

City of Piedmont
COUNCIL AGENDA REPORT

DATE: October 21, 2024

TO: Mayor and Council

FROM: Rosanna Bayon Moore, City Administrator

SUBJECT: Consideration of a Resolution Amending the 2024/2025 City of Piedmont Schedule of Fees and Charges to Include Fees for AB 1332 Entitlement Applications and Applications for Determination of City Jurisdiction

RECOMMENDATION

Adopt the attached resolution amending the 2024/2025 City of Piedmont Schedule of Fees and Charges to include fees for AB 1332 Permit Applications and Applications for Determination of City Jurisdiction.

BACKGROUND

AB 1332 (Carrillo) was signed by Governor Newsom on October 11, 2023. AB 1332 requires each local agency to develop a program for the preapproval of ADU plans and elevations, whereby the local agency accepts ADU plan submissions for preapproval and approves or denies the preapproval applications, as specified. The law authorizes a local agency to charge a fee to an applicant for the review of the requested preapproval of an ADU plan set. The law requires the local agency to post preapproved ADU plan sets and the contact information of the applicant on the local agency's Internet website.

The law requires a local agency to either approve or deny an application for a detached ADU within 30 days that utilizes an ADU plan preapproved by the local agency within the current triennial California Building Standards Code rulemaking cycle. By imposing new duties on local agencies, the law creates a State-mandated local program. AB 1332 becomes effective January 1, 2025.

As to jurisdictional determinations, the City regularly receives requests from owners of properties that are located in both the City of Piedmont and the City of Oakland. Determining which jurisdiction should process planning entitlements requires staff time to confer with City of Oakland staff, consider the application, and prepare a Memorandum of Agreement (MOA) between the cities which specifies which city is ceding jurisdiction. In addition to the preparation of the agreement, the application requires the preparation of a Council agenda item to request approval of the MOA. Staff recommends that an application process and fee be established to define required steps and recover costs

ANALYSIS

AB 1332: Preapproved ADUs

On September 5, 2023, the City Council amended the City of Piedmont Design Standards and Guidelines and amended Chapter 17 of the Piedmont City Code (Zoning Ordinance) to preapprove ADU plans created for the City by Openscope Studio Architecture. The preapproved plans were adopted as new Appendix A of the Design Standards and Guidelines, and they may be used by qualifying property owners at no cost. The preapproved ADU plans may be used by property owners who agree to voluntarily restrict the rent collected on their ADUs for a period of 10 years. On February 5, 2024, the City Council amended the City of Piedmont Schedule of Fees and Charges for 2023/2024 to waive the planning permit application fee for preapproved ADU plans with the voluntary 10-year rent restriction. The fee waiver program was readopted in the 2024/2025 Fee Schedule. This program implements 6th Cycle Housing Element programs 3.F, Incentives for Rent-Restricted ADUs.

According to AB 1332, cities must open the preapproval process to commercially available ADU plans and their designers. As a first step in the process, City staff recommends that the City Council establish a processing fee based on the time and public engagement necessary for City officials and staff to review requests by members of the public to amend the Piedmont Design Standards and Zoning Ordinance to preapprove ADU plans. The process to amend the Piedmont Design Standards and Guidelines and Zoning Ordinance includes review by various departments, study sessions with decision-makers and members of the public, publicity materials and newspaper legal notices, compiling public comment and staff reports, and public hearings before the Planning Commission and City Council.

City staff recommends amendments to the 2024/2025 Fiscal Year Schedule of Fees and Charges to establish an application type and a processing fee (deposit) for AB 1332 preapproval as follows:

- The new application would be for a ***public request for amendment to Zoning Ordinance and/or Design Standards and Guidelines***. The application would be available solely to AB 1332 applications. Based on the public process and staff experience reviewing the Openscope ADU plans in 2022 and 2023, an application deposit with an initial payment of \$7,986 is recommended. This deposit reflects the following estimates: two hours of review time by City Engineer, Public Works Department staff, and Building Division staff; 8 hours of estimated City Attorney review; 24 hours of Planning Division staff review; and \$1,000 in newspaper legal notice costs. Actual staff time and materials necessary to process the AB 1332 application would be charged against the deposit account. Deposits not spent at the end of entitlement processing will be refunded to the applicant.

Preapproval would not extend to building permit plans examination which must take into consideration site-specific slope, soils, seismic activity, and appropriate engineering. Construction of a new ADU using preapproved plans would require an application for planning approval, an application for building permit, and payment of both planning and building permit fees.

Split Jurisdiction: Applications for Determination of City Jurisdiction

Along Piedmont's border with the City of Oakland are numerous properties that are located within both jurisdictions. The City boundary often runs right through the house and/or other buildings. Property owners proposing construction that spans both jurisdictions could submit permit applications to each city for the construction within its boundaries, but this is normally considered too complicated and costly. Instead, the property owner often requests that one jurisdiction, either Piedmont or Oakland, cede its jurisdiction to regulate the construction to the other city. This simplifies the permitting process, but it does require a memorandum of agreement (MOA) between the two cities that each city council must approve.

The drafting of the MOA by staff, its review by the City Attorney, coordinating meetings with Oakland staff members, the preparation of a Council agenda report and attendance at a City Council meeting all require time and effort from City staff and the City Attorney. Staff recommends the establishment of an application and \$2,000 fee to recover associated costs of staff time. The fee does not cover any costs incurred by the City of Oakland.

FISCAL IMPACT

Adding the proposed processing fee (deposit) for AB 1332 applications will help City staff implement the new State law. And establishing a processing fee to determine the jurisdiction of properties partially in the City of Oakland for the review of construction on split-jurisdiction properties will help recover costs.

Under State law, fees charged for processing applications must not exceed the estimated reasonable cost of providing the service for which the fee is charged. Staff's analysis is that the proposed fees are reasonable in light of the expected City costs needed to process AB 1332 applications and jurisdictional determinations, such as staff time and review by subject matter experts, such as contract staff. The fees are based on similar fees for permits of similar complexity and based on the time required to evaluate and process them. Both application types also include a \$52 records management fee.

The establishment of these two new fees will allow for cost recovery associated with AB 1332 related applications and projects that require a jurisdiction determination, preserving General Fund revenue for other essential services and facilities.

By: Kevin Jackson, Planning & Building Director
Pierce Macdonald, Senior Planner

ATTACHMENTS:

A	Page 4	Resolution
B	Pages 5 - 7	Assembly Bill 1332 Legislative Counsel's Digest

RESOLUTION _____

AMENDING THE 2024-2025 SCHEDULE OF FEES AND CHARGES TO ADD FEES
RELATED TO THE IMPLEMENTATION OF ASSEMBLY BILL 1332 AND
DETERMINATION OF JURISDICTION OF CERTAIN LOTS

WHEREAS, approximately 172 properties located along the border of Piedmont and Oakland fall within the jurisdiction of both Piedmont and Oakland, creating challenges to property owners who pursue planning and building permits for construction; and

WHEREAS, Assembly Bill 1332, related to accessory dwelling unit approvals, was signed into law by the Governor on October 11, 2023; and

WHEREAS, the language of the Assembly Bill 1332 requires local jurisdictions, like Piedmont, to preapprove accessory dwelling units plans and elevations put forward by members of the public with the intent to make them commercially available; and

WHEREAS, on June 17, 2024 the City Council adopted the 2024/2025 Schedule of Fees and Charges, which did not include fees for an application type required by AB 1332 nor an application type to request a determination by the City of Piedmont of the jurisdiction of planning and construction projects on properties that are partially within Piedmont and partially within Oakland city boundaries; and

WHEREAS, given the time and effort required by Piedmont staff to process amendments to the Zoning Ordinance and Design Standards and Guidelines and to process requests for determination of jurisdiction, the fees are in line with existing processing charges and do not exceed the estimated reasonable cost of providing the service for which the fee is charged.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Piedmont does hereby resolve, declare, determine, and order as follows:

SECTION 1. The following fees are added to the City of Piedmont 2024/2025 Schedule of Fees and Charges:

1. \$7,986 for an application for AB 1332 Zoning Ordinance Amendment and/or Design Standards and Guidelines Amendment.
2. \$2,000 for an application for Jurisdictional Determination, including associated memorandum of agreement with the City of Oakland.

SECTION 2. The Finance Director is hereby directed to codify these fees in the Schedule of Fees and Charges.

SECTION 3. The City Council finds that above fees for processing AB 1332 related applications and letters of jurisdictional determination do not exceed the estimated reasonable cost of providing the service for which the fee is charged.

[END OF RESOLUTION]

Assembly Bill No. 1332**CHAPTER 759**

An act to add Section 65852.27 to the Government Code, relating to local government.

[Approved by Governor October 11, 2023. Filed with Secretary of State October 11, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1332, Juan Carrillo. Accessory dwelling units: preapproved plans.

Existing law, the Planning and Zoning Law, authorizes a local agency, by ordinance or ministerial approval, to provide for the creation of accessory dwelling units in areas zoned for residential use, as specified. Existing law authorizes a local agency to impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, and maximum size of a unit.

This bill would require each local agency, by January 1, 2025, to develop a program for the preapproval of accessory dwelling unit plans, whereby the local agency accepts accessory dwelling unit plan submissions for preapproval and approves or denies the preapproval applications, as specified. The bill would authorize a local agency to charge a fee to an applicant for the preapproval of an accessory dwelling unit plan, as specified. The bill would require the local agency to post preapproved accessory dwelling unit plans and the contact information of the applicant on the local agency's internet website. The bill would require a local agency to either approve or deny an application for a detached accessory dwelling unit within 30 days that utilizes either an accessory dwelling unit plan preapproved by the local agency within the current triennial California Building Standards Code rulemaking cycle or a plan that is identical to a plan used in an application for a detached accessory dwelling unit approved by the local agency within the current triennial California Building Standards Code rulemaking cycle. By imposing new duties on local agencies, the bill would create a state-mandated local program.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Digest Key

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

Bill Text

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS
FOLLOWS:**

SECTION 1. Section 65852.27 is added to the Government Code, to read:

65852.27. (a) Each local agency shall, by January 1, 2025, develop a program for the preapproval of accessory dwelling unit plans. The program shall comply with all of the following:

- (1) The local agency shall accept accessory dwelling unit plan submissions for preapproval.
- (2) The local agency shall not restrict who may submit accessory dwelling unit plan submissions for preapproval.
- (3) (A) The local agency shall approve or deny the application for preapproval pursuant to the standards established in Section 65852.2.

(B) The local agency may charge the applicant the same permitting fees that the local agency would charge an applicant seeking approval pursuant to Section 65852.2 for the same-sized accessory dwelling unit in reviewing and approving a preapproval accessory dwelling unit plan submission.
- (4) (A) (i) Accessory dwelling unit plans that are preapproved pursuant to this subdivision shall be posted on the local agency's internet website.

(ii) The posting of a preapproved accessory dwelling unit plan pursuant to clause (i) shall not be considered an endorsement of the applicant or approval of the applicant's application for a detached accessory dwelling unit by the local agency.

(B) (i) The local agency shall also post the contact information of the applicant of a preapproved accessory dwelling unit plan, as provided by the applicant.

(ii) The local agency shall not be responsible for the accuracy of the contact information posted pursuant to clause (i).

(C) A local agency shall remove a preapproved accessory dwelling unit plan from their internet website within 30 days of receiving a request for removal from the applicant.
- (5) A local agency may also admit the following accessory dwelling unit plans into the program:
 - (A) Plans that have been developed and preapproved by the local agency.
 - (B) Plans that have been preapproved by other agencies within the state.
- (b) A local agency shall approve or deny an application for a detached accessory dwelling unit ministerially without discretionary review pursuant to paragraph (3) of subdivision (a) of Section 65852.2 and subdivision (b) of Section 65852.2, except that the local agency shall either approve or deny the application within 30 days from the date the local agency receives a completed application, if the application utilizes either of the following:
 - (1) A plan for an accessory dwelling unit that has been preapproved by the local agency pursuant to subdivision (a) within the current triennial California Building Standards Code rulemaking cycle.
 - (2) A plan that is identical to a plan used in an application for a detached accessory dwelling unit approved by the local agency within the current triennial California Building Standards Code rulemaking cycle.
- (c) For purposes of this section, "accessory dwelling unit" and "local agency" have the same meaning as those terms are defined in Section 65852.2.
- (d) The Legislature finds and declares that the lack of housing is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this

section applies to all cities, including charter cities.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.