

**CITY OF PIEDMONT**

**CITY COUNCIL AGENDA REPORT**

MEETING DATE: March 7, 2005

FROM: Kate Black, City Planner

SUBJECT: First Reading of an Ordinance Amending Chapter 17D,  
Regarding Second Units

**RECOMMENDATION:**

- A. Adopt the ordinance to amend Chapter 17D proposed by the Second Unit Task Force, and recommended for approval by the Planning Commission with the following amendments (*in italics*):
1. The addition of a definition for “moderate-income household” under Section 17D.2 as requested by the California Department of Housing and Community Development (HCD):  
  
*“(h) Moderate Income Household means a household with an annual gross household income of 120% or less than the Alameda County median annual gross household income for that household size as last published by HCD.” (California Health and Safety Code Section 50093)*
  2. Modification to the definition of “household” under Section 17D.2 as requested by the Planning Commission, to more clearly define that family members who are dependents under the tax code, are considered to be members of a household (modification shown in italics):  
  
*“(e) Household means those persons who collectively occupy a housing unit. A property owner’s household shall include any child or dependent, as defined in Section 152 of the Internal Revenue Code, of the property owner who is under the age of 18 or who is under the age of 24 and is a full-time student.”*
- B. Adopt the following findings recommended by the Planning Commission:
1. Assembly Bill 1866 amended Government Code Section 65852.2 which requires local governments to use a ministerial process for approving second units, without neighborhood notice and public hearing. With the

proposed revision to Chapter 17D, the City will still be in compliance with Government Code 65852.2.

2. The adoption of the revisions to Chapter 17D implements General Plan Housing Element Program 3.2 requiring a second unit feasibility study, ordinance revision and incentives package.
3. The City finds this code amendment to be exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Section 21080.17 of the Public Resources Code, which exempts the adoption of an ordinance to implement the provisions of Section 65852.2 of the Government Code; and pursuant to Section 15282 (i) which states in part: “Other Statutory Exemptions...the adoption of an ordinance regarding second units in a single-family or multi-family residential zone by a city or county to implement the provisions of Section 65852.1 and 65852.2 of the Government Code as set forth in Section 21080.17 of the Public Resources Code”

## INTRODUCTION

Shortly after the California Department of Housing and Community Development (HCD) conditionally approved the City’s Housing Element in the fall of 2002, Assembly Bill 1866 was enacted, which required all cities to permit second units through a ministerial review process, without public notice or hearing. The City revised the second unit ordinance by the deadline of July, 2003 to comply. Unfortunately, the requirements of AB1866 created barriers to the City’s Housing Element obligation to HCD to revise the second unit ordinance to provide a certain number of new housing units, including some for low and very low income persons.

The proposed amendments to Chapter 17D are intended to keep the City in compliance with AB1866, while adding the mechanisms needed to meet our low and very low income unit obligation under the Housing Element.

The issues involved in this process are complex, and to reconcile the competing objectives, the City Council appointed a six member Second Unit Task Force of resident property owners and renters reflecting a wide range of expertise in law, real estate development, residential architecture, and city planning. The Task Force met regularly throughout 2003 and early 2004 to develop the proposed ordinance revisions (the list of Task Force members is provided in Attachment B, page 26). The City hired the Planning Consulting firm of Baird and Driskell to facilitate the process, and in July of 2004, the attached draft of the proposed ordinance changes was sent to HCD for their review. HCD completed their review and requested clarification of several issues, and requested that a

definition of “moderate income” be added to the ordinance, but did not require other changes.

Staff believes that as proposed, the ordinance amendments are conservative provisions that comply with State law, meet the City’s obligations under the Housing Element, and provide the City with the greatest possible amount of discretion and public notice in the review of second units.

The Task Force’s job was multifaceted, involving regulatory and legal considerations that needed to be applied to Piedmont’s unique physical and economic framework. This report has been organized into two sections: the first section provides basic information on the various facets considered by the Task Force as background to the proposed code amendments, and the second section provides an overview of the amendments. The proposed amended code is attached as Attachment A, page 13, along with a more user-friendly question and answer document that will be given to the public (Attachment C, page 27).

## **BACKGROUND**

### **Ministerial and Discretionary Actions**

As previously mentioned, AB1866 requires all cities to approve second units through a ministerial review process. Ministerial actions involve the application of objective decisions involving quantitative analyses, such as “the project does not exceed the maximum 700 square foot unit size limit” or “the project meets the parking requirement of one covered, non-tandem parking space that measures 9 feet by 20 feet”. If the second unit application meets the quantitative development controls and design review guidelines of Chapter 17D, the second unit permit *shall* be issued.

Discretionary actions involve decisions that are more qualitative in nature, and the application of discretionary findings such as “the project is architecturally in keeping with the existing neighborhood character” or “the project will not materially increase traffic in the neighborhood”. In order to comply with AB1866, the City eliminated the prior discretionary Conditional Use Permit approval process, which involved public notice and a public hearing at the Planning Commission, and established a ministerial approval process without public notice or hearing at the staff design review level. Since July of 2003, four new second units have been approved under the ministerial process, but several applications were not able to be processed because they required a variance that could not be approved under the ministerial process.

### **Piedmont’s Regional Housing Needs Assessment**

Under the Housing Element, the City is required to provide incentives for the creation of a certain number of new housing units. The City’s Regional Housing Needs Assessment (RHNA) is established by the Association of Bay Area Governments (ABAG) which

requires each city to provide its “fair share” of the region’s housing needs. During the period between 1999 and 2007, Piedmont’s “fair share” is 49 new housing units broken down by income group in the table below.

Since 1999, four second units have been approved in the moderate income category, resulting in the adjusted number of units still needed by 2007.

<b>INCOME GROUP</b>	<b># OF UNITS</b>	<b>ADJUSTED #</b>
Very Low	6	6
Low	4	4
Moderate	10	6
Above Moderate	29	29
<b>TOTAL</b>	<b>49</b>	<b>45</b>

**Economic Factors Affecting Second Units**

One of the Task Force’s objectives, therefore, was to find a way to encourage the development of 16 new low, very low, and moderate income second units by 2007. This is a difficult task given that Piedmont’s public school system and municipal services (parks, recreation programs, etc.) are considered to be very good, and consequently, owners of second units can rent their units at higher per-square-foot rates than other adjacent or nearby communities. The tight rental market in the Bay Area and low inventory of rental properties in Piedmont means that Piedmont second unit owners will not rent their units at affordable rates unless there are strong incentives to do so.

A survey of apartment rents in the City revealed that market-rate rents are typically affordable to moderate income households and occasionally affordable to low income households (probably due to the fact that second units in Piedmont are limited to 700 square feet, and are sometimes much smaller). Based on this information, the Task Force concluded that special incentives would need to be adopted to encourage the development of units affordable to low and very low income households and that these units would necessarily have to be rent-restricted by statute in order to guarantee their occupancy by qualifying households at affordable rent levels.

The Task force evaluated the affordable rent levels by unit type which are provided in the table below.

**Maximum Affordable Rent Levels By Unit Type - 2004**

<b>Second Unit Type</b>	<b>Very Low Income</b>	<b>Low Income</b>
Studio	\$725	\$1,159
1 Bedroom	\$828	\$1,325
2 Bedroom	\$931	\$1,490

3 Bedroom	\$1,035	\$1,656
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*Source: California Department of Housing and Community Development, 2004 State Income Limits*

They then looked at what the income levels were for very low, low and moderate income families by household size for Alameda County. The current limits are provided in the table below.

**Alameda County Income Limits by Household Size - 2004**

<b>Persons in Household</b>	<b>Very Low Income</b>	<b>Low Income</b>	<b>Moderate Income</b>
1	\$29,000	\$46,350	\$69,050
2	\$33,100	\$53,000	\$78,900
3	\$37,250	\$59,600	\$88,800
4	\$41,400	\$66,250	\$98,650

*Source: California Department of Housing and Community Development, 2004 State Income Limits*

In order to develop incentives that would be sufficiently valued by property owners to maximize construction of rent-restricted second units, the Task Force explored the physical characteristics of existing lots and single family homes and the constraints most often encountered by owners.

**Piedmont’s Unique Development Limitations**

Piedmont is unusual in that it has very few development opportunities that enable us to provide our “fair share” of housing. The City is almost completely built-out, is completely surrounded by Oakland so that we cannot annex land, has no land suitable for redevelopment (i.e. old industrial sites that can be redeveloped for housing), and only a handful of vacant lots that could be developed for single family housing. It is anticipated that the redevelopment of the PG&E substation property on Linda Avenue will create 8 units, and the occasional new house will be built (approximately one every few years). However, since the PG&E development and new houses will not bring us close to meeting our obligation, the only other way the City can meet its housing obligation is through the creation of new second units.

Piedmont is also uniquely characterized by a non-regular development pattern of properties that vary significantly in size, shape and topography, and in general, has expensive houses that are very large in size relative to their lots. Because the houses are big, it is often possible to find space that could be converted to a second unit, and because many houses are on steep slopes, there are good opportunities for independent access (i.e. the down-slope lowest floor of a house). However, the irregular development pattern

has resulted in a large number of non-conforming properties, and the small lots present physical barriers to providing on-site parking or new construction without one or more variances (two-thirds of the second unit applications approved in recent years have required at least one variance). Each house and property is significantly different from its neighboring properties - precisely the type of development pattern well suited to project- and site-specific discretionary zoning tools, such as variances, but not suited to the current set of quantitative by-right ministerial development controls which preclude variances. Ironically, the passage of AB1866 – which was intended to remove the “NIMBYism” that HCD believed cities used to deny second units – actually has *reduced* the number of second units that could be approved in Piedmont.

### **Goals of the Proposed Ordinance Rewrite.**

Under our conditional Housing Element approval, the City is required to rewrite the second unit ordinance to encourage the production of second units and to provide incentives for the creation of affordable second units. Unfortunately, the passage of AB1866 took away the City’s ability to apply flexible discretionary criteria to facilitate the creation of second units (especially affordable ones) anticipated under the second unit ordinance rewrite.

One of the first questions asked by the Task Force was whether or not the City could create an additional, discretionary second unit approval process, provided that the City still keeps in place the current provisions of Chapter 17D (in compliance with AB1866) that permit “by right” ministerial second unit approval if the quantitative development standards are met. Although it was not clear under the language of AB1866 whether such a process was possible, a later analysis from HCD legal counsel indicated that it would be:

*“If a local ordinance is consistent with subdivisions (a) and (c-g) of second unit law and consistent with the intent of the law, a local government could also adopt an ancillary set of broader standards under which second units might be allowed under a discretionary review process as exceptions to existing zoning. While the statute does not preclude a broader and more flexible set of standards, localities must be very careful that any criteria or process for a secondary set of standards is only ancillary to the ministerial consideration required by Chapter 1062. Typical exceptions to zoning could be handled administratively or quasi-judicially.”*

Based on this information, the Task Force began the job of developing a second type of second unit review procedures for second units that do not meet the development controls under the current process, and the creation of incentives aimed at creating low and very low income units.

### III. OVERVIEW OF THE SECOND UNIT APPROACH

Attached is the new version of Chapter 17D which has been revised so that it still complies with AB1866, but also provides a second, incentive-based approval process aimed at affordable units. The ordinance has been prepared in “~~strikeout~~” format to show text that is proposed to be deleted and “*italics*” format for text that is proposed to be added. The two amendments to Section 17.D.2 (e) and (h) recommended by the Planning Commission, are indicated in bold.

The Task Force created the amended ordinance with the intent of providing as much public notice and hearing as possible, and providing the Planning Commission with the best tools in which to make a fair and reasonable assessment of each application under the new process. Moreover, they wanted the ordinance to provide the Planning Commission with the ability to apply reasonable, discretionary findings leading to an approval or denial of each application based on its site-specific merits and limitations.

The Task Force also considered the use of financial incentives for the development of second units, including the reduction or waiver of the annual rental tax and various development fees. Although it was agreed that additional fee reductions or waivers could increase second unit development, the Task Force was concerned about the potential impact on City finances at the current time. Significant cuts in state funding have further reduced the City’s ability to provide financial assistance, and thus, the Task Force concluded that financial incentives would have to be used very judiciously, if used at all.

Ultimately, the Task Force’s recommendations set up three distinct second unit categories and review processes, with corresponding development standards and incentives, for the development of market-rate and rent-restricted units. Briefly, these three approaches and expected results are as follows:

- **Ministerial Review of Second Units that Fully Conform to All Development Standards.** This is the review process under the current AB1866-compliant second unit ordinance which will remain in effect. In general, these standards limit the second unit to 700 square feet and require one covered parking space per unit. Since the adoption of the new second unit ordinance, four second units have been approved and are currently under construction. While most properties are non-conforming, there remain a number of properties that can accommodate a second unit without the need for a variance.
- **Discretionary Review of Second Units Requesting a Variance.** A second category and review process is proposed for non-conforming properties that need one or more variance from development standards regulating setbacks, lot coverage, height restriction, and floor area ratios (but not parking or unit size). Currently, no such alternative exists for property owners in these circumstances. Under the proposed revisions, if an applicant cannot meet one of these development standards, they may apply for a variance from that standard. If they

are able to demonstrate that they have a hardship, the Planning Commission may grant the variance through a public hearing process and the application of the discretionary variance findings in Section 17.21.6 of the Zoning Code. It is expected that this process will result in the creation of moderate income second units.

- **Discretionary Review of Rent-Restricted Units.** Finally, a third discretionary category and review process is recommended for property owners who agree to rent-restrict their second units in exchange for certain exceptions from the parking requirement and the maximum unit size. Property owners who agree to rent (or occupy) their unit at a low income affordable rent level will be permitted, at the discretion of the Planning Commission (under certain circumstances), to increase the second unit size to 850 square feet (under certain conditions) without an additional parking space. Property owners who agree to rent (or occupy) their unit at a very low income affordable rent level will be permitted, at the discretion of the Planning Commission (under certain circumstances), to increase the second unit size to 1,000 square feet. Very low income units will also be eligible, at the discretion of the Planning Commission, for certain parking exceptions, including uncovered parking spaces, tandem spaces, compact spaces, and street parking. The economic value of these incentives are significant in Piedmont - particularly the parking exception - and they are expected to encourage the development of six units affordable to very low income households and three units affordable to low income households during the Housing Element planning period (through 2007). Again, this process is a discretionary process involving public notice and hearing. The Planning Commission will be able to apply the discretionary criteria and findings to the site-specific evaluation of each application and its surrounding neighborhood context.

Additionally, as a financial incentive, all rent-restricted second units will be offered a waiver of the first year's annual rental tax (\$200).

#### IV. KEY COMPONENTS OF THE DRAFT SECOND UNIT ORDINANCE

A brief summary of the key components of the ordinance follows.

##### **Sec. 17D.1 Intent**

This section has been significantly expanded to include the goals of the housing element for the production of housing affordable to all economic segments of the community. The section also introduces the three new second unit categories.

##### **Sec. 17D.2 Definitions**

Definitions for terms necessary to implement the rent-restricted program have been added.



The “Affordable Rent Level” is defined as the cost of rent and utilities and requires that the maximum affordable rent level equals 30% of the upper limit of an income category as defined and published by HCD. In order to simplify the process used in establishing rent levels, household sizes are determined by type of unit (studio, 1 person; one-bedroom, 2 persons; two-bedroom, 3 persons; and, three-bedroom, 4 persons.) The rent level is adjusted on an annual basis, following the annually updated income schedules from HCD.

The “Rent-Restricted Second Unit” may only be occupied by an owner or tenant who qualifies as a very low or low income household. The unit may only be rented at an affordable rent level established, on an annual basis, by the City. The ordinance specifically prevents guests and dependent members of the owner’s household from occupying the unit not occupied by the owner. This provision is included to prevent property owners from using the exception as a loophole to expand the main residence without providing conforming parking or obtaining a parking variance. However, lower-income caregivers, household workers, elderly parents, or friends may occupy the second unit if they qualify as low or very low income households.

#### **Sec. 17D.4 Permit Application and Procedures**

Sections (b) and (c) were added to describe the application and discretionary review processes for second unit applications requesting variances and rent-restricted second unit permits.

#### **Sec 17D.5 Development Standards**

In order to facilitate ministerial review, Section (f) was expanded with a requirement that the architecture and design of the second unit be compatible with the primary unit.

#### **Sec. 17D.6 Rent-Restricted Second Units**

This new section contains the regulations governing rent-restricted units. It is important to note that these exceptions are at the discretion of the Planning Commission after a comprehensive site and neighborhood evaluation. The major points are as follows:

- (a) Exceptions to Unit Size
  - A second unit size increase to 850 square feet may be permitted if the owner agrees to rent-restrict the unit for a low income household. A size increase to 1,000 square feet may be permitted for a very low income rent restriction.
  - If the lot size is smaller than the established minimum lot size, a unit size exception may only be granted if the second unit is located within the existing building envelope. If the lot size is equal to or greater than the established minimum lot size, new construction and expansion of an existing structure may be permitted.

- Findings by the Planning Commission that there will be not adverse impacts on adjacent properties and that the lot can support the increased unit size are required.
- (b) Exceptions to Parking
- Rent-restricted units for low income households may require only one parking space, regardless of the number of bedrooms.
  - Parking exceptions may be made for very low income units, including uncovered parking, motor courts, tandem spaces, and street parking.
  - Findings by the Planning Commission of adequate parking in the neighborhood without adverse impacts to safety are required.
- (c) Separate Dwelling Unit
- A rent-restricted unit must be accessed from the exterior of the building, and no direct interior access between the primary unit and the second unit is allowed. This provision is included to prevent property owners from using the exception as a loophole to expand the main residence without providing conforming parking or obtaining a parking variance.
- (d) Declaration of Rent Restrictions
- A Declaration serves as an instrument recorded against the property deed and ensures that the rent-restriction is conveyed with the property. A copy of the draft Declaration is included in this packet.
- (e) Affordable Rent Certification
- The owner is required to complete and submit to the City an annual Certification. This form documents the household income of the second unit occupants and ensures that the prevailing rent and cost of utilities is set at an affordable level. The form also enables the City to document the use of the second unit. A copy of the draft Certification is included in this packet.
- (f) Termination of Rent-Restricted Second Unit Permit
- In consideration of the exceptions granted, and in order to maintain the affordable housing stock, an owner is prevented from terminating a rent-restricted second unit permit for 10 years after the date of Planning Commission approval.
- (g) Tax Abatement
- A tax abatement is established as a financial incentive for owners who wish to obtain a rent-restricted second unit permit. The first year of the annual rental tax is waived.
- (h) Owner Occupancy
- The current requirement that the property owner must occupy either the main residence or the second unit, including a declaration recorded against the deed, will continue to apply to second unit permits approved under both the ministerial and discretionary process.

## PLANNING COMMISSION DELIBERATIONS:

At the January 10, 2005 Planning Commission meeting, the Commission reviewed the ordinance proposed by the Second Unit Task Force with the amendment requested by HCD (the meeting minutes are attached as Exhibit G, page 43). The Task Force members, who were present at the hearing, were thanked for their hard work developing the ordinance.

During the hearing, there were several questions about who may occupy a second unit. For most second units, any family member or person unrelated to the family can occupy the second unit. The unit does not have to be occupied, and the homeowner can choose to charge rent or not. However, if the unit is approved as a rent-restricted second unit, a family member can only live in the second unit if he or she is part of a lower-income household. A rent-restricted second unit might be especially appealing to property owners who want to provide housing for caregivers, household workers, elderly parents, friends or family members who qualify as lower-income households. Also, if the property owner's household qualifies as lower-income, they may choose to occupy the rent-restricted unit and rent out the primary unit. This might enable some senior Piedmonters, who are on a limited fixed income, to "age in place", without having to move.

As previously mentioned, there was a concern during the development of the draft code that homeowners might use the rent-restricted parking exception as a loophole to expand the number of rooms eligible for use as a bedroom in the main residence without providing conforming parking or obtaining a parking variance. In order to ensure that the unit is not just a vehicle to accommodate additional living space or bedrooms for the main residence (without providing conforming parking), direct interior access between the main residence and the rent-restricted second unit is not allowed, and dependents of the property owners are not permitted to live in the rent-restricted unit. Again, this is only related to the units that are approved as rent-restricted units; the majority of second units will not be affected by these requirements.

The Commission suggested that the definition of "rent-restricted" second unit be amended to make this more clear. Staff is proposing that the definition of "household" be modified to make sure that dependents of the property owners are considered to be part of the property owner's household, and not therefore, eligible to live in the rent restricted second unit:

*“(e) Household means those persons who collectively occupy a housing unit. A property owner's household shall include any child or dependent, as defined in Section 152 of the Internal Revenue Code\*, of the property*

*owner who is under the age of 18 or who is under the age of 24 and is a full-time student.”*

At the conclusion of the Planning Commission deliberations, the Commission unanimously recommended approval of the revisions to Chapter 17D, as recommended by the Task force, with the modification requested by HCD and one above requested by the Commission.

CONCLUSION:

The proposal to permit the discretionary public review of certain second units was initially reviewed by HCD with concern. They did not object to the exchange of the parking and unit size exceptions for rent restricted affordable units. It was the discretionary findings, and public notice and hearing that they were concerned would create a barrier to the approval of second units, and strongly recommended the City provide that exchange ministerially, without notice or public hearing.

The City insisted that because every property in Piedmont was so physically unique (and often non-conforming), and each neighborhood was characterized by different development patterns, varied topography, and curvy, narrow streets, that each second unit

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\* A “dependent” is defined in Section 152 of the Internal Revenue Code as follows: “For purposes of this subtitle, the term “dependent” means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer (or is treated under subsection (c) or as received from the taxpayer): (1) a son or daughter of the taxpayer, or a descendant of either, (2) a stepson or stepdaughter of the taxpayer, (3) a brother, sister, stepbrother, or stepsister of the taxpayer, (4) the father or mother of the taxpayer, or an ancestor of either, (5) a stepfather or stepmother of the taxpayer, (6) a son or daughter of a brother or sister of the taxpayer, (7) a brother or sister of the father or mother of the taxpayer, (8) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer, or (9) an individual (other than an individual who at any time during the taxable year was the spouse, determined without regard to section 7703, of the taxpayer) who, for the taxable year of the taxpayer, has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household.

that did not meet the ministerial criteria under the existing ordinance should be reviewed on a case-by-case basis. Issues like the distance between adjacent structures and a proposed second unit addition requiring a setback variance or a request for a parking exception are best reviewed by evaluating the very specific context of each unique property. Assessments such as whether or not the second unit addition might create an adverse light or view impact on an adjacent property, and whether or not the existing street has an adequate amount of street parking to accommodate the second unit vehicle cannot be evaluated well ministerially. Moreover, staff believes this evaluation is best done by the Planning Commission who represent the Piedmont community, after hearing comments from neighbors who might be affected by the non-conforming second unit variance or exception.

## UPDATE SINCE PLANNING COMMISSION MEETING

Prior to the Planning Commission meeting, the draft code changes were reviewed by HCD, who verbally indicated that if the City adopted it, the City will have met its Housing Element program objective of rewriting the second unit ordinance to provide affordable second units. However, on January 27, 2005, after the Commission meeting, the City received the attached letter (Exhibit H, page 45) from HCD indicating that if the ordinance reviewed by the Planning Commission is adopted, Piedmont will have satisfied the requirements of HCD's conditional Housing Element approval.

## CITY COUNCIL ACTION

City Council approval is required for the adoption of the revisions to Chapter 17D. If adopted, the ordinance will be scheduled for a second reading at the March 21, 2005 City Council meeting.

### EXHIBITS:

- A, page 13      Revised Chapter 17D
- B, page 26      Task Force Roster
- C, page 27      Frequently Asked Questions and Answers – New Second Unit Regulations
- D, page 34      Draft Affordable Rent Certification for Rent-Restricted Unit
- E, page 36      Draft Declaration of Rent Restriction for Low Income Units
- F, page 39      Draft Declaration of Rent Restriction for Very Low Income Units
- G, page 43      January 10, 2005 Planning Commission Meeting Minutes
- H, page 45      Letter from the Department of Housing and Community Development

ORDINANCE NO. 653 N.S.

AN ORDINANCE AMENDING CHAPTER 17D OF THE MUNICIPAL CODE  
REGARDING SECOND HOUSING UNITS

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

SECTION 1

The intent of the City Council in enacting this Ordinance is to establish the requirements for second units in the City, consistent with California Government Code section 65852.2.

SECTION 2

Chapter 17D of the municipal code is hereby amended in its entirety as follows.

“Chapter 17D  
**SECOND UNITS**”

- 17D.1 Intent
- 17D.2 Definitions
- 17D.2 Second Unit Permit Required
- 17D.3 Permit Application and Procedures
- 17D.4 Development Standards
- 17D.5 Rent-Restricted Second Units*
- 17D.6 Previously Approved Second Units
- 17D.7 Violation and Enforcement

SEC. 17D.1            INTENT

The intent of the City Council in enacting this Ordinance is to establish the requirements for second units in the City, consistent with California Government Code section 65852.2. One of the purposes of this Chapter is to help achieve the goals and policies of the adopted Housing Element of the City of Piedmont General Plan by encouraging a mix of housing types affordable to all economic segments of the community. It is the intent of this Chapter to expand the availability of second units in the City beyond those provided by State law to be approved by ministerial review. This Chapter creates two separate new second unit categories that will be subject to

discretionary review. One category provides certain variances from development standards not available under ministerial review. The other category provides certain exceptions from development standards not available under ministerial review to encourage occupancy by low or very low income households at affordable rent levels. clarify the standards of review governing appeals

## SEC. 17D.2    DEFINITIONS

In this Chapter 17D, the following definitions shall apply:

- (a)    *Affordable Rent Level means that the second unit household’s monthly cost of rent, plus the cost of electricity, gas, water and sewer service, and garbage collection (hereinafter “utilities”) is 30% or less than the upper limit of the annual gross household income, divided by 12, for a specified income category and household size as last published by the California Department of Housing and Community Development (hereinafter “HCD”). The City shall determine maximum affordable rent levels for rent-restricted second units following the annual publication of the State Income Limits by HCD. In determining rent levels, the household size for rent-restricted second units shall be: studio, 1 person; one-bedroom, 2 persons; two-bedroom, 3 persons; and, three-bedroom, 4 persons. The cost of utilities for the second unit shall be included in the affordable rent level. For rent-restricted second units where utilities are separately metered and billed, and where the second unit household is responsible for the costs of that household’s use of utilities, the maximum rent shall be set at 90% of the affordable rent level. (California Health and Safety Code Section 50053)*
  
- (b)    Director means the City’s Director of Public Works.
  
- (c)    *Gross Household Income means the total monies earned or received by all members of a household age 18 and over, including: wages and all types of compensation, before any payroll deductions; spousal and child support; social security, retirement, disability, insurance, and other types of periodic payments; unemployment compensation and other payments in-lieu of earnings; welfare and other public assistance; interest, dividends and other payments generated from any real or personal property; net business income; and, any other type of payment determined to qualify as income by the U.S. Department of Housing and Urban Development. (HUD) and as published in HUD’s Housing Choice Voucher Program Guidebook. The annual gross household income is calculated by multiplying the monthly*

*amounts earned or received at the time of certification by 12 and adjusting for anticipated payments and changes in amounts over the next 12 months.*

- (d) Habitation means regular and exclusive use of a space or structure for shelter or other residential purposes.
- (e) Household means those persons who collectively occupy a housing unit. A property owner's household shall include any child or dependent, as defined in Section 152 of the Internal Revenue Code, of the property owner who is under the age of 18 or who is under the age of 24 and is a full-time student.
- (f) Household Size means the number of persons in a household.
- (g) Low Income Household means a household with an annual gross household income of 80% or less than the Alameda County median annual gross household income for that household size as last published by HCD. (Section 50079.5 Health and Safety Code)
- (h) Moderate Income Household means a household with an annual gross household income of 120% or less than the Alameda County median annual gross household income for that household size as last published by HCD." (California Health and Safety Code Section 50093)"
- (i) Primary Unit means a principal, permitted single-family dwelling.
- (j) Rent means to enter into an agreement whereby the occupant(s) of the second unit make any monetary payment or exchange of goods or services in consideration of occupancy of the second unit.
- (k) Second Unit means an attached or detached residential dwelling unit which provides complete and independent living facilities for one or more persons. It includes permanent provisions for living, sleeping, eating, cooking, bathing and sanitation on the same parcel as a primary unit.
  - 1. Approved Second Unit means a second unit approved for habitation by the City. It includes exempt second units, government code second units, conditional use permit units approved before July 1, 2003, and second units having a second unit permit under this Chapter. It does not include temporary use second units or unintended second units.



2. Conditional Use Permit Second Unit means a second unit that was approved under a conditional use permit before July 1, 2003.
  3. Exempt Second Unit means a second unit established before 1930, whose exempt status was confirmed by the City in writing before July 1, 2003.
  4. Government Code Second Unit means a second unit that was approved in writing by the City under Ordinance Number 549 New Series, effective January 19, 1994.
  5. *Rent-Restricted Second Unit means a second unit that is approved under a rent-restricted second unit permit. A rent-restricted second unit shall only be occupied if rented to a low or very low income household at an affordable rent level or if occupied exclusively by an owner whose household qualifies as a low or very low income household. All members and guests of the owner's household must exclusively occupy the unit occupied by the owner.*
  6. Temporary Second Unit means a second unit used for habitation under a temporary use permit under former Chapter 17D, Ordinance No. 481A New Series, effective May 6, 1987.
  7. Unintended Second Unit means a living space which meets the definition of a second unit, but which is not being used for habitation as an independent dwelling under the definition of approved second unit or temporary second unit.
- (l) *Second Unit Affordable Rent Certification means documentation and certification that a second unit is being rented to a very low or low income household at an affordable rent level or is exclusively being occupied by an owner whose household qualifies as a very low or low income household. Required information for documentation and certification shall include the rent charged, the utilities included in the monthly rent, the household size of the second unit, the names and ages of the second unit occupants, and the gross household income of the second unit household.*
- (m) *Very Low Income Household means a household with an annual gross household income of 50% or less than the Alameda County median annual gross household income for that household size as last published by HCD. (California Health and Safety Code Section 50105)*

SEC. 17D.3 SECOND UNIT PERMIT REQUIRED

A second unit is allowed on any parcel in the City with a primary unit, subject to the issuance of a second unit permit. No second unit permit is required for an unintended second unit. There may be no more than one second unit on a parcel. No subdivision of land is authorized that would result in a second unit being located on a separate parcel, unless each parcel meets all of the zoning requirements for the zoning district in which it is located.

#### SEC. 17D.4 PERMIT APPLICATION AND PROCEDURES

##### 17D.4.1 Second Unit Subject to Ministerial Review.

- (a) Application. ~~The An~~ owner of an existing or proposed primary unit may apply for a second unit permit. ~~The owner shall submit the~~ by submitting an application to the Director on a form provided by the City. The application form shall specify the required information.
- (b) Application Fee. A fee in the amount established by City Council resolution shall accompany the application.
- (c) Decision. *The Director shall consider the application ministerially, without discretionary review, public notice, or a hearing.* The Director shall approve the application only if he or she determines that the application meets all of the development standards in Section 17D.5. The Director shall deny the application if he or she determines that it does not meet all of ~~the~~ such standards. The Director's decision shall be in writing and shall state the reasons for approval or denial.

~~The Director shall consider the application ministerially, without discretionary review, public notice or a hearing.~~

- (d) Appeal. A person may appeal the decision of the Director, in conformance with Section 17.25, Appeals, except that (1) notice of the appeal shall not be given except to the appellant (if not the owner) and to the owner and (2) the grounds for appeal are limited to whether or not the application meets the development standards in Section 17D.5.

##### 17D.4.2 Second Unit Subject to Discretionary Review: Variances.

- (a) General. *For any second unit, the Planning Commission may approve an application for variance(s) from the development standards regulating floor area ratio, lot coverage, setbacks, and parking space dimensions as set forth in Section 17D.5.*

- (b). Application. The owner shall submit a written application for each variance to the Director as provided in Section 17.21.3.
- (c) Application Fee. An initial filing fee, as provided in Section 17.21.4, shall accompany each application for a variance.
- (d) Hearing and Decision. The Planning Commission shall hold a public hearing on the application, as provided in Section 17.21.5. The Commission shall approve or deny the application as provided in Sections 17.21.6 and 17.21.7.
- (e) Appeal. A person may appeal the decision of the Planning Commission in conformance with Section 17.25.

17D.4.3 Second Unit Subject to Discretionary Review: Rent-Restricted Second Units.

- (a) General. The Planning Commission may grant exceptions to the development standards regulating unit size and off-street parking, as set forth in Sections 17D.5 and 17D.6, if the owner agrees to occupy or rent the second unit as a rent-restricted second unit.
- (b) Application. An owner may apply for a rent-restricted second unit permit by submitting an application to the Director on a form provided by the City. The application form shall specify the required information.
- (c) Application Fee. A fee in the amount established by City Council resolution shall accompany the application.
- (d) Hearing. The Planning Commission shall hold a public hearing on the application, as provided in Sections 17.27 17.28.
- (e) Decision. The Planning Commission shall approve or deny the application in accordance with the provisions of Section 17D.6. The Planning Commission shall make its determination on the individual merit of each application without following or establishing precedent. The primary basis for approving or denying the application shall be the general good of the City. The Planning Commission shall not approve an application unless it makes specific findings of fact as provided in Section 17D.6.
- (f) Appeal. A person may appeal the decision of the Planning Commission in conformance with Section 17.25.

SEC. 17D.5 DEVELOPMENT STANDARDS

A Second Unit shall comply with all of the following development standards.

- (a) Size. The Second Unit shall not exceed 700 square feet.
- (b) Floor area ratio. The total floor area of habitable structures on the lot shall comply with the floor area ratio requirements of Chapter 17 for the zone in which it is located.
- (c) Lot coverage. The lot on which the second unit is located must comply with the lot coverage requirements of Chapter 17 for the zone in which it is located.
- (d) Setback. For new construction, the dimensions of the front, side and rear yards of the lot must conform to the setback requirements of Chapter 17 for the zone in which it is located.
- (e) Off-street parking. The lot on which the second unit is located must conform to the parking requirements of Section 17.16.
- (f) Residential Design Review Guidelines. The design of the proposed Second Unit and its required parking shall meet the design criteria in the City's Residential Design Review Guidelines and related policies approved by the City Council. *The architectural style, architectural elements, exterior materials, and color of the second unit shall be consistent with that of the primary unit. As provided in Section 17.20.4(a), a second unit application that proposes only interior remodeling of an existing building and does not propose to change the exterior form of the building shall be exempt from the design review requirement.*
- (g) Owner occupancy. With the exception of Exempt Units, the owner of a Second Unit must occupy either the Primary Unit or the Second Unit, if both units are used for habitation. The owner must have submitted a signed Declaration of Restrictions, to be recorded before or concurrently with *and as a condition of* issuance of the Second Unit Permit, reflecting this restriction. The City shall provide the form of the Declaration of Restrictions.
- (h) Existing Second Units not previously approved. An existing second unit *that is not an exempt second unit and is not previously approved* must also meet these requirements *when the owner applies for the second unit permit*.

- (1) Zoning. The second unit must obtain a Second Unit Permit.
- (2) Building. The second unit must have been constructed with building permits in conformance with the requirements of Chapter 5 of the Piedmont Building Code in effect at the time of construction. If the owner is not able to provide proof of building permits, the Building Official shall make a thorough inspection of the unit to determine compliance with the current Building Code, and with any other building requirements determined by the Piedmont Building Official to be related to the safety of occupants.

SEC. 17D.6 RENT-RESTRICTED SECOND UNITS

*At its discretion, the Planning Commission may grant exceptions to the second unit development standards regulating second unit size and parking if the owner agrees to occupy or rent the second unit as a rent-restricted second unit and if the Planning Commission makes specific findings of fact as set forth in this Section.*

(a) Exceptions to Unit Size.

1. *If the lot size is less than the established minimum lot size of the applicable zoning district, the Planning Commission may grant a second unit size exception only if the second unit is wholly located within an existing building and without an expansion of the existing building envelope as follows:*
  - a. *The Planning Commission may grant a second unit size increase to a maximum of 850 square feet if the second unit is to be a rent-restricted second unit for low income households.*
  - b. *The Planning Commission may grant a second unit size increase to a maximum of 1,000 square feet if the second unit is to be a rent-restricted second unit for very low income households.*
2. *If the lot size equals or exceeds the established minimum lot size of the applicable zoning district, the Planning Commission may approve new construction for all or part of the second unit as an expansion of the existing building envelope or as a detached structure as follows:*

- a. *The Planning Commission may grant a second unit size increase to a maximum of 850 square feet if the second unit is to be a rent-restricted second unit for low income households.*
  - b. *The Planning Commission may grant a second unit size increase to a maximum of 1,000 square feet if the second unit is to be a rent-restricted second unit for very low income households.*
3. *The Planning Commission may grant an exception to the unit size standard only if the exception complies with the Design Review Criteria and Standards of Section 17.20.9 and if the Planning Commission makes the following findings:*
- a. *The unit size exception will not create a significant adverse impact on any adjacent property, the surrounding neighborhood, or the general public good.*
  - b. *The lot and the arrangement of existing and proposed physical improvements on the lot can accommodate the unit size exception without adversely affecting the views, privacy, or access to light and air of neighboring properties.*

(b) Exceptions to Parking.

- 1. *The parking for the primary unit and second unit shall comply with the provisions of Section 17.16, except that the Planning Commission may grant exceptions to the parking requirements only for the second unit as follows:*
  - a. *The Planning Commission may reduce the parking requirement to one parking space per second unit, regardless of the number of bedrooms contained in the second unit, if the second unit is to be a rent-restricted second unit for a low income household. The parking space may be a compact space, as defined in Section 17.16.6 as a space seven and one-half (7-1/2) by sixteen feet (16') in size.*
  - b. *The Planning Commission may grant a parking exception to the second unit to permit off-street, uncovered parking, motor-courts, tandem spaces (only relating to the second unit), compact spaces as defined in Section 17.16.6, and on-*

*street parking if the second unit is to be a rent-restricted second unit for a very low income household. Uncovered parking spaces shall be screened from public view.*

2. *The Planning Commission may grant an exception to the parking requirements only if the exception complies with the Design Review Criteria and Standards of Section 17.20.9 and if it makes all of the following findings:*
  - a. *The parking exception will not be detrimental to the health, safety or general welfare of persons residing in the neighborhood and will not negatively impact traffic safety or emergency vehicle access to residences or create hazards by obstructing views to or from adjoining sidewalks and streets.*
  - b. *The parking exception will not adversely affect the character of the surrounding neighborhood.*
  - c. *There is sufficient street parking available to accommodate the parking exception or the second unit is located within 1/3 mile of a public transit stop.*
- (c) *Separate Dwelling Unit. A rent-restricted second unit shall be in a building or portion of a building designed for, or occupied exclusively by, persons living as one (1) household. Access to the rent-restricted second unit shall be from the exterior of the building. There shall be no direct access between the primary unit and the rent-restricted second unit and such interior access restriction shall be permanently constructed.*
- (d) *Declaration of Rent Restrictions. The owner shall submit a signed Declaration of Rent Restrictions, to be recorded before or concurrently with, and as a condition of, issuance of the rent-restricted second unit permit, reflecting the rent restriction. The City shall provide the form of such Declaration.*
- (e) *Affordable Rent Certification. An owner who has executed a Declaration shall submit to the City a Second Unit Affordable Rent Certification on an annual basis, effective each December 31 and as part of the annual City business license application and renewal, and upon any change in occupancy of the second unit, specifying whether or not the second unit is being occupied, the rent charged, the utilities included in the cost of rent, the household size of the second unit, the names and ages of the second unit*

occupants, the gross household income of the second unit household, and other information as determined appropriate by the City. The City shall provide the form of the Certification to be signed under penalty of perjury by both the owner and the tenant, if any.

- (f) Termination of Rent-Restricted Second Unit Permit. At its discretion, the Planning Commission may grant an owner's request to terminate a rent-restricted second unit permit. The Planning Commission shall consider the length of time such permit has been in force, the conditions of approval, the exceptions granted for the permit, and the impact on the City's affordable housing supply. In no case shall such permit be terminated prior to 10 years from the date of Planning Commission approval under this section. As a condition of termination, the Planning Commission shall require the owner to make modifications to the property to comply with current Building Code requirements and to comply with the Planning Code requirements in effect at the time the exception(s) was granted or obtain a variance from such requirements.
- (g) Tax Abatement. As an incentive to an owner to apply for a rent-restricted second unit permit, the City shall provide the owner a tax abatement for the first year of the City's rental tax, as it applies to such second unit, as a direct financial contribution as set forth in Government Code Sections 7060.1 and 65916.

#### SEC. 17D.7 PREVIOUSLY APPROVED SECOND UNITS

- (a) Previously Approved Second Units. The City has approved second units under prior versions of this Chapter 17D. They include:
1. Approved second units, such as: exempt second units, government code second units, and conditional use permit units approved before July 1, 2003; and
  2. Temporary use second units.
- (b) Non-conforming Second Units. If an approved second unit was legally created but does not meet all of the current development standards set forth in Section 17D.5, it is a legal, non-conforming second unit. Normal repairs and maintenance shall be permitted, provided that the repairs and maintenance do not constitute a change in design or materials. No such legal non-conforming second unit may be altered, partially demolished or reconstructed, and no non-conforming second unit that is destroyed (more than 70% of the building replacement value) may be rebuilt, without



obtaining a second unit permit under Section 17D.3, including compliance with the development standards in Section 17D.5. Non-conforming second units that are destroyed shall conform to the requirements of Section 17.32.5.

SEC. 17D.8 VIOLATION AND ENFORCEMENT

(a) Violation. An illegal second unit is a second unit which is not an approved second unit *or is in violation of the Declaration of Deed Restrictions or the Declaration of Rent Restrictions*. The Director is authorized to pursue any remedies provided by law against the owner of an illegal second unit or a second unit not maintained in conformance with this Chapter, including:

1. General. Those remedies set forth in Chapter 1, Article II, Penalties;
2. Nuisance, as defined in Section 6.2.3(a);
3. Costs. In any civil enforcement action, administrative or judicial, the City is entitled to recover its attorneys' fees and costs from an owner who is determined to have an illegal second unit;
4. Notice of Violation, as provided in subsection (b) below;
5. Revocation of the Second Unit Permit, as provided pursuant to Section 17.30.3;
6. *Citations issued pursuant to the Administrative Citation Procedure authorized by California Government Code, Section 53069.4;*
7. *Deed Restriction/Contract. Any liquidated damages or stipulated penalties authorized under any deed restriction or contract executed by the owner as a condition of the issuance of the second unit permit.*

(b) Notice of Violation. The City may record a Notice of Violation against any property having an illegal second unit.

1. Notice of Intent. Before recording a Notice of Violation, the ~~Director~~ ~~City Planner~~ shall mail by certified mail to the then-current owner of the property a Notice of Intent to Record a Notice of Violation. The Notice of Intent shall: (a) identify the real

property; (b) name the owners *of record*; (c) describe the information indicating that a violation exists; (d) explain why the second unit is *illegal not illegal* under this Chapter; (e) order that the violation be corrected within 45 days of the date of the Notice; (f) state that if compliance does not occur within 45 days of the date of such notice and if the Director has not rescinded *or revoked such notice, he or she will cause the order*, a Notice of Violation to ~~will~~ be recorded; (g) specify a time, date and place for a hearing within 15 days from the date of mailing, before or at which hearing the owner may present evidence as to why the Notice of Violation should not be recorded; *and (h) state that a penalty, as established by the City Council from time to time, shall accrue against the real property from 45 days after the date of the Notice of Intent until the date the violation is fully corrected.*

2. Correction. If the owner corrects the violation within 45 days from the date of the Notice of Intent, no further action shall be taken.
3. Hearing and Determination. The owner may submit evidence at or before the hearing set by the Director. If the Director determines, based on the evidence, that there is no violation, he or she shall mail a clearance letter to the owner.
4. Recordation. If the owner fails to object by the date of the hearing, or if the Director determines, based on evidence presented at or within 15 days following the hearing, that a violation does exist, the Director shall file record the Notice of Violation with the County Recorder ~~of Alameda County~~. The County Recorder shall index the names of the owners in the general index. The *Notice of Violation*, when recorded, is considered constructive notice of the violation.
5. Approvals Withheld. The City shall not grant any permit or approval for a property against which a Notice of Violation is recorded, except a permit or approval necessary to correct a violation.
6. Release of the Notice of Violation. After the violation is corrected, an owner may request that the Notice of Violation be released. The owner shall file an application with the Director, accompanied by a fee in an amount established by City Council resolution. Upon verification by ~~a~~ *the* Building Official that the violation has been corrected, the Director shall file a Release of the Notice of Violation with the County Recorder.”

SECTION 3

This ordinance shall be posted at City Hall after its second reading by the City Council for at least thirty (30) days and shall become effective thirty (30) days after the second reading.

- END -

## EXHIBIT B

**2003/2004 SECOND UNIT TASK FORCE ROSTER**

Michael Bruck City Council Liaison	Mayor, Attorney, former City Council Liaison to Housing Element Committee
Marty Greenman Chair	Planning Commission Vice Chair, Attorney, former member of Housing Element Committee, renter
Paul Faberman Member	Real Estate Manager, former member of Housing Element Committee
Bill Kendrick, AIA Member	Active residential Architect in community.
Nick Levinson Member	Former Planning Commissioner, Finance Manager, former Housing Developer for a community development corporation
Clark Thiele, AIA Member	Former Architect, now practicing as an Attorney
Michael Henn, AICP Alternate Member	Former Urban Planner (retired from municipal practice), now private Planning Consultant
Jeffrey Baird, AICP Baird & Driskell Community Planning	Staff - Project Consultant
Christine Calagna Baird & Driskell Community Planning	Staff - Project Consultant
George Peyton	Staff – City Attorney
Kate Black	Staff – City Planner

**FREQUENTLY ASKED QUESTIONS AND ANSWERS  
NEW SECOND UNIT REGULATIONS**

**How do I apply for a second unit?**

A second unit application is available at the planning counter at City Hall and on the City website at [www.ci.piedmont.ca.us](http://www.ci.piedmont.ca.us). Once you submit the application, the application will be reviewed by Planning Department staff to determine if your proposed second unit conforms to the development standards in the second unit code. If it does, the application will be approved by the Planning Department staff and a notice will be sent to you. No notice will be sent to your neighbors. This process usually takes about 30-40 days, provided that your application is complete in accordance with the required application materials listed in the application. If your application does not comply with the second unit code, the Planning Department staff will contact you to discuss steps you will need to take in order to request approval by the Planning Commission.

**Will my application be reviewed at a public hearing?**

If your second unit application conforms to the development standards in the second unit code, the Planning Department staff will approve the second unit application and no public notice or hearing will occur. If your application does not conform to the development standards in the second unit code and requires a variance or an exception to the standards, the application will be reviewed at a public hearing. Depending on the scope of your application and the variance or exception requested, neighbors within 100 to 200 feet of your property will be notified of the public meeting and your proposed second unit.

**Are second unit applications subject to design review?**

If your second unit conforms to the development standards in the second unit code, the Planning Department will determine design review compliance during its staff review process. The second unit ordinance states that “the architectural style, architectural elements, exterior materials, and color of the second unit shall be consistent with that of the primary unit.” There is no design review if your application proposes only interior remodeling of an existing building.

If your second unit application requests a variance or an exception from development standards, the Planning Commission will conduct design review during its public hearing. Design review guidelines are the same whether your application is reviewed by the Planning Department staff or the Planning Commission.

### **Are second unit applications subject to adopted City policies?**

From time to time, the City adopts policies that provide clarity or guidance in the review of planning applications. For example, the City has a policy that defines the requirements for the installation of story poles for certain types of construction, and another policy, currently under review, that defines the procedures for Planning Commissioners, staff, applicants and neighbors when site visits are made for planning applications. Your second unit application will be subject to the same policies that all planning applications are subject to.

### **What are the development standards for a second unit?**

Development standards depend upon whether your property is located in Zone A or Zone E. Briefly, the development standards are as follows:

- 700 sq. ft. maximum unit size
- One covered parking space per unit
- Side and Rear Setbacks of 4' in Zone A (20' for corner and through-lot properties) and 20' in Zone E, except for accessory structures which are 4'
- Lot Coverage with structures of 40%
- Lot Coverage with hardscape of 70% in Zone A and 60% in Zone E
- FAR: 45% for lots that are greater than 10,000 square feet  
50 % for lots between 5,000 and 10,000 square feet  
55% for lots that are smaller than 5,000 square feet
- Building Height of 35'
- Front Setbacks of 20'
- Owner Occupancy of Primary or Secondary Unit
- Design Review compliance

Planning Department staff is available to help you determine how these standards are applied to your proposed application.

### **What do I do if I need a variance from those development standards?**

If your application requires one or more variance from setback, lot coverage, floor area ratio, or building height standards, the application will be forwarded to the Planning Commission, at your request, for review and approval during a public hearing. An additional fee of \$600 for the review of one variance request, and a fee of \$300 for each additional variance request, will be applied. You will not be required to rent-restrict your unit if you seek and are approved for a variance.

You may not request a variance from the parking requirement of one covered parking space or the unit size maximum of 700 square feet. You may, however, request an exception to these standards if you agree to rent-restrict your unit.

### **How many parking spaces do I need?**

As long as your second unit is 700 square feet or less, only one covered parking space is required. The parking space must be located outside the front setback area and off any public or private street. The parking space must be at least 9' by 20' in size.

Exceptions to the parking requirement may be granted at the discretion of the Planning Commission if you agree to rent-restrict your unit at a rent that is affordable to a lower-income household. A compact space (7' x 16' minimum) is an option that is available to you if you agree to rent-restrict your unit to a low-income household. An uncovered, tandem, and/or motor court parking space may be granted if you agree to rent-restrict your second unit to a very low-income household. At the discretion of the Planning Commission, you may also be permitted to utilize street parking for a very low-income second unit.

Parking requirements are explained in detail in Section 17.16 of the Piedmont City Code. The City Code is available on-line at [www.ci.piedmont.ca.us](http://www.ci.piedmont.ca.us). Copies of Chapter 17 "Regulations Prescribing the Character of Construction" are also available at the planning counter at City Hall.

### **Can I build a second unit if I don't have a covered parking space for the unit?**

An uncovered parking space is only permitted at the discretion of the Planning Commission if you agree to rent-restrict your second unit at a rent that is affordable to a very low-income household.

### **Can I build a second unit that is larger than 700 square feet?**

A unit size exception of up to 850 sq. ft. is allowed if you agree to rent-restrict your second unit at a rent that is affordable to a low-income household. The unit size exception is increased to 1,000 sq. ft. if you agree to rent-restrict your second unit to a very low-income household. Under no circumstances is a unit larger than 1,000 sq. ft. permitted.

### **Can I build a second unit as an expansion of my house or as a separate building?**

Second units can be built as an expansion of your house or as a new building, as long as the proposed construction meets all of the development standards or has been granted a

variance from those standards. If you agree to rent-restrict your unit in exchange for permission to build a second unit larger than 700 square feet, you may only expand your existing home or build a new structure if your lot meets the minimum lot size of your zoning district.

### **Does my second unit have to have exterior access?**

Most second units are not required to have exterior access. However, if you agree to rent-restrict your second unit, you *must* provide exterior access. Interior access between the house and the rent restricted unit is not permitted.

### **What does it mean to rent-restrict a second unit?**

A rent-restricted second unit may only be occupied by a lower-income household. If you choose to charge rent for the second unit, the rent must be affordable to the household that lives in the second unit. You are not, however, obligated to keep the unit occupied.

If you agree to rent restrict your unit, a deed restriction will be recorded against your property deed when the rent-restricted second unit permit is issued. The deed restriction will remain in effect for a minimum of 10 years and will remain in force if you sell your property within that time period. If you wish to terminate your deed restriction after the required 10-year time period, you will need to seek permission from the Planning Commission. You may be required to make changes to your property to comply with building and planning code requirements in effect at the time of your exception approval.

Owners of rent-restricted second units will be required to file an Affordable Rent Certification with the City once a year. This form is used to verify the income status of the second unit household and to ensure that the rent being charge is affordable to that household. Copies of the Affordable Rent Certification are available on line at [www.ci.piedmont.ca.us](http://www.ci.piedmont.ca.us) and at the planning counter at City Hall.

### **Who may occupy a rent-restricted unit?**

A rent-restricted second unit may only be occupied by an owner or tenant who qualifies as a lower-income household. The rent-restricted second unit is not to be used as an extension of your house or as additional living space or bedrooms for your children, household members, or guests. In order to ensure that this provision is upheld, there may be no direct, interior access between your house and the rent-restricted second unit.



A rent-restricted second unit might be especially appealing to you if you want to provide housing for a lower-income caregiver, household worker, elderly parent, friend or family member who qualifies as an independent household. Also, if *your* household qualifies as lower-income, you may choose to occupy the rent-restricted unit and then rent out the primary unit, thereby lowering your housing costs.

**Can a family member live in the second unit?**

If there is no rent restriction placed upon your unit at the time the second unit permit is granted, any family member can occupy the second unit. If, however, your unit is approved as a rent-restricted second unit, a family member can only live in the second unit if he or she is part of a lower-income household. Elderly parents and grown children might meet this requirement. Your dependent children are not permitted to live in the rent-restricted unit unless you all live in the second unit and qualify as a lower-income household.

**How are low and very low-income households defined?**

The California State Department of Housing and Community Development (HCD) defines income categories based on the median income of a particular region. Piedmont’s region encompasses all of Alameda County. Income categories are determined as a percentage of the median income as follows: moderate income is between 80% and 120% of median income; low income is between 50% and 80% of median income; and very low income is up to 50% of median income. Family size is also taken into account when determining income limits for households.

The chart below indicates income limits for Alameda County in 2004. Income categories are revised annually by HCD according to recent income data.

**Alameda County Income Limits by Household Size – 2004**

<b>Persons in Household</b>	<b>Very Low Income</b>	<b>Low Income</b>	<b>Moderate Income</b>
1	\$29,000	\$46,350	\$69,050
2	\$33,100	\$53,000	\$78,900
3	\$37,250	\$59,600	\$88,800
4	\$41,400	\$66,250	\$98,650

*Source: California Department of Housing and Community Development, 2004 State Income Limits*

**How are affordable rent levels determined?**

A particular rent is considered to be affordable if the cost of rent and utilities comprise no more than 30% of a household's annual income. The City determines rent levels by using the 30% rule and standardizing the household size according to the type of second unit. In this manner, a studio is counted as a one-person household, a 1-bedroom unit as a two-person household, and a 2-bedroom unit as a three-person household. More people may occupy the unit, but the stipulated rent level does not change. Similarly, the unit size does not affect how rent levels are determined.

The following chart shows rent levels for different types of second units in 2004. Rent levels will change on an annual basis to reflect changes in the Alameda County Income Limits.

**Maximum Affordable Rent Levels By Unit Type - 2004**

<b>Second Unit Type</b>	<b>Very Low Income</b>	<b>Low Income</b>
Studio	\$725	\$1,159
1 Bedroom	\$828	\$1,325
2 Bedroom	\$931	\$1,490
3 Bedroom	\$1,035	\$1,656

These rents are *maximum* rents. You are, of course, free to charge less or even no rent at all.

**How much does it cost to get a second unit approved?**

The second unit application fee is currently \$750. The fee must be paid at the time your application is submitted. Fees for a variance request are \$600 for one variance and \$300 for each additional variance. A rent-restricted second unit application is only charged the \$750 second unit permit fee. A building permit will be required for any interior or exterior construction you propose, and the fee varies based on the construction costs.

In addition to planning fees, all second unit owners are required to pay an Annual Rental Tax of 1.395% of gross annual receipts, or \$200, whichever is greater. The first year rental tax is waived for owners of rent-restricted units.

**How long will it take to get my second unit approved?**

You will be required to prepare an application that shows all of the proposed construction needed to create your second unit, including new parking spaces if needed. If you have properly provided the required information and plans, your application will be processed within 30-40 days if your second unit complies with the standard second unit

development controls. If you need a variance or exception to the standards, you will need to submit a complete application by the Planning Commission's monthly application submittal deadline. The Planning Commission will take action on your application 30 days later.

### **When will the new regulations go into effect?**

If the revisions to Chapter 17D Second Units are approved by both the Planning Commission and the City Council according to the current tentative schedule, the new regulations will go into effect on March 23, 2005.

### **Why is the City proposing a Rent-Restricted Second Unit Program?**

The City is required by State law to provide its "fair share" of housing to help solve the regional housing shortage, including affordable housing opportunities for people in all income categories. As part of these requirements, the State has determined that the City must provide incentives to encourage six units affordable to very-low income households and four units affordable to low-income households by 2007. Since housing prices are very high in Piedmont, and since there is no land available for multi-family housing, the City has determined that the only way to meet our affordable housing requirement for lower-income households is through a rent-restriction program that "trades" exceptions to parking and unit size standards for a deeded rent restriction. The program is entirely voluntary and does not limit a property owner's right to develop a second unit that meets the development code. Through the program, the City hopes to approve 10 rent-restricted second units over the next few years.

The rent-restricted second unit program provides more housing opportunities for our lower-income caregivers, household workers, elderly parents, and grown children who would not otherwise be able to afford to live in Piedmont. The program also provides a greater opportunity for our seniors who live on limited, fixed-incomes to continue to live in Piedmont by moving in to their second unit and renting out their house at the prevailing market rate.

### **How do I start the process of requesting a second unit?**

Planning staff are available Monday through Friday from 8:30 a.m. to noon and 1:00 p.m. to 5:00 p.m. to help you with your second unit application. The City has a general "property file" for your property that may contain information that will be useful to you in the preparation of your application, and you are welcome to obtain copies of the information in your file. It is also recommended that you make an appointment with the City Planner who will help determine which second unit process you are eligible for, and will review the steps, timing and application materials with you to help you and your

architect or contractor prepare an application. You are also encouraged to call planning staff at 510-420-3050 with any questions.

(Draft)

**City of Piedmont  
RENT-RESTRICTED SECOND UNIT  
AFFORDABLE RENT CERTIFICATION**

This Certification is to be completed on an annual basis, effective each December 31 and submitted by the Owner concurrently with the Owner's application for and/or renewal of the City's business license, and upon any change in occupancy or any change in the composition of the second unit household. Please provide all required information below.

Primary Unit Address: \_\_\_\_\_

Rent-Restricted Second Unit for (please check one):

- Low Income Households
- Very Low Income Households

Second Unit Type (please check one):

- Studio
- 1-Bedroom
- 2-Bedroom
- 3-Bedroom

Owner's Name: \_\_\_\_\_

Owner's Mailing Address: \_\_\_\_\_

Is second unit currently occupied? Yes \_\_\_\_\_ No \_\_\_\_\_

If second unit is rented, date current lease expires \_\_\_\_\_

*Please provide a copy of the written lease agreement, if any.*

Monthly Rent for the Second Unit\*: \_\_\_\_\_

Utilities Provided by Owner, the cost of which is Included in the Monthly Rent:

- \_\_\_ Electricity
- \_\_\_ Gas
- \_\_\_ Water and Sewer Service
- \_\_\_ Garbage Collection

I declare, under penalty of perjury under the laws of the State of California, that the foregoing statements are true of my own knowledge.

\_\_\_\_\_  
Signature of Owner(s)

\_\_\_\_\_  
Date

\* As per your Declaration of Rent Restrictions, the second unit must be rented to a very low or low income household at an affordable rent level. The California Department of Housing and Community Development defines these income categories and establishes State Income Limits on an annual basis. Please see the Planning Staff for a copy of current State Income Limits and a schedule of Maximum Affordable Rent Levels.

Second unit is occupied by \_\_\_\_\_ Owner \_\_\_\_\_ Tenant

Tenant's Name (if applicable): \_\_\_\_\_

Second Unit Occupants' Mailing Address: \_\_\_\_\_

Number of Occupants in the Second Unit \_\_\_\_\_

Occupants:

	Name	Age
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____

Second Unit Household's Gross Annual Income  
*Include only income from occupants age 18 and over.*

	Occupant 1	Occupant 2	Occupant 3
Wages	_____	_____	_____
Child/Spousal Support (deduct if paid out)	_____	_____	_____
Social Security Benefits	_____	_____	_____
Pensions and Annuities	_____	_____	_____
Unemployment Compensation	_____	_____	_____
Welfare	_____	_____	_____
Disability Benefits	_____	_____	_____
VA Benefits	_____	_____	_____
IRA Distributions	_____	_____	_____
Interest and Dividends	_____	_____	_____
Business Net Income	_____	_____	_____
Capital Gains	_____	_____	_____
Other Income	_____	_____	_____
TOTAL	_____	_____	_____

I declare, under penalty of perjury under the laws of the State of California, that the foregoing statements are true of my own knowledge.

\_\_\_\_\_  
Signature of Second Unit Occupant

\_\_\_\_\_  
Date

(Draft)

WHEN RECORDED RETURN TO:

Piedmont City Planner

Piedmont City Hall

120 Vista Avenue

Piedmont, CA 94611

**DECLARATION OF RENT RESTRICTIONS FOR  
SECOND UNIT AFFORDABLE TO LOW INCOME HOUSEHOLDS**

This Declaration, recorded in Alameda County, State of California, is made by \_\_\_\_\_ (“Owner”). Owner owns real property described in Exhibit “A” (property description), known as:

Assessor’s Parcel Number: \_\_\_\_\_

Address: \_\_\_\_\_, the  
“property”).

Owner hereby declares that all of the Property shall be held, sold, and conveyed subject to the following restrictions and conditions, which are for the purpose of satisfying certain exemption requirements set forth in the City of Piedmont City Code as described below, and which shall run with the title to the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors, and assigns, and shall apply to each owner thereof.

**ARTICLE I**

Owner intends to construct/maintain a Second Unit on Owner’s Property and has requested an exemption from the second unit parking requirement and/or maximum second unit size of the Piedmont City Code based on Owner’s assurance that any rental or occupancy of said unit will be to or by a very low income household at an affordable rent level.

**ARTICLE II**

Owner hereby restricts rental or occupancy of the Second Unit to only households that qualify as very low income households as those terms are defined in the State Income Limits for Alameda

County most recently published by the California Department of Housing and Community Development or, in the event that the most recent such report is more than five years old, in accordance with the definitions set forth in California Health and Safety Code Sections 50079.5, 50093, 50105, and 50106, as those sections exist as of the effective date of this restriction.

### ARTICLE III

If rent is charged for the Second Unit, the monthly rent and the cost of all utilities, including electricity, gas, water and sewer service, and garbage collection, for the Second Unit shall not exceed the maximum affordable rent level as determined by the City of Piedmont. If all utilities for the second unit are separately metered and billed, and if the second unit household is responsible for the costs of the that household's use of utilities, the maximum rent shall be set at 90% of the affordable rent level.

### ARTICLE IV

Upon execution of this Declaration, and on an annual basis thereafter, effective December 31 and filed concurrently with the application and renewal of the City's business license, and upon any change in occupancy, Owner shall provide a Second Unit Affordable Rent Certification to the City Clerk of the City of Piedmont. This Certification shall state (a) whether the unit is being rented; (b) the monthly rent being charged; (c) the utilities included in the monthly rent; (d) the household size of the second unit; (e) the name(s) and age(s) of the occupant(s) of the second unit; and (f) the gross household income of the occupant(s) of the second unit. The Certification shall be accompanied by a declaration by both Owner and tenant under penalty of perjury under the laws of the State of California that the Certification is true and correct.

### ARTICLE V

Owner confirms that Owner has voluntarily requested and agreed to the rent restrictions set forth herein and pursuant to the Piedmont City Code, that Owner understands that such agreeing to rent restrictions allows Owner to construct/maintain a Second Unit that would not otherwise be permitted under either State law or the Piedmont City Code, and Owner agrees that such rent restrictions are a fair exchange for the exceptions to normal legal requirements that will allow Owner to construct/maintain such Rent-Restricted Second Unit.

### ARTICLE VI

The City of Piedmont may recover reasonable attorneys' fees and costs incurred in bringing legal action to enforce this Declaration. In addition, the City may recover from Owner any rents received or receivable during any occupancy not authorized by the terms of this Declaration, or, in the alternative, the City may recover the reasonable value of such unauthorized occupancy.

### ARTICLE VII

Owner fully understands that if Owner violates the terms of this Declaration, that City may pursue a number of alternative remedies against Owner, as more specifically spelled out in



Section 17D.8 of the Piedmont City Code, and by signing this Declaration Owner acknowledges that Owner is subject to the provisions of Section 17D.8. Owner further acknowledges that if Owner withdraws the Property from use as a Rent-Restricted Second Unit, even in conformance with the provisions of Chapter 17D.6 of the Piedmont City Code the owner will be required to make modifications to the property to comply with current Building Code requirements and to comply with the Planning Code requirements in effect at the time the exception(s) was granted or obtain a variance from such requirements.

Executed on \_\_\_\_\_

Owner's signature(s): \_\_\_\_\_

\_\_\_\_\_

OWNERS' SIGNATURES ARE TO BE ACKNOWLEDGED BEFORE A NOTARY PUBLIC. IF A CORPORATION, THE CORPORATE FORM OF ACKNOWLEDGEMENT SHALL BE ATTACHED.

(Draft)

WHEN RECORDED RETURN TO:

Piedmont City Planner

Piedmont City Hall

120 Vista Avenue

Piedmont, CA 94611

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**DECLARATION OF RENT RESTRICTIONS FOR  
SECOND UNIT AFFORDABLE TO VERY LOW INCOME HOUSEHOLDS**

This Declaration, recorded in Alameda County, State of California, is made by \_\_\_\_\_ (“Owner”). Owner owns real property described in Exhibit “A” (property description), known as:

Assessor’s Parcel Number: \_\_\_\_\_

Address: \_\_\_\_\_, the  
“property”).

Owner hereby declares that all of the Property shall be held, sold, and conveyed subject to the following restrictions and conditions, which are for the purpose of satisfying certain exemption requirements set forth in the City of Piedmont City Code as described below, and which shall run with the title to the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors, and assigns, and shall apply to each owner thereof.

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Executed on \_\_\_\_\_

Owner's signature(s): \_\_\_\_\_

\_\_\_\_\_

OWNERS' SIGNATURES ARE TO BE ACKNOWLEDGED BEFORE A NOTARY PUBLIC. IF A CORPORATION, THE CORPORATE FORM OF ACKNOWLEDGEMENT SHALL BE ATTACHED.

STATE OF CALIFORNIA        )  
  ) ss.  
COUNTY OF ALAMEDA        )

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed on the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public for California

STATE OF CALIFORNIA        )  
  ) ss.  
COUNTY OF ALAMEDA        )

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed on the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public for California

**PIEDMONT PLANING COMMISSION**

Regular Meeting Minutes for Monday, January 10, 2005

A Regular Session of the Piedmont Planning Commission was held January 10, 2005, in the City Hall Council Chambers at 120 Vista Avenue. In accordance with Government Code Section 54954.2(a) the agenda for this meeting was posted for public inspection on December 27, 2004.

**CALL TO ORDER**

Chairman Hege called the meeting to order at 5:00 p.m.

**ROLL CALL**

Present: Commissioners Arleta Chang, Marty Greenman, Tamra Hege, Fred Karren, and Suzanne Summer.

Absent: Alternate Commissioner Jonathan Levine (excused)

Staff: City Planner Kate Black, Assistant Planner Linda Ajello, Planning Consultant Elizabeth Watty, Planning Technician Kevin Jackson and Recording Secretary Chris Harbert

City Council Liaison: Councilmember Dean Barbieri

**REGULAR CALENDAR**

The Commission considered the following items of regular business:

**Proposed Ordinance**

The City Planner requested Commission review and recommendation of proposed revisions to Chapter 17D intended to keep the City in compliance with AB1866 regarding the ministerial review process for second units. The City Planner reviewed the City's limited capability of developing low and very low income housing and noted that second units help the City fulfill this obligation. The proposed revisions are proposed by the City's 6-member Second Unit Task Force (chaired by Commissioner Greenman) and are conservative provisions that comply with state law, meet the City's obligations under the Housing Element, and provide the City with the greatest possible amount of discretion and public notice in the review of second units. The proposed ordinance has been reviewed by the Housing Community Development which has indicated that if the City adopts it, the City will have met its Housing Element program objective of rewriting the second unit ordinance to provide affordable second units. 1

**Public testimony** was received from:

Clark Thiel, a task force member, urged the Commission to recommend City Council approval of the proposed ordinance, noting that it achieves a good balance between complying with state mandates and retaining reasonable local control over second unit housing.

Nick Levinson, a task force member, submitted a prepared statement, read by the City Planner, concurring with Mr. Thiel's comments.

The Commission inquired re several specifics of the proposed ordinance, which questions were responded to by the City Attorney and Planning Consultant Christine Calagna of the firm of Baird & Driskell, both of whom assisted the task force. During the discussion, the Commission requested that the proposed ordinance be revised to:

1. Include the following definition of “moderate-income household” under Section 17D.2: “(h) Moderate Income Household means a household with an annual gross household income of 120% or less than the Alameda County median annual gross household income for that household size as last published by HCD.”

2. Clarify, as it pertains to Section 17D.2(j)(5), the type of family member that can occupy a rent-restricted second unit. Also, more clearly define “owner’s household.”

**Resolution 2-PL-05**

RESOLVED, that the Planning Commission recommends City Council approval of the proposed revisions to Chapter 17D prepared by the Second Unit Task Force and as recommended herein, finding that:

1. Assembly Bill 1866 amended Government Code Section 65852.2 which requires local governments to use a ministerial process for approving second units, without neighborhood notice and public hearing. With the proposed revision to Chapter 17D, the City will still be in compliance with Government Code Section 65852.2.

2. The adoption of the revisions to Chapter 17D implements General Plan Housing Element Program 3.2 requiring a second unit feasibility study, ordinance revision and incentives package.

3. The City finds this code amendment to be exempt from the provisions of the California Environmental Quality Act, pursuant to Section 21080,17 of the Public Resources Code, which exempts the adoption of an ordinance to implement the provisions of Section 65852.2 of the Government Code; and pursuant to Section 15282(i) which states in part: “Other Statutory Exemptions . . . the adoption of an ordinance regarding second units in a single-family or multi-family residential zone by a city or county to implement the provisions of Section 65852.1 and 65852.2 of the Government Code as set forth in Section 2108017 of the Public Resources Code.”

Moved by Karren, Seconded by Chang

Ayes: Chang, Greenman, Hege, Karren, Summer

Noes: None

Absent: None