilation is not sufficient to ensure meaningful notice, transparency, or public scrutiny. These appeal materials and written objections must be clearly identified, indexed, and expressly called to the attention of the City Council as part of its consideration of the appealed actions. Burying such materials within an undifferentiated record would frustrate due process and undermine the purpose of both the appeal mechanism and public review.

Please advise if the City contends otherwise, and if so, identify the legal basis for that position.

Nothing herein should be construed as an acknowledgment that any appeal fee is required, appropriate, or lawful, nor as a waiver of any rights or remedies under state housing law or otherwise. All rights, positions, and remedies are expressly reserved.

Regards,
Gary Zalewski

On Mon, Jan 26, 2026 at 11:44 AM Kevin Jackson <kjackson@piedmont.ca.gov> wrote:
Good morning Mr. Zalewski,

City Code Section 17.78.020 requires that an appeal be accompanied by the appeal fee. The email you sent City Clerk Anna Brown stating grounds for an appeal of recommendations the Planning Commission made to the City Council at the Commission's regular meeting on January 12, 2026, regarding the adoption of objective design standards, the adoption of revised design guidelines, and Ordinances amending City Code Chapter 17 is not a valid appeal because the required fee was not submitted along with the email.

In addition, City Code Section 17.78.010 provides that "any interested person may appeal a decision of the Planning Commission to the City Council..." The Planning Commission is not the decision-making body regarding the policy documents that were the subject of your email.

The decision-making body for these items is the City Council, which is expected to consider them at their regular meeting of February 2, 2026. You are invited to attend this City Council meeting and participate in the decision-making process by addressing the Council in person during the meeting and/or by submitting written comments.

Please visit the [City Council Meeting Information and Agendas webpage](#) to find information on the agenda and how to submit written comments.

Sincerely,

Kevin Jackson, AICP Planning & Building Director
City of Piedmont, [120 Vista Avenue, Piedmont, CA 94611](#)
Tel: (510) 420-3039 Fax: (510) 658-3167

After the completion of a [User Fee Study](#), the City Council adopted an updated fee schedule for Piedmont's Planning & Building Department to right-size fees to the service provided. [The Updated Fee Schedule](#) will become effective January 1, 2026.

Receive Planning & Building Department news emails by subscribing at: <https://lp.constantcontactpages.com/su/rMGm1oM/PiedmontPlanBuild>

From: Gary Z.
Sent: Thursday, January 22, 2026 5:23 PM
To: City Clerk
<CityClerk@piedmont.ca.gov**>** **Subject:**
APPEAL

Some people who received this message don't often get email
from [Learn why this is important](#)

[EXTERNAL] This email originated from an **external source**. Please use judgment and **caution** when opening attachments, clicking links, or responding.

APPEAL OF PLANNING COMMISSION ACTIONS

Resolution A — Adoption of the Objective Design Standards (ODS) — APPEALED

Resolution B — Ordinance Amending Chapter 17 to “Bring the Code into Compliance” with the ODS — APPEALED

Resolution C — Amendments to the Design Standards and Guidelines (DSG) — APPEALED

Resolution D — ADU Ordinance Amendments (Agenda Item 8) — APPEALED

I. Threshold Legal Defect in the City’s Framing of Ministerial Review

The amendment to Piedmont City Code §17.67.020(A) codifies the statement that the Piedmont Objective Design Standards “are offered as a means to streamline the review of projects that meet the requirements for ministerial review,” a characterization that is grossly misleading. Ministerial approval is mandated by state law and cannot be rendered more “streamlined”

through the adoption of over 507 pages of additional local design standards adopted across the first three resolutions. By embedding this false premise into the City Code and conditioning approval on findings of “conformance” with those standards, the amendment mischaracterizes a state-required ministerial process as a discretionary benefit conferred by the City and operates to frustrate, rather than implement, the by-right approval framework mandated by California Government Code §65852.21. These defects are compounded by the sheer scale and density of the adopted materials, which cannot plausibly function as a ministerial review framework. Accordingly, the following actions are hereby appealed:

- Resolution A — Adoption of the Objective Design Standards (ODS)
- Resolution B — Ordinance Amending Chapter 17 to “Bring the Code into Compliance” with the ODS
- Resolution C — Amendments to the Design Standards and Guidelines (DSG)
- Resolution D — ADU Ordinance Amendments (Agenda Item 8)

II. Interdependent and Unlawful Approval Framework

The four related resolutions advanced by the Planning Commission—adopting the Objective Design Standards (Resolution A), amending Chapter 17 to conform the Code to those standards (Resolution B), retaining and revising the Design Standards and Guidelines (Resolution C), and amending ADU provisions to condition approvals on the same framework (Resolution D)—are interdependent and collectively create a housing approval system that is not streamlined, not ministerial, and not compliant with state housing law.

The Objective Design Standards are mislabeled and internally defective, embedding qualitative and interpretive criteria that require staff judgment rather than binary verification, and are adopted wholesale without legally operative exclusions for Guidelines or other non-objective material. Resolution B compounds these defects by incorporating the ODS by reference into the Municipal Code, giving binding legal force to discretionary criteria, failing to clearly separate SB9 and ADU standards, and collapsing distinct statutory schemes into an internally inconsistent process. Resolution C preserves a parallel discretionary design-guidance regime that continues to influence review without a clear firewall from ministerial approvals, undermining predictability and inviting informal conditioning. Resolution D unlawfully conditions ADU approvals on compliance with the same defective design-standards framework, restricts ADUs on SB9 lots, and introduces an appeal structure premised on discretionary design interpretation in what state law requires to be a ministerial process.

Because incorporation by reference adopts the entire document and not its internal labels, the distinction between “standards” and “guidelines” has no legal force, leaving discretionary guidance embedded within the very provisions designated as ministerial. Taken together, these actions force applicants to reconcile conflicting documents, infer governing standards, and submit to discretionary interpretation, defeating the Legislature’s mandate that SB9 housing and ADUs be approved under clear, objective, and exclusively ministerial standards.

III. Appeal Fee and Appeal Process

This appeal is submitted under protest and without payment of the appeal fee, solely to preserve all rights and objections related to the City’s compliance with state housing law, including objections to the lawfulness of the fee itself.

The City’s imposition of a \$5,800 appeal fee is inappropriate in light of an approval framework for SB9 and other by-right housing developments that is internally inconsistent, procedurally

opaque, and not clearly ministerial in operation. Under the existing code, applicants are required to navigate overlapping provisions, ambiguous cross-references, and so-called “objective” standards that depend on interpretive judgment rather than binary verification.

This lack of clarity is compounded by the City’s process for deeming applications complete, which is prone to error and inconsistency, including asserting that required materials are “missing” when they are present elsewhere in the application record or submitted in substantively equivalent form, demanding duplicative or misaligned submittals, and requiring information unrelated to the objective standards governing completeness of SB9 and ADU applications. The proposed adoption of new Objective Design Standards and related code amendments does not cure these deficiencies; instead, it compounds them by layering additional cross-referenced standards, expanding the scope of interpretive review, and further blurring the line between ministerial verification and discretionary decision-making.

In this context, appeals are not an extraordinary or elective remedy, but a foreseeable consequence of regulatory ambiguity and administrative error created by the City itself.

Requiring a substantial appeal fee as a condition of correcting staff errors, resolving internal inconsistencies, or challenging standards and completeness determinations that conflict with state housing law operates as a deterrent to the exercise of state-granted housing rights and improperly shifts the cost of statutory noncompliance onto the public. Until the City establishes a clear, lawful, and genuinely ministerial approval framework, the imposition of such a fee is unjustified and inconsistent with California Government Code §65852.21 and related housing statutes.

IV. Due Process and Public Notice Defects

The appealed resolutions are independently unlawful due to failure to satisfy basic due-process and public-participation requirements. The Objective Design Standards were revised during the adoption process, yet the public was not provided a meaningful opportunity to review or comment on the revised standards prior to Planning Commission action or City Council consideration. Substantive changes to regulatory text require renewed public notice and opportunity for comment; proceeding without such opportunity deprives the public of due process and undermines the validity of the adoption.

Further, the public notice published in the *San Jose Mercury News* directed the public to review the Objective Design Standards via a City website link that was not functional at the time of notice and has not been functional on the City’s website, preventing access to the operative documents. Posting a broken or inaccessible link to the very standards under consideration defeats the purpose of public notice and renders the notice legally inadequate. Members of the public cannot meaningfully participate, comment, or object to regulations they are unable to access.

Proceeding with adoption under these circumstances violates fundamental principles of due process, frustrates informed public participation, and independently invalidates the Planning Commission’s recommendations and the resulting resolutions.

V. Civil Code and Zoning Defects

Section 17.54.040(B)

Section 17.54.040(B) limits ministerial SB9 review to conformance with the development standards in the division and Chapter 2 of the Piedmont Objective Design Standards (One to Four Residential Unit Developments). However, the Design Standards document repeatedly

refers more broadly to “Piedmont Design Standards” and, as structured, intermixes Chapter 2 standards with discretionary design guidelines applicable outside that chapter, without clear separation or limitation. This creates ambiguity as to the governing standards for ministerial SB9 review and risks the application of discretionary guidelines or non-Chapter-2 criteria. Under settled principles of statutory construction, the specific City Code reference to Chapter 2 controls, and the application of guidelines or standards outside that chapter—including discretionary design criteria labeled as “guidelines”—exceeds the scope of ministerial review authorized by Section 17.54.040(B) and is inconsistent with the ministerial framework required by California Government Code §65852.21.

Section 17.54.060

Section 17.54.060 similarly limits ministerial SB9 review to the development standards in the division and Chapter 2 of the Piedmont Objective Design Standards. As applied, however, the ordinance imposes categorical lot-geometry and configuration requirements—including mandatory side-line orientation rules and a prohibition on “lots of an unusual shape”—that may physically preclude SB9 urban lot splits. These provisions are applied as absolute conditions of approval rather than as waivable standards subject to a physical-preclusion analysis, and the ordinance provides no mechanism for the waiver relief required by California Government Code §65852.21(c)(2). As a result, the standards operate to deny otherwise qualifying SB9 projects and are preempted by state law to the extent they physically preclude ministerial lot splits.

Section 17.54.080

Section 17.54.080 confirms that development standards in the SB9 division and Chapter 2 of the Piedmont Objective Design Standards are subject to waiver. However, under California Government Code §65852.21(c)(2), such standards must be waived when they would physically preclude an otherwise compliant SB9 development. Any interpretation or application that treats Chapter 2 standards as absolute conditions of approval, rather than waivable requirements subject to a physical-preclusion analysis, unlawfully converts ministerial review into discretionary denial.

Division 17.67

Division 17.67 purports to establish a ministerial design review process; however, Section 17.67.020 authorizes the Planning Director to determine whether a project “conforms” based on evaluative “criteria” and required “findings,” rather than limiting review to mechanical verification of compliance with clearly defined, objective standards. While the ordinance states that review is confined to the Piedmont Objective Design Standards and disclaims reliance on discretionary design guidelines, it nonetheless retains a decision-making framework that depends on qualitative assessment and interpretive judgment. As structured, the process functions as a discretionary approval rather than a ministerial check and is therefore inconsistent with the by-right approval requirements of California Government Code §65852.21 and related state housing law.

While a city may require an administrative permit to verify objective compliance for ministerial SB9 projects, Section 17.67.030—by authorizing Director determinations of “conformance” based on qualitative criteria and findings rather than binary, measurable standards—permits discretionary judgment and therefore conflicts with the by-right, ministerial framework mandated by California Government Code §65852.21.

Section 17.67.060 is facially inconsistent with state law because it conditions approval of a ministerial design review permit on Director findings regarding “design conformance” that require qualitative evaluation rather than mechanical verification. While ministerial review may

confirm compliance with clearly defined, objective standards, it may not rely on interpretive judgment, discretionary assessment, or adjudicative findings. By requiring the Director to determine conformance with design standards and zoning criteria—including standards incorporated by reference and subject to future amendment—the ordinance operates as a discretionary approval process and frustrates the by-right, ministerial framework mandated by California Government Code §65852.21 and related housing laws.

VI. Chapter 2 — Objective Design Standards

Chapter 2 repeatedly conditions approval on interpretation, discretion, or contextual judgment, either directly or through circular incorporation. Under SB9, ministerial review must be reducible to factual verification against objective, lawful standards. These provisions are not: S.2.1 fails at the outset due to a threshold defect in circular incorporation and delegation. While S.2.1.1 appears facially objective because it requires compliance with Chapter 17 development standards, it is legally incomplete because it delegates substantive approval criteria wholesale to another chapter without limiting that incorporation to objective, SB9-compliant provisions. S.2.1.2 compounds this defect by requiring compliance with “the objective design standards outlined in this chapter” without excluding non-quantifiable or discretionary criteria embedded elsewhere in Chapter 2. This creates a circular approval condition that depends on interpretive judgment about which provisions apply, rather than on factual measurement. An approval standard that requires legal interpretation rather than objective verification is not ministerial under SB9.

S.2.2 imposes fixed frontage, lot configuration, and dimensional rules that are objectively stated but unlawful as applied to SB9 projects. SB9 permits local objective standards only to the extent they do not physically preclude the development of two units of at least 800 square feet each. S.2.2 contains no mechanism requiring—or even allowing—a physical-preclusion analysis before denial. An objectively stated rule that is statutorily preempted is not a valid objective standard for SB9 purposes.

Several sections include some measurable limits but are rendered non-ministerial in full because a single subjective criterion can independently support denial. In S.2.3, site grading standards specify objective limits for retaining wall height, slope percentage, and cut-and-fill depth, yet subsection (g) requires that graded slopes be “contoured to blend with existing terrain,” a determination that depends on judgment rather than calculation. In S.2.4, building access and entrance design includes an objective minimum walkway width of three feet, but compliance also turns on whether an entrance “faces” or is “visible from” the street—terms that are undefined by distance, angle, obstruction threshold, or sightline geometry and therefore require staff judgment. In S.2.5, vehicular access and parking standards become discretionary where approval depends on whether access arrangements “adequately address” safety or neighborhood impacts rather than on fixed geometric criteria alone, even though an objective standard must be capable of approval or denial based solely on plan measurement. In S.2.7, walls and fences include objective height limits, but permissibility ultimately turns on location-based and contextual judgments rather than on height and setback alone, despite SB9 permitting dimensional controls but not contextual evaluation. In S.2.11, site lighting includes measurable requirements for shielding and orientation, yet allows staff discretion over subjective determinations of “adequacy” or “impact” that exceed numeric limits.

Other sections are facially non-objective and cannot be applied ministerially because they regulate through qualitative, relational, or aesthetic concepts rather than binary measurements.

S.2.6 regulates building placement based on privacy impacts, transitions between uses, and streetscape relationships without numeric thresholds or measurable performance criteria. S.2.9 defines open space through qualitative assessments of “usability” and “function” rather than by area, dimensions, or location alone. S.2.12 regulates massing, form, and scale through comparative and relational concepts rather than dimensional envelopes, and courts and HCD guidance consistently identify “massing,” “form,” and “scale” as subjective unless reduced to explicit height, plane, and setback metrics. S.2.13 regulates roof form based on design characteristics without objective pitch ranges, height limits, or code-based metrics, requiring architectural judgment. S.2.14 includes percentages and dimensional triggers for facade articulation, but compliance ultimately depends on whether a facade is deemed “sufficiently articulated,” and a numerical threshold does not convert architectural judgment into a ministerial test. Across S.2.15 through S.2.21, approval turns on staff judgment regarding windows, materials, entries, and architectural relationships rather than on verifiable measurements alone. Finally, the services, utilities, and landscaping provisions indirectly preclude development through design-level judgment. S.2.8 goes beyond verifying compliance with adopted engineering specifications and instead regulates the configuration and placement of utilities, requiring staff approval of layout rather than ministerial confirmation of code compliance. S.2.10 includes numeric spacing and clearance requirements but effectively mandates preservation and placement decisions without reference to an adopted, ministerial tree ordinance or a physical-preclusion analysis. Landscaping standards that constrain building placement without statutory findings exceed SB9 authority even when partially quantified.

Taken together, Chapter 2 repeatedly conditions approval on interpretation, discretion, or contextual judgment while under SB9, ministerial review must be reducible to factual verification against objective, lawful standards.

VII. Chapter 3 — Design Standards and Guidelines

Section 3.08 (Retaining Walls) is unlawful as applied to ministerial and SB9 projects because it expressly allows retaining walls exceeding 30 inches to be approved through discretionary design review, while categorically prohibiting the same retaining walls for ministerial permits. This structure makes by-right approval more restrictive than discretionary review and unlawfully substitutes subjective aesthetic objectives—such as minimizing visual prominence—for the objective, waiver-based review required by state law. By conditioning approval on design discretion rather than physical feasibility and by denying waiver relief, Section 3.08 circumvents the ministerial approval protections mandated by California Government Code §65852.21. Sections 3.08.01 and 3.08.02, together with the additional retaining-wall design guidelines, are facially non-objective and unlawful as applied to ministerial and SB9 projects because they condition approval on subjective aesthetic judgments and discretionary design preferences rather than measurable standards. These provisions require visual screening, planting and irrigation, consistency of terracing, avoidance of “tunnel effects,” protection of views from the public right-of-way, and determinations of whether alterations to topography are “significant.” They rely extensively on advisory language such as “should,” “ideally,” “preferred,” and “whenever possible,” require individualized taste and visual judgment, and mandate design features unrelated to objective zoning or safety criteria. Codifying and applying these aesthetic guidelines as approval standards unlawfully converts by-right, ministerial approval into discretionary design review, replaces the statutorily required physical-preclusion analysis with visual preference, and

directly conflicts with the objective, waiver-based framework mandated by Government Code §65852.21.

Although framed as a safety consideration, the requirement that a retaining wall “should not obstruct the view of a driver exiting a driveway” is not an objective or ministerial standard because it lacks measurable criteria and relies on subjective judgment regarding visibility. The provision provides no defined sight-distance metrics, engineering standards, or reference to adopted safety criteria, and therefore its application necessarily becomes discretionary and case-by-case. Applying such an undefined standard to ministerial and SB9 projects unlawfully converts ministerial review into discretionary judgment in violation of Government Code §65852.21.

Section 3.09 (Fences and Walls) is unlawful as applied to ministerial and SB9 projects because it expressly characterizes its standards as discretionary design guidelines, yet imposes categorical aesthetic prohibitions on ministerial permits derived from the same subjective criteria. These include neighborhood character, visual prominence, streetscape quality, and “rare instances” of enclosure. The section relies on non-objective aesthetic judgment and advisory terms such as “should,” “discouraged,” and “unique site circumstances,” and unlawfully makes by-right approval more restrictive than discretionary review. By codifying discretionary design preferences as binding limitations on ministerial permits, Section 3.09 substitutes subjective design judgment for the objective, waiver-based analysis required by Government Code §65852.21.

Section 3.09.02 is facially non-objective and unlawful as applied to ministerial and SB9 projects because it conditions approval on wholly subjective aesthetic determinations, including architectural compatibility, visual interest, variety, prominence, and whether a fence or wall “calls attention to itself.” These criteria are inherently discretionary, internally contradictory, incapable of binary compliance, and dependent on individualized aesthetic judgment. Codifying them as approval standards unlawfully converts by-right, ministerial review into discretionary design review in direct conflict with Government Code §65852.21.

Sections 3.09.03 and 3.10 are unlawful as applied to ministerial and SB9 projects because, although nominally framed around safety and operational considerations, they rely on advisory language such as “should,” undefined concepts of obstruction and access, and discretionary judgment rather than measurable or adopted safety standards. The fence and wall provisions lack objective fire-access or sight-distance criteria and instead substitute staff judgment for codified engineering standards. The trash-enclosure provisions mandate facilities while simultaneously prohibiting their placement in street yards for ministerial permits, without providing waiver relief, objective alternatives, or a physical-preclusion analysis. Together, these sections impose categorical prohibitions on ministerial projects that are more restrictive than discretionary review and unlawfully convert by-right approval into discretionary design review, contrary to Government Code §65852.21.

Section 3.11 is unlawful as applied to ministerial and SB9 projects because it expressly limits its landscape standards to discretionary review, yet imposes a categorical prohibition on artificial turf in street yards for ministerial permits. This prohibition makes by-right approval more restrictive than discretionary review and is derived from aesthetic and policy-based objectives such as visual character, compatibility, and streetscape quality that are inherently discretionary and not objectively measurable. By codifying an aesthetic ban without waiver relief or physical-preclusion analysis, Section 3.11 unlawfully converts ministerial approval into discretionary review in violation of Government Code §65852.21.

Section 3.13 similarly limits its design guidelines to discretionary design review while imposing a categorical prohibition on site features within street yards for ministerial permits. This structure replaces objective regulation with a blanket ban untethered to safety, feasibility, or physical-preclusion analysis and unlawfully circumvents the ministerial approval framework required by Government Code §65852.21.

VIII. Conclusion and Notice of Harm

For all of the foregoing reasons, the Planning Commission's recommendations and the four appealed resolutions are legally defective and should not be adopted or relied upon. The City's unlawful reframing of a state-mandated ministerial process as discretionary, its reliance on non-objective and internally inconsistent standards, its failure to provide lawful public notice and opportunity to comment, and its imposition of improper procedural and fee barriers have already caused—and continue to cause—substantial harm.

These actions have resulted in material delay, increased carrying and financing costs, exposure to adverse interest-rate changes, escalation in construction and material pricing, loss or impairment of contractual opportunities, disruption of construction sequencing due to weather and seasonal timing constraints, and diminution of property value. The City is hereby placed on notice that continued reliance on the appealed framework, continued enforcement of defective standards, and continued failure to provide a lawful, ministerial approval process may give rise to significant damages and legal liability, in addition to corrective and enforcement action, as the ongoing interference with by-right housing approvals directly conflicts with California Government Code §65852.21 and related state housing laws. All rights and remedies are expressly reserved.