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ORDINANCE No. 09-011
AN ORDINANCE OF THE ALBANY CITY COUNCIL AMENDING
CHAPTER 20, PLANNING AND ZONING
OF THE ALBANY MUNICIPAL CODE

WHEREAS, the City of Albany has adopted a Zoning Ordinance in the form of Chapter XX of the Albany Municipal Code, Planning and Zoning; and

WHEREAS, on December 4, 2004, the City council adopted a substantial update to the Planning and Zoning Code; and

WHEREAS, during the course of implementation, a variety of applications have been received and processed pursuant to the new code; and

WHEREAS, whereas the Community Development Department has maintained a binder, available to the public, Commissioners, and staff to catalog areas of the new code that require correction or clarification; and

WHEREAS, the Planning and Zoning Commission discussed proposed changes at their regular meetings of September 23, 2008, October 14, 2008, October 28, 2008, November 25, 2008, December 9, 2008, January 27, 2009, March 24, 2009, April 14, 2009, May 12, 2009, May 26, 2009; June 9, 2009, July 14, 2009, and September 9, 2009; and

WHEREAS, on November 25, 2008, the Planning and Zoning Commission approved a Resolution of Intention to Amend the Planning and Zoning Code; and

WHEREAS, the Albany Planning and Zoning Commission, on March 24, 2009, after due public notice, held a public hearing on the proposed amendments to Chapter XX to address corrections and clarifications to the Code, and

WHEREAS, the Albany City Council, on June 9, 2009, after due public notice, held a public hearing on the proposed amendments to Chapter XX to address corrections and clarifications to the Code, and referred several proposed changes back to the Planning and Zoning Commission, and continued the City Council public hearing to a date certain of September 21, 2009; and

WHEREAS, pursuant to the California Environmental Quality Act, the City has determined that the Mitigated Negative Declaration of Environmental Impacts certified on December 4, 2004 is consistent with the proposed clarifications and corrections and no additional environmental review is required pursuant to CEQA Guidelines Section 15183 and Public Resources Code 21083.3; and

1 **WHEREAS**, the Albany City Council, on July 6, 2009, after due public
2 notice, held a public hearing on the proposed amendments to Chapter XX to address
3 corrections and clarifications to the Code.

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6 **NOW, THEREFORE, THE ALBANY CITY COUNCIL DOES HEREBY**
7 **ORDAIN AS FOLLOWS:**

8
9
10 **Section 1:** Chapter XX of the Albany Municipal Code, Section 20.08.020, titled
11 “Definitions,” is hereby amended to include the following text:

12
13 a. **Yard, front** means a yard of uniform depth extending across the full
14 width of the lot inward from the front lot line. The front lot line shall be determined
15 by the Community Development Director.

16
17 **Section 2:** Chapter XX of the Albany Municipal Code, Section 20.12.040, Table 1
18 titled “Permitted land uses by district,” is hereby amended to include the following
19 text:

20
21 Day Care Home, Residential

Land Use	R-1	R-2	R-3	R-4	RHD	SC	SPC	CM X	PF	W F
b) Large Family ¹⁹	UP-M	UP-M	UP-M	UP-M	UP-M	-	-	-	-	Formatted

22
23 **Section 3:** Chapter XX of the Albany Municipal Code, Section 20.12.040, Notes,
24 Table 1 is hereby amended to add the following text:

25 19. Refer to Section 20.20.020.B.2.d. for special process of notice
26 and hearing.

27 **Section 4:** Chapter XX of the Albany Municipal Code, Section 20.20.020.B.2.d, is
28 hereby amended to add the following text:

29 d. Public Notice and Hearing. At least ten (10) calendar days prior to a
30 administrative public hearing on a Minor Use Permit for a Large Family Day Care
31 Home, notice of the proposed use and public hearing shall be mailed or delivered to
32 owners of property within one hundred (100) feet of the exterior boundaries of the
33 proposed day care home, as described in subsection 20.100.030.C.

34
35 **Section 5:** Chapter XX of the Albany Municipal Code, a new section shall be
36 adopted. Section 20.20.130, titled “Live Entertainment Permits,” and 20.20.070 are
37 hereby adopted to include the following text:

38
39 20.20.130 A. Purpose. This section establishes regulations for the granting of
40 an entertainment permit. The standards are in addition to the requirements of Albany
41 Municipal Code Section 5-11.

1
2 B. Entertainment Permit Required. An entertainment permit shall be
3 required for any place where entertainment is provided within a bar, cocktail lounge,
4 tavern, café, restaurant, hotel, motel, or public place where food, alcoholic or other
5 beverages, or other refreshments are served. See Municipal Code Section 5-11.

6
7 20.20.070 4. Entertainment Permit. An entertainment permit shall be
8 required for any place where entertainment is provided within a bar, cocktail lounge,
9 tavern, café, restaurant, hotel, motel, or public place where food, alcoholic or other
10 beverages, or other refreshments are served. See Municipal Code Section 5-1.

11
12 * See “Section 23-25” for revisions to Municipal Code, 5-11. *

13
14 **Section 6:** Chapter XX of the Albany Municipal Code, Section 20.24.020 Table 2.A.,
15 titled “ Site Regulations by District: Residential,” Note 14 is hereby amended to
16 include the following text:

17
18 Maximum building height is three stories and 35 feet, above natural or finished
19 grade, whichever is lower, except that the maximum height allowed at the front
20 setback line shall be 28 feet plus a 45-degree daylight plane. (See subsection
21 20.24.070.B.)
22

23 **Section 7:** Chapter XX of the Albany Municipal Code, Section 20.24.020. Table
24 2.A. titled “Site Regulations by District: Residential,” Note 19(a), is hereby amended
25 to include the following text:

26
27 19. Exceptions to setback requirements may be made in the case of a second story
28 addition to a single-family dwelling, as follows:

29 (a) Nonconforming walls shall be allowed to extend up over an existing wall or
30 foundation, which does not conform to the required setbacks, subject to design
31 review by the Planning and Zoning Commission and obtaining a use permit.
32 Existing walls which do not conform to the existing side or rear yard setbacks
33 may be extended, subject to design review by the Planning and Zoning
34 Commission and a use permit. Such extensions shall not further encroach on
35 any required setback, (i.e., a nonconforming wall which encroaches one (1)
36 foot into a required setback shall not be permitted to encroach two (2) feet)
37 nor shall any extension create a new encroachment in another direction.
38

39 **Section 8:** Chapter XX of the Albany Municipal Code, Section 20.24.020. Table 2.B.
40 Note 3, titled “Site Regulations by District: Nonresidential,” is hereby amended to
41 include the following text:

42
43 3. Same as R-3 District, See note **79** – Site regulations, Table 2A:Residential.
44

1 **Section 9:** Chapter XX of the Albany Municipal Code, Section 20.24.020 Table
2 2.B.Note 4, titled “Site Regulations by District: Nonresidential” is hereby amended to
3 include the following text:

4
5 Maximum building height is three stories and 38 feet, above grade, except that where
6 the rear property line abuts a residential district, the maximum height shall be 20 feet
7 in height at a point 10 feet back from the residential district property line, plus a 45
8 degree daylight plane to the maximum permitted height; or alternatively 12 feet in
9 height at the property line, then, horizontally to a point 10 feet from the property line,
10 plus 35 degree from vertical daylight plane to the maximum permitted height. (See
11 subsection 20.24.070.A., Figure 1.a & 1.b). If there is a difference in grade planes
12 between two adjacent parcels, the Community Development Director shall determine
13 appropriate grade plane to be used for daylight plane calculation. No projections shall
14 be allowed in the area between the daylight planes and rear property line. Usable
15 open spaces located on top of the structure, within ten feet of a residential district
16 boundary, shall have a solid fence or wall six feet in height. The combined height of
17 the structure and the wall shall comply with daylight plane requirements of this code.

18
19
20 **Section 10:** Chapter XX of the Albany Municipal Code, Section 20.24.050 B.1.c,
21 titled “Floor-Area-Ratios” is hereby amended to include the following text:

22
23 c. Any covered area on or below the first or main floor, shall be
24 considered a story and shall be calculated in the floor-area ratio if the average height
25 of the perimeter is greater than five (5) feet, except a single parking area may be
26 excluded as provided in paragraph B.1.b. above. Measurement of height shall be
27 taken from the lower of natural or finished grade at the exterior to the top of finished
28 floor of the first, main or story above.

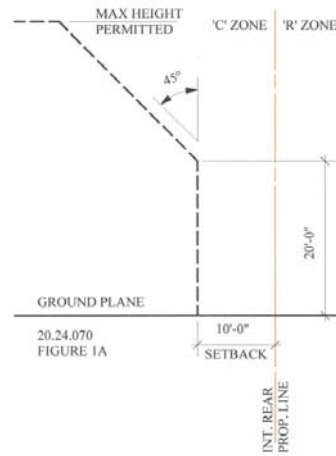
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30 **Section 11:** Chapter XX of the Albany Municipal Code, Section 20.24.070 A, titled
31 “Setbacks with Daylight Planes, Interior Property Lines Abutting Residential District
32 Boundaries,” is hereby amended to include the following text:

33
34 **A.1. Interior Property Lines Abutting Residential District Boundaries:** The minimum
35 setback where an interior lot line of a property in a Solano Commercial or San Pablo
36 Commercial District abuts a residential district boundary shall be five (5) feet on the
37 side-

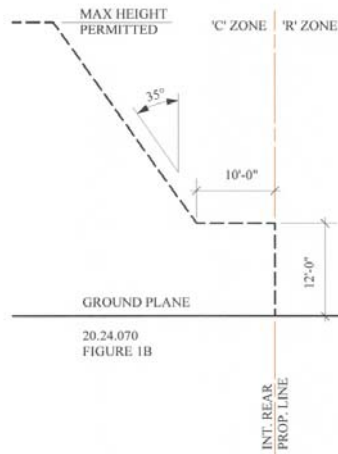
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39 The minimum setback at the rear shall be one of the following two options: 1) A 20
40 feet in height at a point 10 feet back from the property line, plus a 45 degree daylight
41 plane to the maximum permitted height, or 2) A 12 feet in height at the property line,
42 then, horizontally to a point 10 feet from the property line, plus 35 degree from
43 vertical daylight plane to the maximum permitted height. (See subsection
44 20.24.070.A., Figure 1.a & 1.b) If there is a difference in grade planes between two
45 adjacent parcels, the Community Development Director shall determine appropriate
46 grade plane to be used for daylight plane calculation.

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No projections shall be allowed in the area between the daylight planes and rear property line. Usable open spaces located on top of the structure, within ten feet of a residential district boundary, shall have a solid fence or wall six feet in height. The combined height of the structure and the wall shall comply with daylight plane requirements of this code.



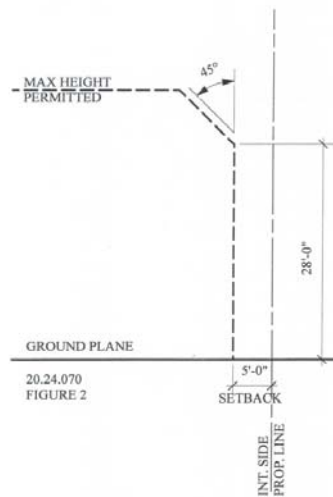
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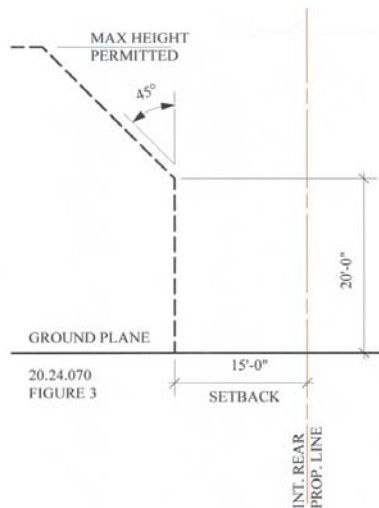
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Section 12: Chapter XX of the Albany Municipal Code, Section 20.24.070, titled "Setbacks with Daylight Planes, Interior Property Lines Abutting Residential District Boundaries," is hereby amended to include the following text:

1 A2. The minimum setback, where an interior lot line of a property in a higher density
2 residential district abuts a lower density residential district, and Municipal Code
3 Section 20.24.030 does not apply, the minimum side yard setback shall be five (5)
4 feet on the side. An additional setback for any portion of any structure extending
5 above twenty (28) feet in height, up to the maximum height permitted in the zoning
6 district, shall be defined by a daylight plane extending from a base point located
7 twenty (28) feet above the ground plane at the line of the five (5) foot required side
8 yard setback, inclined away from the vertical at a forty-five degree angle (See figure
9 2) If there is a difference in grade planes between two adjacent parcels, the
10 Community Development Director shall determine appropriate grade plane to be used
11 for daylight plane calculation.
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15 A.3. The minimum setback, where an interior lot line of a property in a higher density
16 residential district abuts a lower density residential district, and Municipal Code
17 Section 20.24.030 does not apply, shall be fifteen (15) feet at the rear. An additional
18 rear yard setback for any portion of any structure extending above twenty (20) feet in
19 height, up to the maximum height permitted in the district shall be defined by a
20 daylight plane extended from a base point located twenty (20) feet above the ground
21 plane at the line of the required setback, inclined away from the vertical at a forty-five
22 (45) degree angle (See figure 3). If there is a difference in grade planes between two
23 adjacent parcels, the Community Development Director shall determine appropriate
24 grade plane to be used for daylight plane calculation.
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Section 13: Chapter XX of the Albany Municipal Code, Section 20.24.070 B, titled “Setbacks with Daylight Planes, Exterior Property Lines at Streets Abutting Residential Districts,” is hereby amended to include the following text:

2. Where a property in a Residential Medium Density District (R-2) or a Residential High Density District (R-3) has an exterior lot line that abuts a residential district, the minimum setback from such lot line shall be fifteen (15) feet. An additional setback for any portion of any structure extending above twenty-eight (28) feet in height, up to the maximum height permitted, shall be defined by a daylight plane extending from a base point located twenty-eight (28) feet above the line of the minimum required setback, inclined away from the vertical at a forty-five (45) degree angle. See Figure 4. below.

Section 14: Chapter XX of the Albany Municipal Code, Section 20.24.080 B, titled “Height Limits and Exceptions,” is hereby amended to include the following text:

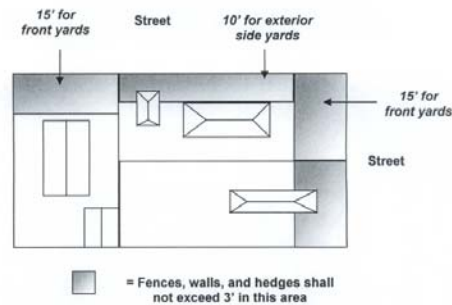
B. General Exceptions. Subject to approval of a use permit, towers, spires, cupolas, chimneys, elevator penthouses, water tanks, monuments, flagpoles, theatre scenery storage structures, fire towers, and similar structures may be erected to a height not more than ten (10) feet above the height limit prescribed by the regulations for the district in which the site is located, provided that no such structure shall be used for habitable space or advertising purposes, and provided that the aggregate of such structures does not cover more than ten (10%) percent of the roof area of the top floor of the structure to which they are attached. All structures that exceed the height limit shall be subject to design review.

Section 15: Chapter XX of the Albany Municipal Code, Section 20.24.080 C, titled “Height Limits and Exceptions,” is hereby amended to include the following text:

1 **C. Mechanical Appurtenances.** Mechanical appurtenances covering not
2 more than twenty (20%) of the roof area of the top floor of any nonresidential, mixed-
3 use or multi-family structure to which they are attached may exceed the height limit
4 prescribed by the regulations for the district in which the site is located by six (6) feet
5 subject to design review and provided that such structures are screened in accordance
6 with subsection 20.24.110, and further provided that no screening is located within
7 ten (10) feet of the perimeter of the plate line of the top story.
8

9 **Section 16:** Chapter XX of the Albany Municipal Code, Section 20.24.110 C.2, titled
10 “Fences, Landscaping, Screening” is hereby amended to include the following text:
11

12 2. In any R District any fence, wall hedge, or other visual obstruction shall not
13 exceed three (3) feet in height within any required front yard. A visual obstruction
14 exceeding three (3) feet in height within ten (10) feet of any property line abutting a
15 street shall be subject to administrative design review. No exceptions shall be made
16 for residential structures with nonconforming front yard setbacks (see illustration
17 below).
18



MC 20.24.110

Areas Where the Height of Fences,
Walls and Hedges are Limited to
Three (3) Feet

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21 **Section 17:** Chapter XX of the Albany Municipal Code, Section 20.24.110 C.2 and,
22 titled “Fences, Landscaping, Screening,” is hereby amended to include the following
23 text:
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25 Exception to height limit in front yard: A structure designed to provide a decorative
26 gateway, such as an arbor, trellis or pergola, may occupy an area not to exceed twenty
27 (20) square feet, with a maximum horizontal dimension of six (6) feet and a
28 maximum vertical dimension of ten (10) feet, subject to administrative design review
29 approval based on all of the following findings:
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- 31 a. *The structure is not attached to the principal structure or any other*
32 *structure other than a fence.*

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- b. *Structural bulk is minimized by the use of open materials such as lattice.*
- c. *The location of the structure does not create a sight distance problem with respect to driveways or street intersections.*
- d. *The design of the structure is appropriate to the main building and the landscaping of the property.*

Section 18: Chapter XX of the Albany Municipal Code, Section 20.24.080 E.5, titled “Height Limits and Exceptions,” is hereby amended to include the following text, which will be repeated from Municipal Code Section 20.24.020 Table 2.A. Note 12:

E.5. Planning and Zoning Commission, subject to Design Review criteria, may grant a use permit to allow greater height for second story additions, up to 35 feet, measured in accordance with subsection 20.24.080, and based on all three (3) of the following findings:

- a. *The existing house has a partial ground story that causes an increase in the overall height of the building, and there are sound design reasons from considering a roof line that exceeds twenty-eight (28) feet.*
- b. *The natural downward or upward topography of the site causes an increase in the overall height of the building. The minimum roof pitch has been maintained on the addition to be consistent with the existing architectural design of the house. The height has been measured from the natural or finished grade to the highest point on the roof.*
- c. *The existing architectural character and design of the house is maintained. Design factors have been considered to offset or minimize the increased height, such as breakup in the mass and bulk, offsetting one or more portions of the addition from the ground story wall line, and adding architectural details and elements such as horizontal trim or other features to create interest.*

Section 19: Chapter XX of the Albany Municipal Code, Section 20.24.130 H, titled “Accessory Buildings,” is hereby amended to include the following text:

- H. Setbacks. Accessory buildings shall be within six (6”) inches of the side or rear lot line, or shall be set back at least three (3’) feet, and shall be subject to the following provisions:
- 1. Accessory buildings shall not have openings (windows, doors, and vents) within three (3) feet of the property line. This includes openings on walls that are perpendicular to a property line. An exception shall be made for garage (vehicle) doors.

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2. Accessory buildings located on the street side yard of corner lots are required to meet the minimum setback requirements for the main building.

Section 20: Chapter XX of the Albany Municipal Code, Section 20.28.050.A.1.c and Table 6, titled “Parking Area Standards,” is hereby amended to include the following text:

- c. Open Parking. The minimum dimensions for an open parking space meeting the parking requirements for a newly constructed single-family dwelling shall be eight (8) feet six (6) inches in width and eighteen (18) feet in length. The minimum width dimension for a double-car open parking space shall be sixteen (16) feet.

Table 6. 20.28.050 Residential Parking Dimensions.			
Type of Parking	Width	Length	Height
<i>Enclosed Parking:</i>			
Single space	8'6"	19'	7'
Side-by-side spaces	16'	19'	7'
<i>Covered Parking:</i>			
Single space	8'6"	18'	7'
Side-by-side spaces	16'	18'	7'
<i>Open Parking:</i>			
Single space	8'6"	18'	N/A
Side-by-side spaces	16'	18'	N/A
<i>Driveways</i>			
Single	7'	N/A	N/A
Double	15'	N/A	N/A

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Section 21: Chapter XX of the Albany Municipal Code, Section 20.40.080 titled “Housing Provisions” is hereby adopted to include the following text:

- A. A developer of any project subject to the requirements in this chapter may appeal to the city council for a reduction, adjustment, or waiver of the requirements based upon the absence of any reasonable relationship or nexus between the impact of the development and either the amount of the fee charged or the inclusionary requirement.
- B. A developer subject to the requirements of this chapter who has received an approved tentative subdivision or parcel map, use permit or similar discretionary approval and who submits a new or revised tentative subdivision or parcel map, use permit or similar discretionary approval for the same property may appeal for a reduction, adjustment or waiver of the requirements with respect to the number of lots or square footage of construction previously approved.

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C. Any such appeal shall be made in writing and filed with the city clerk not later than ten (10) calendar days before the first public hearing on any discretionary approval or permit for the development, or if no such discretionary approval or permit is required, or if the action complained of occurs after the first public hearing on such permit or approval, then the appeal shall be filed within ten (10) calendar days after payment of the fees objected to. The appeal shall set forth in detail the factual and legal basis for the claim of waiver, reduction, or adjustment. The city council shall consider the appeal at the public hearing on the permit application or at a separate hearing within sixty (60) calendar days after the filing of substantial evidence to support the appeal including comparable technical information to support appellant’s position. No waiver shall be approved by the city council for a new tentative subdivision or parcel map, user permit or similar discretionary approval on property with an approved tentative subdivision or parcel map, use permit or similar discretionary permit unless the council finds that the new tentative subdivision or parcel map, user permit or similar discretionary approval is superior to the approved project both in its design and its mitigation of environmental impacts. The decision of the council shall be final. If a reduction, adjustment, or waiver is granted, any change in use within the project shall invalidate the waiver, adjustment, or reduction of the fee or inclusionary requirement.

Section 22: Chapter XX of the Albany Municipal Code, Section 20.100.080.C.1. titled “Administrative Actions Appealable.” is hereby amended to include the following text:

- 1. Any person aggrieved by a decision to grant or deny a permit or action taken by the Planning staff or any other City Official under the provisions of this chapter, or any person aggrieved by an administrative determination or interpretation made in conjunction with a decision to grant, deny or comply with a determination made pursuant to a provision of this chapter, may appeal such action to the Planning and Zoning Commission.

Section 23: Chapter V of the Albany Municipal Code, 5-11.6 “Entertainment Permits Required in Place Serving Food or Refreshments” is hereby amended to include the following text:

No person shall provide or permit any entertainment in a bar, cocktail lounge, tavern, cafe, restaurant, hotel, motel, hall or public place where food, alcoholic or other beverages, or other refreshments are served, unless such person shall first obtain an entertainment permit to do so from the Planning and Zoning Commission as hereinafter provided. (Ord. #80-08; 1958 Code §9.6)

1 **Section 24:** Chapter V of the Albany Municipal Code, 5-11.9 “Administration;
2 Rules and Regulations; Adoption of Rules and Regulations” is hereby amended to
3 include the following text:
4

5 The Planning and Zoning Commission or their duly authorized representative,
6 is empowered to adopt reasonable rules and regulations or to impose reasonable
7 conditions upon any permit issued for the purpose of implementing this section, with
8 copies of such rules, regulations, or conditions to be provided to those permittees
9 affected thereby and violation of such rules and regulations or conditions shall be
10 deemed grounds for suspension or revocation of a permit. A copy of such rules and
11 regulations shall be conspicuously posted in every room of the establishment wherein
12 entertainment takes place. Such rules and regulations shall not be printed in type less
13 than nine point. (Ord. #80-08; 1958 Code §9.9)
14

15 The term of an entertainment permit shall be limited to one (1) year. Upon filing an
16 application of an extension of a valid entertainment permit, the Planning and Zoning
17 Commission may consider extension of the entertainment permit in one year
18 intervals. After granting two (2) 12-month extensions of an entertainment permit,
19 extensions will not be required; however, the Planning and Zoning Commission shall
20 have discretion to review an entertainment permit if issues of health, safety and/or
21 welfare arise.
22

23 **Section 25:** Chapter V of the Albany Municipal Code, 5-11.12 “Exception,
24 Application to Planning and Zoning Commission” is hereby amended to include the
25 following text:
26

27 Any person who shall desire to carry on or conduct any amusement or
28 entertainment or dance during the hours prohibited by subsection 5-11.10 and for a
29 longer period than one (1) night, shall file a written application therefore with the
30 Community Development Department for presentation to the Planning and Zoning
31 Commission. Such application shall contain a detailed statement of the type of
32 amusement or entertainment or dance which the applicant desires to carry on or
33 conduct and a statement of the reasons which, in the applicant's opinion, warrant the
34 granting of same. Such application shall be filed with the Community Development
35 Department at least fourteen (14) days prior to the date upon which the applicant
36 desires the granting of such permission. Thereupon, the Community Development
37 Department shall refer the application to the Chief of Police or his agent for
38 investigation pursuant to subsection 5-11.8 and his recommendation to the Planning
39 and Zoning Commission. The Planning and Zoning Commission may grant such
40 permission to applicant when, in its discretion, the nightly conduct of such
41 amusement or entertainment or dance shall not be detrimental to the public health,
42 safety, morals or welfare. (Ord. #80-08; 1958 Code §9.12)
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Section 26. Severability.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance, and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

Section 27: Publication and Effective Date.

This ordinance shall be posted at three public places within the City of Albany and shall become effective thirty days after the date of its posting.

MARGE ATKINSON
MAYOR