

Chapter 17D
SECOND UNITS

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SEC. 17D.1 INTENT

The intent of the City Council in enacting this Ordinance is to establish the requirements for second units in the City, consistent with California Government Code section 65852.2. One of the purposes of this Chapter is to help achieve the goals and policies of the adopted Housing Element of the City of Piedmont General Plan by encouraging a mix of housing types affordable to all economic segments of the community. It is the intent of this Chapter to expand the availability of second units in the City beyond those provided by State law to be approved by ministerial review. This Chapter creates two separate new second unit categories that will be subject to discretionary review. One category provides certain variances from development standards not available under ministerial review. The other category provides certain exceptions from development standards not available under ministerial review to encourage occupancy by low or very low income households at affordable rent levels.

SEC. 17D.2 DEFINITIONS

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

- (a) Affordable Rent Level means that the second unit household’s monthly cost of rent, plus the cost of electricity, gas, water and sewer service, and garbage collection (hereinafter “utilities”) is 30% or less than the upper limit of the annual gross household income, divided by 12, for a specified income category and household size as last published by the California Department of Housing and Community Development (hereinafter “HCD”). The City shall determine maximum affordable rent levels for rent-restricted second units following the annual publication of the State Income Limits by HCD. In determining rent levels, the household size for rent-restricted second units shall be: studio, 1 person; one-bedroom, 2 persons; two-bedroom, 3 persons; and, three-bedroom, 4 persons. The cost of utilities for the second unit shall be included in the affordable rent level. For rent-restricted second units where utilities are separately metered and billed, and where the second unit household is responsible for the costs of that

household's use of utilities, the maximum rent shall be set at 90% of the affordable rent level. (California Health and Safety Code Section 50053)

- (b) Director means the City's Director of Public Works.
- (c) Gross Household Income means the total monies earned or received by all members of a household age 18 and over, including: wages and all types of compensation, before any payroll deductions; spousal and child support; social security, retirement, disability, insurance, and other types of periodic payments; unemployment compensation and other payments in-lieu of earnings; welfare and other public assistance; interest, dividends and other payments generated from any real or personal property; net business income; and, any other type of payment determined to qualify as income by the U.S. Department of Housing and Urban Development. (HUD) and as published in HUD's Housing Choice Voucher Program Guidebook. The annual gross household income is calculated by multiplying the monthly amounts earned or received at the time of certification by 12 and adjusting for anticipated payments and changes in amounts over the next 12 months.
- (d) Habitation means regular and exclusive use of a space or structure for shelter or other residential purposes.
- (e) Household means those persons who collectively occupy a housing unit. A property owner's household shall include any child or dependent, as defined in Section 152 of the Internal Revenue Code, of the property owner who is under the age of 18 or who is under the age of 24 and is a full-time student.
- (f) Household Size means the number of persons in a household.
- (g) Low Income Household means a household with an annual gross household income of 80% or less than the Alameda County median annual gross household income for that household size as last published by HCD. (Section 50079.5 Health and Safety Code)
- (h) Moderate Income Household means a household with an annual gross household income of 120% or less than the Alameda County median annual gross household income for that household size as last published by HCD." (California Health and Safety Code Section 50093)"
- (i) Primary Unit means a principal, permitted single-family dwelling.
- (j) Rent means to enter into an agreement whereby the occupant(s) of the second unit make any monetary payment or exchange of goods or services in consideration of occupancy of the second unit.

- (k) Second Unit means an attached or detached residential dwelling unit which provides complete and independent living facilities for one or more persons. It includes permanent provisions for living, sleeping, eating, cooking, bathing and sanitation on the same parcel as a primary unit.
1. Approved Second Unit means a second unit approved for habitation by the City. It includes exempt second units, government code second units, conditional use permit units approved before July 1, 2003, and second units having a second unit permit under this Chapter. It does not include temporary use second units or unintended second units.
 2. Conditional Use Permit Second Unit means a second unit that was approved under a conditional use permit before July 1, 2003.
 3. Exempt Second Unit means a second unit established before 1930, whose exempt status was confirmed by the City in writing before July 1, 2003.
 4. Government Code Second Unit means a second unit that was approved in writing by the City under Ordinance Number 549 N.S., effective January 19, 1994.
 5. Rent-Restricted Second Unit means a second unit that is approved under a rent-restricted second unit permit. A rent-restricted second unit shall only be occupied if rented to a low or very low income household at an affordable rent level or if occupied exclusively by an owner whose household qualifies as a low or very low income household. All members and guests of the owner's household must exclusively occupy the unit occupied by the owner.
 6. Temporary Second Unit means a second unit used for habitation under a temporary use permit under former Chapter 17D, Ordinance No. 481A N.S., effective May 6, 1987.
 7. Unintended Second Unit means a living space which meets the definition of a second unit, but which is not being used for habitation as an independent dwelling under the definition of approved second unit or temporary second unit.
- (l) Second Unit Affordable Rent Certification means documentation and certification that a second unit is being rented to a very low or low income household at an affordable rent level or is exclusively being occupied by an owner whose household qualifies as a very low or low income household. Required information for documentation and certification shall include the rent charged, the utilities included in the monthly rent, the household size of the second unit, the names and ages of the second unit occupants, and the gross household income of the second unit household.

- (m) Very Low Income Household means a household with an annual gross household income of 50% or less than the Alameda County median annual gross household income for that household size as last published by HCD. (California Health and Safety Code Section 50105)

SEC. 17D.3 SECOND UNIT PERMIT REQUIRED

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

SEC. 17D.4 PERMIT APPLICATION AND PROCEDURES

17D.4.1 Second Unit Subject to Ministerial Review.

- (a) Application. An owner may apply for a second unit permit by submitting an application to the Director on a form provided by the City. The application form shall specify the required information.
- (b) Application Fee. A fee in the amount established by City Council resolution shall accompany the application.
- (c) Decision. The Director shall consider the application ministerially, without discretionary review, public notice, or a hearing. The Director shall approve the application only if he or she determines that the application meets all of the development standards in Section 17D.5. The Director shall deny the application if he or she determines that it does not meet all of such standards. The Director's decision shall be in writing and shall state the reasons for approval or denial.
- (d) Appeal. A person may appeal the decision of the Director, in conformance with Section 17.25, Appeals, except that (1) notice of the appeal shall not be given except to the appellant (if not the owner) and to the owner and (2) the grounds for appeal are limited to whether or not the application meets the development standards in Section 17D.5.

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

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

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

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

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

SEC. 17D.5 DEVELOPMENT STANDARDS

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

- (a) Size. The Second Unit shall not exceed 700 square feet.

- (b) Floor area ratio. The total floor area of habitable structures on the lot shall comply with the floor area ratio requirements of Chapter 17 for the zone in which it is located.
- (c) Lot coverage. The lot on which the second unit is located must comply with the lot coverage requirements of Chapter 17 for the zone in which it is located.
- (d) Setback. For new construction, the dimensions of the front, side and rear yards of the lot must conform to the setback requirements of Chapter 17 for the zone in which it is located.
- (e) Off-street parking. The lot on which the second unit is located must conform to the parking requirements of Section 17.16.
- (f) Residential Design Review Guidelines. The design of the proposed Second Unit and its required parking shall meet the design criteria in the City's Residential Design Review Guidelines and related policies approved by the City Council. The architectural style, architectural elements, exterior materials, and color of the second unit shall be consistent with that of the primary unit. As provided in Section 17.20.4(a), a second unit application that proposes only interior remodeling of an existing building and does not propose to change the exterior form of the building shall be exempt from the design review requirement.
- (g) Owner occupancy. With the exception of Exempt Units, the owner of a Second Unit must occupy either the Primary Unit or the Second Unit, if both units are used for habitation. The owner must have submitted a signed Declaration of Restrictions, to be recorded before or concurrently with and as a condition of issuance of the Second Unit Permit, reflecting this restriction. The City shall provide the form of the Declaration of Restrictions.
- (h) Existing Second Units not previously approved. An existing second unit that is not an exempt second unit and is not previously approved must also meet these requirements when the owner applies for the second unit permit:
 - (1) Zoning. The second unit must obtain a Second Unit Permit.
 - (2) Building. The second unit must have been constructed with building permits in conformance with the requirements of Chapter 5 of the Piedmont Building Code in effect at the time of construction. If the owner is not able to provide proof of building permits, the Building Official shall make a thorough inspection of the unit to determine compliance with the current Building Code, and with any other building requirements determined by the Piedmont Building Official to be related to the safety of occupants.

SEC. 17D.6 RENT-RESTRICTED SECOND UNITS

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

(a) Exceptions to Unit Size.

1. If the lot size is less than the established minimum lot size of the applicable zoning district, the Planning Commission may grant a second unit size exception only if the second unit is wholly located within an existing building and without an expansion of the existing building envelope as follows:
 - a. The Planning Commission may grant a second unit size increase to a maximum of 850 square feet if the second unit is to be a rent-restricted second unit for low income households.
 - b. The Planning Commission may grant a second unit size increase to a maximum of 1,000 square feet if the second unit is to be a rent-restricted second unit for very low income households.
2. If the lot size equals or exceeds the established minimum lot size of the applicable zoning district, the Planning Commission may approve new construction for all or part of the second unit as an expansion of the existing building envelope or as a detached structure as follows:
 - a. The Planning Commission may grant a second unit size increase to a maximum of 850 square feet if the second unit is to be a rent-restricted second unit for low income households.
 - b. The Planning Commission may grant a second unit size increase to a maximum of 1,000 square feet if the second unit is to be a rent-restricted second unit for very low income households.
3. The Planning Commission may grant an exception to the unit size standard only if the exception complies with the Design Review Criteria and Standards of Section 17.20.9 and if the Planning Commission makes the following findings:
 - a. The unit size exception will not create a significant adverse impact on any adjacent property, the surrounding neighborhood, or the general public good.
 - b. The lot and the arrangement of existing and proposed physical improvements on the lot can accommodate the unit size exception

without adversely affecting the views, privacy, or access to light and air of neighboring properties.

(b) Exceptions to Parking.

1. The parking for the primary unit and second unit shall comply with the provisions of Section 17.16, except that the Planning Commission may grant exceptions to the parking requirements only for the second unit as follows:
 - a. The Planning Commission may reduce the parking requirement to one parking space per second unit, regardless of the number of bedrooms contained in the second unit, if the second unit is to be a rent-restricted second unit for a low income household. The parking space may be a compact space, as defined in Section 17.16.6 as a space seven and one-half (7-1/2) by sixteen feet (16') in size.
 - b. The Planning Commission may grant a parking exception to the second unit to permit off-street, uncovered parking, motor-courts, tandem spaces (only relating to the second unit), compact spaces as defined in Section 17.16.6, and on-street parking if the second unit is to be a rent-restricted second unit for a very low income household. Uncovered parking spaces shall be screened from public view.
2. The Planning Commission may grant an exception to the parking requirements only if the exception complies with the Design Review Criteria and Standards of Section 17.20.9 and if it makes all of the following findings:
 - a. The parking exception will not be detrimental to the health, safety or general welfare of persons residing in the neighborhood and will not negatively impact traffic safety or emergency vehicle access to residences or create hazards by obstructing views to or from adjoining sidewalks and streets.
 - b. The parking exception will not adversely affect the character of the surrounding neighborhood.
 - c. There is sufficient street parking available to accommodate the parking exception or the second unit is located within 1/3 mile of a public transit stop.

(c) Separate Dwelling Unit. A rent-restricted second unit shall be in a building or portion of a building designed for, or occupied exclusively by, persons living as

one (1) household. Access to the rent-restricted second unit shall be from the exterior of the building. There shall be no direct access between the primary unit and the rent-restricted second unit and such interior access restriction shall be permanently constructed.

- (d) Declaration of Rent Restrictions. The owner shall submit a signed Declaration of Rent Restrictions, to be recorded before or concurrently with, and as a condition of, issuance of the rent-restricted second unit permit, reflecting the rent restriction. The City shall provide the form of such Declaration.
- (e) Affordable Rent Certification. An owner who has executed a Declaration shall submit to the City a Second Unit Affordable Rent Certification on an annual basis, effective each December 31 and as part of the annual City business license application and renewal, and upon any change in occupancy of the second unit, specifying whether or not the second unit is being occupied, the rent charged, the utilities included in the cost of rent, the household size of the second unit, the names and ages of the second unit occupants, the gross household income of the second unit household, and other information as determined appropriate by the City. The City shall provide the form of the Certification to be signed under penalty of perjury by both the owner and the tenant, if any.
- (f) Termination of Rent-Restricted Second Unit Permit. At its discretion, the Planning Commission may grant an owner's request to terminate a rent-restricted second unit permit. The Planning Commission shall consider the length of time such permit has been in force, the conditions of approval, the exceptions granted for the permit, and the impact on the City's affordable housing supply. In no case shall such permit be terminated prior to 10 years from the date of Planning Commission approval under this section. As a condition of termination, the Planning Commission shall require the owner to make modifications to the property to comply with current Building Code requirements and to comply with the Planning Code requirements in effect at the time the exception(s) was granted or obtain a variance from such requirements.
- (g) Tax Abatement. As an incentive to an owner to apply for a rent-restricted second unit permit, the City shall provide the owner a tax abatement for the first year of the City's rental tax, as it applies to such second unit, as a direct financial contribution as set forth in Government Code Sections 7060.1 and 65916.

SEC. 17D.7 PREVIOUSLY APPROVED SECOND UNITS

- (a) Previously Approved Second Units. The City has approved second units under prior versions of this Chapter 17D. They include:
 - 1. Approved second units, such as: exempt second units, government code second units, and conditional use permit units approved before July 1, 2003;

2. Temporary use second units; and
3. Non-conforming Second Units. An approved second unit that does not meet all of the current development standards set forth in Section 17D.5, is a legal, non-conforming second unit. Normal repairs, maintenance and exterior design and material modifications that make the second unit architecturally consistent with the main residence and compliant with current building code requirements shall be permitted, provided that the exterior design and material modifications comply with the Residential Design Review Guidelines, with no change to the size or location of the unit, no increase in structure coverage or hardscape surface coverage related to the unit, and no increase in the number of rooms Eligible For Use as a Bedroom. No such approved non-conforming second unit may be partially demolished or reconstructed, and no non-conforming second unit that is destroyed (more than 70% of the building replacement value) may be rebuilt, without obtaining a second unit permit under Section 17D.3, including compliance with the development standards in Section 17D.5. Non-conforming second units that are destroyed shall conform to the requirements of Section 17.32.6 when rebuilt. (Ord. 679 N.S. 6/08)

SEC. 17D.8 VIOLATION AND ENFORCEMENT

- (a) Violation. An illegal second unit is a second unit which is not an approved second unit or is in violation of the Declaration of Deed Restrictions or the Declaration of Rent Restrictions. The Director is authorized to pursue any remedies provided by law against the owner of an illegal second unit or a second unit not maintained in conformance with this Chapter, including:
 1. General. Those remedies set forth in Chapter 1, Article II, Penalties;
 2. Nuisance, as defined in Section 6.2.3(a);
 3. Costs. In any civil enforcement action, administrative or judicial, the City is entitled to recover its attorneys' fees and costs from an owner who is determined to have an illegal second unit;
 4. Notice of Violation, as provided in subsection (b) below;
 5. Revocation of the Second Unit Permit, as provided pursuant to Section 17.30.3;

6. Citations issued pursuant to the Administrative Citation Procedure authorized by California Government Code, Section 53069.4;
 7. Deed Restriction/Contract. Any liquidated damages or stipulated penalties authorized under any deed restriction or contract executed by the owner as a condition of the issuance of the second unit permit.
- (b) Notice of Violation. The City may record a Notice of Violation against any property having an illegal second unit.
1. Notice of Intent. Before recording a Notice of Violation, the Director shall mail by certified mail to the then-current owner of the property a Notice of Intent to Record a Notice of Violation. The Notice of Intent shall: (a) identify the real property; (b) name the owners of record; (c) describe the information indicating that a violation exists; (d) explain why the second unit is illegal under this Chapter; (e) order that the violation be corrected within 45 days of the date of the Notice; (f) state that if compliance does not occur within 45 days of the date of such notice and if the Director has not rescinded or revoked such notice, he or she will cause a Notice of Violation to be recorded; (g) specify a time, date and place for a hearing within 15 days from the date of mailing, before or at which hearing the owner may present evidence as to why the Notice of Violation should not be recorded; and (h) state that a penalty, as established by the City Council from time to time, shall accrue against the real property from 45 days after the date of the Notice of Intent until the date the violation is fully corrected.
 2. Correction. If the owner corrects the violation within 45 days from the date of the Notice of Intent, no further action shall be taken.
 3. Hearing and Determination. The owner may submit evidence at or before the hearing set by the Director. If the Director determines, based on the evidence, that there is no violation, he or she shall mail a clearance letter to the owner.
 4. Recordation. If the owner fails to object by the date of the hearing, or if the Director determines, based on evidence presented at or within 15 days following the hearing, that a violation does exist, the Director shall file the Notice of Violation with the County Recorder. The County Recorder shall index the names of the owners in the general index. The Notice of Violation, when recorded, is considered constructive notice of the violation.
 5. Approvals Withheld. The City shall not grant any permit or approval for a property against which a Notice of Violation is recorded, except a permit or approval necessary to correct a violation.

6. Release of the Notice of Violation. After the violation is corrected, an owner may request that the Notice of Violation be released. The owner shall file an application with the Director, accompanied by a fee in an amount established by City Council resolution. Upon verification by the Building Official that the violation has been corrected, the Director shall file a Release of the Notice of Violation with the County Recorder. (Ord. 481 N.S. 5/6/87; Ord. 549 N.S. 12/20/93; Ord. 559 N.S. 11/21/94; Ord. 562 N.S. 3/20/95; Ord. 640 N.S. 7/7/03; Ord. 653 N.S. 3/21/05).

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