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ORDINANCE # _____
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 Community Development Department has maintained a binder, available to the public, Commissioners, and staff, to catalog areas of the new code that required correction or clarification.

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, and January 27, 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, 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

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

WHEREAS, the Albany City Council, on _____, after due public notice, held a public hearing on the proposed amendment to Chapter XX to address corrections and clarifications to the Code, and

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

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

3
4 a. **Yard, front** means a yard of uniform depth extending across the full
5 width of the lot inward from the front lot line. ~~The front yard of a corner lot is the~~
6 ~~yard adjacent to the shorter street fronts—shall be determined by the Community~~
7 **Development Director.**

8
9 **Section 2:** Chapter XX of the Albany Municipal Code, Section 20.23.040, table 1
10 titled “Permitted land uses by district,” is hereby amended to include the following
11 text:

<u>Land Use</u>	<u>R-1</u>	<u>R-2</u>	<u>R-3</u>	<u>R-4</u>	<u>RH</u> <u>D</u>	<u>SC</u>	<u>SPC</u>	<u>CM</u> <u>X</u>	<u>PF</u>	<u>WF</u>
<u>b) Large Family</u> <u>19</u>	<u>UP</u> <u>-M</u>	<u>UP-</u> <u>M</u>	<u>UP-</u> <u>M</u>	<u>UP-</u> <u>M</u>	<u>UP-</u> <u>M</u>	=	=	=	=	=

13
14 **Section 3:** Chapter XX of the Albany Municipal Code, Section 20.20.020.B.2.d,
15 titled “Community Care Facilities (Child Care and Residential Care),” is hereby
16 amended to include the following text:

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

19
20 **Section 4:** Chapter XX of the Albany Municipal Code, Section 20.20.130, titled
21 “Entertainment Permits,” is hereby amended to include the following text:

22
23 A. **Purpose.** This section establishes regulations for the
24 granting of an entertainment permit. The standards are in addition to the
25 requirements of Albany Municipal Code section 5-11.

26
27 B. **Use Permit Required.** A major use permit shall be required for
28 any place where entertainment is provided within a bar, cocktail lounge, tavern,
29 café, restaurant, hotel, motel, shall or public place where food, alcoholic or
30 other beverages, or other refreshments are served.

31
32 **Section 5:** Chapter XX of the Albany Municipal Code, Section 20.24.020 Table 2.A.
33 Note 14, titled “Development Regulations,” is hereby amended to include the
34 following text:

35
36 Maximum building height is three stories, ~~or 35 feet,~~ above grade, except that the
37 maximum height allowed at the front setback line shall be 28 feet plus a 45-
38 degree daylight plane. (See subsection 20.24.070.B.)

39
40 **Section 6:** Chapter XX of the Albany Municipal Code, Section 20.24.020. Table
41 2.A. Note 19(a), titled “Development Regulations” is hereby amended to include the
42 following text:

1
2 19. Exceptions to setback requirements may be made in the case of a second story
3 addition to a single-family dwelling, as follows:

- 4 (a) A second story addition may be built which builds over an existing wall or
5 foundation which does not conform to the required setbacks, subject to design
6 review by the Planning **and Zoning** Commission and obtaining a use permit.
7 Existing walls which do not conform to the existing side or rear yard setbacks
8 may be extended in an existing vertical or horizontal plane, subject to design
9 review by the Planning and Zoning Commission and a use permit. Such
10 extensions shall not further encroach on any required setback, (i.e., a
11 nonconforming wall which encroaches one (1) foot into a required setback
12 shall not be permitted to encroach two (2) feet) nor shall any extension create
13 a new encroachment in another direction.
14

15 **Section 7:** Chapter XX of the Albany Municipal Code, Section 20.24.020. Table 2.B.
16 Note 3, titled “Development Regulations,” is hereby amended to include the
17 following text:

- 18 3. Same as R-3 District, See note 7, Site regulations, Table ~~2A~~ **9:Residential.**
19

20 **Section 8:** Chapter XX of the Albany Municipal Code, Section 20.24.050 B.1.c,
21 titled “Floor-Area-Ratio” is hereby amended to include the following text:
22

- 23 c. Any covered area on or below the first or main floor, for which the
24 average height of the four (4) corners is greater than ~~six (6)~~ four (4) feet, shall be
25 included in the calculation of gross square footage, except a single parking area may
26 be excluded as provided in paragraph a,1(b) above. **Measurement of height shall be**
27 **taken from the lower of natural or finished grade to the top of finished floor of**
28 **the first or main story.**
29

30 **Section 9:** 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 The minimum setback where an interior lot line of a property in a Solano Commercial
35 or San Pablo Commercial District abuts a residential district boundary shall be five
36 (5) feet on the ~~side and ten (10) feet on the rear~~. An additional setback for any
37 portion of any structure extending above ~~twenty (20)~~ **twelve (12)** feet in height, up to
38 the maximum height permitted in the Commercial District, shall be defined by a
39 daylight plane extending from a base point located ~~twenty (20)~~ **twelve (12)** feet
40 above the ~~ground plane~~ **higher of natural or finished grade** at the line of the
41 minimum required setback, inclined away from the vertical at a ~~forty-five (45)~~
42 **thirty-five (35)** degree angle. (See Figure 1.a., below.) ~~Alternatively the base point~~
43 ~~for the daylight plane may be located twelve (12) feet above the ground plane at~~
44 ~~the property line that abuts a residential district, with no setback from the~~
45 ~~property line required. (See Figure 1.b., below.)~~
46

1 *Insert Diagram 20.24.070 A. Figure 1.a.*
2

3 **Section 10:** Chapter XX of the Albany Municipal Code, Section 20.24.070 B, titled
4 “Setbacks with Daylight Planes, Exterior Property Lines at Streets Abutting
5 Residential Districts,” is hereby amended to include the following text:
6

7 2. Where a property in a Residential Medium Density District (R-2) or a
8 Residential High Density District (R-3) has an exterior lot line ~~on either Kains~~
9 ~~Avenue or Adams Street~~ **that abuts a residential district**, the minimum setback
10 from such lot line shall be fifteen (15) feet. An additional setback for any portion of
11 any structure extending above twenty-eight (28) feet in height, up to the maximum
12 height permitted, shall be defined by a daylight plane extending from a base point
13 located twenty-eight (28) feet above the line of the minimum required setback,
14 inclined away from the vertical at a forty-five (45o) degree angle. See Figure 2.
15 below.
16

17 **Section 11:** Chapter XX of the Albany Municipal Code, Section 20.24.080 B, titled
18 “Height Limits and Exceptions,” is hereby amended to include the following text:
19

20 **B. General Exceptions.** Subject to approval of a ~~use permit~~ **design**
21 **review**, towers, spires, cupolas, chimneys, elevator penthouses, water tanks,
22 monuments, flagpoles, theatre scenery storage structures, fire towers, and similar
23 structures may be erected to a height not more than ten (10) feet above the height
24 limit prescribed by the regulations for the district in which the site is located,
25 provided that no such structure shall be used for habitable space or advertising
26 purposes, and provided that the aggregate of such structures does not cover more than
27 ten (10%) percent of the roof area of the top floor of the structure to which they are
28 attached.
29

30 **Section 12:** Chapter XX of the Albany Municipal Code, Section 20.24.080 C, titled
31 “Height Limits and Exceptions,” is hereby amended to include the following text:
32

33 **B. Mechanical Appurtenances.** Mechanical appurtenances covering not
34 more than twenty (20%) of the roof area of the top floor of any ~~nonresidential~~
35 **structure** to which they are attached may exceed the height limit prescribed by the
36 regulations for the district in which the site is located by six (6) feet subject to design
37 review and provided that such structures are screened in accordance with subsection
38 20.24.110, and further provided that no screening is located within ten (10) feet of the
39 perimeter of the plate line of the top story.
40

41 **Section 13:** Chapter XX of the Albany Municipal Code, Section 20.24.110 C.2, titled
42 “Fences, Landscaping, Screening” is hereby amended to include the following text:
43

44 2. In any R District any fence, wall hedge, or other visual obstruction shall not
45 exceed three (3) feet in height within any front yard, or within fifteen (15) feet of any
46 front property line, whichever is less; except that in no case shall such visual

1 obstruction exceed three (3) feet in height within ten (10) feet of ~~the front property~~
2 ~~line-any property line abutting a street.~~

3
4 **Section 14:** Chapter XX of the Albany Municipal Code, Section 20.24.110 C.2 and,
5 titled “Fences, Landscaping, Screening,” is hereby amended to include the following
6 text:

7
8 2. In any R District any fence, wall hedge, or other visual obstruction shall not
9 exceed three (3) feet in height within any front yard, or within fifteen (15) feet of any
10 front property line, whichever is less; except that in no case shall such visual
11 obstruction exceed three (3) feet in height within ten (10) feet of ~~the front property~~
12 ~~line-any property line abutting a street.~~

13
14 **Exception to height limit in front yard:** A structure designed to provide a
15 decorative gateway, such as an arbor, trellis or pergola, may occupy an area not to
16 exceed twenty (20) square feet, with a maximum horizontal dimension of six (6) feet
17 and a maximum vertical dimension of ten (10) feet, subject to ~~granting of a zoning~~
18 ~~permit- administrative design review approval~~ based on all of the following
19 findings:

- 20
21 a. The structure is not attached to the principal structure or any other
22 structure other than a fence.
23
24 b. Structural bulk is minimized by the use of open materials such as lattice.
25
26 c. The location of the structure does not create a sight
27 distance problem with respect to driveways or street intersections.
28
29 d. The design of the structure is appropriate to the main building and the
30 landscaping of the property.
31

32 **Section 15:** Chapter XX of the Albany Municipal Code, Section 20.24.080 E.5, titled
33 “Height Limits and Exceptions,” is hereby amended to include the following text,
34 which will be repeated from Municipal Code Section 20.24.020 Table 2.A. Note 12:
35

36 E.5. Planning and Zoning Commission, subject to Design Review criteria,
37 may grant a use permit to allow greater height for second story additions, up to 35
38 feet, measure in accordance with subsection 20.24.080, and based on at least one fo
39 the following findings:

- 40 a. *The existing house has a partial ground story that causes an increase in the overall*
41 *height of the building, and there are sound design reasons from considering a roof*
42 *line, which exceeds twenty-eight (29) feet.*
43 b. *The natural downward or upward topography of the site causes an increase in the*
44 *overall height of the building. The minimum roof pitch has been maintained on the*
45 *addition to be consistent with the existing architectural design of the house. The*

1 height has been measured from the natural or finished grade to the highest point on
2 the roof.

3 c. The existing architectural character and design of the house is maintained. Design
4 factors have been considered to offset or minimize the increase height, such as
5 breakup in the mass and bulk, offsetting one or more portions of the addition from the
6 ground story wall line, and adding architectural details and elements such as
7 horizontal trim or other features to create interest.

8
9 **Section 16:** Chapter XX of the Albany Municipal Code, Section 20.24.0130, titled
10 “Accessory Buildings,” is hereby amended to include the following text:

11
12 § 20.24.130.H. Setbacks. Accessory buildings ~~located in rear setback areas~~
13 shall be within six (6”) inches of the side or rear lot line, or shall be set back at
14 least three (3’) feet, and shall be subject to the following provisions:

- 15
16 1. Accessory buildings shall not have openings (windows, doors, and vents)
17 within three (3) feet of the property line. This includes openings on walls
18 that are perpendicular to a property line. An exception shall be made for
19 garage (vehicle) doors.
- 20 2. Accessory buildings located on the street side yard of corner lots are
21 required to meet the minimum setback requirements for the main building.
- 22 3. ~~Accessory buildings on the interior side yard shall not encroach into~~
23 ~~the required side yard setback.~~

24
25 **Section 17:** Chapter XX of the Albany Municipal Code, Section 20.28.040.A.6,
26 titled “Exceptions to Parking Space Requirements,” is hereby amended to include the
27 following text:

28
29 Existing Garages. The Planning and Zoning Commission may find that an existing
30 garage meets the requirements for an off-street parking space if the interior
31 dimensions of such garage are not less than sixteen (16) feet in length, and eight (8)
32 feet in width, for a single garage, or sixteen (16) feet in width for a double garage,
33 and six (6) feet six (6) inches in height. The Planning and Zoning Commission may
34 allow a local obstruction (such as a chimney, stairs or other feature) to protrude into
35 the required parking space dimension, upon finding that such obstruction does not
36 impede the ability to park vehicles in the garage or open space parking.

37
38 **Section 18:** Chapter XX of the Albany Municipal Code, Section 20.28.050 Table 6,
39 titled “Residential Parking Dimensions,” is hereby amended to include the following
40 text:

41 ~~* One (1) additional foot in width shall be provide on each side abutting any~~
42 ~~wall, fence, property line, or other fixed obstruction that restricts vehicle access.~~

43 ** Minimum side-by-side, or double, parking space width is double the minimum
44 single minus one (1) foot. ~~Additional width for obstruction is applicable.~~
45

1 **Section 19:** Chapter XX of the Albany Municipal Code, Section 20.40.080 titled
2 “Housing Provisions” is hereby amended to include the following text:
3

4 A. A developer of any project subject to the requirements in this chapter may
5 appeal to the city council for a reduction, adjustment, or waiver of the
6 requirements based upon the absence of any reasonable relationship or
7 nexus between the impact of the development and either the amount of the
8 fee charged or the inclusionary requirement.
9

10 B. A developer subject to the requirements of this chapter who has received
11 an approved tentative subdivision or parcel map, use permit or similar
12 discretionary approval and who submits a new or revised tentative
13 subdivision or parcel map, use permit or similar discretionary approval for
14 the same property may appeal for a reduction, adjustment or waiver of the
15 requirements with respect to the number of lots or square footage of
16 construction previously approved.
17

18 Any such appeal shall be made in writing and filed with the city clerk not later than
19 ten (10) days before the first public hearing on any discretionary approval or permit
20 for the development, or if no such discretionary approval or permit is required, or if
21 the action complained of occurs after the first public hearing on such permit or
22 approval, then the appeal shall be filed within ten (10) days after payment of the fees
23 objected to. The appeal shall set forth in detail the factual and legal basis for the
24 claim of waiver, reduction, or adjustment. The city council shall consider the appeal
25 at the public hearing on the permit application or at a separate hearing within sixty
26 (60) days after the filing of substantial evidence to support the appeal including
27 comparable technical information to support appellant’s position. No waiver shall be
28 approved by the city council for a new tentative subdivision or parcel map, user
29 permit or similar discretionary approval on property with an approved tentative
30 subdivision or parcel map, use permit or similar discretionary permit unless the
31 council finds that the new tentative subdivision or parcel map, user permit or similar
32 discretionary approval is superior to the approved project both in its design and its
33 mitigation of environmental impacts. The decision of the council shall be final. If a
34 reduction, adjustment, or waiver is granted, any change in use within the project shall
35 invalidate the waiver, adjustment, or reduction of the fee or inclusionary requirement
36

37 **Section 20:** Chapter XX of the Albany Municipal Code, Section 20.100.080.C.1.
38 titled “Administrative Actions Appealable.” is hereby amended to include the
39 following text:

40 Any person aggrieved by a decision to grant or deny a permit or action taken by
41 the Planning staff or any other City Official under the provisions of this chapter,
42 or any person aggrieved by an administrative determination or interpretation made
43 in conjunction with a decision to grant, deny or comply with a determination
44 made pursuant to a provision of this ~~code~~ **chapter** may appeal such action to the
45 Planning and Zoning Commission.
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Section 20. 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 21: 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.

PASSED AND ADOPTED by the City Council of the City of Albany at its meeting on the ___ day of ___, 2009, by the following vote: