

Chapter 17

**REGULATIONS PRESCRIBING THE CHARACTER OF CONSTRUCTION**

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SEC. 17.1     INTENT

The City of Piedmont consists primarily of unique single family residences set among mature trees and other vegetation. The residents of Piedmont believe it to be in the welfare of all residents to preserve the beauty and architectural heritage of the City's housing stock, the mature vegetation, and the tranquility and privacy which now exist. The residents also desire to reduce on-street parking and traffic in the neighborhood streets and to avoid overcrowding and its detrimental effects on City schools and other services and facilities. The residents of Piedmont also wish to promote improvements to single family residences without sacrificing the goals already mentioned. The regulations which follow are designed to implement these purposes. (Ord. No. 516 N.S., 4/90)

SEC. 17.2     DEFINITIONS

For the purposes of this chapter, the following words and phrases shall have the meanings listed:

17.2.1:        Accessory Use. "Accessory use" means a use which is appropriate, subordinate, incidental, and customarily or necessarily related to a lawfully existing principal use on the same lot or building site and does not alter the essential characteristics of such principal use as a whole and as related to other uses permitted in the same District. (Cf. Principal Use, Use) (Ord. No. 488 N.S., 10/87)

17.2.2:        Adjacent. "Adjacent" shall refer to any lot wholly or partially contiguous with the subject property, generally including the properties on each side, the three lots most closely situated across the street from the subject property, and the three lots most closely situated at the rear of the subject property. (Ord. No. 488 N.S., 10/87, Ord. 662 N.S. 1/06)

(a)    Adjacent Affected Property. "Adjacent affected property" shall refer to any lot wholly or partially contiguous with the subject property that is physically or visually adjacent to the portion or portions of the subject property that propose one or more exterior change(s) subject to design review. (Ord. 635 N.S. 1/03)

17.2.3:        Applicant. "Applicant" is the person or entity or the representative of a person or entity who submits an application for any approval required by this chapter. An applicant need not possess legal title to the subject property, so long as the applicant has secured the written consent of the property owner and a copy of that consent is submitted with the application.

17.2.4:        Automatic Teller Machine. "Automatic Teller Machine" means a device for the primary purpose of receiving or dispensing cash, and providing other automated services related to banking. (Ord. 692 N.S 10/2010)

17.2.5:        Average. "Average" is the arithmetic mean determined by dividing the sum of the set of terms by the number of terms. For purposes of example only, the "average lot

frontage" where there are six lots with total frontage of six hundred feet would be one hundred feet. (Ord. No. 488 N.S., 10/87)

17.2.6:        Basement. "Basement" means that portion of a building between floor and ceiling which is partly or completely below grade. (Ord. No. 488 N.S., 10/87)

17.2.7:        Building "Building" means a structure for the support, shelter, or enclosure of persons, animals, or chattels, and, when separated by division walls from the ground up and without openings, then each portion of such building shall be deemed a separate building. (Ord. No. 488 N.S., 10/87)

17.2.8:        Building Height. "Building Height" means the vertical distance measured from the average level of the highest and lowest point of that portion of the ground covered by the footprint of the building to the highest point of the roof edge, penthouse, mechanical equipment, or parapet wall. "Building Height" is not measured to the highest point of a chimney or communications antenna. (Ord. No. 488 N.S., 10/87, Ord. 662 N.S. 1/06)

17.2.9:        Business or Commerce. "Business" or "Commerce" means the purchase, sale, or other transaction involving the handling or disposition of any article, substance, service, interest or commodity for profit or livelihood, or the ownership or management of office buildings, offices, recreational, or amusement enterprises. (Ord. No. 488 N.S., 10/87)

17.2.10:       Change in Actual Existing Use. "Change in Actual Existing Use" means the addition, withdrawal, or other modifications of:

- (a) the type or quality of service or product being marketed;
- (b) the time or place of delivery of such service or product;
- (c) the manner or method of delivery of such service or product;
- (d) terms of a lease; or
- (e) the number of personnel on the site,

where such addition, withdrawal, or other such modification changes the facts upon which were based the findings made by the City Council for the theretofore permitted use pursuant to Section 17.24 of the Piedmont City Code. (Ord. No. 488 N.S., 10/87)

17.2.11:       Children's Play Structure. "Children's play structure" means a structure installed in the ground which is intended for use by children at play.

17.2.12:        Church. "Church" means one or more contiguous lots used as follows:

- (a)     At least one lot contains a building used for religious services.
- (b)     The lot or lots and any buildings or other structures on the lot or lots may be used for purposes other than religious services which are reasonably related to the practice of a religion and maintenance of the property, including but not limited to religious and other education, parking, social functions, meetings, and residential quarters for person whose activities directly support such religious purposes. (Ord. No. 488 N.S., 10/87; Ord. No. 500 N.S., 7/88)

17.2.13:        Conditional Use. "Conditional Use" means a principal use for which a conditional use permit is required, to which conditions may be attached, and which may be issued or denied under the terms of this Chapter. (Ord. No. 488 N.S., 10/87) (Cf. Permitted Use, Use)

17.2.14:        Corner Lot. "Corner Lot" means a lot located at the intersection of two or more streets and with frontage on at least two of those streets. (Ord. No. 488 N.S., 10/87) (Cf. Interior Lot, Lot)

17.2.15:        Coverage. "Coverage" means the percentage of the lot area which may be covered. "Coverage" may refer either to all primary, accessory and secondary structures including the vertical projections thereof to the ground except eaves, sills, or cornices, or to hardscape surfaces, or to both, as may be specified in the context. (Ord. No. 488 N.S., 10/87, Ord. 662 N.S. 1/06)

17.2.16:        Deck. "Deck" means an expanse of wood or other material any point of the horizontal surface of which is greater than twelve inches (12") above the actual surface of the ground directly below the point of measurement. (Ord. No. 488 N.S., 10/87)

17.2.17:        Director of Public Works. Where, under the terms of this Chapter, the Director of Public Works is authorized to act on an application, "Director of Public Works" shall include the Director of Public Works' designee. (Ord. No. 488 N.S., 10/87)

17.2.18:        Drive-In. "Drive-in" means a place of business laid out and equipped so as to allow its patrons to be served or accommodated while remaining in their vehicles. (Ord. No. 488 N.S., 10/87)

17.2.19:        Drive-In Stacking. "Drive-in Stacking" means a permanently surfaced area on the same lot as the building served, available for the exclusive use of the patrons waiting in their vehicles for drive-in services. (Ord. No. 488 N.S., 10/87)

17.2.20:        Driveway. "Driveway" means an unobstructed, all-weather vehicular passage to a parking area, garage, or other structure or structures on a lot. A driveway may consist of pavement or a combination of pavement and vegetation. (Ord. No. 488 N.S., 10/87)

17.2.21:        Dwelling Unit. "Dwelling Unit" means a room or a suite of connecting rooms, which provides complete, independent living quarters for one or more persons, including permanent facilities for living, sleeping, eating, cooking and sanitation, and which complies with all building and construction code requirements. (Cf. "Multiple Family Dwelling, Single Family Dwelling") (Ord. No. 488 N.S., 10/87)

17.2.22:        Electronic Advertising and Information Device. "Electronic Advertising and Information Device" means a device or medium for communication that is internally or externally lighted, has static or moving images, sound or no sound, for the primary purpose of conveying information or advertisement for goods or services, located so as to be visible from any street, public walkway, parking lot, or other public place. Such devices include, but are not limited to, monitors and reader boards, and are subject to the provisions of Section 17.19, which regulates signs. Electronic Advertising Devices do not include Automatic Teller Machines. (Ord. 692 N.S 10/2010)

17.2.23:        Eligible for Use as a Bedroom. "Eligible for use as a bedroom" means a room with certain features characteristic of bedrooms generally, which include but are not limited to the following: access to a full bathroom on the same floor or within half a floor, if the house has a split level; access to the bedroom through a common hallway or other common space such as a kitchen, living room and/or dining room; adequate privacy; meets minimum size requirements of the Uniform Building Code. A room eligible for use as a bedroom need not have a closet. (Ord. 662 N.S. 1/06)

17.2.24:        Exterior Wall. "Exterior Wall" means any wall or element of a wall, or any member or group of members, which defines the exterior boundaries of the interior space of a building and which has a slope of sixty degrees (60E) or greater with the horizontal plane. (Ord. No. 488 N.S., 10/87)

17.2.25:        Family. See "Single Family." (Ord. No. 488 N.S., 10/87)

17.2.26:        Fast Food Restaurant. "Fast Food Restaurant" means an establishment the principal business of which is the sale of food or beverages to the customer in a ready-to-consume state for consumption either within the restaurant building, elsewhere on the restaurant premises (particularly the parking lot), or off the premises. "Fast Food Restaurant" does not include an establishment where all food served is consumed within the restaurant building, nor one such as a bakery or delicatessen, which primarily sells rather than serves food, although some food may be sold in a ready-to-consume state. (Ord. No. 488 N.S., 10/87)

17.2.27:        Fence. "Fence" means a vertical screen device used to provide privacy, visual or otherwise, or for containment. "Fence" includes but is not limited to railings, walls, and decorative elements such as lattice, trellises, and covered gates, provided that the decorative element is no wider than twenty-four inches (24") in the smallest plan dimension. A "fence" is usually but not necessarily free-standing or self-supporting. (Ord. No. 488 N.S., 10/87, Ord. 662 N.S. 1/06)

17.2.28:        Floor Area. "Floor area" of a building or buildings means the sum of the gross horizontal area of the several floors of such building, measured from the exterior faces of exterior walls or from the center line of party walls separating two buildings, and includes:

- (a) Basement space being used for habitation or having window size, ventilation, access, ceiling height, heating and electrical service which meet the requirements of the Uniform Building Code.
- (b) Elevator shafts and stairwells at each floor;
- (c) Bay windows and window seats that project beyond the exterior wall of the residence, even if the bay window or window seat does not have an average ceiling height of seven feet, six inches (7'6"); (Ord. 662 N.S. 1/06)
- (d) Accessible attic floor space that meets the Building Code definition for ceiling height for habitable spaces, and has at least some finishes typical of habitation including lights, wall and/or ceiling surfaces, flooring, and/or plumbing. Such attics that do not have direct heat will still be counted toward floor area. Attic spaces that have exposed wall framing and/or do not have permanent access, cannot be used for habitation, and do not count toward floor area. Permanent access includes built-in stairs (even if they do not meet all of the building code requirements), but does not include built-in or pull-down ladders; (Ord. 662 N.S. 1/06)
- (e) Enclosed porches and lanais; *and* (Ord. No. 488 N.S., 10/87)
- (f) High-volume spaces that exceed an average height of fifteen feet (15'), measured from finished floor to the outer roof, counted as two-stories. (Ord. 662 N.S. 1/06)

Interior spaces where window size, ventilation, access, ceiling height, heating, or electrical service is inadequate under the Uniform Building Code or is nonexistent shall not be included in this definition, but if such space is actually used for living, sleeping, eating or cooking, such space shall be included, subject to the interpretation of the Public Works Director. (Ord. No. 520 N.S., 9/90, Ord. 662 N.S. 1/06)

17.2.29:        Footprint. See "Coverage." (Ord. No. 488 N.S., 10/87)

17.2.30:        Front Lot Line. "Front Lot Line" means the lot line contiguous with the boundary of the public street identified by the mailing address established for such lot by the United States Postal Service; if there is no mailing address established for a lot or no frontage on such a public street, the following criteria shall govern:

- (a) For an interior lot, the front lot line shall be the lot line which abuts the public street.
- (b) For a corner lot, the front lot line shall be the shorter of the two lot lines abutting a street. Where both lines are equal, the front lot line shall be that lot line toward which the primary structure on the lot has its main entrance; if there is no primary

structure on the lot, then the front lot line shall be that lot line through which driveway access occurs, or if neither of these conditions occurs, the front lot line shall be determined by the lot pattern in the block in which the lot is located; if such a determination is inconclusive the front lot line shall be that which is designated as such by the Director of Public Works.

- (c) For a through lot, the front lot line shall be that lot line toward which the primary structure on the lot has its main entrance, or if there is no primary structure on the lot, then the front lot line shall be that lot line through which driveway access occurs, or if neither of these conditions occurs, the front lot line shall be determined by the lot pattern in the block in which the lot is located; if such a determination is inconclusive the front lot line shall be that which is designated as such by the Director of Public Works.
- (d) If frontage is entirely on a private street, the lot line contiguous with the boundary of the private street shall be considered the front lot line. (Ord. No. 488 N.S., 10/87)

17.2.31:        Front Yard. "Front Yard" means a yard, extending across the full width of the lot, which is measured between the front lot line and the nearest point of the structure on that lot nearest the front lot line, including all eaves, sills, cornices, or other architectural projections. The "front yard" of a corner lot is the yard abutting the front lot line. (Ord. No. 488 N.S., 10/87)

17.2.32:        Frontage. "Frontage" means the length of a boundary line of a lot contiguous with a portion of a public or private street, whether or not the entrance to any structure on that lot faces said street. The boundary line must be continuous and not interrupted. Frontage may occur along a front, side, or rear lot line. (Ord. No. 488 N.S., 10/87)

17.2.33:        Guest. "Guest" means a person who is an occasional visitor occupying a portion of the residential premises without payment or compensation. (Ord. No. 488 N.S., 10/87)

17.2.34:        Guest House. "Guest House" means a detached accessory structure that is used for habitation without payment or compensation. A Guest house may not be used as an independent dwelling or second unit. (Ord. 662 N.S. 1/06)

17.2.35:        Hardscape Surface. "Hardscape surface" means any non-landscaped surface where vegetation would not easily grow. "Hardscape surface" specifically includes, but is not limited to, all primary, accessory and secondary structures; paving materials such as concrete, asphalt, brick, stone, or gravel, or wood, including stepping stones or other similar walkways; swimming pools; and patios, decks, balconies, and terraces. "Hardscape surface" does not include building eaves, landscaping or furniture, statuary, or other individual articles used in conjunction with landscaping which individually do not cover more than ten (10) square feet and cumulatively do not cover more than one hundred (100) square feet. (Ord. 662 N.S. 1/06) (Ord. 648 N.S. 6/04)

17.2.36:        Hedge. "Hedge" means a screen or barrier made of living plants.

17.2.37:        Improvement(s) "Improvement(s)" means any building, structure, landscaping, or other alteration of the natural or existing state of land. (Ord. No. 488 N.S., 10/87)

17.2.38:        Interior Bearing Wall. "Interior Bearing Wall" means any wall meeting either of the following classifications:

- (a) Any metal or wood stud wall which supports more than one hundred (100) pounds per lineal foot of superimposed load; or
- (b) Any masonry or concrete wall which supports more than two hundred (200) pounds per lineal foot superimposed load or any such wall supporting its own weight for more than one story. (Ord. No. 488 N.S., 10/87)

17.2.39:        Interior Lot. "Interior Lot" means any lot not defined as a corner lot or a through lot. (Cf. "Corner Lot," "Lot," "Through Lot") (Ord. No. 488 N.S., 10/87)

17.2.40:        Irrigation. "Irrigation" means any system or method of artificially supplying water to landscaping, including but not limited to underground sprinkler systems, drip irrigation, and hand watering. (Ord. No. 488 N.S., 10/87)

17.2.41:        Landscaping. "Landscaping" means the planting, irrigation, and maintenance of land with living plant materials. (Ord. No. 488 N.S., 10/87)

17.2.42:        Lot. "Lot" means a parcel of land under one ownership used or capable of being used under the regulations of this chapter, and including both the building area and all required yards, parking and drive areas, and other open spaces. (Ord. 662 N.S. 1/06)

17.2.43:        Lot-line. "Lot Line" means one of the boundary lines of a lot. Where the boundary line is in a right-of-way, the lot line shall be the line defining the edge of the right-of-way inside the legally-described parcel. (Cf. "Front Lot Line," "Side Lot Line," "Rear Lot Line") (Ord. No. 488 N.S., 10/87)

17.2.44:        Mobile and Manufactured Home. "Mobile or Manufactured Home" means a single-family residence that is constructed, in whole or in part, off-site and transported to a foundation on a residential lot. (Ord. 662 N.S. 1/06)

17.2.45:        Multiple Dwelling or Multiple Residence. "Multiple dwelling" or "Multiple residence" means a residential structure containing more than one dwelling unit and designed to be occupied by more than one family independently of each other. (Cf. Dwelling Unit, Single Family Dwelling) (Ord. No. 488 N.S., 10/87)

17.2.46:        Nonconforming Use "Nonconforming Use" means a use, which was legally established, so as to be consistent with the zoning in effect at the time of its

establishment, but which does not conform to the regulations of the zone in which it is presently located. (Ord. No. 488 N.S., 10/87, Ord. 662 N.S. 1/06)

17.2.47:        Nonconforming Building. "Nonconforming Building" means a building or structure or portion thereof, which was legally established, designed and erected, or structurally altered so as to be consistent with the zoning in effect at the time of its establishment, design, erection, or alteration, but which does not conform to the regulations of the zone in which it is presently located. (Ord. No. 488 N.S., 10/87. Ord. 662 N.S. 1/06)

17.2.48:        Non-Structural Decorative Element. "Non-Structural Decorative Element" means a minor component of the design of the exterior of a structure or property which is primarily ornamental, is portable, and does not bear significant weight. Examples include but are not limited to window boxes, potted plants, shutters, plaster medallions, and portable birdbaths, portable fountains, and portable children's play equipment. (Ord. 662 N.S. 1/06)

17.2.49:        Open Space. "Open Space" means an expanse of land which is essentially unimproved except for vegetation and paved walkways. (Ord. No. 488 N.S., 10/87)

17.2.50:        Parking Space. "Parking Space" means a permanently surfaced area on the same lot as the building which it serves for the exclusive use of off-street parking of motor vehicles. (Ord. No. 488 N.S., 10/87)

17.2.51:        Permitted Use. "Permitted Use" means a principal use which is allowed as a matter of right in a particular zone, although other requirements may apply under this Code. (Cf. Conditional Use, Use) (Ord. No. 488 N.S., 10/87)

17.2.52:        Principal Use. "Principal Use" means a use permitted, excluded, conditionally allowed, or allowed to continue as a nonconforming use by these regulations, as distinguished from an auxiliary or subordinate use permitted only when accessory to another use lawfully occupying the same lot or building site. (Cf. Accessory Use, Use) (Ord. No. 488 N.S., 10/87)

17.2.53:        Private School. "Private School" means an institution of learning supported in whole or in part from private funds, providing for the education of children who do not exceed the age of nineteen. (Ord. No. 488 N.S., 10/87)

17.2.54:        Private Street. "Private Street" shall mean any street, access way, or the like, lying in whole or in part within the City subdivision for which dedication and ownership is privately held and is utilized as access to a development.

17.2.55:        Public Street. "Public Street" means a vehicular access maintained by the City and located on real property either owned by the City or subject to an easement in favor of the City, and which has been accepted as a public street by the City. (Ord. No. 488 N.S., 10/87)

17.2.56:        Public Utility. "Public Utility" means any entity defined as a public utility in § 216a of the California Public Utilities Code or any successor statute. (Ord. No. 488 N.S., 10/87)

17.2.57:        Rear Lot Line. "Rear Lot Line" is the lot line most directly opposite the front lot line. (Cf. "Front Lot Line," "Lot Line," "Side Lot Line") (Ord. No. 488 N.S., 10/87)

17.2.58:        Rear Yard. "Rear Yard" means a yard extending across the full width of the lot measured between the rear lot line and the nearest point of the structure on that lot nearest the rear lot line, including all eaves, sills, cornices, or architectural projections. (Ord. No. 488 N.S., 10/87)

17.2.59:        Retaining Wall. "Retaining Wall" means a wall the major purpose of which is to contain earth and other natural materials. (Ord. No. 488 N.S., 10/87)

17.2.60:        Rooming or Boarding House. "Rooming or Boarding House" means a residence in which lodging and board are provided for money or money's worth. A rooming or boarding house is not a single family residence. (Ord. No. 516 N.S., 4/90, Ord. 662 N.S. 1/06)

17.2.61:        Servant. "Servant" means a person performing domestic services upon the premises on which he or she resides, who may receive reasonable monetary compensation for such services in addition to the value of room and board. (Ord. No. 488 N.S., 10/87)

17.2.62:        Servants' Quarters "Servants' Quarters" means living accommodations provided for servants. (Ord. No. 488 N.S., 10/87)

17.2.63:        Setback. "Setback" means the minimum zone requirement for front, side, and rear yards. (Ord. No. 488 N.S., 10/87)

17.2.64:        Side Lot Line. "Side Lot Line" means any lot line which is not defined as a front lot line or rear lot line. (Cf. "Front Lot Line," "Lot Line," "Rear Lot Line") (Ord. No. 488 N.S., 10/87)

17.2.65:        Side Yard. "Side Yard" means a yard extending the full length of the lot measured between the side lot line and the nearest point of the structure on that lot nearest the side lot line, including all eaves, sills, cornices, or architectural projections. (Ord. No. 488 N.S., 10/87)

17.2.66:        Single Family. "Single Family" means a group of people living together as a single housekeeping unit and occupying one dwelling unit, together with their guests and servants. "Single Family" also means a group of people who collectively share the common living facilities such as the kitchen, living room and dining room. (Ord. No. 488 N.S., 10/87, Ord. 662 N.S. 1/06) (Cf. Multiple Family)

17.2.67:        Single Family Dwelling or Single Family Residence "Single Family Dwelling" or Single Family Residence" means a residential structure containing one and only one Dwelling Unit. (Cf. Multiple-Family Dwelling) (Ord. No. 488 N.S., 10/87)

17.2.68:        Street. "Street " means a public or private vehicular roadway, alley or similar passageway, not including passageways that are exclusively pedestrian. (Ord. 662 N.S. 1/06)

17.2.69:        Street Side Yard. "Street Side Yard" means a side yard which abuts a street. (Cf. Front Yard, Rear Yard, Side Yard, Yard) (Ord. No. 488 N.S., 10/87)

17.2.70:        Structural Change. "Structural Change" means any physical change in either an exterior wall, an interior bearing wall, a floor or a roof. (Ord. No. 488 N.S., 10/87)

17.2.71:        Structure, Accessory. "Accessory Structure" means a detached subordinate, single-story structure or building on a lot, the use of which is appropriate, incidental to, and customarily or necessarily related to the zone and to the principal use of the lot or to that of a main building on the lot. "Accessory Structure" includes but is not limited to a private garage or carport containing space for no more than four automobiles, servants' quarters, swimming pools, pool houses, garden sheds, and guest houses, as defined in this Section, and Second Dwelling Units approved in accordance with Chapter 17D. (Ord. No. 488 N.S., 10/87, Ord. 662 N.S. 1/06)

17.2.72:        Structure, Primary. "Primary Structure" means the building on a lot in which the principal use is conducted. In a residential zone, the "Primary Structure" is considered to be the main residence and includes anything that is twelve inches (12") or higher above existing or proposed grade, constructed or erected on or in the ground, or attached to something on the ground, including but not limited to buildings, decks, balconies, bay windows, cantilevered upper level projections, building eaves, and in-ground and above-ground swimming pools. A "primary structure" does not include accessory structures, secondary structures, underground facilities, or accessory buildings used as tool and storage sheds, playhouses and similar uses in accordance with Section 5.2.2 of the Piedmont Building Code, driveways, sidewalks, on-grade improvements, patios, parking spaces, fences, hand rails and retaining walls, temporary handicap structures and non-structural decorative elements. (Cf. Accessory Structure) (Ord. No. 488 N.S., 10/87; Ord. No. 547 N.S., 9/93; Ord. No. 579 N.S., 9/96, Ord. 648 N.S. 6/04, Ord. 662 N.S. 1/06)

17.2.73:        Structure, Secondary. "Secondary Structure" means a subordinate physical element that is twelve inches (12") or higher above existing or proposed grade, constructed or erected on or in the ground, or attached to something on the ground, which is intended to functionally or decoratively enhance a property. Secondary structures do not include structures that are used for habitation or the storage of vehicles, but are primarily used for recreation, decoration or are a utility feature. Secondary Structures include but are not limited to built-in fountains, ponds or other water features, barbeques and outdoor fireplaces, hot tubs and spas, children's play structures, dish antennas, arbors, trellises, gazebos, planter boxes, built-in outdoor furniture, and freestanding utility equipment such as backflow preventers, air conditioners and electrical boxes. (Ord. 662 N.S. 1/06)

17.2.74:        Temporary Handicap Feature. “Temporary Handicap Feature” means a temporary element that is located on a structure or site to accommodate special needs of handicapped or disabled persons for a period of up to one year. Such features include but are not limited to wheel chair ramps, special railings, walkways, and stair-climber chairs. Temporary Handicap features are not considered to be primary, accessory or secondary structures. (Ord. 662 N.S. 1/06)

17.2.75:        Trellis. A permanent decorative form with components which may be vertical, horizontal, or both, made of latticework or other materials which may or may not be intended to support vegetation.

17.2.76:        Through Lot. "Through Lot" means a lot, both the front lot line and rear lot line of which have frontage on a street. (Cf. "Corner Lot," "Interior Lot," "Lot") (Ord. No. 488 N.S., 10/87)

17.2.77:        Underground Facility. “Underground facility” means a basement area used as non-habitable space such as, but not limited to, a garage, fallout shelter, wine cellar, or storage, and including all related footings, waterproofing and drainage systems. Underground facilities are not considered to be structures if they are completely below-grade or no more than twelve inches (12”) above existing grade, but are considered to be hardscape surfaces, even if covered with landscaping. (Ord. 662 N.S. 1/06)

17.2.78:        Use. "Use" means the purpose for which a parcel or improvement is designed, arranged, or intended, or for which it is or may be occupied or maintained. (Cf. Accessory Use, Conditional Use, Permitted Use, Principal Use) (Ord. No. 488 N.S., 10/87)

17.2.79:        View. “View” means an existing significant view involving more than the immediately surrounding properties, including, but not limited to, any of the following: city skylines, bridges, distant cities, geologic features, hillside terrains and wooded canyons or ridges. (Ord. 656 N.S. 8/05)

17.2.80:        Yard. See "Front Yard," "Rear Yard," "Setback," "Side Yard." (Ord. 488 N.S., 10/87; Ord 656 N.S. 8/05)

## SEC. 17.3        ESTABLISHMENT OF ZONES

17.3.1: Purpose. It is the purpose of this Chapter to provide for specified zones and uses therein and to prescribe the character of construction within the City, in accordance with the City Charter. The zoning system of the City consists of two parts:

- (a) The City Charter, which contains the zoning policy and requirements for voter approval of zone classification changes.
- (b) Chapter 17 of the City Code. (Ord. No. 488 N.S., 10/87)

17.3.2: Intent, Establishment of Zones. In order to (1) maintain the City of Piedmont as primarily a single-family residential city, (2) to designate, regulate, and restrict the location and use of all buildings and land, (3) to promote the public interest, health, comfort, economy and convenience, and (4) to preserve the public peace, safety, morals, order, and the public welfare, the City of Piedmont is divided into five zones as follows:

- Zone A Single Family Residential Zone
- Zone B Public Facilities Zone
- Zone C Multiple Density Residential Zones
- Zone D Commercial Zone
- Zone E Single Family Residential Estate Zone

Within each of these zones, certain uses of land and buildings are allowed as permitted or conditional uses, and certain other uses of land and buildings are restricted or prohibited as set forth in this Chapter and elsewhere in this Code. Within each of these zones, other regulations regarding prescriptive standards as set forth in this Chapter and elsewhere in this Code may apply. (Ord. No. 488 N.S., 10/87)

#### SEC. 17.4 ZONING MAP

The zones referred to in Section 17.3.2 above are hereby established and described upon the Zoning Map of the City of Piedmont (hereinafter referred to as "Zoning Map"). The Zoning Map shall show by boundaries and designation the boundaries and classifications have been established by this Code and the Charter, and any amendments thereto. The City Clerk shall maintain the official copy of the Zoning Map. (Ord. No. 516 N.S., 5/90)

#### SEC. 17.5 ZONE A--USES

17.5.1: Intent. Zone A is established to regulate and control development in appropriate areas of single-family residential development in harmony with the character of existing and proposed development in the neighborhood and to assure the provision of light, air, privacy, and the maintenance of usable open space in amounts appropriate to the specific types and numbers of dwellings permitted. (Ord. No. 488 N.S., 10/87)

17.5.2: Permitted Uses. The following principal uses are allowed as permitted uses in Zone A: Single-family residences on a minimum lot size of 10,000 square feet, together with accessory structures located on the same lot or parcel of land, subject to the provisions of the City Charter, this, and other sections of the City Code. (Ord. No. 488 N.S., 10/87)

17.5.3: Conditional Uses The following principal uses are allowed as conditional uses in Zone A: Church or private school previously existing as a conforming or nonconforming use, and a new private or public school associated with an existing church, subject to the provisions of the City Charter, this chapter and other sections of the City Code. (Ord. No. 488 N.S., 10/87, Ord. 662 N.S. 1/06)

#### SEC. 17.6 ZONE B--USES

17.6.1: Intent. Zone B is established to regulate and control development of public facilities which are compatible with the character of existing and proposed surrounding uses. (Ord. No. 488 N.S., 10/87)

17.6.2: Permitted Uses. The following principal uses are allowed as permitted uses in Zone B:

Single-family residences on a minimum lot size of 10,000 square feet, together with accessory structures located on the same lot or parcel of land, subject to the provisions of the City Charter, this, and other sections of the City Code.

City Building, Veterans' Building, or other public agency building, and accessory structures located on the same lot of parcel, for use by governmental entities or other nonprofit entities as allowed by the City.

Park.

Cemetery, public utility. (Ord. No. 488 N.S., 10/87)

17.6.3: Conditional Uses. The following principal uses are allowed as conditional uses in Zone B:

Church or private school, subject to the provisions of the City Charter, this, and other sections of the City Code. (Ord. No. 488 N.S., 10/87)

Temporary Emergency Shelter or Transitional Housing. (Ord. 662 N.S. 1/06)

## SEC. 17.7 ZONE C--USES

17.7.1: Intent. Zone C is established to regulate and control development in appropriate areas of multiple residential units at densities in harmony with the character of existing and proposed development in the neighborhood, and to assure the provision of light, air, privacy, and the maintenance of usable open space in amounts appropriate to the specific types and numbers of dwellings permitted. (Ord. No. 488 N.S., 10/87)

17.7.2: Permitted Uses. The following principal uses are allowed as permitted uses in Zone C:

Single-family residences on a minimum lot size of 10,000 square feet, together with accessory structures located on the same lot or parcel of land, subject to the provisions of the City Charter, this, and other sections of the City Code. (Ord. No. 488 N.S., 10/87)

Multi-family residences with up to seven (7) dwelling units, at a density not to exceed one dwelling unit per each 2,000 square feet of lot area, subject to the provisions of the City Charter, this, and other sections of the City Code, except that a density bonus in

accordance with State law may be granted by the Planning Commission when affordable housing is provided. (Ord. 662 N.S. 1/06)

17.7.3: Conditional Uses. The following principal uses are allowed as conditional uses in Zone C:

Church or private school, subject to the provisions of the City Charter, this, and other sections of the City Code.

Multi-family residences with eight (8) or more dwelling units at a density not to exceed one dwelling unit per each 2,000 square feet of lot area, subject to the provisions of the City Charter, this, and other sections of the City Code, except that a density bonus in accordance with State law may be granted by the Planning Commission when affordable housing is provided. (Ord. No. 488 N.S., 10/87, Ord. 662 N.S. 1/06)

## SEC. 17.8    ZONE D--USES

17.8.1: Intent. Zone D is established to regulate and control commercial development in appropriate areas of the City, which will serve the residents of the City, consistent and in harmony with the character of existing and proposed development in the neighborhood and adjacent residential areas. Commercial uses which will serve the residents of the City are those uses which residents would be expected to use on a regular basis. They do not include uses which would be expected to draw the major portion of their clientele from outside the City of Piedmont and the surrounding area. (Ord. No. 488 N.S., 10/87)

17.8.2: Permitted Uses. The following principal uses are allowed as permitted uses in Zone D:

Single-family residences on a minimum lot size of 10,000 square feet, together with accessory structures located on the same lot or parcel of land, subject to the provisions of the City Charter, this, and other sections of the City Code. (Ord. No. 488 N.S., 10/87)

17.8.3: Conditional Uses. The following principal uses are allowed as conditional uses in Zone D:

Church or private school, subject to the provisions of the City Charter, this, and other sections of the City Code.

Retail, office, and service commercial uses of a type which will primarily serve City residents, as provided by City Council resolution from time to time.

Any structural change or change in actual existing use in any commercial building. (Ord. No. 488 N.S., 10/87)

17.8.4: Prohibited Uses. The following principal uses are prohibited uses in Zone D:

Any manufacturing, wholesaling, distributing, or industrial use.

Motor vehicle sales or service, except minor servicing.

Hotel or motel.

Fast food restaurant. (Ord. No. 488 N.S., 10/87)

## SEC. 17.9    ZONE E--USES

17.9.1 Intent: Zone E is established to regulate and control development in appropriate areas of a single family residential development in harmony with the character of existing development in the neighborhood, and to assure the provision of light, air, privacy, and the maintenance of usable open space in amounts appropriate to the specific types and numbers of dwellings permitted.

17.9.2 Permitted Uses: The following principal uses are allowed as permitted uses in Zone E:

Single family residences on a minimum lot size of 20,000 square feet, together with accessory structures located on the same lot or parcel of land, subject to the provisions of the City Charter, this, and other sections of the City Code.

17.9.3 Conditional Uses: The following principal uses are allowed as conditional uses in Zone E:

Church or private school, previously existing as a conforming or nonconforming use, subject to the provisions of the City Charter, this chapter and other sections of the City Code. (Ord. No. 488 N.S., 10/87)

## SEC. 17.10 ZONE A--REGULATIONS

17.10.1: General. Within Zone A the following regulations shall apply: (Ord. No. 488 N.S., 10/87)

17.10.2: Lot Area. Each lot shall have a minimum area of ten thousand (10,000) square feet. (Ord. No. 488 N.S., 10/87)

17.10.3: Lot Frontage. Each lot shall have a minimum of ninety feet (90') frontage on a public or private street. (Ord. No. 488 N.S., 10/87)

17.10.4: Lot Coverage. No more than forty percent (40%) of the total lot area shall be covered by primary, accessory or secondary structures, except that in-ground swimming pools that are not supported by a structure or retaining wall, temporary handicap structures, and building eaves shall not be counted toward the 40%; no more than seventy percent (70%) shall be covered by hardscape surfaces, except permitted temporary handicap features. (Ord. No. 488 N.S., 10/87, Ord. 648 N.S. 6/04, Ord. 662 N.S. 1/06)

17.10.5: Building Height. No structure shall exceed thirty-five feet (35') in height. (Ord. No. 488 N.S., 10/87)

17.10.6: Front Yard. For Primary Structures and Accessory Structures the front yard setback shall be a minimum of twenty feet (20'). Secondary Structures of any height proposed in the front yard setback of a lot shall be subject to Planning Commission Design Review. (Ord. No. 488 N.S. Ord. 662 N.S. 1/06)

17.10.7: Side Yard. For Primary Structures and Accessory Structures, the side yard setback shall be a minimum of four feet (4'), except that it shall be a minimum of twenty feet (20') for the street side yard setback of a corner lot. Secondary Structures that are seven feet (7') high or less, may be located within the four foot side yard setback subject to Staff Design Review. Secondary structures that are greater than seven feet (7') high may be located within the

four foot side yard setback subject to Planning Commission Design Review. Secondary Structures of any height may be located in the twenty foot (20') street side yard setback of a corner lot, subject to Planning Commission Design Review. (Ord. No. 488 N.S., 10/87, Ord. 662 N.S. 1/06)

17.10.8:        Rear Yard. For Primary Structures and Accessory Structures, the rear yard setback shall be a minimum of four feet (4'), except that it shall be a minimum of twenty feet (20') at the rear yard of a lot with rear street frontage. Secondary Structures that are seven feet (7') high or less, may be located within the four foot rear yard setback subject to Staff Design Review. Secondary structures that are greater than seven feet (7') high may be located within the four foot rear yard setback subject to Planning Commission Design Review. Secondary Structures of any height may be located in the twenty foot (20') rear yard setback of a lot with rear street frontage, subject to Planning Commission Design Review. (Ord. No. 488 N.S., 10/87, Ord. 662 N.S. 1/06)

#### SEC. 17.11 ZONE B--REGULATIONS

17.11.1:        General. Within Zone B, the following regulations shall apply for nonresidential uses: (Ord. No. 488 N.S., 10/87)

17.11.2:        Lot Area. There shall be no minimum lot area. (Ord. No. 488 N.S., 10/87)

17.11.3:        Lot Frontage. There shall be no minimum lot frontage. (Ord. No. 488 N.S., 10/87)

17.11.4:        Lot Coverage. There shall be no maximum lot coverage. (Ord. No. 488 N.S., 10/87)

17.11.5:        Building Height. No structure shall exceed thirty-five feet (35') in height. (Ord. No. 488 N.S., 10/87)

17.11.6:        Front Yard. The front yard shall be a minimum of twenty feet (20'). (Ord. No. 488 N.S., 10/87)

17.11.7:        Side Yard. The side yard shall be a minimum of twenty feet (20'). (Ord. No. 488 N.S., 10/87)

17.11.8:        Rear Yard. The rear yard shall be a minimum of twenty feet (20'). (Ord. No. 488 N.S., 10/87)

17.11.9:        Single Family Residential Uses. Single family residential use of a lot in Zone B shall be subject to the regulations of Zone A. (Ord. No. 488 N.S., 10/87)

17.11.10 Green Building and Bay-Friendly Landscaping Regulations for City Facilities. City owned and/or operated Permitted Use facilities in Zone B shall be subject to the following regulations:

(a) Definitions. As used in this section, the following words and definitions shall have the meanings listed:

- (i) Bay-Friendly Landscaping Guidelines. “Bay-Friendly Landscaping Guidelines” means the most recent version of guidelines developed by StopWaste.Org for use in the professional design, construction and maintenance of Landscapes.
- (ii) Bay-Friendly Landscaping Scorecard. “Bay-Friendly Landscaping Scorecard” means the most recent version of the Bay-Friendly Landscaping points system developed by StopWaste.Org.
- (iii) Building. "Building" shall have the same meaning as defined in section 17.2 of this code.
- (iv) City Project. "City Project" means any new construction or Renovation of a Building or Landscape owned or occupied by a City Department or Agency.
- (v) Covered Project. “Covered Project” means (1) all new Building or Renovation projects that equal or exceed \$3 million in construction costs; and are either owned or occupied by a City Department or Agency or developed as a Public-Private Partnership; and (2) all new Landscaping projects or Renovations of Landscapes that equal or exceed \$100,000 in construction costs and are either owned or occupied by a City Department or Agency or developed as a Public-Private Partnership.
- (vi) Green Building and Bay-Friendly Landscaping Compliance Official. "Green Building and Bay-Friendly Landscaping Compliance Official" means the Director of Public Works or his or her designee.
- (vii) GreenPoint Rated. “GreenPoint Rated” means the most recent version of the residential green building rating program developed by Build It Green.
- (viii) Initiated. “Initiated” means officially identified and substantially funded to offset the costs associated with the project.
- (ix) Landscape. “Landscape” means the parcel area less the building pad and includes all planted areas and hardscape surfaces (i.e. driveway, parking, paths and other paved areas).

- (x) LEED™ Rating System. "LEED™ Rating System" means the most recent version of the Leadership in Energy and Environmental Design (LEED™) Green Building Rating System approved by the United States Green Building Council.
  - (xi) LEED™ Accredited Professional. "LEED™ Accredited Professional" means an individual who has passed the LEED™ accreditation exam administered by the US Green Building Council.
  - (xii) Public-Private Partnership. "Public-Private Partnership" means any project built on city-owned land, primarily funded by the City, or built under a Disposition and Development Agreement with the City.
  - (xiii) Renovation. "Renovation" means any change, addition, or modification to an existing Building Structure or Landscape, including, but not limited to, tenant improvements.
  - (xiv) Structure. "Structure" shall have the same meaning as defined in section 17.2 of this code.
  - (xv) Traditional Public Works Project. "Traditional Public Works Project" means heavy construction projects including but not limited to such items as pump stations, flood control improvements, roads, and bridges, as well as traffic lights, sidewalks, bike paths, bus stops, and associated infrastructure on City owned and maintained property.
- (b) Regulations and Standards for Compliance
- (i) At all times, City staff shall maintain the most recent version of the Bay-Friendly Landscape Guidelines; the Bay-Friendly Landscaping Scorecard; the GreenPoint checklists and Residential Green Building Guidelines for New Home Construction, Remodeling, and Multifamily Building; and the LEED™ Rating System.
  - (ii) LEED™ Rating and GreenPoint Score. All Covered Projects Initiated on or after the effective date of this Ordinance, shall meet either: a minimum LEED™ Certified rating and be so certified by the US Green Building Council or a minimum GreenPoint Rated score of 50 and be so verified by Build It Green. All Covered Projects shall also have a LEED™-Accredited Professional or a Certified Green Building Professional as a principal member of the design team from the beginning of the project.

- (iii) Bay-Friendly Landscape Scorecard Points. All Covered Projects with landscapes Initiated on or after the effective date of this Ordinance shall meet the most recent minimum Bay Friendly Landscape Scorecard points as recommended by StopWaste.Org or its designee.
- (iv) Practicable Effort and Documentation. For the purposes of reducing operating and maintenance costs in all City facilities and Public-Private Partnership facilities, Covered Projects that do not meet the threshold that triggers compliance with the requirements of this ordinance and that have Building construction costs greater than \$200,000 or Landscape construction costs greater than \$10,000 are required to meet as many LEED credits, or GreenPoint Rated measures and as many Bay-Friendly Landscaping Scorecard points as practicable and are required to complete and submit to the City’s Green Building and Bay-Friendly Landscaping Compliance Official the LEED or GreenPoint checklist and the Bay-Friendly Landscaping scorecard as a way of documenting the green building and Bay-Friendly Landscaping practices that have been incorporated into the project.
- (v) Project Specifications in Bids. In developing project specifications for use in building “Traditional Public Works Projects,” the Public Works Department shall consider including in those specifications green building, Bay-Friendly landscape and environmentally sound practices whenever practicable.

(c) Unusual Circumstances. Compliance with the provisions of this Article may be waived in unusual circumstances where the City Council has, by resolution, found and determined that the public interest would not be served by complying with such provisions. (Ord. 680 NS 08/08, Ord. 687 NS 05/09)

SEC. 17.12 ZONE C--REGULATIONS

17.12.1: General. Within Zone C, the following regulations shall apply to multiple residential uses: (Ord. No. 488 N.S., 10/87)

17.12.2: Lot Area. Each lot shall have a minimum area of ten thousand (10,000) square feet. (Ord. No. 488 N.S., 10/87)

17.12.3: Lot Frontage. Each lot shall have a minimum of ninety feet (90') frontage on a public or private street. (Ord. No. 488 N.S., 10/87)

17.12.4: Lot Coverage. No more than forty percent (40%) of the total lot area shall be covered by primary, accessory or secondary structures, except that in-ground swimming pools that are not supported by a structure or retaining wall, temporary handicap structures and building eaves shall not be counted toward the 40%; no more than seventy percent (70%) shall be covered by hardscape surfaces, except permitted temporary handicap features. For projects

that provide affordable units as defined by the California Department of Housing and Community Development Department, for at least 20% of the total units, the lot coverage by structures as defined above shall be increased to fifty percent (50%) and the lot coverage by hardscape surfaces as defined above shall be increased to eighty percent (80%). (Ord. No. 488 N.S., 10/87, Ord. 662 N.S. 1/06)

17.12.5:        Building Height. No structure shall exceed thirty-five feet (35') in height. (Ord. No. 488 N.S., 10/87)

17.12.6:        Front Yard. For Primary Structures and Accessory Structures the front yard setback shall be a minimum of twenty feet (20'). Secondary structures of any height proposed in the front yard setback of a lot shall be subject to Planning Commission Design Review. (Ord. No. 488 N.S., 10/87, Ord. 662 N.S. 1/06)

17.12.7:        Side Yard. For Primary Structures and Accessory Structures, the side yard setback shall be a minimum of four feet (4'), except that it shall be a minimum of twenty feet (20') for the street side yard setback of a corner lot. Secondary Structures that are seven feet (7') high or less, may be located within the four foot side yard setback subject to Staff Design Review. Secondary structures that are greater than seven feet (7') high ~~or less~~ may be located within the four foot side yard setback subject to Planning Commission Design Review. Secondary Structures of any height may be located in the twenty foot (20') street side yard setback of a corner lot, subject to Planning Commission Design Review. (Ord. No. 488 N.S., 10/87, Ord. 662 N.S. 1/06)

17.12.8:        Rear Yard. For Primary Structures and Accessory Structures, the rear yard setback shall be a minimum of four feet (4'), except that it shall be a minimum of twenty feet (20') at the rear yard setback of a lot with rear street frontage. Secondary Structures that are seven feet (7') high or less, may be located within the four foot rear yard setback subject to Staff Design Review. Secondary structures that are greater than seven feet (7') high ~~or less~~ may be located within the four foot rear yard setback subject to Planning Commission Design Review. Secondary Structures of any height may be located in the twenty foot (20') rear yard setback of a lot with rear street frontage, subject to Planning Commission Design Review. (Ord. No. 488 N.S., 10/87, Ord. 662 N.S. 1/06)

17.12.9:        Single Family Residential Uses. Single family residential use of a lot in Zone C shall be subject to the regulations of Zone A. (Ord. No. 488 N.S., 10/87)

#### SEC. 17.13 ZONE D--REGULATIONS

17.13.1:        General. Within Zone D, the following regulations shall apply to nonresidential uses: (Ord. No. 488 N.S., 10/87)

17.13.2:        Lot Area. There shall be no minimum lot area. (Ord. No. 488 N.S., 10/87)

17.13.3:        Lot Frontage. There shall be no minimum lot frontage. (Ord. No. 488 N.S., 10/87)

17.13.4:        Lot Coverage. There shall be a maximum lot coverage of fifty percent (50%) of the total lot area for a one-story building and twenty-five percent (25%) of the total lot area for a two-story building. No more than eighty percent (80%) of the total lot area shall be covered by hardscape surfaces. (Ord. No. 488 N.S., 10/87, Ord. 662 N.S. 1/06)

17.13.5:        Building Height. No structure shall exceed thirty-five feet (35') in height. (Ord. No. 488 N.S., 10/87)

17.13.6:        Front Yard. There shall be no front yard requirement, except in the case of lots adjacent to Zone A, in which case the minimum front yard shall be one-half (1/2) that required for lots in Zone A. (Ord. No. 488 N.S., 10/87)

17.13.7:        Side Yard. There shall be no side yard requirement, except in the case of lots adjacent to Zone A, in which case the minimum side yard shall be the same as that required for lots in Zone A. (Ord. No. 488 N.S., 10/87)

17.13.8:        Rear Yard. There shall be no rear yard requirement, except in the case of lots adjacent to Zone A, in which case the minimum rear yard shall be the same as that required for the lots in Zone A. (Ord. No. 488 N.S., 10/87)

17.13.9:        Drive-In Stacking. In the case of a facility offering drive-in services, drive-in stacking shall be six times the drive-in service capacity. This shall be in addition to the parking required by the floor area of the building. (Ord. No. 488 N.S., 10/87)

17.13.10:       Single Family Residential Uses. Single family residential use of a lot in Zone D shall be subject to the regulations of Zone A. (Ord. No. 488 N.S., 10/87)

#### SEC. 17.14 ZONE E--REGULATIONS

17.14.1:        General: Within Zone E the following regulations shall apply:

17.14.2:        Lot Area: Each lot shall have a minimum area of twenty thousand (20,000) square feet.

17.14.3:        Lot Frontage: Each lot shall have a minimum area of one hundred twenty feet (120') frontage on a public or private street.

17.14.4:        Lot Coverage: No more than forty percent (40%) of the total lot area shall be covered by primary, accessory or secondary structures, except that in-ground swimming pools that are not supported by a structure or retaining wall, temporary handicap structures, and building eaves shall not be counted toward the 40%; no more than sixty percent (60%) shall be covered by hardscape surfaces, except permitted temporary handicap features. (Ord. 648 N.S. 6/04, Ord. 662 N.S. 1/06)

17.14.5:        Building Height: No structure shall exceed thirty-five feet (35') in height.

17.14.6:        Front Yard. For Primary Structures, the front yard setback shall be a minimum of twenty feet (20'). (Ord. 662 N.S. 1/06)

17.14.7:        Side Yard: For Primary Structures, the side yard setback shall be a minimum of twenty feet (20'). (Ord. 662 N.S. 1/06)

17.14.8:        Rear Yard: For Primary Structures, the rear yard setback shall be a minimum of twenty feet (20'). (Ord. 662 N.S. 1/06)

17.14.9:        Accessory and Secondary Structures: Detached Accessory Structures that are single story may be located no less than four feet (4') from the side or rear lot line, and no less than twenty feet (20') from the front lot line, street side lot line or rear lot line of a through lot. Secondary Structures that are seven feet (7') high or less, may be located within the four foot side or rear yard setbacks subject to Staff Design Review. Secondary structures that are greater than seven feet (7') high may be located within the four foot rear or side yard setbacks subject to Planning Commission Design Review. Secondary Structures of any height may be located in the twenty foot (20') front yard setback or street side yard setback of a corner lot or through lot, subject to Planning Commission Design Review. (Ord. No. 488 N.S., 10/87, Ord. 662 N.S. 1/06)

17.14.10:       Attached Garage/Carport Structures: Single story garages or carports that are no higher than fifteen feet (15') and attached to a primary structure, may be located no less than four feet (4') from the side or rear lot line, and no less than twenty feet (20') from the front lot line, street side lot line or rear lot line of a through lot, not including any portion of a primary structure. (Ord. 662 N.S. 1/06)

## SEC. 17.15    ON-SITE IMPROVEMENTS

17.15.1:        General On-site improvements not covered by this Chapter shall be subject to the requirements of Chapter 19 of this Code and the Uniform Building Code as amended by the City Council, Section 5.2 of this Code. (Ord. No. 488 N.S., 10/87)

## SEC. 17.16    PARKING REQUIREMENTS

17.16.1:        Single Family Residential Zone. There shall be a minimum of one off-street covered non-tandem parking space per dwelling unit in Zone A and Zone E for each dwelling unit which is 700 square feet or less. Otherwise, there shall be a minimum of two off-street covered non-tandem parking spaces per dwelling unit in Zone A and Zone E. If the number of rooms eligible for use as a bedroom exceeds four, the minimum number of conforming parking spaces per dwelling unit shall be as follows: a third conforming parking space shall be required for the fifth such room and another conforming parking space for every two of such rooms in excess of five. Each parking space must be located outside the front setback area and off any street, public or private. More than two off-street parking spaces shall be required for a lot where necessary under the circumstances to ensure adequate traffic

circulation, on-street parking space and public safety. Parking is considered to be conforming when it meets the criteria of this section 17.16. The design of additional required parking spaces shall comply with the requirements of this section 17.16.

When approvals under this chapter or any other chapter of the Piedmont City Code are sought for an improvement or change which will affect the need for parking, including but not limited to an increase in the number of rooms eligible as a bedroom, the requirements of this section shall apply to existing parking on the site which is nonconforming under section 17.32. (Ord. No. 516 N.S., 5/90, Ord. No. 550 N.S., 12/93, Ord. 662 N.S. 1/06)

17.16.2: Multiple Residential Zone. There shall be a minimum of two covered non-tandem parking spaces per dwelling unit on the lot in Zone C, each of which must be located outside the front setback area. (Ord. No. 48 N.S., 10/87; Ord. No. 516 N.S., 5/90)

17.16.3: Commercial Zone. In Zone D, there shall be one non-tandem parking space for each one hundred fifty (150) square feet of floor area or fraction thereof for eating places and similar high intensity on-premise customer uses, or as required by the conditional use permit authorizing the use. There shall be one non-tandem parking space for each two hundred fifty (250) square feet of floor area or fraction thereof for retail stores, offices, and other low intensity uses, or as required by the conditional use permit authorizing the use. (Ord. No. 488 N.S., 10/87; Ord. No. 516 N.S., 5/90)

17.16.4: Public Facilities Zone. There shall be a minimum of one non-tandem parking space per each two hundred fifty (250) square feet of floor area of the main building on the lot in Zone B. (Ord. No. 488 N.S., 10/87)

17.16.5: Location of Parking Spaces. Parking for permitted uses in any zone shall be provided on the same lot as the permitted use. Parking for conditional uses in any zone shall be provided as required by the conditional use permit authorizing the use. (Ord. No. 488 N.S., 10/87)

17.16.6: Size and Specifications of Parking Spaces. Except as otherwise provided, any parking space required by this section 17.16 shall be not less than nine feet (9') by twenty feet (20') in size and shall have unrestricted access to a public right-of-way, which access shall have a grade not in excess of twenty percent (20%). Parking spaces for compact cars shall be not less than seven and one-half (7-1/2) by sixteen feet (16'). In Zones B, C and D, one of every four required parking spaces may be for a compact car. (Ord. No. 488 N.S., 10/87)

17.16.7: Reduction of Existing Parking Prohibited. No existing off-street parking space, whether or not it complies with the requirements of this section 17.16, shall be altered or eliminated unless prior to alteration or destruction it is determined by the Director of Public Works that such existing off-street parking space is unusable or that such parking space is to be restored or replaced with a parking space which meets the requirements of this section 17.16 or is permitted by reason of an approved variance. For purposes of making this determination, the term "unusable" shall mean that such parking facility is not large enough to harbor a compact-sized automobile or that the driveway to such parking facility is so steep, narrow or otherwise

designed as to preclude the safe passage of such motor vehicles and that enlargement to permit such safe passage would result in severe economic hardship.

No garage or other off-street parking facility shall have fabric floor coverings or in any other manner be altered for any use other than parking. (Ord. No. 516 N.S., 4/90)

#### SEC. 17.17 FENCES, WALLS, AND RETAINING WALLS

17.17.1: General Rules. Except as otherwise provided in this Code, fences, walls, retaining walls, and hedges shall be subject to this section as follows:

- (a) Retaining Walls: Any retaining wall, with or without a guardrail as may be required by the Building Code, shall comply with the following:
  - (i) Any Location, Thirty Inches High or Less: If the retaining wall has a maximum height of thirty inches (30”) or less, measured from existing or proposed grade, it is exempt from design review.
  - (ii) Street Setbacks – More than Thirty Inches High: If the retaining wall exceeds thirty inches (30”) in height, measured from existing or proposed grade, and is located within a front yard setback, a street side yard setback, or a rear yard setback of a through lot, it shall require design review by the Planning Commission under section 17.20 of this Code prior to construction; and
  - (iii) Other Areas – More than Thirty Inches High: If the retaining wall exceeds thirty inches (30”) in height but is no greater than eight feet (8’) in height, measured from existing or proposed grade, and is located outside of a street setback, it shall require administrative design review under Section 17.20.5 (b) (ix) of this Code prior to construction. If the retaining wall exceeds eight feet (8’) in height, measured from existing or proposed grade, and is located outside of a street setback, it shall require staff design review under Section 17.20.7 of this Code prior to construction.
- (b) Fences and Walls: Any fence, wall that is not retaining existing grade, or any combination of a fence and wall or fence and retaining wall shall comply with the following:
  - (i) Street Setbacks: If it is located within a front yard setback, a street side yard setback, or a rear yard setback of a through lot, no matter how high, it shall require design review by the Planning Commission under section 17.20 of this Code prior to construction;
  - (ii) Other Areas – Six Feet or Less: If it is six feet (6’) in height or less, measured from existing or proposed grade, it is exempt from design review;

- (iii) Other Areas - Six to Eight Feet: If it exceeds six feet (6') but is no greater than eight feet (8') in height, measured from existing or proposed grade, it shall comply with the administrative design review criteria of 17.20.5 (b) (ix) of this Code prior to construction; and
  - (iv) Other Areas – More than Eight Feet (8'+ High): If it exceeds eight feet (8') in height, measured from existing or proposed grade, it shall require staff design review under section 17.20.7 of this Code prior to construction. (Ord. 635 N.S. 1/03, Ord. 648 N.S. 6/04, Ord. 662 N.S. 1/06)
- (c) Trash Enclosures: Any solid fence, wall, or combination of a fence and wall at least 4' in height and up to 6' in height; open fence up to 6' in height in combination with dense evergreen landscaping at least 4' in height at maturity and up to any height; or dense, evergreen landscaping at least 4' in height at maturity and up to any height shall be constructed in compliance with the following:
- (i) Non-Street Setback Areas: Trash enclosures in compliance with this section may be permitted in any non-street setback area without the need for a building permit or design review.
  - (ii) Street Setbacks: Any Trash Enclosure used exclusively for the purpose of screening trash, recycling and green waste carts from public view that is located within a front yard setback, a street side yard setback, or a rear yard setback of a through lot, shall require staff review and approval at the Planning Counter in compliance with the provisions of this Chapter and the Trash/Recycling/Green Waste Cart Enclosure Policy, except that staff may refer any application to the Planning Commission for review. The enclosure shall be:
    - a) located as far away from the street as possible;
    - b) as small as is necessary to enclose the carts;
    - c) as low in height as necessary to adequately screen the carts; and
    - d) designed in compliance with Category 5 of the Residential Design Guidelines

Two years from the date of its adoption, this section 17.17.1 (c) (ii) shall be reviewed by the City Council who will determine if it shall expire or be extended for a further term.  
(Ord. 682 N.S. 9/08)

17.17.2: Terracing. If a series of one or more retaining walls and fences on a single slope is designed so that no single wall or fence exceeds the limits set forth in section 17.17.1 above, and at least two feet of soil exists between each vertical element, design review under section 17.17.1 will not be required, even if the total height of the combined vertical elements

exceeds the height limitations set forth in section 17.17.1; provided that adequate landscaping and drainage is installed and maintained.

17.17.3: Corner Obstructions. No fence, hedge, retaining wall, or vegetation shall be erected or grown in the front or street side yard of a corner lot to a height of more than three feet (3'), within the triangular area formed by measuring thirty feet (30') along the front and side property lines along the right-of-way from their "extended" intersection and connecting these two points, or as otherwise may be approved by the Planning Commission. (Ord. 662 N.S. 1/06)

17.17.4: Height Measurement The heights referred to in this section shall be measured from whichever of the following is lower:

- (a) the finished grade surface of the ground; or
- (b) the natural surface of the ground. The surface of the ground for measurement purposes shall be determined by the specific plane of the proposed fence.

#### SEC. 17.18 LANDSCAPING

17.18.1: Intent. In order to maintain and enhance the residential character, preserve the architectural heritage, and protect the natural beauty and visual character of the City, and to improve property values and prevent blighted areas, landscaping and irrigation commensurate with the use of property shall be required where appropriate. (Ord. No. 488 N.S., 10/87)

17.18.2: Landscape Plans. An application for a conditional use permit, design review or variance for a completely new residence or other building shall include landscape plans. All other applications for building permits, conditional use permits, design review, or variances for improvements which substantially affect existing vegetation shall include landscape plans upon the request of the Director of Public Works, Planning Commission or City Council. Plans shall set forth clearly the areas and types of landscaping to be placed upon and already located upon the property in question, and their relation to the structure or structures requiring the approval or permit. Landscaping must conform to guidelines which the City Council may adopt from time to time. All landscaping shall be completed to the satisfaction of the Director of Public Works. A cash deposit or letter of credit to ensure completion of the landscaping may be required by the Director of Public Works, the Planning Commission and the City Council as a condition to approval of any project described in this section, to be released to the homeowner in increments proportionate to the progress of landscape completion. Final approval of a project may be withheld until landscaping is completed. (Ord. No. 488 N.S., 10/87, Ord. 662 N.S. 1/06)

17.18.3: Approval. The individual or decision-making body making the required determination on the accompanying application shall determine whether the proposed landscaping submitted under this section is consistent with the general objectives and the criteria and standards of review as set forth in this section, and shall approve or disapprove the plan accordingly. That individual or body may modify the design and attach conditions as appropriate to the approval of the landscaping of any project subject to this section in order to

assure compliance with this section. Such conditions may include installation of an irrigation system.

17.18.4:        Location. The required landscaping shall have a minimum dimension on any side of not less than three feet (3'). The following minimum areas for landscaping shall be required:

- (a) Lots devoted to residential occupancies shall have not less than fifteen percent (15%) of the site devoted to landscaping. With the exception of areas paved for ingress and egress, all required street setbacks shall be landscaped.
- (b) Lots devoted primarily to commercial or public occupancies shall have not less than twenty percent (20%) of the site devoted to landscaping. No less than seventy-five percent (75%) of the required landscaping shall be provided in the area of the site next to the street frontage; the remaining twenty-five percent (25%) may be placed elsewhere on the site. With the exception of areas paved for ingress and egress, all required street setbacks shall be landscaped.
- (c) Lots devoted to parking shall have fifteen percent (15%) of the site area devoted to landscaping. Such landscaped areas shall be distributed along not less than ninety percent (90%) of the street frontage of the site not required for driveways. Such landscaping shall be a type which shall achieve a height of at least four feet (4') for the purpose of providing a screen to the parking area and an attractive facade to the public street and abutting property. (Ord. No. 488 N.S., 10/87)

17.18.5:        Maintenance. All landscaped areas required herein or required as a condition of approval of any use shall be planted with living materials. All such areas shall be maintained in a healthy and attractive state, with irrigation, weeding, and replacement as needed. The decision maker may, as a condition of approval of any landscaping, require execution of a contract for the maintenance of any or all landscaping on a building site. (Ord. No. 488 N.S., 10/87)

17.18.6:        Application Fees. The fee for approval of a landscape plan shall be included in the fee for the accompanying application as provided in section 17.29. (Ord. No. 488 N.S., 10/87)

17.18.7:        Action. Action on a landscape plan shall be taken at the same time and in the same manner as that required for approval of the accompanying application. (Ord. No. 488 N.S., 10/87)

17.18.8:        Appeals. Any disapproval of landscape plans by the Director of Public Works may be appealed to the Planning Commission; any disapproval of landscape plans by the Planning Commission may be appealed to the City Council, as provided in section 17.25. (Ord. No. 488 N.S., 10/87)

## SEC. 17.19 SIGNS

17.19.1: Residential Property. No person may display, erect, hang or suspend, or cause to be displayed, erected, hung or suspended, any sign on property used for residential purposes except for one sign no larger than four square feet. For the purposes of this section, "property used for residential purposes" shall include the lot on which the residence is located and any contiguous unimproved property.

17.19.2: Non-Residential Property. No person may display, hang, erect, hang or suspend, or cause to be displayed, erected, hung or suspended, any sign on private property used for non-residential purposes which is visible from a public right of way or from any area accessible by the public unless design review approval of the Planning Commission after a noticed hearing pursuant to this Code has been obtained for all signs on the property, including those affixed to windows, or located inside a window in such a manner as to be visible from a sidewalk, parking lot, street or other public place. The Planning Commission shall not approve the design of signage on private non-residential property unless the sign conforms to each of the following criteria:

- (a) A maximum of one sign not required by law is permitted on the face of the building, unless the Planning Commission determines that one or more additional signs are needed for the convenience of the public.
- (b) Each sign, including a sign required by law, shall be simple in design. Graphic depictions related to the non-residential use are appropriate.
- (c) Each sign, including a sign required by law, shall be compatible in design, color and scale to the front of the building, adjoining structures and general surroundings.
- (d) A sign shall be oriented toward the pedestrian and vehicular traffic.
- (e) A sign shall be constructed of sturdy materials. (Ord. 692 N.S 10/2010)

17.19.3: Illuminated Signs. An illuminated sign, whether externally or internally illuminated, shall be turned off when the premises are not open to the public. (Ord. 692 N.S 10/2010)

17.19.4: Public Property. No person may display, erect, hang or suspend, or cause to be displayed, erected, hung or suspended, any sign on public property, including, but not limited to, streets, sidewalks, flights of stairs, pathways, lanes, and alleys, except as provided in this section 17.19.4. No person shall paint, mark, or write on, or post or otherwise affix any handbill or sign to or upon any sidewalk, crosswalk, curb, curbstone, street lamp post, hydrant, tree, shrub, tree stake, or guard, public utility structure, or wire system, street sign, traffic sign, traffic signal, wall, fence or other structure located on public property.

- (a) Sidewalks. Temporary self-supporting two-sided signs no larger than four square feet on a side (excluding the frame) may be placed on City sidewalks on Sundays

from 12 noon to 5 p.m., so long as no such sign impedes pedestrian traffic or otherwise constitutes a safety hazard.

- (b) Piedmont Park. Temporary self-supporting two-sided signs no larger than four square feet on a side (excluding the frame) which are related to a contemporaneous event in the Piedmont Park may be placed in and around the Piedmont Park for a period not to exceed 24 hours, so long as no such sign impedes pedestrian or vehicular traffic otherwise constitutes a safety hazard. (Ord. 692 N.S 10/2010)
- (c) Other Public Property. Signs may be placed on the Exedra and other public property from time to time for a limited period to broadcast information of general interest to the citizens of Piedmont and to identify the location of community events, after obtaining a sign permit from the Director of Public Works. It is the intent of the City Council that such signs constitute extensions of the City Hall bulletin board; the City retains the right to limit the content of such signs to non-partisan matters of general community interest and to exclude all signs of any nature on such property from time to time. The City Council wished to limit the use of such spaces to general community purposes in order to avoid the appearance of favoritism and in order to avoid imposing on a captive audience.

17.19.5: Non-Conforming Uses Permanently-located signs unlawfully existing on May 7, 1997, shall be permitted without conforming to this section 17.19, except that if any such sign is altered, partially demolished or reconstructed, the provisions of this section 17.19 shall apply. Normal repairs, replacement and maintenance which do not change the location or appearance of the sign are permitted without requiring conformity.

17.19.6      Violations.

- (a) Public Property. Any sign posted or otherwise placed on any public property contrary to the provisions of section 17.19.4 shall be removed by the Police Department or the Department of Public Works. The person responsible for any such illegal signs shall be liable for the cost incurred in the removal of the sign, and the City is authorized to collect the cost.
- (b) Non-Public Property. Any sign posted or otherwise placed on property that is not public property contrary to the provisions of 17.19.1 and 17.19.2 shall be removed by the property owner no later than fifteen days after notice of the violation is given by the City, except that if an application for design review approval is submitted under section 17.19.2, removal shall not be required unless and until a final decision disapproving the design has been made. If legal proceedings are required to enforce the provisions of section 17.19 on residential property, the property owner shall be liable for all cost incurred as a result of the enforcement action, including attorneys' fees.

17.19.7      Definition of "Sign". For purposes of this section 17.19, the word "sign" shall mean one or more visual figures, including but not limited to words, letters and numbers,

other writings, designs, pictures and illustrations, or any combination of those, which are erected, placed on, fixed to, painted or represented on or above a building or structure, sidewalk, street or other way, on the ground or any part of a building or structure, or in any other manner so as to be visible to the public. The word "sign" shall include but is not limited to banners, pennants, insignia, bulletin boards, ground signs, billboards, posters, murals, electronic advertising and information devices, illuminated signs and marquees. The word "sign" shall exclude signs placed by a public entity, such as street signs, place signs, traffic signals and other safety signs, as well as inconspicuous signs posted at the entrances of private homes to discourage peddlers and other unwanted contacts.

17.19.8: Audible Signs. Any sign that has mechanically generated noise associated with it, shall have a maximum decibel level emanating from the sign of 0 decibels measured at all property lines, and such sign shall be turned off when the premises are not open to the public. (Ord. 692 N.S 10/2010)

17.19.9 Variance Prohibited. No variance from the provisions of this section 17.19 shall be permitted. (Ord. No. 266 N.S., 11/66; Ord. No. 352 N.S., 9/77; Ord. No. 488 N.S., 10/87; Ord. No. 588 N.S., 4/97)

17.19.10 Temporary Political Campaign Signs. Notwithstanding any other provision of Section 17.19, temporary political campaign signs shall be permitted on private property in connection with any scheduled election, provided that such signs are removed from the private property no later than ten (10) days after the date of such election. (Ord. 663 N.S., 2/2006)

## SEC. 17.20 DESIGN REVIEW

17.20.1: Intent. Design Review is intended to

- (a) promote orderly, attractive, safe and harmonious development;
- (b) recognize environmental limitations on development;
- (c) promote the general welfare by preventing development having qualities which do not meet the specific intent clauses or performance standards of this Chapter, or which are not properly related to their sites, surroundings, traffic circulation, or their environmental setting;
- (d) maintain and enhance the residential character of the City;
- (e) preserve the architectural heritage of the City;
- (f) protect the natural beauty and visual character by insuring that structures, signs, and other improvements are properly related to their own site and to the surrounding sites and structures with due regard to the aesthetic qualities of the surrounding

area, natural terrain, and landscaping, and to the exterior appearance of the structures, signs, and other improvements;

- (g) improve property values and prevent blighted areas; and
- (h) uphold the aesthetic values of the community.

Where necessary to meet this intent, the City may impose conditions in addition to those otherwise specified in this Chapter. (Ord. No. 488 N.S., 10/87)

17.20.2: Scope. Except as otherwise provided in this Chapter, the design of all (1) improvements requiring variances, conditional use permits, or building permits and demolition permits; (2) satellite dishes; (3) children's play structures located so as to be visible from the street; (4) secondary structures that are ~~no~~ greater than seven feet (7') in height, measured from existing or proposed grade, located within a side or rear yard setback and secondary structures of any height within a front yard setback, street side yard setback of a corner or through lot; and (5) fences, walls, retaining walls and hedges in accordance with Section 17.17.1 (a) (ii) and 17.17.1 (b) (i), shall be subject to review and action by the Planning Commission prior to issuance of a building permit. The design of an application associated with a subdivision application pursuant to Chapter 19 is subject to review and action by the City Council, and the Planning Commission shall be advisory to the City Council. No demolition permit shall be issued under Chapter 5 unless approval of plans required by Chapter 17 for a replacement structure or other site improvements in place of the structure to be demolished and a building permit under Chapter 5 have been obtained. (Ord. No. 488 N.S., 10/87; Ord. No.587 N.S., 3/97; Ord. 658 N.S. 8/05, Ord. 662 N.S. 1/06)

17.20.3: Applications. A written application for each design review shall be filed with the Director of Public Works. The application shall be accompanied by copies of plans showing the site plan, location of existing buildings, the parking and driveway plans, and exterior elevations, or as required on the Application Submittal Checklist which may be amended from time to time. Where appropriate, any required plans may be waived, or additional information such as "story poles" may be required at any time by the Director of Public Works, the Planning Commission, or the City Council to clarify information in the application. Within 30 days of application submittal, an application will be reviewed for completeness, and the applicant will be notified in writing if the application is not complete. Processing of the application will not begin until all required information has been submitted. (Ord. No. 488 N.S., 10/87, Ord. 648 N.S. 6/04, Ord. 662 N.S. 1/06)

17.20.4: Exceptions: Scope of Review.

- (a) Exceptions Listed. The following shall be excepted from the requirements of this section 17.20:
  - (i) Unless otherwise regulated by this City Code, interior remodeling of existing buildings where the use of the property, number of rooms eligible

for use as a bedroom, and exterior form of the building is unchanged;  
(Ord. No. 579 N.S., 9/96, Ord. 648 N.S. 6/04)

- (ii) Fences that are no greater than six feet (6') in height, not located in a front or street-side setback of a corner or through lot, and retaining walls retaining existing grade, that are less than thirty inches (30");  
(Ord. 648 N.S. 6/04, Ord. 662 N.S. 1/06)
- (iii) On-grade or below-grade improvements, including but not limited to, walkways, patios and decks under 12 inches in height, irrigation lines and drainage works, unless a variance for hardscape surface coverage is required, or unless the improvement is a patio in the front yard setback, or a new or enlarged driveway or parking pad anywhere on the lot.  
(Ord. No. 565 N.S., 5/95; Ord. No. 579 N.S., 9/96, Ord. 648 N.S. 6/04, Ord. 662 N.S. 1/06)
- (iv) Normal repairs, replacement and maintenance of existing construction, so long as there is no change in the materials, design and size of the feature being repaired or replaced; (Ord. No. 562 N.S., 3/95; Ord. No. 579 N.S., 9/96, Ord. 648 N.S. 6/04)
- (v) Minor construction related changes to previously approved plans which are architecturally compatible with approved new construction and existing construction, so long as the prior written approval of all affected neighbors has been obtained by the property owner and provided to the City Planner. (Ord. No. 562 N.S., 3/95)
- (vi) A satellite dish less than one meter in diameter. (Ord. No. 562 N.S., 3/95; Ord. 594 N.S. 11/17/97)
- (vii) A change in roof material, provided that the new roof material is not a light or reflective color or surface for the following changes:
  - 1. Existing sloped roofs with wood shingles, wood shakes, tar and gravel or other granular material to composition shingles, or cap sheet to tar and gravel, provided that all sloped roofs for the entire house and detached structures are proposed to change. (Ord. 662 N.S. 1/06)
  - 2. Existing flat roofs with any material to tar and gravel, or other similar material such as modified bitumen with a granular surface, provided that exposed seams are covered with a granular surface. (Ord. 648 N.S. 6/04)
- (viii) New or relocated electrical panels that are no greater than 200 amps, gas meters or alarm boxes, provided that they are not located on the front wall,

street-facing side wall, or area of a side wall containing the front door; and such meters, boxes, panels, exposed lines, and exposed conduit are painted to match the structure color. (Ord. 648 N.S. 6/04)

- (ix) The complete demolition and/or removal of (a.) outdoor features including fences, secondary structures, pools, decks, patios, awnings, greenhouses, storage sheds, solar panels and equipment, and exterior lighting not required by the Piedmont Building Code; (b.) non-original decorative architectural elements such as shutters and flower boxes; and (c.) exterior architectural elements including chimneys, skylights, vents, chases, stacks, and conduit, provided that the area is patched and painted to match the adjacent wall, eave, or roof material. (Ord. 648 N.S. 6/04, Ord. 662 N.S. 1/06)
- (x) The installation of downward-directed low voltage path lights and stair lights, and downward-directed wall lights required by the Piedmont Building Code of a maximum 60 watts, that have an opaque shade that completely covers the light bulb. (Ord. 648 N.S. 6/04)
- (xi) The construction of mailboxes and non-structural decorative elements such as flower boxes, house numbers and mail-slots. (Ord. 648 N.S. 6/04)
- (xii) New or relocated non-structural portable barbeques, bird baths and fountains that do not require electricity, gas or plumbing. (Ord. 648 N.S. 6/04)
- (xiii) New or relocated copper gutters and downspouts and other wood or metal gutters and downspouts that are painted to match the existing structure or trim color. (Ord. 648 N.S. 6/04, Ord. 662 N.S. 1/06)
- (xiv) New or relocated low-profile flues, vents and spark arrestors that are mounted on the wall or roof, not including wall-mounted plumbing lines or stacks, that have no exterior fans or blowers, provided that the vents/flues/spark arrestors project less than 12 inches and are painted to match the adjacent wall, roof or chimney color. Roof-mounted attic or ridge vents may be covered in the matching roof material in lieu of painting. (Ord. 648 N.S. 6/04, Ord. 662 N.S. 1/06)
- (xv) New or relocated crawl space access doors that are not full height, and pet doors, not located on the front wall of a house that are painted to match the house color. (Ord. 648 N.S. 6/04, Ord. 662 N.S. 1/06)
- (xvi) The replacement of existing “bubble” skylights with flat-profile skylights, provided that there is no change in size or location. (Ord. 648 N.S. 6/04, Ord. 662 N.S. 1/06)
- (xvii) New or replacement flooring material on decks, balconies, patios, stairs,

and entry porches and stairs, provided that the entire surface is replaced. (Ord. 648 N.S. 6/04, Ord. 662 N.S. 1/06)

- (xviii) New or modified non-reflective roof-mounted solar panel, such as photovoltaic roof tiles, that project less than 12 inches (12”) from the roof surface, provided that they are not located on any street-facing roof slope, or are located behind a parapet on a flat roof, and are not visible from any street or roadway. (Ord. 662 N.S. 1/06)
  - (xix) Trash Enclosures in compliance with the provisions of this Chapter, and the Trash/Recycling/Green Waste Cart Enclosure Policy. (Ord. 682 N.S. 9/08)
  - (xx) Modifications to prior approvals that otherwise are not regulated by this Chapter, subject to the approval of the Director of Public Works.
- (b) Fees. Except when there is no change whatsoever in design, a review fee shall be collected for improvements described in sections 17.20.4(a), along with a building permit fee. The amount of the review fee shall be determined by the City Council from time to time. (Ord. No. 579 N.S., 9/96, Ord. 635 N.S. 1/03)

17.20.5: Administrative Design Review Approval. A project subject to design review under Section 17.20.2 shall nevertheless be approved, approved with conditions, or denied without notice and hearing by the Director of Public Works if the Director of Public Works finds that the change in design is so insubstantial that there is no foreseeable effect on the public welfare, and the project is one of the listed projects below. Findings shall be made for each of the three standards of Section 17.20.9 to approve the design of a project under this Section 17.20.5. Any applicant may appeal any action of the Director of Public Works as provided in Section 17.25. (Ord. 615 N.S. 3/00; Ord. 635 N.S. 1/03)

- (a) Projects Not Requiring Adjacent Neighbor Sign-Off. The following projects may be approved without neighborhood notification or appeal, provided the project meets each of the three standards of Section 17.20.9(a) and is found to be in compliance with the criteria in the Residential Design Review Guidelines and approved city policies. At the discretion of the Director of Public Works, such application pursuant to this section may be deferred to the Staff Design Review process under 17.20.7:
- (i) The removal of a window or door, or the reduction in size of a window or door within the existing opening, provided that the wall is patched and painted to match the surrounding wall; (Ord. 648 N.S. 6/04, Ord. 662 N.S. 1/06)
  - (ii) New chimney tie-downs, seismic bracing, and caps, provided that such bracings and caps are painted to match the structure walls, chimney or roof color; (Ord. 648 N.S. 6/04)

- (iii) New or relocated gas meters, alarm boxes, and electrical panels that are no greater than 200 amps, proposed on the front wall, street-facing side wall, or area of a side wall containing a front door, provided they are painted to match the structure color; (Ord. 648 N.S. 6/04)
  - (iv) New or modified handrails on existing stairs and handrails on new or renovated on-grade stairs; (Ord. 648 N.S. 6/04)
  - (v) Changes to deck or stair railings to meet the current California Building Code, such as adding stiles to meet the minimum spacing requirement or increasing the height to meet the required minimum height, provided that there is no significant change in materials or design; (Ord. 648 N.S. 6/04)
  - (vi) The replacement of an existing feature not involving a change in size or location, such as a window, door, and garage door replacement, and the installation of a new garage door for a garage that does not currently have one; and (Ord. 662 N.S. 1/06)
  - (vii) Temporary handicap features such as wheelchair ramps, to accommodate handicapped and disabled residents for a period of up to one year. (Ord. 662 N.S. 1/06)
  - (viii) Other very minor changes to a structure subject to the approval of the Director of Public Works, provided that the change is very minor or is minor and not permanent. (Ord. 648 N.S. 6/04)
  - (ix) Modifications to prior approvals for projects that are eligible for Administrative Design Review without neighbor sign-off. (Ord. 662 N.S. 1/06)
- (b) Projects Requiring Adjacent Neighbor Sign-Off. The following projects may be approved without neighborhood notification or appeal, provided that prior written approval of the property owners of all adjacent affected properties has been obtained by the applicant and submitted as part of the application, and provided that the project meets each of the three standards of Section 17.20.9(a) and is found to be in compliance with the criteria in the Residential Design Review Guidelines and approved city policies. If the applicant is not able to obtain adjacent affected property owner sign-off, or at the discretion of the Director of Public Works, such application pursuant to this section shall be ineligible for Administrative Design Review, and shall instead be subject to the provisions of the Staff Design Review process under 17.20.7:
- (i) Minor design revisions to previously approved staff or Planning Commission design review applications including minor window changes (size, location, design); minor door changes (such as sliding to French); landscape material changes; the elimination of a feature previously approved (such as a window or exterior light fixture); the retention of an

existing feature that was previously proposed to be removed (such as a window or exterior light fixture), provided that the change is limited to a feature or aspect of the prior approval, and provided that there is no increase in structure coverage, hardscape surface coverage, or floor area ratio; (Ord. 648 N.S. 6/04, Ord. 662 N.S. 1/06)

- (ii) Chimney extensions and minor chimney modifications not involving significant design or materials changes to meet the requirements of the California Building Code; (Ord. 648 N.S. 6/04)
- (iii) Landscape lighting not otherwise regulated by this chapter, including up-lights, entry lights and wall or fence-mounted lights, and any other exterior lighting (Ord. 648 N.S. 6/04)
- (iv) New, relocated or enlarged driveways and parking pads. (Ord. 648 N.S. 6/04)
- (v) Storage structures not located in required setbacks or otherwise exempt from a building permit pursuant to Section 5.2.2 of the City Code. (Ord. 635 N.S. 1/03)
- (vi) Minor modifications to existing decks, such as a new railing or stair design, not involving a change in deck size; (Ord. 648 N.S. 6/04)
- (vii) New flat-profile skylights that project less than 12 inches provided that they are not located on any street-facing roof slope, or are located behind a parapet on a flat roof, and are not visible from any street or roadway; and (Ord. 648 N.S. 6/04, Ord. 662 N.S. 1/06)
- (viii) New or modified solar panels not otherwise regulated by this Chapter; (Ord. 662 N.S. 1/06)
- (ix) New or relocated walls, fences or a combination of wall and fence greater than six feet (6') in height but no more than eight feet (8') in height, provided that the wall or fence are not located within the front yard setback, street side yard setback or rear yard setback of a through lot. (Ord. 648 N.S. 6/04, Ord. 662 N.S. 1/06)
- (x) New or modified roof-mounted solar panels that are reflective but project less than 12 inches (12") from the roof surface, provided that they are not located on any street-facing roof slope, or are located behind a parapet on a flat roof, and are not visible from any street or roadway. (Ord. 662 N.S. 1/06)
- (xi) Other very minor changes to a structure subject to the approval of the Director of Public Works, provided that the change is very minor, or is minor and not permanent. (Ord. 648 N.S. 6/04, Ord. 662 N.S. 1/06)

17.20.6: Special Exception.

- (a) Intent. In certain situations, a proposed improvement will reduce, but not eliminate, an existing nonconformity. In such situations where the legislative goals of design review will be better served by such a change, despite the continuation of the nonconformity, it is appropriate to evaluate the proposed project by the standards of design review under Section 17.20 rather than the standards applicable to a request for a variance under Section 17.21.
- (b) Requirement. If a proposed improvement of an existing structure would be subject only to design review, except that a feature of the property improvement requires a variance under Section 17.21, the project may be approved without the need for a variance under the standards of Section 17.20.9(a) if the extent of the nonconformity is reduced. (Ord. 615 N.S. 3/20/00)

17.20.7: Staff Design Review. The design of an improvement may be approved, modified or rejected or referred to the Planning Commission by the Director of Public Works if the project is valued by the Director of Public Works at less than seventy-five thousand dollars (\$75,000.00) and the Director of Public Works determines that the project is not eligible for Administrative Design Review pursuant to Sections 17.20.5 (a) and (b), and determines that the project:

- (a) involves no substantial change in building shape or exterior materials;
- (b) is not an application submitted in compliance with Section 17.20.5, and is not a new Staff Design Review application submitted prior to the issuance of a final inspection by the Building Official for one or more other Staff Design Review application(s) under construction at the same property when the total combined construction costs of all the Staff Design Review application(s) under construction and the new application do not exceed seventy-five thousand dollars (\$75,000);
- (c) is not specifically subject to Planning Commission design review by other section of this Code;
- (d) does not require a variance; and
- (e) does not adversely affect public safety and convenience.

For all other improvements, the Director of Public Works shall determine whether an application falls under either any of these subsections and, where it is found that the dollar amount may not reflect the objectives set out in section 17.21.1, and where it is found that the scope of the project is more appropriately approved by the Planning Commission, may in his or her discretion refer any such application to the Planning Commission for its decision. Any action of the Director of Public Works under this subsection may be appealed as provided in

section 17.25. (Ord. No. 488 N.S., 10/87; Ord. No. 562 N.S., 3/95; Ord. 597 N.S. 5/98; Ord. 615 N.S. 3/20/00, Ord. 647 N.S. 6/04)

17.20.8:        Approval. The Planning Commission, or when so authorized by this section, the Director of Public Works or the City Council, shall determine whether the proposed design submitted under this section is consistent with the general objectives and the criteria and standards of review set forth in this section and shall approve or disapprove the application accordingly. The Planning Commission (or Director of Public Works or City Council) may modify the design and attach conditions reasonably related to the intent of this section and to other sections of the City Code as appropriate to the approval of the design of any project subject to design review in order to assure compliance with this section. (Ord. 488 N.S., 10/87; Ord. 658 N.S. 8/05)

17.20.9:        CRITERIA AND STANDARDS. The City Council, Planning Commission or Director of Public Works shall not approve any projects subject to design review unless the design of the project conforms to all of the following criteria and standards;

- (a) Projects generally subject to design review pursuant to Section 17.20.2.
  - (i) The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. These elements include but are not limited to: height, bulk, area openings, breaks in the façade, line and pitch of the roof, materials, arrangements of structures on the parcel, and concealment of mechanical and electrical equipment;
  - (ii) The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect light; and
  - (iii) The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress.
- (b) Upper level additions (new upper levels or expansions) and new multi-level structures or expansions.
  - (i) The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. These elements include but are not limited to: height, bulk, area openings, breaks in the façade, line and pitch of the roof, materials, arrangements of structures on the parcel, and concealment of mechanical and electrical equipment. The distance between the proposed upper level addition/expansion or new multi-level structure and adjacent residences is reasonable and appropriate due to the existing topography and neighborhood development pattern. Upper level setbacks greater than the

setbacks required for the lower level have been considered and are/are not necessary to reduce losses of ambient and reflected light;

- (ii) The proposed upper level addition/expansion or new multi-level structure/expansion has been designed in a way that reasonably minimizes view and light impacts on neighboring properties (as defined in Section 17.2.77), including consideration of the location of the new construction, lowering the height of the addition, expansions within the existing building envelope (with or without excavation), lower level excavation for new multi-level structures, and/or changing the roof slope or ridge direction;
- (iii) The size and height of the addition is commensurate with the size of the lot (excluding the portions of the lot that cannot reasonably be built on), and is in keeping with the existing neighborhood development pattern; and
- (iv) The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress. In accordance with Sections 17.16.1 and 17.22.1, the existing or proposed on-site parking is/is not appropriate to the size of the new upper level or new multi-level structure or addition, and additional parking is/is not required to prevent unreasonable short and/or long term parking impacts on the neighborhood.

It is the intent of subsection 17.20.9 (b) to ensure the careful evaluation of every upper level and/or multi-level structure application in terms of its very site-specific conditions and neighboring context. It is intended to guide the review of these applications and lead to fair and consistent decisions. Upper level expansions and new multi-level structures have the potential to create adverse impacts on adjacent residences, and it is the intent of this subsection to require affirmative findings that the project will not have a significant impact on adjacent residences and the general neighborhood using several different standards of review.

The City Council has adopted illustrated Design Review Guidelines for residential projects, which may be amended from time to time by the City Council, subject to prior review and recommendation by the Planning Commission. The Residential Design Review Guidelines shall be made available by the City to persons proposing residential projects subject to design review. The Residential Design Review Guidelines are not mandatory requirements but shall be a source of reference for the Planning Commission in determining whether a specific project conforms to the standards and criteria set forth in section 17.20.7. The Design Review criteria for condominiums is provided in the City Subdivision Manual (Ord. 494 N.S., 6/88; Ord. 656 N.S. 8/05; Ord. 658 N.S. 8/05; Ord. 660 N.S. 9/05)

17.20.10: Application Fees. Each application for design review shall be accompanied by a fee in an amount to be set by the City Council as provided in section 17.29. (Ord. No. 488 N.S., 10/87)

17.20.11:     Hearings. When action by the Planning Commission is required, a hearing upon the application shall be scheduled and noticed as provided in sections 17.27 *and* 17.28. (Ord. No. 488 N.S., 10/87, Ord. 662 N.S. 1/06)

17.20.12:     Withdrawals. An applicant may request to withdraw an application at any time during the review process prior to the final decision by filling out the Request for Withdrawal form. If an application has been submitted and determined to be incomplete in writing, and the applicant has not provided the required application materials to complete the application within one year from the date the application was determined incomplete, the application shall be considered withdrawn. The City will send the applicant or current property owner a letter stating that the application has been determined to be withdrawn. (Ord. 662 N.S. 1/06)

SEC. 17.21    VARIANCES

17.21.1:        Intent. The provisions of Chapter 17 regulating the construction of improvements in the City of Piedmont are designed to provide safe, attractive homes and other buildings, preserve open space among residences, prevent traffic and safety hazards, provide substantial amounts of light, air, and reasonable privacy for all residents, prevent overcrowded conditions, and maintain and enhance the overall beauty and tranquility of the city. Variances from these regulations shall not be granted except when the particular property to be improved varies in some unique physical way from other properties in the same zone and, because of these physical differences, applying the regulations of Chapter 17 would effectively prohibit the use of the property in a manner similar to the use of other properties in the same zone. This standard of hardship relates to the property, not the personal or economic circumstances of the applicant. No variance shall be granted for reasons which are personal to the applicant and unrelated to the uniqueness of the property. Variances must be granted only when the general welfare of the city as a whole is not adversely affected. (Ord. No. 516 N.S., 4/90)

17.21.2:        General. The Planning Commission may approve variances from the provisions of this Chapter, except that fences, retaining walls, and secondary structures shall not require variances, regardless of height or location, nor shall secondary structures regardless of location. When an application associated with a subdivision application pursuant to Chapter 19 requires a variance, the City Council shall be the decision-making body on the variance, and the Planning Commission shall be advisory to the City Council. (Ord. 488 N.S., 10/87; Ord. 658 N.S., 8/05, Ord. 662 N.S. 1/06)

17.21.3:        Application. A written application for each variance shall be filed with the Director of Public Works on a form to be provided by the Director of Public Works. The application shall set forth reasons for and evidence in support of the request. The application shall be accompanied by copies of plans showing the plot plan, location of existing buildings on the lot, the location of the proposed building including accurate dimensions, the parking and driveway plans, and elevations. Where appropriate, any required plans may be waived, or additional information may be required at any time by the Director of Public Works, the Planning Commission, or City Council. The Planning Commission or City Council may require that a survey be submitted at the applicant's expense. (Ord. 488 N.S., 10/87)

17.21.4:        Application Fees. Each application for a variance shall be accompanied by an initial filing fee in an amount to be set by the City Council as provided in section 17.29. (Ord. No. 488 N.S., 10/87)

17.21.5:        Hearings.

- (a) A hearing on an application to the Planning Commission shall be held under the provisions of section 17.27.1 The Planning Commission shall approve, deny, or recommend approval or denial of the application. The Planning Commission may modify the plan and attach conditions as appropriate to its approval or recommendation of approval. (Ord. No. 488 N.S., 10/87)

- (b) A hearing on an application to the City Council shall be held under the provisions of section 17.27.2. The City Council shall approve or deny the application and may modify the plan or attach conditions as appropriate to its approval.

17.21.6: Required Findings. The Commission or the City Council, as appropriate, 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. No variance shall be granted unless the Planning Commission can make specific findings of fact to support all of the following conclusions:

- (a) The underlying lot and existing improvements present unusual physical circumstances including but not limited to size, shape, topography, location and surroundings), so that strictly applying the terms of this chapter would keep the property from being used in the same manner as other properties in the zone which conform to the zoning requirements.
- (b) The variance is compatible with the immediately surrounding neighborhood and the public welfare.
- (c) Accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction.

"Unreasonable hardship" for purposes of subsection 17.21.6(c) refers to the unusual physical characteristics of the underlying lot and existing improvements on the lot which prohibit development of the lot in a manner consistent with lots conforming to City standards. "Unreasonable hardship" shall not refer to any conditions personal to the applicant.

In addition, no variance shall be granted authorizing a use or activity which is not otherwise expressly authorized by the regulations of the zone in which the property is located. (Ord. No. 516, 4/90)

17.21.7: Conditions. The Commission, or the City Council, as appropriate, shall attach as conditions to the grant of a variance such requirements as are reasonably necessary in the determination of the Commission or Council to ensure that the health, safety and welfare of the occupants and neighbors of the proposed project and of the residents of Piedmont as a whole will be preserved. (Ord. No. 488 N.S., 10/87)

## SEC. 17.22 HOME EXPANSION AND CONSTRUCTION

17.22.1: Intent. The City of Piedmont desires to permit construction of new homes and reasonable residential expansions to adapt older homes to modern lifestyles, while at the same time preserving those elements which make Piedmont a desirable place to live: visual open space, bounteous trees and landscaping, and residential privacy and tranquility. Furthermore, the City desires to permit such improvements so long as they do not increase traffic and parking problems in the neighborhood, or increase the burden on city facilities and schools. For these

reasons, any improvement to property requiring prior city approvals, permits or both under this Code shall meet the criteria set forth in section 17.22.2, unless exempt under section 17.22.3.

17.22.2: Floor Area Ratio Limitations – Single Family Residences. An improvement to a single family residence which increases the floor area of the interior or the construction of a new residence shall meet the following limitations according to the size of the underlying parcel. The area comprised of a driveway which is not entirely contiguous with and an integral part of the main lot, as in the case of a "flag lot", shall be excluded from the calculations set forth below. (Ord. No. 547 N.S., 9/93)

- (a) Lot Size Does Not Exceed 5,000 Square Feet: If an improvement is proposed on a parcel which does not exceed 5,000 square feet, the total of the floor area of the existing residence and the floor area of the proposed improvement or the floor area of a new residence shall not exceed 55 percent of the lot area.
- (b) Lot Size Exceeds 5,000 Square Feet but Does Not Exceed 10,000 Square Feet: If an improvement is proposed on a parcel which exceeds 5,000 square feet but does not exceed 10,000 square feet, the total of the floor area of the existing residence and the floor area of the proposed improvement or the floor area of a new residence shall not exceed 50 percent of the lot area.
- (c) Lot Size Exceeds 10,000 Square Feet: If an improvement is proposed on a parcel which exceeds 10,000 square feet, the total of the floor area of the existing residence and the floor area of the proposed improvement or the floor area of a new residence shall not exceed 45 percent of the lot area.

17.22.3: Floor Area Ratio - Exemption. If a residential improvement is proposed which will not alter the exterior dimensions of the residence, the improvement shall not be required to meet the requirements of section 17.22.2, provided that this exemption shall not apply within three years of the issuance of a building permit for a prior improvement that was subject to section 17.22.2. (Ord. No. 573 N.S., 2/96)

17.22.4: Limitation on Approval

- (a) Legislative Intent. The City of Piedmont recognizes the diversity and historical value of existing residences and encourages improvements of such homes. The City of Piedmont recognizes that remodeling an existing residence may require variances and design compromises which would not be necessary if the parcel were undeveloped and a new residence were proposed. Findings of hardship concerning design and construction are much more likely for a remodel of an existing residence in order to (1) accommodate the existing orientation of the house on the lot, (2) preserve the architectural heritage of the house and its compatibility with surrounding structures, (3) incorporate existing nonconformities into a reasonable adaptation to present-day residential patterns, (4) accommodate the special needs of disabled or handicapped persons, and (5) accommodate unique existing parking circumstances, such as not requiring the addition of covered parking spaces on

large lots, where there is additional uncovered parking that is not highly visible from the street exists or can be accommodated on the site. On the other hand, if an undeveloped lot exists or is created by demolition, the opportunity is much greater, because of the lack of physical constraints, to design and construct a residence which will comply with existing regulations without the need for variances and design compromises. (Ord. 662 N.S. 1/06)

- (b) Approvals for Remodeling Existing Residence. Variance and design review approvals for a remodel of an existing residence shall be considered specific to the proposed plan to remodel. If the property owner subsequently decides to demolish all or part of the original structure for which the remodel approvals were obtained, the approvals for the remodel shall terminate and a new application shall be required under this chapter, in accordance with Section 17.32.6. The property owner shall have no vested right in the original approvals once the subject structure, or the affected portion, is demolished.

### SEC. 17.23 TERM OF APPROVAL

17.23.1: General Rule. All design review and variance approvals, including those granted before November 2, 1992 shall be effective for twelve months from the date of the final decision on the application, or for such other period, either longer or shorter, as the Planning Commission or City Council shall specifically designate. Staff design review approvals are effective for one year from date of approval.

17.23.2: Administrative Extension. The Director of Public Works shall grant one six-month extension for any design review or variance approval by the Planning Commission, City Council, or staff, upon written application by the property owner on a form provided by the Director of Public Works prior to expiration of the original approval. A fee equal to one-half of the initial fee paid by the applicant is required for this administrative extension. (Ord. 662 N.S. 1/06)

17.23.3: Re-Application. When an approval has expired and substantial construction on the project has not occurred, work on a project shall be prohibited until and unless approval has been obtained again for the project. An application for second approval shall be subject to all the requirements of this Code which are in effect on the date of the final hearing of the application for second approval, including but not limited to procedure, standards, and fees.

17.23.4: Notice of Non-Compliance. If a project is not completed within the time limits of section 5.2 of this Code, the City Planner shall record a Notice of Noncompliance against the property in the records of the Alameda County Recorder's Office. The Notice of Noncompliance shall be removed upon completion of the project, final inspection approval by the Building Official, and payment by the property owner of all related costs.

SEC. 17.24 CONDITIONAL USE PERMITS

17.24.1: General. No person or organization shall commence a use defined as a conditional use under the terms of this Chapter unless a conditional use permit has first been obtained. A permit for any conditional use defined in this Chapter may be granted by the City Council for a limited period subject to such conditions as are deemed appropriate by the Council, revoked, or denied in accordance with the requirements and criteria set forth in this section and in other sections of this Code. (Ord. No. 488 N.S., 10/87)

17.24.2: Application. A conditional use permit shall be obtained or renewed prior to undertaking the following:

- (a) A proposed change in the number of dwelling units in a multiple dwelling in Zone C;
- (b) A change in actual existing use or a structural change relating to a commercial use in Zone D;
- (c) A proposed new church, school, multiple dwelling unit or commercial use.

In addition, a conditional use permit shall be renewed prior to expiration of the term of the permit as provided in Section 17.24.8.

A written application on a form provided by the Director of Public Works for each conditional use permit shall be filed with the Director of Public Works. The application shall be accompanied by copies of plans showing the plot plan, location of existing buildings on the lot, the location of any proposed new building or construction, including accurate dimensions, the parking and driveway plans, landscaping plans and elevations. Where necessary or appropriate, or both, any required plans may be waived, or additional information may be required at any time by the Director of Public Works, the Planning Commission, or City Council. (Ord. No. 488 N.S., 10/87; Ord. No. 574 N.S., 5/96)

17.24.3: Application Fees. Each application for a conditional use permit shall be accompanied by a filing fee in an amount to be set by the City Council as provided in section 17.29. (Ord. No. 488 N.S., 10/87)

17.24.4: Planning Commission Hearings. The Planning Commission shall hold a hearing upon the application and shall recommend to the City Council that the permit be approved or denied. The Planning Commission may recommend that conditions be attached to the approval of a new permit which are necessary to preserve the health, safety, general welfare, beauty, and tranquility of the City. If necessary for those purposes, the Planning Commission may also recommend additions or modifications to the conditions of an existing permit for which renewal is sought. The Planning Commission hearing shall be scheduled and noticed as provided in sections 17.27 and 17.28. (Ord. No. 488 N.S., 10/87; Ord. No. 574 N.S., 5/96)

17.24.5: Determinations. The Commission and Council shall make their determinations on the individual merit of each application without following or establishing precedent. The primary basis for approval or denial shall be the general good of the City. (Ord. No. 488 N.S., 10/87)

17.24.6: Findings. The Planning Commission shall recommend approval of a conditional use permit where specific findings of fact can be made to support all of the following conclusions:

- (a) The use is primarily of benefit to Piedmont residents; (Ord. 662 N.S. 1/06)
- (b) The use will be properly related to other land uses and transportation and service facilities in the vicinity, including consideration of how many similar nearby uses exist; (Ord. 662 N.S. 1/06)
- (c) Under all the circumstances and conditions of the particular case, the use will not have a material adverse effect on the health or safety of persons residing or working in the vicinity;
- (d) The use will not be contrary to the standards established for the zone in which it is to be located;
- (e) The use will not contribute to a substantial increase in the amount of noise or traffic in the surrounding area;
- (f) The use is compatible with the General Plan and will not adversely affect the character of the surrounding neighborhoods or tend to adversely affect the property values of homes in the surrounding neighborhoods;
- (g) Adequate provision for driveways to and from the property has been made; facilities for ingress and egress from secondary streets instead of arterials, where possible, have been made; provision for parking in compliance with this Chapter 17 has been made, together with sufficient agreements to enforce the carrying out of such plans as may be required by the Council; and
- (h) The plans conform to all other laws and regulations of the City, provided, however, that front, rear, and side yard setbacks greater than those otherwise provided in the laws and regulations of the City may be required as a condition of approval if necessary to provide for the health, safety, and general welfare of the residents of Piedmont. (Ord. No. 488 N.S., 10/87, Ord. No. 574 N.S., 5/96)

17.24.7: City Council Determination. At the next City Council meeting after the Planning Commission has finalized its recommendations and notice under Section 17.28 has been given, the application shall be heard by the Council.

- (a) Hearing. The Council shall consider the application and accompanying documents, the findings and recommendations of the Planning Commission, and any further evidence introduced at the time of the hearing. The Council shall determine whether or not to grant a conditional use permit and whether to attach conditions to the permit based on the requirements of section 17.24.6 and by making specific findings of fact related to those requirements.
  
- (b) Terms and Conditions. The City Council shall set a term and attach conditions which are necessary to preserve the health, safety, general welfare, beauty, and tranquility of the City. In the case of the renewal of an existing permit, the City Council shall add to or modify the original conditions of the permit as are necessary to serve those purposes. The City Council shall, in making such determination, consider factors including but not limited to the potential adverse impact of the proposed use on the surrounding area, the potential for changes in actual existing use or in the structure, and the administrative burden to the City of frequent reassessment. If no other term is specifically set by the City Council, the term of a conditional use permit shall be twelve months from the date of its approval by the City Council. Findings in support of such conditions shall be made. (Ord. No. 488 N.S., 10/87; Ord. No. 574 N.S., 5/96)

17.24.8: Renewal. At least 90 days before expiration of a conditional use permit, application shall be filed with the Director of Public Works for renewal of the conditional use permit. Renewal of a conditional use permit is subject to the same requirements of this Chapter as is an application under section 17.24.2.

17.24.9: Registration of Conditional Uses. All existing uses in any zone which are nonconforming by virtue of the fact that when they were established they were permitted uses in the zone but by the terms of this or any previous or subsequent amendment to the language of the City Code are conditional uses and subject to a conditional use permit must be registered with the Director of Public Works within thirty (30) days of notification as provided below. Registration shall be in a form and include such information as the Director of Public Works shall require, including but not limited to building plans, hours of operation, number of employees, and scope of operation. Any modification of the existing use, including a change in actual existing use or structural change shall be subject to a conditional use permit for the entire scope of the use.

Notice of this requirement shall be mailed to the recorded owner of the property as shown on the most recent County assessment rolls and to the owner of business as shown on the business license issued by the City. The City Clerk may, upon application of the property owner or business owner, allow an extension of time if and only if the City Clerk finds that extraordinary circumstances prevented the registration of the use within the thirty day period. Failure to register the use shall eliminate nonconforming status if granted previously and the use shall be subject to the requirements of the provisions of this Chapter, including that of a conditional use permit. (Ord. No. 488 N.S., 10/87)

17.24.10      Revoked (Ord. 574 N.S., 5/96)

SEC. 17.25   APPEALS

17.25.1:      General. Any decision of the Director of Public Works in the approval, denial or revocation of design review pursuant to this Chapter may be appealed by the applicant or any interested person to the Planning Commission at the close of business within ten (10) calendar days after the decision of the Director of Public Works becomes final, in accordance with the procedures in this section. When the tenth day of the appeal period falls on a weekend day, the appeal period shall end at the close of business on the following Monday. When the tenth day of the appeal period falls on an approved City holiday as published annually on a list of City holidays, the appeal period shall end at the close of business on the following non-holiday business day. Ord. 615 N.S. 3/20/00, Ord. 662 N.S. 1/06)

Any decision of the Planning Commission in the approval, denial or revocation of a landscape plan or application for a variance or design review pursuant to this Chapter ~~or~~ may be appealed by the applicant or any interested person to the City Council at the close of business within ten (10) days after the date the Planning Commission decision is made in accordance with the procedures in this section. When the tenth day of the appeal period falls on a weekend day, the appeal period shall end at the close of business on the following Monday. When the tenth day of the appeal period falls on an approved City holiday as published annually on a list of City holidays, the appeal period shall end at the close of business on the following non-holiday business day. (Ord. 662 N.S. 1/06)

During the ten day appeal period and until all conditions are met, no building permit shall be granted to the applicant for variance or design review, and in the event an appeal is filed, no building permit shall be granted to such applicant until the appeal has been decided by the appeal body. (Ord. No. 488 N.S., 10/87; Ord. 615 N.S. 3/20/00, Ord. 648 N.S. 6/04)

17.25.2:      Filing. A request for an appeal shall be filed with the City Clerk, shall state specifically the grounds for appeal, and shall be accompanied by a filing fee in an amount to be set by the City Council as provided in section 17.29. The appeal shall be filed during normal business hours of the City, and no later than close of business, ten (10) days after the decision of the Director of Public Works or Planning Commission becomes final. When the tenth day of the appeal period falls on a weekend day, the appeal period shall end at the close of business on the following Monday. When the tenth day of the appeal period falls on an approved City holiday as published annually on a list of City holidays, the appeal period shall end at the close of business on the following non-holiday business day. On the filing of an appeal, the City Clerk shall transmit and make available to the appeal body the complete written record of the matter on which the appeal is taken. (Ord. No. 488 N.S., 10/87, Ord. 648 N.S. 6/04, Ord. 662 N.S. 1/06)

17.25.3:        Notice. The City Clerk shall give notice of the day on which the action shall be reviewed by the appeal body to the appellant, to the original applicant if not the appellant, to all those property owners notified in the original application hearing, to any person who has submitted a written comment on the application or who commented in person at the time of the initial hearing of the application, and to any other person requesting notice. (Ord. No. 488 N.S., 10/87)

17.25.4:        Hearing. The appeal body shall hear the appeal as soon as is reasonably possible, and no later than the next regular meeting which occurs at least fourteen (14) days after notice of the hearing of the appeal has been given according to section 17.25.3 of this Code. At that meeting, the appeal body may continue the hearing by its own motion to the next regular meeting of the appeal body or a special meeting prior to the next regular meeting. Once the hearing has begun, the appeal body may by its own motion continue the hearing no more than one time without the consent of the applicant or appellant. At the public hearing, the appeal body shall consider the facts contained in the documents constituting the record upon which the appeal was taken and hear the testimony of the appellant or any witness in the appellant's behalf and other interested parties. (Ord. No. 488 N.S., 10/87; Ord. No. 547 N.S., 9/93, Ord. 662 N.S. 1/06)

17.25.5:        Action. Upon conclusion of the hearing, the appeal body shall act upon the appeal. The standard of review governing the appeal shall not be a de novo review, but instead shall be governed by the provisions of Section 17.25.6 hereafter. Subject to the foregoing, the appeal body may sustain, modify, add to, or overrule any recommendations or rulings of the decision maker and make such other findings which are consistent with the provisions of this chapter, including the right to require or modify the requirements for story poles, surveys, time periods for completion or extension thereof, and any other conditions relating to the project for which approval is sought, whether or not the decision maker has made any such requirements; provided that in the event there is not a majority of three members of the appeal body who vote for any of the foregoing actions, then the matter automatically shall be continued to the next meeting, but if no such majority vote can be obtained at the next meeting, the appeal shall be deemed denied and the action of the decision maker affirmed. The appeal body shall report its decision to the appellant, the original applicant for variance or design review, and the decision maker. (Ord. 488 N.S., 10/87; Ord. 652 N.S. 7/05)

17.25.6.        Appeals – Standard of Review. The standard of review which applies to the hearing of an appeal from a Planning Commission decision by the City Council or of a Staff Design Review decision by the Planning Commission shall not be de novo, and shall be governed by the following:

- (a)        Deference. Due deference shall be given to the actions of the Planning Commission in light of the substantial number of planning applications heard by them and the major accumulated group experience that those actions represent.
- (b)        Grounds for Overruling Decision. The following will serve as the exclusive grounds for overruling all or part of a Planning Commission decision:

- (1) If findings made by the Planning Commission as a basis for its action are not supported by the weight of the evidence
  - (2) If there is a significant error in the application of the provisions of Chapter 17 or other provisions of the City Code that is important to sustaining the action by the Planning Commission.
  - (3) If there is a significant error in the application of the Design Review Guidelines as approved by the City Council from time to time.
  - (4) If it is determined that there is a significant violation of the notice provisions of Section 17.28 or other pertinent notice provisions of Chapter 17 of the Piedmont City Code relating to the hearing(s) leading to the Planning Commission action.
  - (5) If significant errors are discovered after the Planning Commission hearing on which its action was taken in the application, plans, drawings or other materials provided to the Planning Commission as a basis of its decision.
  - (6) If there is a significant error in the application of approved City policies (such as the story pole and site visit policies) that is important to sustaining the action taken by the Planning Commission.
- (c) Appeals from Staff Design and Administrative Design Review Decisions. The same grounds as set forth in Section 17.25.6.b. shall apply for overruling part or all of a Staff Design Review decision or Administrative Design Review decision appealed to the Planning Commission.
- (d) Burden of Proof. In all appeals pursuant to Sections 17.25.5 and 17.25.6, the burden of proof shall be on the appellant. (Ord. 652 N.S. 7/05)

17.25.7 Remand. Notwithstanding the provisions of Section 17.25.5, the City Council acting as the appeal body shall have the option to remand the matter to the Planning Commission for further consideration, which remand shall include either specific issues to be considered alone or direction that the Planning Commission open the entire application for de novo review. Unless the City Council determines otherwise, the remand hearing before the Planning Commission shall be scheduled at a Planning Commission Meeting, occurring at least fourteen (14) calendar days after the date of remand action of the City Council, but no later than 75 days after the date of remand. Unless the City Council affirmatively acts to the contrary, no additional fees shall be charged to the applicant or appellant relating to the remand. The decision of the Planning Commission on the remand shall be deemed final unless appealed pursuant to Section 17.25, or unless the City Council retains appeal jurisdiction over the entire matter at the time of the remand and requests only an advisory opinion on specific issues from the Planning Commission. The burden of proof on remand shall be on the applicant. (Ord. 652 N.S. 7/05, Ord. 662 N.S. 1/06)

17.25.8 Definitions. For purposes of Sections 17.25 and 17.26, the following definitions shall control:

- (a) "A significant error" shall mean an error that has or potentially will have an important negative impact.
- (b) "Weight of the evidence" shall mean in excess of 50% of the evidence.
- (c) "Substantial evidence" shall mean well in excess of 50% of the evidence, i.e., in general terms at least 65% of the evidence.
- (d) "A significant violation" shall mean a violation of the notice provisions that would provide insufficient notice to the public to allow reasonable public participation.
- (e) "Burden of proof" shall mean that the party shall have the obligation to provide evidence or proof significant enough to overcome any other evidence presented. (Ord. 652 N.S. 7/05)

#### SEC. 17.26 REVIEW

Within ten (10) calendar days of the date of any action by the Director of Public Works, a member of the City Council, a member of the Planning Commission or City Administrator may initiate proceedings for review by the Planning Commission of the action in the manner set forth in Section 17.25 for appeals. When the tenth day after an action falls on a weekend day or approved City holiday, the period by which proceedings may be initiated shall end at the close of business on the following business day. Within ten (10) calendar days of the date of any action by the Planning Commission or within seven (7) calendar days of Council receipt of an appeal that has been filed relating to any action by the Planning Commission, which will be within one (1) business day of the date such appeal is filed, a member of the City Council or the City Administrator may initiate proceedings for review by the City Council of the Planning Commission action in the manner set forth in Section 17.25 for appeals. The standard of review governing proceedings under Section 17.26 shall be a de novo hearing. The burden of proof shall be on the applicant. In the event that an appeal and review apply to a specific application, then review shall apply and the appeal shall be moot and of no effect. (Ord. 488 N.S., 10/87; Ord. 615 N.S. 3/00; Ord. 620 N.S. 3/01; Ord. 652 N.S. 7/05, Ord. 662 N.S. 1/06)

#### SEC. 17.27 HEARINGS

17.27.1: Hearings before Planning Commission. Except in the case of a matter of public urgency, where hearings before the Planning Commission are required for consideration of any application under this section and the application is determined to be complete, the application shall be considered at the next Planning Commission meeting which has an open agenda at the time of the determination of completeness. Applications shall be scheduled in order of determination of completeness except that when two or more applications are determined to be complete on the same day, the application received earlier shall have priority.

The Commission may schedule a special meeting to hear the matter. If a special meeting is scheduled, it shall be scheduled at least fourteen (14) calendar days after receipt of the completed application, but no later than the next regular Planning Commission meeting when the hearing would have been scheduled. (Ord. No. 516 N.S., 4/90, Ord. 662 N.S. 1/06)

17.27.2: Hearings before City Council. Where hearings before the City Council are required for any application under this section, the hearing shall be held at the next regular City Council meeting at least fourteen (14) calendar days after filing the application or after the Planning Commission action on the application, if such action is required. The Council may schedule a special meeting to hear the matter. If a special meeting is scheduled, it shall be scheduled at least fifteen (15) working days after receipt of the completed application, but no later than the next regular City Council meeting when the hearing would have been scheduled. (Ord. No. 488 N.S., 10/87, Ord. 662 N.S. 1/06)

17.27.3: Continued Hearing. When necessary for proper evaluation of an application, the Planning Commission or City Council may continue the hearing to a specified regular or special meeting. (Ord. No. 488 N.S., 10/87)

17.27.4: Voting. The provisions of section 25.16 of this Code notwithstanding, no action taken by the Planning Commission under the provisions of Chapter 17 shall be valid or binding unless adopted by an affirmative vote of a majority of a quorum. If a tie vote occurs and the hearing will not be continued, the matter shall be deemed approved. (Ord. 596 N.S. 5/98, Ord. 615 N.S., Ord. 648 N.S.)

17.27.5: Notice. Notice of the Planning Commission or City Council hearings on an application shall be given as provided in section 17.28. (Ord. No. 488 N.S., 10/87, Ord. 648 N.S.)”

## SEC. 17.28 NOTICE OF HEARINGS

17.28.1: Notice Generally. Notice of hearing for any purpose provided in this Chapter shall be given by the City as provided in sections 17.28.2 and 17.28.3 and by the applicant as provided in section 17.28.4, except that publication under section 17.28.3 and applicant notice under section 17.28.4 shall not be required for hearings of appeals. (Ord. 547 N.S., 9/93)

17.28.2: Notice by City. Notice by the City of hearings for any purpose as provided in this Chapter shall be given not less than fourteen (14) calendar days prior to the hearing date. (Ord. No. 488 N.S., 10/87, Ord. 648 N.S. 6/04)

17.28.3: Notice Method. Notice required by section 17.28.2 shall be given as follows:

- (a) By submitting notice for publication in a newspaper of general circulation circulated in the City; or

- (b) By posting on the official City Hall bulletin boards; and
- (c) By mailing a copy of such notice to each property owner of record as shown on the latest equalized assessment rolls, as follows:
  - (1) For staff design review requests, to all adjacent property owners.
  - (2) For the following projects, to all property owners within 100 feet of the project property boundary:
    - (i) Single variance request other than for variances from building height or Floor Area Ratio standards.
    - (ii) Design review, other than requests for design review of a new home.
    - (iii) Landscape plans
    - (iv) Signs.
    - (v) Lot line adjustments between two lots.
    - (vi) Staff Design Review applications that are referred to the Planning Commission pursuant to Section 17.20.7. (Ord. 662 N.S. 1/06)
    - (vii) Wireless communication facilities. (Ord. 662 N.S. 1/06)
  - (3) For the following projects, to all property owners within 200 feet of the project property boundary:
    - (i) More than one variance requested.
    - (ii) One or more variances from building height or floor area ratio.
  - (4) For the following projects, to all property owners within 300 feet of the project property boundary:
    - (i) Design review of a new home.
    - (ii) Negative declaration or environmental impact report is required.
    - (iii) Tract map or parcel map is required.
    - (iv) Lot line adjustment among more than two lots.

- (5) For any project which requires obtaining or modifying a conditional use permit, to all property owners within 500 feet of the project property boundary.
- (6) The above-specified notice requirements shall be increased when, in the opinion of the City Planner, an increase in the scope of notice is warranted by the facts and circumstances of a proposed project. (Ord. 662 N.S. 1/06)
- (7) For all other applications, to each owner of adjacent property. (Ord. No. 488 N.S., 10/87, Ord. 648 N.S. 6/04)

17.28.4: Notice by Applicant. The applicant for design review approval or grant of a variance as provided in this Chapter shall notify all adjacent property owners of the proposed project at least 30 calendar days before the date of the initial hearing.

- (a) Form. The notice should be in writing, describe the project in specific detail, and give the date of the hearing on the application.
- (b) Service. The notice should be given personally to each adjacent property owner or mailed first class on or before the 30 day period begins to run. The applicant shall submit an affidavit of service to the Director of Public Works no less than thirty (30) calendar days before the date of the initial hearing. The application will not be considered complete until the affidavit has been submitted in proper form. (Ord. No. 516 N.S., 4/90)

17.28.5: Notice to Property Owner. In the event that a reclassification of property has been proposed by a person other than the property owner, including the City, notice of all hearings shall be mailed to the owner of the property as shown on the last equalized assessment roll. (Ord. No. 488 N.S., 10/87)

17.28.6: Alternative Notice. In the event that the number of owners to whom notice would be sent pursuant to this section is greater than one thousand (1,000), the City may give notice in either of the following ways:

- (a) By placing a display advertisement of at least one-fourth (1/4) page in a newspaper having general circulation within the area affected by the proposed ordinance or amendment; or
- (b) By placing an insert with any generalized mailing sent by the City to property owners in the area affected by the proposed ordinance or amendment, such as billings for City services.

Such advertisement or mailing insert shall specify the type and magnitude of the changes proposed, the place where copies of the proposed changes may be obtained, the time, date, and place of the hearing, and the right to appear and be heard. Any display advertisement published pursuant to this section satisfies the publication requirement of this section.

17.28.7: Continued Hearings. After proper notice has been given, no further notice is required for the continuance of a hearing, except as provided otherwise in this Chapter. (Ord. No. 488 N.S., 10/87)

## SEC. 17.29 FEES

17.29.1 Basic Fee Determination. A fee shall be charged by the City for each application for any permit or approval, or renewal of same, required by this Chapter. A reasonable fee may also be charged whenever an application is returned by the City Council to the Planning Commission for further changes and review. The City Council shall establish the amounts of such fees from time to time. Fees may be either a flat fee or the actual cost incurred by the City in processing the application, which may include costs based on hourly billing rates of City employees, consultants or contractors, as well as reasonable overhead charges and other specific costs. Such fees shall be established by resolution of the City Council and may be modified at any time; provided, however, that once an application is filed and a flat fee paid, the fee for that specific application shall not be changed, except as provided in Section 17.29.3 hereafter.

17.29.2 Deposits and Extraordinary Costs. If a fee is based on cost, the Director of Public Works may require that a deposit equal to the anticipated cost of processing the application be deposited with the City prior to processing the application. Extraordinary costs incurred by the City in processing an application under this Chapter, including but not limited to the cost of consultants and experts determined by the City Council to be necessary for a full and adequate hearing, shall be paid to the City by the applicant. If the actual cost is less than the deposit, the balance shall be refunded to the applicant within fifteen (15) working days after final action on the application. If it appears that the actual cost will be greater than the deposit, the Director of Public Works may require an additional deposit from the applicant and may direct the City staff to cease work on the application until such additional deposit is received. In any event, no permits may be issued under the application until the balance is paid by the applicant. No application shall be considered complete until a fee or deposit is paid. (Ord. No. 488 N.S., 10/87; Ord. No. 547 N.S., 9/93).

17.29.3 Additional Fees/Flat Fee on Applications. When a flat fee is established for a particular type of application, including where there is a sliding scale of flat fees, the flat fee will include an estimated number of hours of work by various City staff members, including but not limited to the work by the City Planner and the City Attorney, together with a reasonable additional charge based on overhead costs. When the estimated number of hours for any specific City staff member included in determining such flat fee has been exceeded, City may charge for any additional hours worked by such City staff member on the application, together with a reasonable overhead charge, to the applicant.

17.29.4 Applications With No Flat Fees. In connection with any application which does not fit within a category for which a flat fee has been established, such applicant shall be charged based on the actual work performed by specific City staff members on such application at the hourly rate of that City staff member, together with a reasonable overhead charge applying

to work performed, as well as any specific costs involved (Ord. 488 N.S., 10/87; Ord. 547 N.S., 9/93, Ord. 651 N.S.; Ord. 651 N.S. 9/04)

SEC. 17.30 COMPLIANCE; CHANGES TO PLANS; REVOCATION

17.30.1: Compliance. No property in the City of Piedmont may be altered or improved without first obtaining all approvals and permits required by this chapter or any other provision of the Piedmont City Code. The property owner or a person acting with the consent of the property owner shall be entitled to apply for any such approval or permit. The Director of Public Works may record in the Alameda County Records a Notice of Noncompliance against the property for duration of any violation of this section. (Ord. 596 N.S. 5/98,

17.30.2: Changes to Approved Plans. After final plans have been approved, no change - including a decision not to build something for which plans were approved - shall be made to such plans without first notifying the Department of Public Works of the proposed change. A change in approved plans shall be subject to the same requirement of this chapter as an entirely new application. (Ord. No. 488 N.S., 10/87, Ord. 596 N.S. 5/98)

17.30.3: Revocation and Modification.

- (a) **Grounds for Revocation or Modification.** Any permit or approval under this Chapter may be revoked or modified pursuant to the provisions of this section if the Planning Commission makes one or more of the following findings:
  - (1) The permit or approval or extension of either was obtained by the applicant's fraud or misrepresentation of a material fact, or by the mistake of either the applicant or the City.
  - (2) One or more of the conditions of approval have been violated.
  - (3) The use or its operation violate applicable provisions of the Piedmont City Code, or any state or federal law.
  - (4) The use is so conducted as to be detrimental to the public health, welfare, or safety, or as to be a nuisance.
  
- (b) **Initiation of Action.** An action to revoke or modify a permit or approval under section 17.30.3(a) may be initiated at any time by the City Council, the Planning Commission, or the Director of Public Works. The decision to seek modification or revocation shall be in the reasonable discretion of the City Council, the Planning Commission and the Director of Public Works, considering the potential benefit to the public and the potential detriment to affected property owners. The action shall be in writing and shall set forth the facts constituting grounds for revocation or modification. (Ord. 596 N.S. 5/98)

- (c) Public Hearing. The Planning Commission shall hold a public hearing as prescribed in section 17.27 and give notice as provided in section 17.28 on the revocation or modification of the permit or approval at its next meeting after the request for revocation is issued and may revoke or modify the permit or approval if, on the basis of the evidence submitted, the Commission makes any one of the findings listed in section 17.30.3(a). (Ord. No. 488 N.S., 10/87)

17.30.4: New Application. Following the denial or revocation of a permit or approval, no application for a permit or approval for the same or substantially the same improvement or use on the same or substantially the same site shall be filed within one year from the date of denial or revocation of the permit or approval, unless the denial or revocation is made without prejudice. (Ord. No. 488 N.S., 10/87)

17.30.5: Violations. Violation of a permit or approval, or of any required conditions, constitutes a violation of this ordinance. Any violation of this ordinance shall be a misdemeanor and shall be punishable by fine or imprisonment or both as provided in Penal Code section 19, as amended. A separate offense shall occur each day during any portion of which any violation of any provision of this Chapter is committed, continued, or permitted by the person to whom the permit or approval was given. (Ord. No. 488 N.S., 10/87)

17.30.6: Civil Procedures and Penalties. Penalties for failure to comply with the provisions of this Chapter and procedures to abate such violations shall be adopted from time to time by resolution of the City Council. (Ord. No. 488 N.S., 10/87)

17.30.7: Repealed by Ord. 596 N.S. 5/4/98

### SEC. 17.31 GUARANTEES

The Director of Public Works, Planning Commission, or City Council may, as a condition of any approval of any application under this section, require a reasonable bond, cash deposit, letter of credit or other guarantee that specified conditions of approval of the application will be met, and may require that the applicant agree in writing to the City's right to complete or repair incomplete or incorrect work on the applicant's property and to recover the costs incurred by the City from the applicant or to create a lien against the property for the costs, including additional staff time required. The guarantee shall be released upon production of evidence showing that all the specified conditions of approval have been met. If the conditions are not met, the City shall use the guarantee to meet the conditions, and may take legal action to recover additional costs necessary to meet the conditions. (Ord. No. 488 N.S., 10/87)

## SEC. 17.32 NONCONFORMING BUILDINGS AND USES

17.32.1: Nonconforming Uses Generally. Except as otherwise provided in this Chapter, the use or uses of all improvements and premises lawfully existing in any zone at the time of the adoption of this ordinance, or of any amendment or addition thereto, may be continued. Except as otherwise provided in this Chapter, no use or improvement now lawfully existing shall be altered or reconstructed except in conformance with the provisions of this Chapter, and no improvement shall be constructed or established which is designed or intended for occupancy or use in any zone contrary to the provisions of that zone. (Ord. No. 488 N.S., 10/87, Ord. 662 N.S. 1/06)

17.32.2: Nonconforming Uses, Established. Any use being conducted within a structure or upon open land which was legally established prior to and legally existing at the time of adoption of this Chapter on October 19, 1987, but which does not comply with the current regulations of the zone in which it is currently located shall be considered nonconforming. Nonconforming uses may be continued, except that if any nonconforming use is abandoned or for any other reason discontinued for a period of one year or more, any subsequent use of the property shall conform to the provisions of this chapter. (Ord. No. 488 N.S., 10/87, Ord. 662 N.S. 1/06)

17.32.3: Nonconforming Structures, Enlargement or Repairs. Except as provided in this section, no nonconforming structure shall be altered, partially demolished, or reconstructed unless the alteration or reconstruction conforms to the regulations specified by this chapter. Normal repairs, replacement, and maintenance shall be permitted. For purposes of this section, "reconstruction" shall mean rebuilding all or a portion of an improvement in a way which differs from the prior construction, including but not limited to differences in design or materials or both. "Replacement" shall mean rebuilding all or a portion of an improvement to be exactly the same as what was replaced. (Ord. No. 488 N.S., 10/87, Ord. 662 N.S. 1/06)

### 17.32.4: Nonconforming Structures, Single-Family and Multi-Family Residential.

- (a) An existing single-family or multi-family residence shall be deemed a nonconforming structure if, among other possible reasons, any of the following applies:
- (1) the lot does not have the area or frontage required by this Chapter;
  - (2) a portion of the primary, accessory or secondary structure on the property lies within the setback or exceeds the height limitation required by this Chapter;
  - (3) the structure exceeds the lot coverage maximum;
  - (4) parking facilities do not comply with the requirements of this Chapter; or

- (5) the primary structures and habitable accessory structures exceed the floor area ratio;
- (b) An existing nonconforming structure may be altered or enlarged without variance so long as the alteration or enlargement does not relate to or involve the nonconformity.
- (c) Where the alteration or enlargement does relate to or involve a nonconformity of a non-conforming structure, approval of the variance shall be required, such as when a proposed addition to the residence would horizontally or vertically extend a wall which is presently within the setback area.
- (d) Normal repairs, replacement, and maintenance to non-conforming structures shall be permitted. (Ord. No. 488 N.S., 10/87; Ord. 615 N.S. 3/20/00, Ord. 648 N.S. 6/04, Ord. 662 N.S. 1/06)

17.32.5: Nonconforming Uses, Single-Family and Multi-Family Residential.

- (a) Single-Family Use: Except as otherwise provided in Chapter 17D, a residential property in Zones A, B, D and E shall be deemed a non-conforming use if the property contains more than one dwelling unit, except that Second Units approved in accordance with Chapter 17D shall not be considered a non-conforming use; and
- (b) Multi-Family Use: A residential property in Zone C shall be deemed a non-conforming use if the property contains more than one dwelling unit per each 2,000 square feet of lot area. (Ord. 662 N.S. 1/06)

17.32.6: Nonconforming Structures, Destruction, Replacement. If at any time any nonconforming building is demolished or destroyed for any reason to the extent of more than seventy percent (70%) of the physical building then, and without further action by the City Council, said building and the land on which said building was located or maintained shall from and after the date of such destruction be subject to all regulations of the zone in which said land or building(s) or both are located, except lot area and lot frontage. For the purposes of this chapter, the amount of physical building destruction or demolition shall be determined by the Building Official. Where any nonconforming building has been demolished or destroyed less than seventy percent (70%), as specified above, reconstruction shall be completed with final inspection and occupancy under the building permit for its restoration granted two years from the date of issuance of the building permit. When a property owner of a non-conforming property has received permission to demolish or destroy less than 70% of the building structure, but during renovation, more that 70% is destroyed or demolished, the project approvals shall terminate in accordance with Section 17.22.4 (b). (Ord. No. 488 N.S., 10/87, Ord. 662 N.S. 1/06)

SEC. 17.33 CONFORMANCE, BUILDING PERMITS AND SUBDIVISION

17.33.1: Building Permits to Conform. The Director of Public Works shall not issue any building permit for the construction, alteration, or establishment of any improvement or use within the City contrary to the provisions of this Chapter, and each application for a building permit shall state therein the purpose for which the proposed improvement is intended. (Ord. No. 488 N.S., 10/87)

17.33.2: Subdivision to Conform. Except as otherwise provided by City Ordinance, no lot shall be created which does not conform to this Chapter or other sections of the City Code. No lot shall be created in such a manner that any portion sold or otherwise transferred or any portion remaining shall contain an area, area per dwelling unit, effective lot frontage, required yards, or parking spaces less than the minimum prescribed by the regulations relating to the zone in which it is situated, nor shall a lot or portion thereof be sold or otherwise transferred in such a manner that shall create a use on any portion of the original lot inconsistent with the regulations relating to the zone in which it is situated. (Ord. No. 488 N.S., 10/87)

SEC. 17.34 CONSTRUCTION ON CITY OR PUBLIC UTILITY PROPERTY

17.34.1: Zone A Regulations Apply. The regulations and standards of this Chapter 17 applicable to lots in Zone A shall apply to structures and fences over four feet high which are located on or over City property, a City easement, or a public utility easement or other property. (Ord. No. 488 N.S., 10/87)

17.34.2: Encroachment Permit Required. No building permit shall issue for construction by any person or entity other than the City or any public utility on or over City property or a City easement unless an encroachment permit has been obtained from the Director of Public Works. An encroachment permit shall not issue until required design review and variance approvals have been given and decisions have been rendered on any appeal of such decisions or, if there is no appeal, when the period for an appeal has lapsed. Conditions reasonably required to protect the access to and use of such property or easement shall be imposed on the encroachment permit as deemed necessary by the Director of Public Works. (Ord. No. 488 N.S., 10/87)

17.34.3: Public Utility Improvements. No improvement shall be constructed by a public utility on or over City property or a City easement unless prior written permission has been obtained from the Director of Public Works. Conditions reasonably required to protect the access to and use of such property or easement shall be imposed on the encroachment permit as deemed necessary by the Director of Public Works. (Ord. No. 488 N.S., 10/87)

17.34.4: Public Utility Easement. No permit or approval pursuant to this Chapter shall be granted for an improvement to be constructed on or over a public utility easement of which the City has actual knowledge unless the applicant provides written evidence of the prior consent of the public utility owning the easement. (Ord. No. 488 N.S., 10/87)

## SEC. 17.35 CONFLICTING REGULATIONS

To the extent that provisions of this Chapter 17 conflict with or are inconsistent with any other ordinance or rule previously adopted, the terms of this Chapter shall control the construction, alteration or other improvements of property, except as to ordinances and rules which are subject to voter approval pursuant to the terms of the City Charter, which are not intended to be modified or repealed by any such inconsistency. (Ord. No. 488 N.S., 10/87)

## SEC. 17.36 AMENDMENTS TO ZONING ORDINANCE, PROCEDURE

17.36.1: General. The City Council may from time to time amend or propose amendments to this Chapter on its own motion or upon the filing with the City Council of a petition of interested owners of property within the City. Upon the filing of a petition by an individual, the Council may also propose reclassification of property from one zone to another or to redraft the boundaries of any zone. (Ord. No. 488 N.S., 10/87)

17.36.2: Amendments to Zone Boundaries and Classifications Initiated by Council. The Council may propose amendments to sections 17.4 through 17.9 subject to ratification by the voters of the City under the provisions of the Charter. Proposed amendments may be referred to the Planning Commission for public hearings and recommendation to the Council. Hearings before the Planning Commission and City Council shall be held as provided in section 17.27, except that notice of these hearings shall be given as provided in section 17.28.2 through 17.28.6. (Ord. No. 488 N.S., 10/87)

17.36.3: Amendments to Zoning Map Initiated by an Individual. When an individual proposes reclassification of property from one zone to another, a written application shall be filed with the Director of Public Works. The application shall be in a form prescribed by the City Council. Proposed amendments may be referred to the Planning Commission for public hearings and recommendation to the Council. Hearings before the Planning Commission and City Council shall be held as provided in section 17.27. (Ord. No. 488 N.S., 10/87)

17.36.4: Application Fees. Each petition by an individual for reclassification of property under section 17.36.3 shall be accompanied by a filing fee in an amount to be set by the City Council as provided in section 17.29. (Ord. No. 488 N.S., 10/87)

17.36.5: Amendments to Regulatory or Procedural Provisions. The Council may amend sections 17.1, 17.2, 17.3 and 17.10 through 17.36 by its own action. The Council may also reclassify property to Zone A with the written consent of all property owners, as provided in section 9.02 of the City Charter. Proposed amendments may be referred to the Planning Commission for public hearings and recommendation to the Council. Hearings before the Planning Commission and City Council shall be held as provided in section 17.27, except that notice of these hearings shall be given as provided in section 17.28.1 through 17.28.6. (Ord. No. 488 N.S., 10/87)

17.36.5: Amendments to Regulatory or Procedural Provisions. The Council may amend sections 17.1, through 17.37 by its own action, provided that it is consistent with Section

9.02 of the City Charter. The Council may also reclassify property to Zone A with the written consent of all property owners, as provided in section 9.02 of the City Charter. Proposed amendments may be referred to the Planning Commission for public hearings and recommendation to the Council. Hearings before the Planning Commission and City Council shall be held as provided in section 17.27, except that notice of these hearings shall be given as provided in section 17.28.1 through 17.28.6. (Ord. No. 488 N.S., 10/87, Ord. 662 N.S. 1/06)

17.36.6: Basis for Amendments. The Planning Commission and City Council shall act on each request under this section on the individual merit of each application without following or establishing precedent. The primary basis for action shall be for the general good of the City. (Ord. No. 488 N.S., 10/87)

#### SEC.17. 37 APPLICATION PROCEDURES

The Director of Public Works shall make a written determination that an application is or is not complete on or before 30 calendar days from the date the application was submitted. An applicant may appeal that decision to the Planning Commission by submitting a written statement setting forth the basis for the appeal within ten calendar days of the determination. The appeal shall be heard at the next regular Planning Commission meeting, and written findings shall be made. The decision of the Planning Commission shall be final. The appellant shall pay a fee for the appeal in an amount to be determined from time to time by the City Council.

#### SEC 17.38. INDEMNIFICATION AGREEMENT.

As a specific condition to granting all planning or other applications pursuant to this Chapter 17, which may involve approval under Government Code Section 66474.9, the applicant shall defend, indemnify, and hold harmless the city, its agents, officers, and employees from any claim, action, or proceedings against the city to attack the approval of an application under Gov. Code Section 66474.9, and as part of any application filed under Chapter 17 all applicant(s) or all persons having the authority to bind all persons or entities making an application shall execute a binding agreement to be approved and prepared by the city attorney to carry this condition out.

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