

**From:** [Gary Z.](#)  
**To:** [Rosanna Bayon Moore](#); [Betsy Andersen](#); [Conna McCarthy](#); [Jennifer Long](#); [Tom Ramsey](#); [Lorrel Plimier](#); [City Clerk](#); [Kevin Jackson](#)  
**Subject:** Re: Brown Act, Due Process, and State Housing Law Violations and Legal Risk Associated with Proposed Objective Design Standards  
**Date:** Monday, February 2, 2026 1:39:04 PM

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### **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. [REDACTED] 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

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## **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.

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## **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.

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## **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.

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## **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.

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## **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.

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## **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.

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## **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. [REDACTED] 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. [REDACTED]  
Date: Thu, Jan 29, 2026 at 5:35 PM  
Subject: Re: APPEAL  
To: Kevin Jackson <[kjackson@piedmont.ca.gov](mailto: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](mailto:kjackson@piedmont.ca.gov)> wrote:  
Good afternoon Mr. Zalewski,

If you would like for your January 22<sup>nd</sup> email to be included in the record of proceedings, you simply need to send it to [citycouncil@piedmont.ca.gov](mailto: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.

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<https://lp.constantcontactpages.com/su/rMGm1oM/PiedmontPlanBuild>

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**From:** Gary Z. <[gazalew@gmail.com](mailto:gazalew@gmail.com)>  
**Sent:** Thursday, January 29, 2026 2:11 PM  
**To:** Kevin Jackson <[kjackson@piedmont.ca.gov](mailto: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](mailto: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

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**From:** Gary Z. [REDACTED]  
**Sent:** Thursday, January 29, 2026 1:17 AM  
**To:** Kevin Jackson <[kjackson@piedmont.ca.gov](mailto: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](mailto: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](https://www.piedmontca.gov/120-Vista-Avenue)  
Tel: (510) 420-3039    Fax: (510) 658-3167

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

Some [REDACTED]d this message don't often get email  
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## 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

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### 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)

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## 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.

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### 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.

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### 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.

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## 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.

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## 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.

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## 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.

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## 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.