

**CITY OF ALBANY  
CITY COUNCIL AGENDA  
STAFF REPORT**

Agenda Date: May 18, 2020  
Reviewed by: NA

**SUBJECT:** Proposed Code Amendments to Section 20.20.040 “Home Occupations” of the Albany Municipal Code – First Reading

**REPORT BY:** Anne Hersch, AICP, Planning Manager

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**SUMMARY**

This report provides information for the City Council to consider proposed amendments to Section 20.20.040 “Home Occupations” of the Albany Municipal Code.

**PLANNING & ZONING COMMISSION RECOMMENDATION**

That the Council introduce for first reading Ordinance No. 2020-05 amending Section 20.20.040 “Home Occupations” of the Albany Municipal Code. The Planning & Zoning Commission adopted the following resolutions:

1. Planning & Zoning Resolution No. 2020-02, a Resolution of Intention to initiate Code amendments in Section 20.20.040 “Home Occupations” of the Albany Municipal Code on March 11, 2020.
2. Planning & Zoning Resolution No. 2020-03 forwarding a recommendation to the City Council to adopt Code amendments in Section 20.20.040 “Home Occupations” of the Albany Municipal Code on April 29, 2020.

**STAFF RECOMMENDATION**

That the Council introduce for first reading Ordinance No. 2020-05 amending Section 20.20.040 “Home Occupations” of the Albany Municipal Code.

**BACKGROUND**

Section 20.20.040 of the Albany Municipal Code regulates home occupations and also provides permit procedures for home-based businesses. The regulations date back to at least the 1950s and identify performance standards to operate a home-based business as well as prohibited uses. A homeowner applying for the Home Occupation Permit completes a form which is filed with the Community Development Department accompanied by an application fee as set in the Master Fee Schedule (\$77 for FY 2019-2020). Staff completes a cursory review of the application and typically approves the home

occupation request.

## **ANALYSIS**

Recent changes in State Law related to Assembly Bill 5 (AB5) have limited the use of independent contractors in California. On a local level, independent contractors are now required to obtain a City issued business license as a result of the law. If the only address provided is a residential property, a home occupation permit is also required, regardless of whether work is conducted on site. The changes in State law require workers who were previously contractors to obtain local business licenses to maintain their current working arrangements.

The City has received questions about the requirement for the home occupation permit for independent contractors as the requirement is antiquated and has not evolved to meet the current situation of many professional independent contractors.

As an example, an independent contractor such as a therapist or other service provider who receives assignments via e-mail at their residence and conducts assignments off-site is now subject to Home Occupation requirements. The business license and Home Occupation process requires a physical address within the City limits to be provided on the forms. However, the individual does not conduct business at their residence and they do not provide services within the City. Consequently, two fees are collected and no actual business or services are rendered in the City.

Home occupation regulations were originally established to prevent inappropriate and incompatible uses which impact quality of life and public health within the City's residential neighborhoods. The current enforcement of home occupation requirements are broad and have proven to be an outdated regulatory tool that has a de minimis impact on neighbors and related quality of life.

Based on the direction of the City Attorney, staff is proposing to eliminate the requirements for a home occupation permit. Performance standards, prohibited uses, and allowable uses will be retained in the amended ordinance. This will eliminate the Home Occupation review process and require only a business license and clearance form for home based businesses.

As included in the ordinance prohibited uses shall include:

1. Automobile repair;
2. Barber shops and beauty parlors;
3. Clinics and hospitals; also veterinarian clinics and hospitals;
4. Kennels and other boarding for pets;
5. Offices for physicians, dentists and other medical practitioners, except that

a practitioner, in conducting the business through house calls, may use the home for clerical and similar work;

6. Other uses which, in the opinion of the Community Development Director, conflict with the purpose of this section.

### **SUSTAINABILITY CONSIDERATIONS**

N/A

### **SOCIAL EQUITY AND INCLUSIVITY CONSIDERATIONS**

N/A

### **CITY COUNCIL STRATEGIC PLAN INITIATIVES**

N/A

### **FINANCIAL CONSIDERATIONS**

A home occupation fee is currently \$77. This fee would no longer be charged, resulting in a nominal loss in revenue.

### **CEQA**

The Code amendments are exempt from CEQA pursuant to Section 15061(b)(3).

### **Attachments**

1. Ordinance No. 2020-05
2. Planning & Zoning Commission Resolution No. 2020-02
3. Planning & Zoning Commission Resolution No. 2020-03
4. Planning & Zoning Commission Meeting Minutes Excerpts (3/11/20 & 4/29/20)

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**ORDINANCE NO. 2020-05**

**AN ORDINANCE OF THE ALBANY CITY COUNCIL AMENDING SECTION 20.20.040  
“HOME OCCUPATIONS” OF THE ALBANY MUNICIPAL CODE**

**WHEREAS**, Chapter 20 “Planning & Zoning” was comprehensively updated and adopted in 2004; and

**WHEREAS**, home occupation regulations are contained in Section 20.20.040 of the Albany Municipal Code; and

**WHEREAS**, Assembly Bill 5 has created an increased demand for business licenses and home occupation permits for independent contractors in the City of Albany; and

**WHEREAS**, the City Attorney has provided recommendations on proposed ordinance amendments; and

**WHEREAS**, on March 11, 2020 the Planning & Zoning Commission adopted Resolution 2020-02, a Resolution of Intention to amend Section 20.20.040 “Home Occupations” of the Albany Municipal Code; and

**WHEREAS**, a public hearing notice was published in the West County Times and posted in three public places pursuant to California Government Code Section 65090 on April 17, 2020 for the virtual public hearing held on April 29, 2020; and

**WHEREAS**, the Planning & Zoning Commission held a public hearing on April 29, 2020 to discuss proposed amendments to Home Occupations and adopted Resolution 2020-02 forwarding a recommendation to City Council to amend Section 20.20.040 “Home Occupations” of the Albany Municipal Code; and

1           **WHEREAS**, a public hearing notice was published in the West County Times and posted  
2 in three public places pursuant to California Government Code Section 65090 on May 8, 2020  
3 for the virtual public hearing held on May 18, 2020; and  
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5           **WHEREAS**, the City Council held a public hearing on May 18, 2020 to discuss  
6 proposed amendments to Section 20.20.040 “Home Occupations” of the Albany Municipal Code.  
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8           **NOW, THEREFORE, THE ALBANY CITY COUNCIL ORDAINS AS**  
9 **FOLLOWS:**  
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11           **SECTION 1: CHAPTER 20 “PLANNING & ZONING” OF THE ALBANY**  
12 **MUNICIPAL CODE, SECTION 20.20.040 TITLED “HOME OCCUAPTIONS” IS**  
13 **HEREBY REPEALED AND REPLACED AS FOLLOWS:**  
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15           **A. Purpose.** The regulations contained in this section are intended to prescribe conditions  
16 under which nonresidential activities may be conducted in conjunction with, but  
17 incidental to, residential uses, thus assuring that such activities are not detrimental to the  
18 residential character of the neighborhood in which they are located.

19           **B. Prohibited Activities.** The following items are prohibited from use as a home occupation  
20 as they would clearly violate the principle of home occupation as herein defined and  
21 would not be businesses which could be carried on clearly incidental to the residential use  
22 and without destroying the residential character of the property or neighborhood:

- 23           1. Automobile repair;
- 24           2. Barber shops and beauty parlors;
- 25           3. Clinics and hospitals; also veterinarian clinics and hospitals;
- 26           4. Kennels and other boarding for pets;
- 27           5. Offices for physicians, dentists and other medical practitioners, except that a  
28           practitioner, in conducting the business through house calls, may use the home for

1           clerical and similar work;

- 2           6. Other uses which, in the opinion of the Community Development Director, conflict  
3           with the purpose of this section.

4           **C. Requirements.** Home occupations shall be carried out in strict compliance with the  
5           following requirements:

- 6           1. The operation, conduct or maintenance of the home occupation shall not create or  
7           maintain either during daylight or night hours any disturbance or nuisance  
8           including, but not limited to noise, odor and light.  
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10          2. No structural alterations, either visible or otherwise, which tend to diminish the  
11          residential character of the residence will be required to be made or will be made to  
12          the residence building in order to conduct, operate or maintain the business.  
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14          3. That existing garages that are required for off-street parking spaces shall not be  
15          modified or used so as to preclude the normal parking and storage of family  
16          vehicles.  
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18          4. Businesses or home occupations located in accessory structures shall not  
19          adversely affect the enjoyment and use of adjacent residential properties, including  
20          but not limited to impacts from noise, odor, and light.

21          **D. Business License Required.** The home occupation or business shall, make application  
22          and pay the required fee for a business license pursuant to the City Code or such  
23          applicable ordinance or ordinances of this City as may be hereinafter enacted.

24          **E. Enforcement.** The Community Development Director or designee is hereby authorized  
25          and directed to enforce the provisions of this section, including issuance of penalties as  
26          detailed in the City's Master Fee Schedule.



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**PLANNING & ZONING COMMISSION  
RESOLUTION # 2020-02**

**A RESOLUTION OF INTENTION THE CITY OF ALBANY PLANNING AND  
ZONING COMMISSION TO AMEND SECTION 20.20.040 OF THE  
ALBANY MUNICIPAL CODE**

**WHEREAS**, Chapter 20 "Planning & Zoning" was comprehensively updated and adopted in 2004; and

**WHEREAS**, home occupation regulations are contained in Section 20.20.040 of the Albany Municipal Code; and

**WHEREAS**, Assembly Bill 5 has created an increase demand for business licenses and home occupation permits for independent contractors in the City of Albany; and

**WHEREAS**, city staff has experienced backlash from residents who are required to obtain a home occupation permit but conduct business outside of the City limits; and

**WHEREAS**, the City Attorney has provided recommendations on proposed ordinance amendments.

**NOW, THEREFORE**, The Albany Planning and Zoning Commission does hereby resolve and adopt a Resolution of Intention to amend Section 20.20.040 of the Albany Municipal Code.

**PASSED AND ADOPTED** by the Planning and Zoning Commission of the City of Albany at its meeting on the 11<sup>th</sup> day of March 2020, by the following vote:

AYES: Donaldson, Jennings, Kent, Macleod, Watty

NOES:

ABSENT:

ABSTAIN:



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Chair Watty



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**PLANNING & ZONING COMMISSION  
RESOLUTION # 2020-03**

**A RESOLUTION OF ALBANY PLANNING AND ZONING COMMISSION  
FORWARDING A RECOMMENDATION TO THE ALBANY CITY COUNCIL  
TO AMEND SECTION 20.20.040 "HOME OCCUPATIONS" OF THE  
ALBANY MUNICIPAL CODE**

**WHEREAS**, Chapter 20 "Planning & Zoning" was comprehensively updated and adopted in 2004; and

**WHEREAS**, home occupation regulations are contained in Section 20.20.040 of the Albany Municipal Code; and

**WHEREAS**, Assembly Bill 5 has created an increased demand for business licenses and home occupation permits for independent contractors in the City of Albany; and

**WHEREAS**, the City Attorney has provided recommendations on proposed ordinance amendments; and

**WHEREAS**, on March 11, 2020 the Planning & Zoning Commission adopted Resolution 2020-02, a Resolution of Intention to amend Chapter 20.20.040 "Home Occupations" of the Albany Municipal Code; and

**WHEREAS**, a public hearing notice was published in the West County Times and posted in three public places pursuant to California Government Code Section 65090 on April 17, 2020 for the virtual public hearing held on April 29, 2020; and

**WHEREAS**, the Planning & Zoning Commission held a public hearing on April 29, 2020 to discuss proposed amendments to Home Occupations.

**NOW, THEREFORE**, The Albany Planning and Zoning Commission does hereby resolve and forward a recommendation to Albany City Council to amend Section 20.20.040 "Home Occupations" of the Albany Municipal Code.

**PASSED AND ADOPTED** by the Planning and Zoning Commission of the City of Albany at its meeting on the 29<sup>th</sup> day of April 2020, by the following vote:

AYES: Donaldson, Jennings, Kent, Macleod, Watty

NOES:

ABSENT:

ABSTAIN:

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Chair Watty

**Planning & Zoning Commission Meeting Minutes Excerpts**

**March 11, 2020**

**Proposed Amendments to 20.20.040 "Home Occupations" of the Albany Municipal Code** – The Albany Planning & Zoning Commission will review Resolution of Intention 2020-02 initiating amendments to Chapter 20.20.040 "Home Occupations" of the Municipal Code.

**Recommendation:** The Planning & Zoning Commission review and adopt Resolution 2020-02, a Resolution of Intention to amend Chapter 20.20.040 "Home Occupations" of the Albany Municipal Code.

**CEQA:** The project is exempt pursuant to Section 15061(b)(3).

Planning Manager Hersch presented the staff report dated March 11, 2020.

PUBLIC HEARING OPENED

None

PUBLIC HEARING CLOSED

**Motion to adopt Resolution 2020-02**, a Resolution of Intention to amend Chapter 20.20.040 "Home Occupations" of the Albany Municipal Code. Jennings  
Seconded by Donaldson

AYES: Donaldson, Kent, MacLeod, Jennings, Watty

NAYES: None

ABSTAINING: None

ABSENT: None

**Motion passed, 5-0-0-0**

**April 29, 2020**

**6-2. Proposed Amendments to 20.20.040 "Home Occupations" of the Albany Municipal Code** – The of Albany Planning & Zoning Commission will review Resolution of Intention 2020-02 initiating amendments to Chapter 20.20.040 "Home Occupations" of the Albany Municipal Code.

**Recommendation:** The Planning & Zoning Commission review and adopt Resolution 2020-03 forwarding a recommendation to the City Council to amend Chapter 20.20.040 "Home Occupations" of the Albany Municipal Code.

**CEQA:** The project is exempt pursuant to Section 15061(b)(3).

Planning Manager Hersch presented the staff report dated April 29, 2020.

PUBLIC HEARING OPENED

None

PUBLIC HEARING CLOSED

Commissioner Jennings requested the resolution title reflect a recommendation to the City Council; deletion of the fourth "whereas" clause; and inclusion of information about notice for the current meeting.

Commissioner Donaldson indicated "increase" in the third "whereas" clause should be "increased."

Chair Watty supported the proposed amendments as the language is outdated.

**Motion to adopt Resolution 2020-03** forwarding a recommendation to the City Council to amend Chapter 20.20.040 "Home Occupations" of the Albany Municipal Code with the additional modifications. Donaldson

Seconded by Kent

AYES: Donaldson, Kent, MacLeod, Jennings, Watty

NAYES: None

ABSTAINING: None

ABSENT: None

**Motion passed, 5-0-0-0**