



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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 5  
 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:

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 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.  
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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:  
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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:  
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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 7 9 – 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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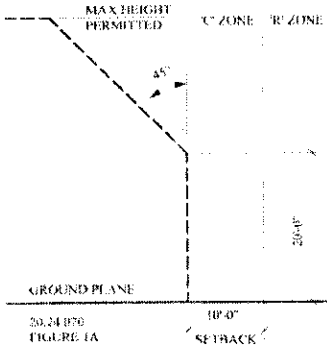
30 **Section 11:** Chapter XX of the Albany Municipal Code, Section 20.24.070 A, titled  
31 "Setbacks with Daylight Planes, Interior Property Lines Abutting Residential District  
32 Boundaries," is hereby amended to include the following text:

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:

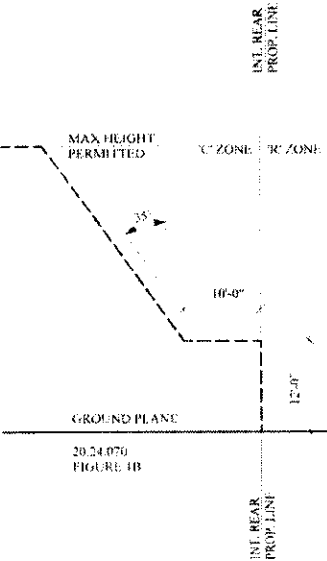
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39 The minimum setback at the rear shall be one of the following two options: 1) A 20  
40 feet in height at a point 10 feet back from the property line, plus a 45 degree daylight  
41 plane to the maximum permitted height, or 2) A 12 feet in height 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.



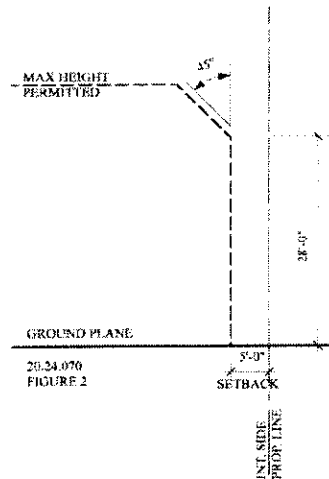
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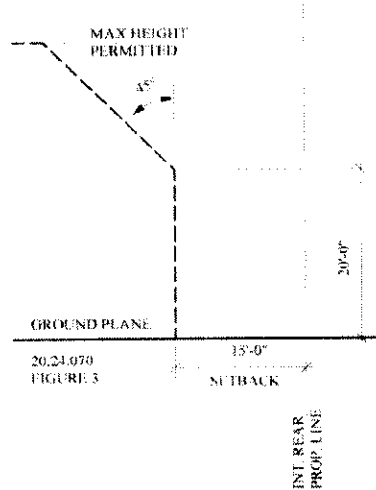
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**Section 12:** Chapter XX of the Albany Municipal Code, Section 20.24.070, titled "Setbacks with Daylight Planes, Interior Property Lines Abutting Residential District Boundaries," is hereby amended to include the following text:

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:

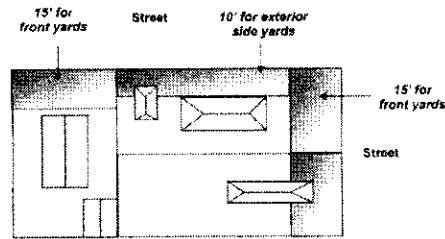
**B. General Exceptions.** Subject to approval of a use permit, towers, spires, cupolas, chimneys, elevator penthouses, water tanks, monuments, flagpoles, theatre scenery storage structures, fire towers, and similar structures may be erected to a height not more than ten (10) feet above the height limit 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  
Area Where the Height of Fences,  
Walls and Hedges are Limited to  
Three (3) Feet

19  
20  
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:  
24

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:  
30

- 31       a. *The structure is not attached to the principal structure or any other*  
32 *structure other than a fence.*



- 1  
2       b. *Structural bulk is minimized by the use of open materials such as lattice.*  
3  
4       c. *The location of the structure does not create a sight*  
5       *distance problem with respect to driveways or street intersections.*  
6  
7       d. *The design of the structure is appropriate to the main building and the*  
8       *landscaping of the property.*  
9

10 **Section 18:** Chapter XX of the Albany Municipal Code, Section 20.24.080 E.5, titled  
11 "Height Limits and Exceptions," is hereby amended to include the following text,  
12 which will be repeated from Municipal Code Section 20.24.020 Table 2.A. Note 12:  
13

14       E.5. Planning and Zoning Commission, subject to Design Review criteria,  
15 may grant a use permit to allow greater height for second story additions, up to 35  
16 feet, measured in accordance with subsection 20.24.080, and based on all three (3) of  
17 the following findings:  
18

- 19       a. *The existing house has a partial ground story that causes an increase in the*  
20       *overall height of the building, and there are sound design reasons from*  
21       *considering a roof line that exceeds twenty-eight (28) feet.*  
22  
23       b. *The natural downward or upward topography of the site causes an increase in*  
24       *the overall height of the building. The minimum roof pitch has been*  
25       *maintained on the addition to be consistent with the existing architectural*  
26       *design of the house. The height has been measured from the natural or*  
27       *finished grade to the highest point on the roof.*  
28  
29       c. *The existing architectural character and design of the house is maintained.*  
30       *Design factors have been considered to offset or minimize the increased*  
31       *height, such as breakup in the mass and bulk, offsetting one or more portions*  
32       *of the addition from the ground story wall line, and adding architectural*  
33       *details and elements such as horizontal trim or other features to create*  
34       *interest.*  
35

36 **Section 19:** Chapter XX of the Albany Municipal Code, Section 20.24.130 H, titled  
37 "Accessory Buildings," is hereby amended to include the following text:  
38

39       H. Setbacks. Accessory buildings shall be within six (6") inches of the side or  
40       rear lot line, or shall be set back at least three (3') feet, and shall be subject to the  
41       following provisions:  
42

- 43       1. Accessory buildings shall not have openings (windows, doors, and vents)  
44       within three (3) feet of the property line. This includes openings on walls  
45       that are perpendicular to a property line. An exception shall be made for  
46       garage (vehicle) doors.

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.

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

**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:  
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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)  
43  
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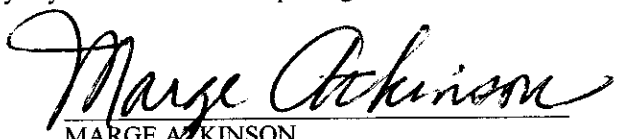
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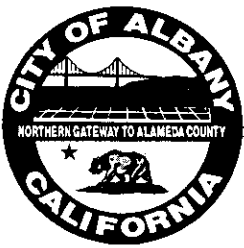
**Section 26. Severability.**

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



# City of Albany

1000 SAN PABLO AVENUE • ALBANY, CALIFORNIA 94706-2295

**CITY ADMINISTRATOR**  
PH. (510) 528-5710  
FAX (510) 528-5797

**CITY ATTORNEY**  
PH. (510) 524-9205  
FAX (510) 526-9190

**CITY CLERK**  
PH. (510) 528-5720  
FAX (510) 528-5797

**CITY COUNCIL**  
PH. (510) 528-5720  
FAX (510) 528-5797

**COMMUNITY DEVELOPMENT & ENVIRONMENTAL RESOURCES**

- Building
- Engineering
- Environmental Resources
- Maintenance
- Planning

PH. (510) 528-5760  
FAX (510) 524-9359

**FINANCE & ADMINISTRATIVE SERVICES**

**CITY TREASURER**  
PH. (510) 528-5730  
FAX (510) 528-2743

**FIRE & EMERGENCY MEDICAL SERVICES**

PH. (510) 528-5771  
FAX (510) 528-5774

**PERSONNEL**

PH. (510) 528-5714  
FAX (510) 528-5797

**POLICE**

PH. (510) 525-7300  
FAX (510) 525-1360

**RECREATION & COMMUNITY SERVICES**

1249 Marin Avenue  
PH. (510) 524-9283  
FAX (510) 528-8914

- Friendship Club/ Childcare Program  
PH. (510) 524-0135
- Senior Center  
PH. (510) 524-9122  
FAX (510) 524-8940
- Teen Center  
PH. (510) 525-0576

STATE OF CALIFORNIA )  
COUNTY OF ALAMEDA ) ss  
CITY OF ALBANY )

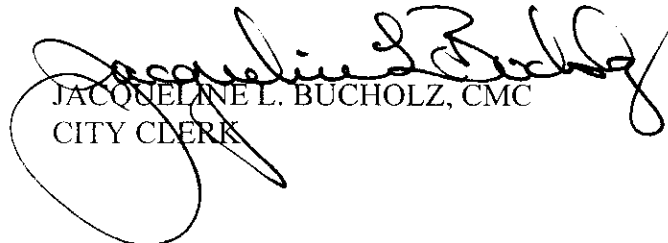
I, **JACQUELINE L. BUCHOLZ**, City Clerk of the City of Albany, California, do hereby certify that the whole number of members of the City Council of said City of Albany is five and that the foregoing is a true and correct copy of Ordinance No. 09-011 which was passed and adopted by the said City Council, approved and signed by the Mayor of said City, and attested by the City Clerk of said City, all at a regular meeting of the said Council on the 5th day of October 2009 A.D., and that the same was so passed and adopted by the following votes and duly published or posted according to State law.

AYES: Javandel, Lieber, Wile, Thomsen & Mayor Atkinson

NOES: None

ABSENT: None

In witness whereof, I have hereunto set my hand and affixed the official seal of the City of Albany, this 6th day of October, 2009.

  
JACQUELINE L. BUCHOLZ, CMC  
CITY CLERK

*The City of Albany is dedicated to maintaining its small town ambience, responding to the needs of the community, and providing a safe, healthy environment now and in the future.*



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