



1           **WHEREAS**, David Long on behalf of Orange Theory Fitness filed an appeal of  
2 the Planning & Zoning Commission decision on May 10, 2016; and

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4           **WHEREAS**, the appeal cites a desire to have an opening hour of 5:30 am where  
5 6am was approved by the Planning & Zoning Commission; and

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7           **WHEREAS**, City staff scheduled the hearing on July 5, 2016 pursuant to Section  
8 20.100.080 (E) (1) which requires that the appeal be scheduled within thirty (30) days of  
9 the initial filing; and

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11           **WHEREAS**, a public hearing notice was mailed to property owners within 300 ft.  
12 of the subject site and was posted in three public places on Tuesday June 21, 2016 for the  
13 City Council appeal pursuant to Government Code Section 65090; and

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15           **WHEREAS**, on July 5, 2016 the City Council held a public hearing, considered  
16 all public comments received, the presentation by City staff, the staff report, and all other  
17 pertinent documents regarding the proposed request;

18           **WHEREAS**, Planning and Zoning Code Section 20.100.080.F establishes the  
19 following standards for review of appeals:

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21           *When reviewing any decision of the Planning and Zoning Commission on appeal,*  
22 *the City Council shall use the same standards for decision making and is required*  
23 *to make findings in accordance with the Municipal Code. The Council may adopt*  
24 *the Planning and Zoning Commission's decision and findings as its own. In*  
25 *either case, the City Council shall have the option to prepare a resolution stating*  
26 *the council's decision or shall render its decision by minute action.*

1           **NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of  
2 Albany approves application request PA 16-033 and upholds the decision of the Planning  
3 & Zoning Commission:  
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5           **1. FINDINGS FOR EXEMPTION FROM CEQA**  
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7           **Finding:** The project is Categorically Exempt from the California Environmental  
8 Quality Act Guidelines pursuant to Section 15332 “In-Fill Development Projects”.

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10           **Evidence:** The proposed application would result in minor changes to the interior and  
11 exterior of an existing structure.  
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13           **2. FINDINGS FOR APPROVAL OF CONDITIONAL USE PERMIT**

14           1.   **Finding Required for Approval:** The size, location and intensity of the  
15 project are desirable and compatible with the neighborhood and  
16 community.  
17

18                   **Evidence:** The operation will occupy a previously vacant store front on the  
19 Solano Ave. corridor. The fitness studio is compatible with surrounding  
20 uses which include various restaurant operations, and other retail and  
21 service oriented businesses in the corridor.

22           2.   **Finding Required for Approval:** The project will not be detrimental to  
23 the health, safety, convenience or general welfare of people residing or  
24 working in the vicinity, or injurious to property, improvements or potential  
25 development in the vicinity, with respect to aspects including but not  
26 limited to the following:  
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28                   a.   The nature of the proposed site, including its size and shape, and  
29 the proposed size, shape and arrangement of structures.

1           **Evidence:** The proposal is in scale and harmony with existing  
2 development near the site. The business will be located within an existing  
3 commercial building along the Solano Ave. corridor. Adverse impacts are  
4 not expected with the business operation.

5           b. The accessibility and traffic patterns for persons and vehicles, the  
6 type and volume of such traffic, and the adequacy of proposed off-street  
7 parking and loading.

8           **Evidence:** The patron-driven demand for parking is expected to be short  
9 term and will be 6am-10am and 4:30pm-8pm Monday-Friday. and peak in  
10 the afternoon.

11           c. The safeguards afforded to prevent noxious or offensive emissions  
12 such as noise, glare, dust and odor.

13           **Evidence:** The proposed location is within an existing building and is  
14 surrounded by existing businesses on either side.

15           d. Treatment given, as appropriate, to such aspects as landscaping,  
16 screening, open spaces, parking and loading areas, service areas, lighting  
17 and signs.

18           **Evidence:** The proposed location is an interior space with fully operating  
19 businesses on either side with frontage on Solano Ave. as the only access  
20 point.

- 21           3. **Finding Required for Approval:** That such use or feature as proposed  
22 will comply with the applicable provisions of this Chapter and will be  
23 consistent with the policies and standards of the General Plan.

24           **Evidence:** The project as proposed is consistent with the Zoning Ordinance  
25 and General Plan.

26 **PASSED AND ADOPTED** by the City Council of the City of Albany on the 5<sup>h</sup> day of  
27 July, 2016.

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29 PETER MAASS, MAYOR



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**SP7-** The earliest class offering permitted is 6 am. (Per Planning & Zoning Commission review 4/27/16)

**SP8-** A compliance report shall be presented to the Planning & Zoning Commission 6 months after the date of operation commencement. (Per Planning & Zoning Commission review 4/27/16)

**SP9-** Orange Theory Fitness shall provide two (2) indoor bicycle parking spaces. (Per Planning & Zoning Commission review 4/27/16)

**SP10-** To the maximum extent feasible, the applicant shall work with the landlord to allow 90 minute off-street parking in the attached parking garage. (Per Planning & Zoning Commission review 4/27/16)

**SP11-** If it is determined that the business operation is compliant with the Noise Ordinance and has not generated complaints or impacts from adjacent neighbors during the first six months of operation, the Planning & Zoning Commission at the time of the 6-month compliance may change the opening hour to 5:30 am without a formal application filing and at no cost to the applicant. (Per City Council July 5, 2016)

**GENERAL PROJECT CONDITIONS**

Gen-1      **Project Approval.** This Conditional Use Permit approval is for 1495 Solano Ave., as substantially shown and described on the project plans, except as may be modified by conditions herein. Plans provided by David Long, date received April 5, 2016, as presented to the Planning and Zoning Commission on April 27, 2016. For any condition herein that requires preparation of a Final Plan where the project developer has submitted a conceptual plan, the project developer shall submit final plan(s) in

1 substantial conformance with the conceptual plan, but incorporate the  
2 modifications required by the conditions herein for approval by the City.

3 GEN-2

4 **Project Approval Expiration.** This Conditional Use Permit approval  
5 expires on May 11, 2017 (one year from the date on which this approval  
6 becomes effective) or at an alternate time specified as a condition of  
7 approval, unless a building permit has been issued and construction  
8 diligently pursued. The approval may be renewed by the Community  
9 Development Director for a period up to an additional two (2) years,  
10 provided that, at least ten (10) days before expiration of one (1) year from  
11 the date when the approval becomes effective, an application for renewal  
12 of the approval is filed with the Community Development Department.  
13 The Community Development Director may grant a renewal of an  
14 approval where there is no change in the original application, or there is no  
15 request to change any condition of approval.

16 Gen-3

17 **Fees.** The applicant shall pay any and all City and other related fees  
18 applicable to the property, as may be modified by conditions herein. Fees  
19 shall be based on the current fee structure in effect at the time the relevant  
20 permits are secured, and shall be paid before issuance of said permit or  
21 before any City Council final action approval. Notice shall be taken  
22 specifically of Plan Check, Engineering, Fire and Inspection Fees. The  
23 project developer shall also reimburse the City for direct costs of planning;  
24 building and engineering plan check and inspection, as mutually agreed  
25 between the City and developer.

26 GEN-4

27 **Appeals.** The Albany Municipal Code provides that any action of the  
28 Planning staff may be appealed to the Planning and Zoning Commission,  
29 and any action of the Planning and Zoning Commission may be appealed  
to the City Council as per the procedures described in Section 20.100.080.

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The City Clerk will then schedule the matter for the next available City Council meeting.

**GEN-5 Requirement for Building Permit.** Approval granted by the Planning and Zoning Commission does not constitute a building permit or authorization to begin any construction or demolish an existing structure. An appropriate permit issued by the Community Development Department must be obtained before constructing, enlarging, moving, converting, or demolishing any building or structure within the City.

**GEN-6 Fire Department Approval.** As part of a building permit application, the applicant shall submit written documentation that all requirements of the Albany Fire Department have, or will be, met to the satisfaction of the AFD.

**GEN-7 Engineering Approval.** As part of a building permit application, the applicant shall submit written documentation that all requirements of the Public Works Department have, or will be, met to the satisfaction of the City Engineer.

**GEN-8 Construction Hours.** Construction activity shall be restricted to the hours of 8:00 a.m. to 6:00 p.m. Mondays through Saturdays, and 10:00 a.m. to 6:00 p.m., Sundays and legal holidays, unless otherwise approved in writing by the City Engineer for general construction activity. Failure to comply with construction hours may result in stop work orders or other administrative actions.

**GEN-9 Archeological Remains.** In the event subsurface archeological remains are discovered during any construction or preconstruction activities on the



1 site, all land alteration work within 100 feet of the find shall be halted, the  
2 Community Development Department notified, and a professional  
3 archeologist, certified by the Society of California Archeology and/or the  
4 Society of Professional Archeology, shall be notified. Site work in this  
5 area shall not occur until the archeologist has had an opportunity to  
6 evaluate the significance of the find and to outline appropriate mitigation  
7 measures, if deemed necessary. If prehistoric archeological deposits are  
8 discovered during development of the site, local Native American  
9 organizations shall be consulted and involved in making resource  
10 management decisions.

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12 **GEN-10** **Modifications to Approved Plans.** The project shall be constructed as  
13 approved. Planning staff may approve minor modifications in the project  
14 design, but not the permitted land use (per MC 20.12). A change in an  
15 item requiring discretionary approval and any other changes deemed  
16 appropriate by the Planning staff shall require further Planning and Zoning  
17 Commission approval through the Design Review process.

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19 **GEN-11** **Hold Harmless Agreement.** The applicant (including any agent thereof)  
20 shall defend, indemnify, and hold harmless, the City of Albany and its  
21 agents, officers and employees, from any claim, action, or proceeding  
22 against the City or its agents, officers or employees to attack, set aside,  
23 void, or annul the City's approval concerning this application, which action  
24 is brought within the time period provide for in Section 66499.37. The  
25 City will promptly notify the applicant of any such claim action or  
26 proceeding and cooperate fully in the defense.

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28 **GEN-12** **Public Improvements Standards.** Public improvements shall be  
29 designed and constructed in accordance with the City's Standard

1 Specifications and Standard Details, unless specifically waived in writing  
2 by the City Engineer.

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4 GEN-13 **Title 24 Standards.** All construction shall be designed and built in  
5 accordance with California Title 24 handicap accessibility standards.  
6 Appropriate details and specifications shall be incorporated into the plans  
7 and submitted at time of building permit application.

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9 GEN-14 **Energy Conservation Standards.** All buildings shall be designed in  
10 accordance with the State of California energy conservation standards for  
11 non-residential buildings. The necessary plans and documentation shall be  
12 submitted at time of building permit application.

13 LIGHTING CONDITIONS

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16 LGHT-1 **Exterior Lighting.** All exterior lighting shall be installed in such a  
17 manner that glare is directed away from surrounding properties and rights-  
18 of-way. If required, exterior light fixtures shall be equipped with “cut off”  
19 lenses to minimize light and glare spill over onto adjacent properties.

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21 LGHT-2 **Shielding of Lighting.** Prior to the certificate of occupancy, all accent  
22 lighting shall be directed downward and, if necessary, fixed with cut-off  
23 lenses to ensure that no glare spills onto neighboring properties.

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25 LANDSCAPING CONDITIONS

26 LNDSC-1 **Street Tree Requirement.** The applicant shall apply for one street tree  
27 before the issuance of the building permit. The City’s Environmental  
28 Resource Assistance will determine the type and location of the tree and  
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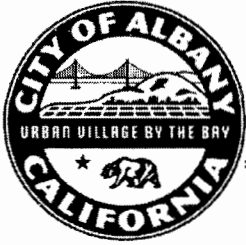
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may waive this requirement if site conditions will not reasonably support establishment of a new tree.

**SIGN CONDITIONS**

**SIGN -1 Signage Design Review Approval.**

All construction/installation of signage shall conform to the approved sign plan and color samples approved the Community Development Department.



# City of Albany

1000 San Pablo Avenue • Albany, California 94706  
(510) 528-5710 • [www.albanyca.org](http://www.albanyca.org)

## RESOLUTION NO. 2016-56

PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF ALBANY,

the 5th day of July, 2016, by the following votes:

AYES: Council Members Barnes, McQuaid, Nason, Pilch and Mayor Maass

NOES: none

ABSENT: none

ABSTAINED: none

RECUSED: none

WITNESS MY HAND AND THE SEAL OF THE CITY OF ALBANY, this

6th day of July, 2016.

Eileen Harrington  
DEPUTY CITY CLERK

*The City of Albany is dedicated to maintaining its small town ambiance, responding to the needs of a diverse community, and providing a safe, healthy and sustainable community.*