

Chapter 1  
**GENERAL PROVISIONS<sup>1</sup>**

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**ARTICLE I. GENERAL PROVISIONS**

SEC. 1.1. HOW CODE DESIGNATED AND CITED

The ordinances embraced in the following chapters and sections shall constitute and be designated "The Code of the City of Piedmont, California, 1959," and may be so cited.

SEC. 1.2. DEFINITIONS AND RULES OF CONSTRUCTION

In the construction of this Code and of all ordinances of the City, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the City Council or the context clearly requires otherwise:

1.2.1. City. The words "the City" or "this City" shall be construed as if followed by the words "of Piedmont."

1.2.2. Code. The words "the Code" or "this Code" shall mean "The Code of the City of Piedmont, California, 1959."

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1 For charter provisions as to enactment, etc., of ordinances, see Char. §2.12.  
For state law as to power of city to codify ordinances, see Gov. C.A., §§50022.1 to 50022.8.  
For constitutional provisions of state relative to cities generally, see Const. of Calif., art. XI, §1 et seq.

- 1.2.3. Computation of Time.<sup>2</sup> The time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded.
- 1.2.4. Council. Whenever the word "Council" is used, it shall be construed to mean the City Council of the City of Piedmont, California.
- 1.2.5. County. The words "the county" or "this county" shall mean the County of Alameda.
- 1.2.6. Day.<sup>3</sup> A day is the period of time between any midnight and the midnight following.
- 1.2.7. Daytime, Nighttime.<sup>4</sup> "Daytime" is the period of time between sunrise and sunset. "Nighttime" is the period of time between sunset and sunrise.
- 1.2.8. Department, Board, Commission, Office, Officer, or Employee. Whenever any department, board, commission, office, or officer or employee is referred to it shall mean a department, board, commission, office, officer or employee of the City unless the context clearly indicates otherwise.
- 1.2.9 Director-Defined. For purposes of this Section, "Director" means the City Administrator or the head of any City department which is charged with responsibility for enforcement of any provision of this Code.
- 1.2.10. Gender.<sup>5</sup> The masculine gender includes the feminine and neuter.
- 1.2.11. In the City. The words "in the City" or "within the City" shall mean and include all territory over which the City now has, or shall hereafter acquire, jurisdiction for the exercise of its police powers or other regulatory powers.
- 1.2.12 Joint Authority.<sup>6</sup> All words giving a joint authority to three or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

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2 For similar state law, see Gov. C.A., §6800.

3 For similar state law, see Gov. C.A., §6806.

4 For similar state law, see Gov. C.A., §6807.

5 For similar state law, see Gov. C.A., §12.

6 See C.C., §12.

1.2.13. Month.<sup>7</sup> The word "month" shall mean a calendar month.

1.2.14. Number.<sup>8</sup> The singular number includes the plural, and the plural the singular.

1.2.15. Oath.<sup>9</sup> "Oath" includes affirmation.

1.2.16. Official Time. Whenever certain hours are named herein, they shall mean Pacific Standard Time or Daylight Saving Time whichever may be in current use in the City.

1.2.17. Or, And. "Or" may be read "and," and "and" may be read "or," if the sense requires it.

1.2.18. Owner. The word "owner" applied to a building or land, shall include any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by entirety, of the whole or of a part of such building or land.

1.2.19. Person.<sup>10</sup> "Person" includes any person, firm, association, organization, partnership, business trust, corporation or company.

1.2.20. Personal Property.<sup>11</sup> includes every species of property except real property, as defined in this section.

1.2.21. Preceding, Following. The words "preceding" and "following" mean next before and next after, respectively.

1.2.22. Process.<sup>12</sup> "Process" includes a writ or summons issued in the course of judicial proceedings of either a civil or criminal nature.

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7 For similar state law, see Gov. C.A., §6804.

8 For similar state law, see Gov. C.A., §13.

9 For similar state law, see Gov. C.A., §15.

10 For similar state law, see Gov. C.A., §17.

11 See C.C., §14.

12 For similar state law, see Gov. C.A., §22.

1.2.23. Property.<sup>13</sup> The word "property" shall include real and personal property.

1.2.24. Real Property.<sup>14</sup> Real property shall include lands, tenements and hereditaments.

1.2.25. Roadway. "Roadway" is that portion of a highway improved, designed or ordinarily used for vehicular travel.

1.2.26. Shall, May.<sup>15</sup> "Shall" is mandatory, and "may" is permissive.

1.2.27. Signature or Subscription.<sup>16</sup> "Signature" or "subscription" includes a mark when the signer or subscriber cannot write, such signer's or subscriber's name being written near the mark by a witness who writes his own name near the signer's or subscriber's name; but a signature or subscription by mark can be acknowledged or can serve as a signature or subscription to a sworn statement only when two witnesses so sign their own names thereto.

1.2.28. State. The words "the state" or "this state" shall be construed to mean the State of California.

1.2.29. Tenant or Occupant. The words "tenant" or "occupant," applied to a building or land, shall include any person holding a written or oral lease of, or who occupies the whole or a part of such building or land, either alone or with others.

1.2.30. Tenses.<sup>17</sup> The present tense includes the past and future tenses; and the future, the present.

1.2.31. Week.<sup>18</sup> A "week" consists of seven consecutive days.

1.2.32. Writing.<sup>19</sup> "Writing" includes any form of recorded message capable of comprehension by ordinary visual means. Whenever any notice, report, statement

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13 See C.C., §14.

14 See C.C., §14.

15 For similar state law, see Gov. C.A., §14.

16 For similar state law, see Gov. C.A., §16.

17 For similar state law, see Gov. C.A., §11.

18 For similar state law, see Gov. C.A., §6805.

19 For similar state law, see Gov. C.A., §8.

or record is required or authorized by this Code, it shall be made in writing in the English language, unless it is expressly provided otherwise.

1.2.33. Year.<sup>20</sup> The word "year" shall mean a calendar year, except where otherwise provided.

SEC. 1.3      PROVISIONS CONSIDERED AS CONTINUATIONS OF EXISTING ORDINANCES

The provisions appearing in this Code, so far as they are the same as those of ordinances existing at the time of the effective date of this Code, shall be considered as continuations thereof and not as new enactments.

SEC. 1.4      EFFECT OF REPEAL OF ORDINANCES

The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed took effect.

The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for any offense committed under the ordinance repealed.

SEC. 1.5.      SEVERABILITY OF PARTS OF CODE

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

SEC. 1.6      TITLES

The titles at the beginning of the various sections of this Code are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be any part of the section itself, nor, unless expressly so provided, shall they be so deemed when any of such sections, including the titles, are amended or re-enacted.

**ARTICLE II PENALTIES**

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20      For state law definition of "year", see Gov. C.A., §6803. For charter provisions as to fiscal year, see Char., §4.01.

SEC. 1.7. GENERAL PENALTY; CONTINUING VIOLATIONS<sup>21</sup>

Whenever in this Code any act is prohibited or is made or declared to be unlawful or an offense, or the doing of any act is required or the failure to do any act is declared to be unlawful or a misdemeanor, where no specific penalty is provided therefore, the violation of any such provision of this Code shall be punished by a fine not exceeding one thousand dollars or imprisonment for a term not exceeding six months, or by both such fine and imprisonment.

Every day any violation of this Code shall continue shall constitute a separate offense. (Ord. No. 509 N.S., 3/89)

SEC. 1.8 IMPRISONMENT IN COUNTY JAIL<sup>22</sup>

Any person sentenced to imprisonment for the violation of this Code or other ordinances of the City shall be imprisoned in the county jail. (Ord. No. 51 N.S., §1)

SEC. 1.9 ADMINISTRATIVE PENALTIES

1.9.1 Applicability.

- a. This Section provides for administrative remedies, which shall be in addition to all other legal remedies, criminal or civil, which may be pursued by the City to address any violation of this Code.
- b. The remedies specified in this Section shall be at the sole discretion of the City.

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21 For state law authorizing cities to impose fines not exceeding five hundred dollars and imprisonment for terms not exceeding six months, or both, for violations of ordinances, see Gov. C.A., §36901. For provision declaring violation of ordinance to be a misdemeanor, see Gov. C.A., §36900.

22 For state law as to place of imprisonment and expense of imprisonment in county jail, see Gov. C.A., §36903.

1.9.2 Compliance Order.

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- a. Whenever the Director determines that a violation of any provision of this Code within the Director's responsibility is occurring or exists, the Director may issue a written notice entitled "Compliance Order" to any person responsible for violation.
  - b. A Compliance Order issued pursuant to this Section shall contain the following information:
    - 1. The date and location of the violation;
    - 2. The section of this Code violated and a description of the violation;
    - 3. The actions required to correct the violation;
    - 4. The time period after which administrative penalties will begin to accrue if compliance with the Order has not been achieved;
    - 5. Either a copy of this Chapter of the City Code or an explanation of the consequences of noncompliance with this Chapter and a description of the hearing procedure and appeal process.

1.9.3 Method of Service.

- a. All notices required by this Section shall be served personally or by certified mail.
- b. Where real property is involved, written notice shall be mailed to the property owner at the address shown on the last County assessment roll.
- c. Where personal service or service by mail upon the property owner is unsuccessful, a copy of the Order shall be conspicuously posted at the property which is the subject of the order.
- d. The failure of any person to receive any notice required under this Section shall not affect the validity of any proceedings taken under this Section.

1.9.4 Hearing.

- a. If the Director determines that all violations have been corrected within the time specified in the Compliance Order, no further action shall be taken.
- b. If full compliance is not achieved within the time specified in the Compliance Order, the Director shall advise the City Clerk to set a hearing before the City Council.
- c. The City Clerk shall cause a written notice of hearing to be served on the violator and, where real property is involved, a notice of hearing shall be served on the

property owner at the address as it appears on the last County assessment roll available on the date the notice is prepared.

1.9.5 Notice of Hearing.

- a. Every notice of hearing on a Compliance Order shall contain the date, time and place at which the hearing shall be conducted by the City Council.
- b. Each hearing shall be set for a date not less than fifteen days nor more than sixty days from the date of the notice of hearing unless the Director determines that the matter is urgent or that good cause exists for an extension of time.
- c. This hearing shall constitute full opportunity for a person subject to a Compliance Order to object to the determination that a violation has occurred and/or that the violation has continued to exist. The failure of any person subject to a Compliance Order, pursuant to this Section, to appear at the hearing shall constitute a failure to exhaust administrative remedies

1.9.6 Hearing—Findings and Order.

- a. At the place and time set forth in the notice of hearing, the City Council shall conduct a hearing on the Compliance Order issued pursuant to Section 1.9.3.
- b. The City Council shall consider any written or oral evidence consistent with its rules and procedures regarding the violation and compliance by the violator or by the real property owner.
- c. Within a reasonable time following the conclusion of the hearing, the City Council shall make findings and issue its determination regarding:
  1. The existence of the violation;
  2. The failure of the violator or owner to take required corrective action within the required time period,
- d. The City Council shall issue written findings on each violation. The findings shall be supported by evidence received at the hearing.
- e. If the City Council finds that a violation has occurred and that the violation was not corrected within the time period specified in the Compliance Order, the City Council shall issue an "Administrative Order" pursuant to Section 1.9.7.
- f. If the City Council finds that no violation has occurred or that the violation was corrected within the time period specified in the Compliance Order, the City

Council shall issue a finding as to those facts.

1.9.7 Administrative Order. If the City Council determines that a violation occurred which was not corrected within the time period specified in the Compliance Order, the City Council shall issue an Administrative Order which imposes any or all of the following:

- a. An order to correct, including a schedule for correction where appropriate;
- b. Administrative penalties as provided in Section 1.9.8;
- c. Administrative costs as provided in Section 1.9.9.

1.9.8 Administrative Penalties.

- a. The City Council may impose administrative penalties for the violation of any provision of this Code in an amount not to exceed a maximum of One Thousand Dollars (\$1,000.00) per violation, except that the total administrative penalty shall not exceed One Hundred Thousand Dollars (\$100,000.00), exclusive of administrative costs, interest and restitution for compliance reinspections, for any related series of violations.
- b. In determining the amount of the administrative penalty, the City Council may take any or all of the following factors into consideration:
  1. The duration of the violation;
  2. The frequency, recurrence and number of violations, related or unrelated, by the same violator;
  3. The seriousness of the violation;
  4. The good faith efforts of the violator to come into compliance;
  5. The economic impact of the penalty on the violator;
  6. The impact of the violation on the community;
  7. Such other factors as the Council may require.
- c. Administrative penalties imposed by the City Council shall accrue from the date of the violation specified in the Compliance Order and shall cease to accrue on the date the violation is corrected as determined by the Director or the City Council.
- d. The City Council, in its discretion, may suspend the imposition of applicable penalties for any period of time during which:
  1. The violator has filed for necessary permits; and
  2. Such permits are required to achieve compliance; and
  3. Such permit applications are actively pending before the City, State or

other appropriate governmental agency.

- e. Administrative penalties assessed by the City Council shall be due and paid by the date specified in the Administrative Order.
- f. If the violation is not corrected as specified in the City Council's order to correct, pursuant to 1.9.7(a), administrative penalties shall continue to accrue on a daily basis until the violation is corrected, subject to the maximum amount set forth in Section 1.9.8(a) above.
- g. If the violator gives written notice to the Director that the violation has been corrected and if the Director finds that compliance has been achieved, the Director shall deem the date the written notice was postmarked or personally delivered to the Director or the date of the final inspection, whichever first occurred, to be the date the violation was corrected. If no written notice is provided to the Director, the violation will be deemed corrected on the date of the final inspection.

1.9.9 Administrative Costs.

- a. The City Council shall assess administrative costs against the violator when it finds that a violation has occurred and that compliance has not been achieved within the time specified in the Compliance Order.
- b. The administrative costs may include any and all costs incurred by the City in connection with the matter including, but not limited to, costs of investigation, staffing costs incurred in preparation for the hearing and for the hearing itself, and costs for all reinspections necessary to enforce the Compliance Order.

1.9.10 Failure to Comply with Administrative Order. Failure to pay the assessed administrative penalties and administrative costs specified in the Administrative Order of the City Council may be enforced as:

- 1. A personal obligation of the violator; and/or
- 2. If the violation is in connection with real property, a lien upon the real property. The lien shall remain in effect until all of the administrative penalties, interest and administrative costs are paid in full.

1.9.11 Right of Judicial Review. Any person aggrieved by an Administrative Order of the City Council may obtain review of the Administrative Order in the Superior Court by filing with the court a Petition for Writ of Mandate.

1.9.12 Recovery of Administrative Penalties. The City may collect the assessed administrative penalties and administrative costs by use of all available legal means, including recordation of a lien pursuant to Section 1.9.15.

1.9.13 Report of Compliance After Administrative Order. If the Director determines that compliance has been achieved after a Compliance Order has been sustained by the City Council, the Director shall file a report indicating that compliance has been achieved.

1.9.14 Compliance Dispute.

- a. If the Director does not file a report pursuant to Section 1.9.13, a violator who believes that compliance has been achieved may request a compliance hearing before the City Council by filing a request for a hearing with the secretary to the City Council.
- b. The hearing shall be noticed and conducted in the same manner as a hearing on a Compliance Order provided in Sections 1.9.5 through 1.9.6 of this Section.
- c. The City Council shall determine if compliance has been achieved and, if so, when it was achieved.

1.9.15 Lien Procedure.

- a. Whenever the amount of any administrative penalty and/or administrative cost imposed by the City Council pursuant to this Section in connection with real property has not been satisfied in full within ninety days and/or has not been successfully challenged by a timely writ of mandate, this obligation shall constitute a lien against the real property on which the violation occurred.
- b. The lien provided herein shall have no force and effect until recorded with the County Recorder. Once recorded, the Administrative Order shall have the force and effect and priority of a judgment lien governed by the provisions of Section 697.340 of the Code of Civil Procedure and may be extended as provided in Sections 683.110 to 683.220, inclusive of the Code of Civil Procedure.
- c. Interest shall accrue on the principal amount of the judgment remaining unsatisfied pursuant to law.
- d. Prior to recording any such lien, the City Administrator shall prepare and file with the City Clerk a report stating the amounts due and owing.
- e. The City Clerk shall fix a time, date and place for hearing such report and any protests or objections thereto by the City Council.
- f. The City Administrator shall cause written notice to be served on the property owner not less than ten days prior to the time set for the hearing. Such notice

shall be served as provided in Section 1.9.3.

1.9.16 Public Hearing and Protests.

- a. Any person whose real property is subject to a lien pursuant to Section 1.9.15 may file a written protest with the City Clerk and/or may protest orally at the City Council meeting.
- b. Each written protest or objection must contain a description of the property in which the protesting party is interested and the grounds of such Protest or objection.
- c. The City Council, after the hearing, shall adopt a resolution confirming, discharging or modifying the amount of the lien.

1.9.17 Recording of Lien.

- a. Thirty days following the adoption of a resolution by the City Council imposing a lien, the City Clerk shall file the same as a judgment lien in the Office of the Alameda County Recorder, California. The lien may carry such additional administrative charges as set forth by resolution of the City Council.
- b. In addition to the foregoing, the City Clerk may file a certified copy of the City Council's resolution in the office of the County Treasurer-Tax Collector, whereupon it shall be the duty of the County Treasurer-Tax Collector to add the unpaid amount as a special assessment to the next regular tax bills levied against the property for municipal purposes. Thereafter the amounts shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure under foreclosure and sale in case of delinquency as provided for ordinary municipal taxes.

1.9.18 Satisfaction of the Lien. Once payment in full is received by the City for outstanding penalties and costs, the City Administrator shall either record a notice of satisfaction or provide the property owner or financial institution with a notice of satisfaction so they may record this notice with the Office of the County Recorder. Such notice of satisfaction shall cancel the City's lien. (Ord. 630 N.S. 6/02)