

**CITY OF ALBANY
PLANNING AND ZONING AGENDA
STAFF REPORT**

Agenda date: 6/9/09

Prepared by: JB

Reviewed by: AC

ITEM/ 6c

SUBJECT: **Recommendation to the City Council on Proposed Amendments to the Planning and Zoning Code to Correct and Clarify Development Regulations.**

SITE: City-wide

RECOMMENDATION

That the Commission recommend that the City Council approve the draft ordinance containing proposed amendments to the Planning and Zoning Code.

BACKGROUND AND DISCUSSION

Attached is a revised draft ordinance based on the Commission's most recent review of the proposed changes to the Planning and Zoning Code. The most substantive changes are corrections to Section 9 and associated figures. Staff also has added language to address the issue of differences in ground plane between adjacent parcels as follows:

"If there is a difference in grade planes between two adjacent parcels, the Community Development Director shall determine appropriate grade plane to be used for daylight plane calculation."

This language has been added to all references to a daylight plane, including Section 9, Section 11, and Section 12.

This draft also includes detailed language modifying Chapter 5 of the Municipal Code reflecting proposed changes to the processing of entertainment permits. Also attached for your convenience is the entirety of the Amusement and Entertainment Premises section of Chapter 5.

Attachments

- A. Draft Ordinance and Associated Figures
- B. Albany Municipal Code Section 5-11

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 lot line of a corner lot is**
6 **the yard adjacent to the shorter street front shall be determined by the**
7 **Community Development Director.**

8
9 **Section 2:** Chapter XX of the Albany Municipal Code, Section 20.12.040, Table 1
10 titled “Permitted land uses by district,” is hereby amended to include the following
11 text:

12
13 Day Care Home, Residential

Land Use	R-1	R-2	R-3	R-4	RHD	SC	SPC	CM	PF	W
b) Large Family 19	<u>UP-M</u>	<u>UP-M</u>	<u>UP-M</u>	<u>UP-M</u>	<u>UP-M</u>	-	-	-	1	-

14
15 **Section 3:** Chapter XX of the Albany Municipal Code, Section 20.12.040, Notes,
16 Table 1 is hereby amended to add the following text:

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

19 **Section 4:** Chapter XX of the Albany Municipal Code, Section
20 20.20.020.B.2.d, is hereby amended to add the following text:

21 d. Public Notice and Hearing. At least ten (10) calendar days prior to a
22 **decision-administrative public hearing** on a Minor Use Permit for a Large
23 Family Day Care Home, notice of the proposed use and public hearing shall be
24 mailed or delivered to owners of property within one hundred (100) feet of the
25 exterior boundaries of the proposed day care home, **as described in subsection**
26 **20.100.030.C. No hearing shall be held on the application unless a hearing**
27 **is requested by the applicant or other affected person prior to the**
28 **announced time of the decision. Upon request for a hearing, public notice**
29 **shall be provided in the manner and form described in subsection**
30 **20.100.010.E, except that notice shall not be mailed or delivered beyond**
31 **one hundred (100) feet of the exterior boundaries of the proposed day care**
32 **home.**

33
34 **Section 5:** Chapter XX of the Albany Municipal Code, a new section shall be
35 adopted, **Section 20.20.130, titled “Live Entertainment Permits,” and 20.20.070**
36 **are hereby adopted to include the following text:**

37
38 **20.20.130 A. Purpose. This section establishes regulations for the**
39 **granting of an entertainment permit. The standards are in addition to the**
40 **requirements of Albany Municipal Code Section 5-11.**

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

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

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

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

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

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

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

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

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

45
46 3. Same as R-3 District, See note **7 9** – Site regulations, Table 2A:Residential.

1
2 **Section 9:** Chapter XX of the Albany Municipal Code, Section 20.24.020 Table
3 2.B.Note 4, titled “Site Regulations by District: Nonresidential” is hereby amended to
4 include the following text:
5

6 Maximum building height is ~~three stories, or 38 feet~~, above grade, except that where
7 the rear property line abuts a residential district, the maximum height shall be ~~20 feet~~
8 ~~plus a 45 degree day light plane, or at the rear property line shall be 12 feet plus~~
9 ~~a 45 degree daylight plane. either: 20 feet in height at a point 10 feet back from~~
10 ~~the residential district property line, plus a 45 degree daylight plane to the~~
11 ~~maximum permitted height; or alternatively 12 feet in height at the property~~
12 ~~line, then, horizontally to a point 10 feet from the property line, plus 35 degree~~
13 ~~from vertical daylight plane to the maximum permitted height. (See subsection~~
14 ~~20.24.070.A., Figure 1.a & 1.b). If there is a difference in grade planes between~~
15 ~~two adjacent parcels, the Community Development Director shall determine~~
16 ~~appropriate grade plane to be used for daylight plane calculation.~~
17

18 **No projections shall be allowed in the area between the daylight planes and rear**
19 **property line.**
20

21 **Section 10:** Chapter XX of the Albany Municipal Code, Section 20.24.050 B.1.c,
22 titled “Floor-Area-Ratios” is hereby amended to include the following text:
23

24 c. Any covered area on or below the first or main floor, ~~for which the~~
25 ~~average height of the four (4) corners is greater than six (6) feet, shall be~~
26 ~~included in the calculation of gross square footage, shall be calculated in the~~
27 ~~floor-area ratio if the average height of the perimeter is greater than four (4)~~
28 ~~feet, except a single parking area may be excluded as provided in paragraph B.1.b.~~
29 ~~above. Measurement of height shall be taken from the lower of natural or~~
30 ~~finished grade to the top of finished floor of the first, main or story above.~~
31

32 **Section 11:** Chapter XX of the Albany Municipal Code, Section 20.24.070 A, titled
33 “Setbacks with Daylight Planes, Interior Property Lines Abutting Residential District
34 Boundaries,” is hereby amended to include the following text:
35

36 **A.1. Interior Property Lines Abutting Residential District Boundaries:** The minimum
37 setback where an interior lot line of a property in a Solano Commercial or San Pablo
38 Commercial District abuts a residential district boundary shall be five (5) feet on the
39 side.
40

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

1 between two adjacent parcels, the Community Development Director shall
2 determine appropriate grade plane to be used for daylight plane calculation.

3
4 No projections shall be allowed in the area between the daylight planes and rear
5 property line.

6
7 and ten (10) feet on the rear. An additional setback for any portion of any
8 structure extending above twenty (20) twelve (12) feet in height, up to the
9 maximum height permitted in the Commercial District, shall be defined by a
10 daylight plane extending from a base point located twenty (20) twelve (12) feet
11 above the ground plane lower of natural or finished grade at the line of the
12 minimum required setback, inclined away from the vertical at a forty-five (45o)
13 thirty-five (35) degree angle. (See Figure 1.a., below.) Alternatively the base
14 point for the daylight plane may be located twelve (12) feet above the ground
15 plane at the property line that abuts a residential district, with no setback from
16 the property line required. (See Figure 1.b., below.)

17
18 *Insert Diagram 20.24.070 A. Figure 1.*

19
20 **Section 12:** Chapter XX of the Albany Municipal Code, Section 20.24.070, titled
21 “Setbacks with Daylight Planes, Interior Property Lines Abutting Residential District
22 Boundaries,” is hereby amended to include the following text:

23
24 A2. The minimum setback, where an interior lot line of a property in a higher
25 density residential district abuts a lower density residential district, and
26 Municipal Code Section 20.24.030 does not apply, the minimum side yard
27 setback shall be five (5) feet on the side. An additional setback for any portion of
28 any structure extending above twenty (28) feet in height, up to the maximum
29 height permitted in the zoning district, shall be defined by a daylight plane
30 extending from a base point located twenty (28) feet above the ground plane at
31 the line of the five (5) foot required side yard setback, inclined away from the
32 vertical at a forty-five degree angle (See figure 2) If there is a difference in grade
33 planes between two adjacent parcels, the Community Development Director
34 shall determine appropriate grade plane to be used for daylight plane
35 calculation.

36
37 A.3. The minimum setback, where an interior lot line of a property in a higher
38 density residential district abuts a lower density residential district, and
39 Municipal Code Section 20.24.030 does not apply, shall be fifteen (15) feet at the
40 rear. An additional rear yard setback for any portion of any structure extending
41 above twenty (20) feet in height, up to the maximum height permitted in the
42 district shall be defined by a daylight plane extended from a base point located
43 twenty (20) feet above the ground plane at the line of the required setback,
44 inclined away from the vertical at a forty-five (45) degree angle (See figure 3). If
45 there is a difference in grade planes between two adjacent parcels, the

1 **Community Development Director shall determine appropriate grade plane to**
2 **be used for daylight plane calculation.**
3

4 **Section 13:** Chapter XX of the Albany Municipal Code, Section 20.24.070 B, titled
5 “Setbacks with Daylight Planes, Exterior Property Lines at Streets Abutting
6 Residential Districts,” is hereby amended to include the following text:
7

8 2. Where a property in a Residential Medium Density District (R-2) or a
9 Residential High Density District (R-3) has an exterior lot line ~~**on either Kains**~~
10 ~~**Avenue or Adams Street that abuts a residential district,**~~ the minimum setback
11 from such lot line shall be fifteen (15) feet. An additional setback for any portion of
12 any structure extending above twenty-eight (28) feet in height, up to the maximum
13 height permitted, shall be defined by a daylight plane extending from a base point
14 located twenty-eight (28) feet above the line of the minimum required setback,
15 inclined away from the vertical at a forty-five (45) degree angle. See Figure 4. below.
16

17 **Section 14:** 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. All structures that exceed the height limit shall be subject to design review.
29

30 **Section 15:** 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 **C. Mechanical Appurtenances.** Mechanical appurtenances covering not
34 more than twenty (20%) of the roof area of the top floor of any ~~**nonresidential**~~
35 ~~**nonresidential, mixed-use or multi-family structure**~~ to which they are attached
36 may exceed the height limit prescribed by the regulations for the district in which the
37 site is located by six (6) feet subject to design review and provided that such
38 structures are screened in accordance with subsection 20.24.110, and further provided
39 that no screening is located within ten (10) feet of the perimeter of the plate line of
40 the top story.
41

42 **Section 16:** Chapter XX of the Albany Municipal Code, Section 20.24.110 C.2, titled
43 “Fences, Landscaping, Screening” is hereby amended to include the following text:
44

45 2. In any R District any fence, wall hedge, or other visual obstruction shall not
46 exceed three (3) feet in height within any ~~**required front yard, or within fifteen (15)**~~

1 ~~feet of any front property line, whichever is less; except that~~ In no case shall such
2 visual obstruction exceed three (3) feet in height within ten (10) feet of ~~the front~~
3 ~~property line any property line abutting a street. No exceptions shall be made~~
4 ~~for residential structures with nonconforming front yard setbacks (see Figure~~
5 ~~___).~~

6
7 **Section 17:** Chapter XX of the Albany Municipal Code, Section 20.24.110 C.2 and,
8 titled “Fences, Landscaping, Screening,” is hereby amended to include the following
9 text:

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

- 16
17 a. *The structure is not attached to the principal structure or any other*
18 *structure other than a fence.*
19
20 b. *Structural bulk is minimized by the use of open materials such as lattice.*
21
22 c. *The location of the structure does not create a sight*
23 *distance problem with respect to driveways or street intersections.*
24
25 d. *The design of the structure is appropriate to the main building and the*
26 *landscaping of the property.*
27

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

31
32 **E.5. Planning and Zoning Commission, subject to Design Review criteria,**
33 **may grant a use permit to allow greater height for second story additions, up to**
34 **35 feet, measured in accordance with subsection 20.24.080, and based on all**
35 **three (3) of the following findings:**

- 36 **a. The existing house has a partial ground story that causes an increase in the**
37 **overall height of the building, and there are sound design reasons from considering**
38 **a roof line that exceeds twenty-eight (28) feet.**
39 **b. The natural downward or upward topography of the site causes an increase in**
40 **the overall height of the building. The minimum roof pitch has been maintained on**
41 **the addition to be consistent with the existing architectural design of the house. The**
42 **height has been measured from the natural or finished grade to the highest point**
43 **on the roof.**
44 **c. The existing architectural character and design of the house is maintained.**
45 **Design factors have been considered to offset or minimize the increased height,**
46 **such as breakup in the mass and bulk, offsetting one or more portions of the**

1 addition from the ground story wall line, and adding architectural details and
2 elements such as horizontal trim or other features to create interest.
3

4 **Section 19:** Chapter XX of the Albany Municipal Code, Section 20.24.130 H, titled
5 “Accessory Buildings,” is hereby amended to include the following text:
6

7 H. Setbacks. Accessory buildings ~~located in rear setback areas~~ shall be within
8 six (6”) inches of the side or rear lot line, or shall be set back at least three (3’)
9 feet, and shall be subject to the following provisions:
10

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

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

- 23 c. Open Parking. The minimum dimensions for an open parking
24 space meeting the parking requirements for a newly constructed
25 single-family dwelling shall be eight (8) feet six (6) inches in
26 width and eighteen (18) feet in length. The minimum width
27 dimension for a double-car open parking space shall be sixteen
28 (16) feet. All minimum width dimensions shall be increased by
29 an additional one (1) foot of width adjacent to each wall, fence,
30 property line or other fixed obstruction that restricts access
31 abutting the long dimension of the parking space.
32

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

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

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

~~Chapter XX of the Albany Municipal Code, Section 20.28.050 Table 6, titled "Residential Parking Dimensions," is hereby amended to include the following text:~~

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

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

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**

1 the number of lots or square footage of construction previously
2 approved.

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

26
27 **Section 22:** Chapter XX of the Albany Municipal Code, Section 20.100.080.C.1.
28 titled "Administrative Actions Appealable." is hereby amended to include the
29 following text:

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

37
38 **Section 23:** Chapter V of the Albany Municipal Code, 5-11.6 "Entertainment
39 Permits Required in Place Serving Food or Refreshments" is hereby amended to
40 include the following text:

41
42 No person shall provide or permit any entertainment in a bar, cocktail lounge,
43 tavern, cafe, restaurant, hotel, motel, hall or public place where food, alcoholic or
44 other beverages, or other refreshments are served, unless such person shall first obtain
45 an entertainment permit to do so from the ~~City Council~~ Planning and Zoning
46 Commission as hereinafter provided. (Ord. #80-08; 1958 Code §9.6)

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

6 The ~~City Council~~, **Planning and Zoning Commission** or their duly
7 authorized representative, is empowered to adopt reasonable rules and regulations or
8 to impose reasonable conditions upon any permit issued for the purpose of
9 implementing this section, with copies of such rules, regulations, or conditions to be
10 provided to those permittees affected thereby and violation of such rules and
11 regulations or conditions shall be deemed grounds for suspension or revocation of a
12 permit. A copy of such rules and regulations shall be conspicuously posted in every
13 room of the establishment wherein entertainment takes place. Such rules and
14 regulations shall not be printed in type less than nine point. (Ord. #80-08; 1958 Code
15 §9.9)
16

17 **The term of an entertainment permit shall be limited to one (1) year. Upon filing**
18 **an application of an extension of a valid entertainment permit, the Planning and**
19 **Zoning Commission may consider extension of the entertainment permit in one**
20 **year intervals. After granting two (2) 12-month extensions of an entertainment**
21 **permit, extensions will not be required; however, the Planning and Zoning**
22 **Commission shall have discretion to review an entertainment permit if issues of**
23 **health, safety and/or welfare arise.**
24

25 **Section 25:** Chapter V of the Albany Municipal Code, 5-11.12 “Exception,
26 Application to Planning and Zoning Commission” is hereby amended to include the
27 following text:
28

29 Any person who shall desire to carry on or conduct any amusement or
30 entertainment or dance during the hours prohibited by subsection 5-11.10 and for a
31 longer period than one (1) night, shall file a written application therefore with the
32 ~~City Clerk for presentation to the City Council~~ **Community Development**
33 **Department for presentation to the Planning and Zoning Commission.** Such
34 application shall contain a detailed statement of the type of amusement or
35 entertainment or dance which the applicant desires to carry on or conduct and a
36 statement of the reasons which, in the applicant's opinion, warrant the granting of
37 same. Such application shall be filed with the City Clerk at least fourteen (14) days
38 prior to the date upon which the applicant desires the granting of such permission.
39 Thereupon, the City Clerk shall refer the application to the Chief of Police or his
40 agent for investigation pursuant to subsection 5-11.8 and his recommendation to the
41 Council. The Council may grant such permission to applicant when, in its discretion,
42 the nightly conduct of such amusement or entertainment or dance shall not be
43 detrimental to the public health, safety, morals or welfare. (Ord. #80-08; 1958 Code
44 §9.12)
45
46
47

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

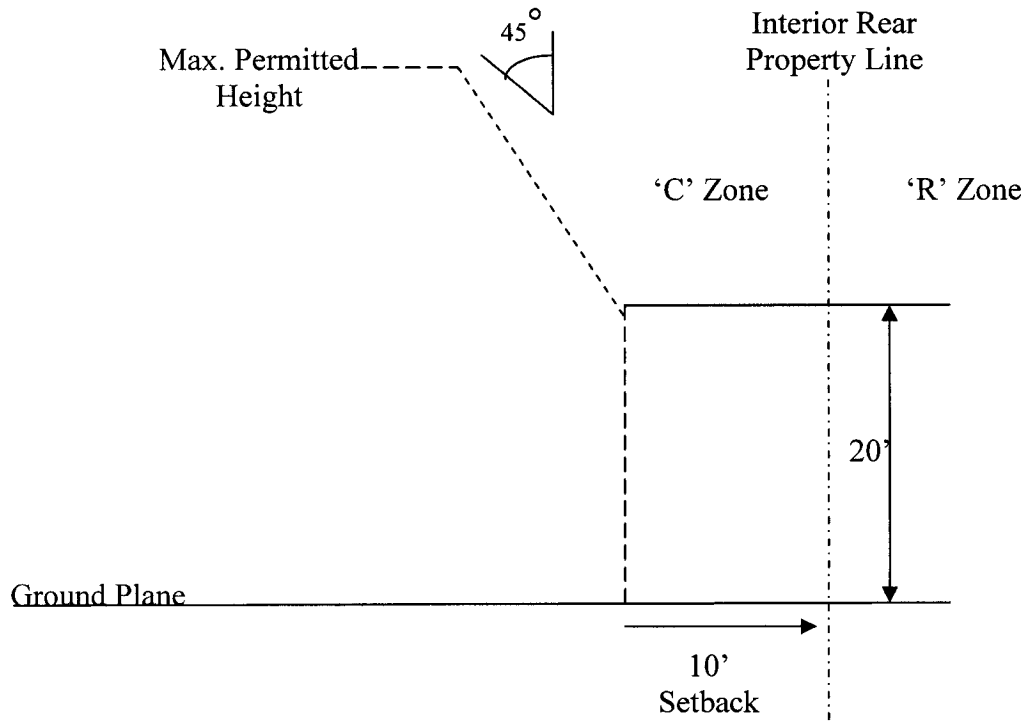
Section 26. Severability.

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.

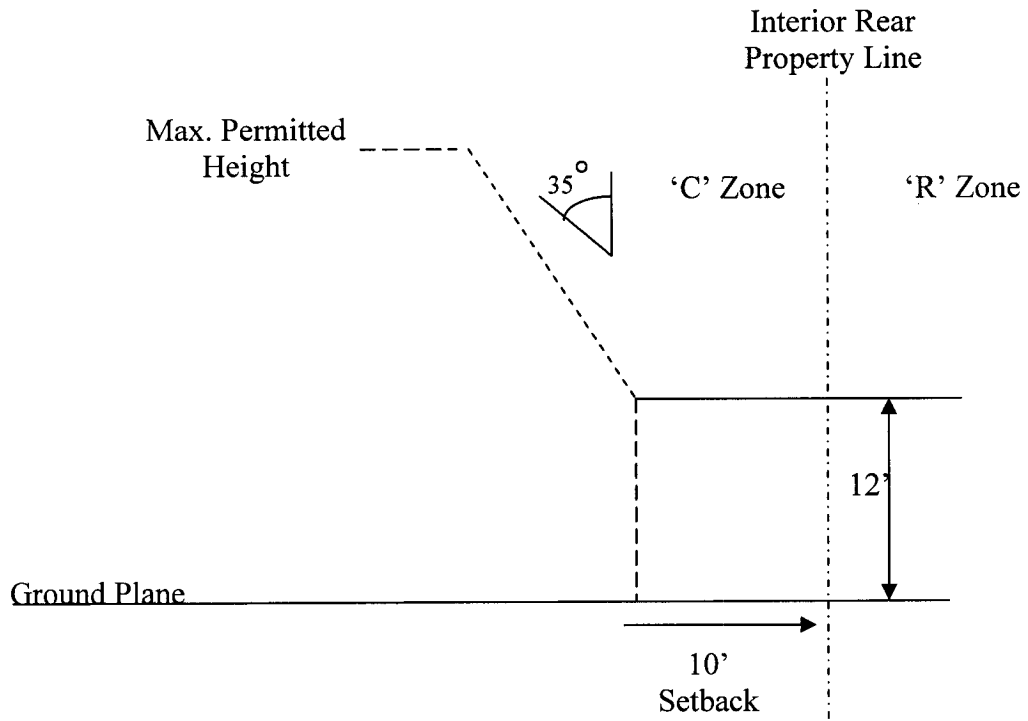
Section 27: Publication and Effective Date.

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.

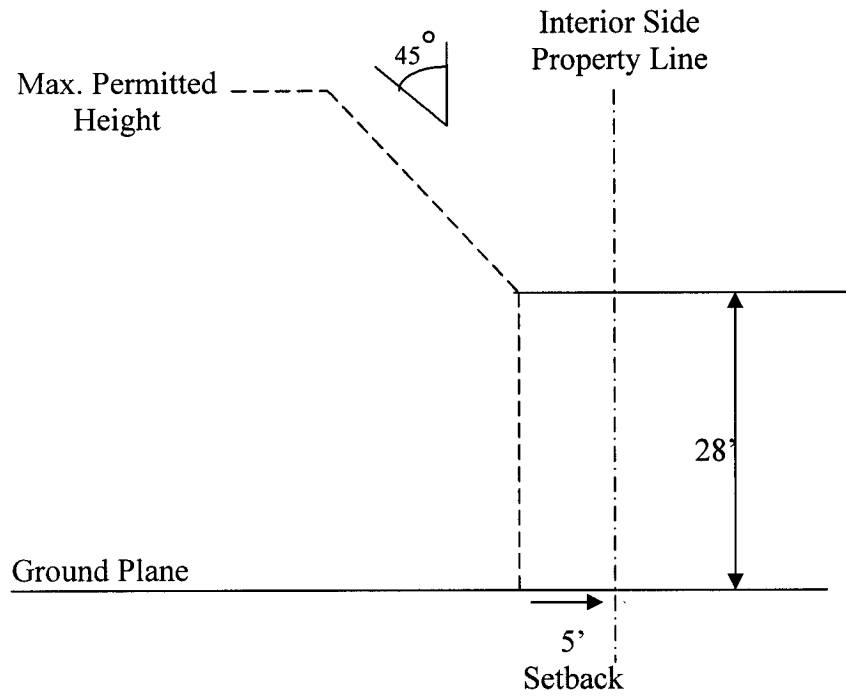
PASSED AND ADOPTED by the City Council of the City of Albany at its meeting on the ___ day of ___, 2009, by the following vote:



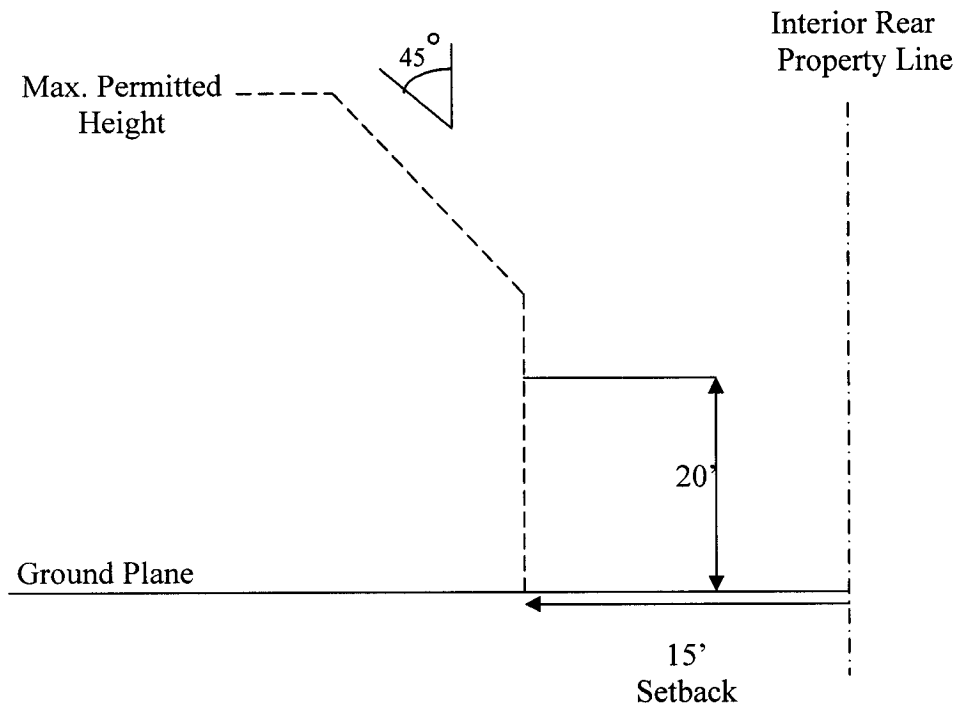
20.24.070 Figure 1.a.



20.24.070 Figure 1.b.



20.24.070 Figure 2



20.24.070 Figure 3

5-11 AMUSEMENT AND ENTERTAINMENT PREMISES.²

5-11.1 Definitions.

As used in this section:

Cabaret shall mean any place conducting a public performance for direct or indirect profit, including every public vaudeville or other performance or diversion in the way of acting, singing, declamation, or dancing, either with or without instrumental or other music, conducted by professionals, amateurs or patrons, and under the direction or control of the owner, operator or management, in connection with the serving or selling of food, alcoholic beverages, any other refreshment or merchandise at any room in any bar, cocktail lounge, tavern, cafe, restaurant, hotel, motel, hall, or any other public place. Every form of entertainment is included.

Dance hall shall mean any place or hall where public dances are held.

Entertainment shall mean every form of live entertainment, music, solo band or orchestra, act, play, burlesque show, fashion show, review, pantomime, scene, song or dance act or song and dance act, or performance participated in by one (1) or more persons for the purpose of holding the attention and interest of, diverting or amusing guests or patrons, and shall include any such forms of live entertainment when used in connection with, or as a means to attract or hold the attention of such guests or patrons for the purpose of advertisement, demonstration or display of goods, wares, merchandise, or services, or monetary compensation, of whatever kind.

Mechanical music machine shall mean any phonograph or other mechanical device of whatever kind, which upon the insertion of a coin, slug, token or similar representation of value into the machine, or any device connected therewith, or by the payment of any price, operates or may be operated for the audible emission of songs, music, or similar entertainment or amusement.

Private dance shall mean any dance other than a public dance with or without charge for admission or participation.

Public dance shall mean any dance to which the public, regardless of restrictions as to age, or similar modifiers, is admitted, with or without charge for admission or participation.

(Ord. #80-08; 1958 Code §9.1)

5-11.2 Permit Required to Conduct or Maintain.

It shall be unlawful for any person to conduct a public dance for profit or nonprofit, or to maintain a dance hall, or cabaret, or place where entertainment is

ATTACHMENT

B

provided for profit within the City on a regular basis without having first obtained a permit from Community Development and Environmental Resources. Fees from a temporary entertainment or dance shall be set by the City Treasurer. (Ord. #80-08; 1958 Code §9.2; Ord. #97-08)

5-11.3 Fee.

Every person who maintains or conducts a public dance hall, cabaret, or place of amusement shall pay a fee as set by the City Treasurer. Such fee shall be payable to the City Treasurer after a permit to operate the same has been issued by Community Development and Environmental Resources. If a permit is revoked for any reason, an application for a refund of the fee on a proportional basis, may be made at the City Treasurer's Office. (Ord. #80-08; 1958 Code §9.3; Ord. #97-08)

5-11.4 Exemptions for Charitable Purposes or Sponsored by the City.

Subsections 5-11.2, 5-11.3 and 5-11.6 shall not apply to any dance given by any lodge, club, church, or other benefit association, given for charitable or benevolent purposes, nor to any dance sponsored by the City, except as provided in subsection 5-11.5 of this Chapter.

Other activities which are excluded from this section are as follows:

- a. The "no fee" use of a radio, television receiver, music recording machine, or similar device in any establishment(s).
- b. The fee use of a mechanical music machine or jukebox in any establishment(s).
- c. Any entertainment provided for members and their guests at a private club, where admission is not open to the public and the private club is in current compliance with all applicable laws and ordinances with respect to such clubs.
(Ord. #80-08; 1958 Code §9.4)

5-11.5 Permit for Charitable Purposes.

Any such dance given by a lodge, club, or benefit association, as described in subsection 5-11.4, shall first obtain a permit from Community Development and Environmental Resources to hold such nonprofit event. All other events for profit only shall be held after payment of the fee referred to in the preceding section and after a permit has been received from Community Development and Environmental Resources. (Ord. #80-08; 1958 Code §9.5; Ord. #97-08)

5-11.6 Entertainment Permits Required in Place Serving Food or Refreshments.

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 ~~City Council~~ Planning and Zoning Commission as hereinafter provided. (Ord. #80-08; 1958 Code §9.6)

5-11.7 Application for Entertainment Permits.

Applicants for entertainment permits shall file a written and signed application with the City Clerk showing the following:

a. Full legal name and permanent residence address, including business address, if any, phone numbers for home and work, of applicant(s) and all persons directly or indirectly interested in the permit.

b. A reasonable description of the entertainment, including type of entertainment, approximate number of persons engaged in the entertainment, and any further information about the entertainment and/or entertainers as the City Council may deem necessary.

c. The date, hours and location where such entertainment is proposed, and the admission fee, if any, to be charged.

d. A statement of the nature and character of applicant's business, if any, to be carried on in conjunction with such entertainment.

e. Whether or not the applicant or anyone having a beneficial interest in the permit, directly or indirectly, has had a permit for the same or similar business suspended or revoked anywhere, and, if so, under what circumstances.

f. Such other reasonable information as to the identity or character of the person or persons having the management or supervision of applicant's business, as the City Council or License Collector may deem necessary.

g. The Fire Department and Building Department shall furnish information on zoning and occupancy requirements.

A copy of the application shall remain on the premises and available upon request by any Police Officer and/or Fire Official.

(Ord. #80-08; 1958 Code §9.7; New)

5-11.8 Reserved.¹

5-11.9 Administration; Rules and Regulations; Adoption of Rules and Regulations.

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

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

5-11.10 Hours of Operation.

No person shall carry on or assist in carrying on or operating a public dance, cabaret or place of entertainment to which the public may be invited at any time between the hours of 2:00 a.m. and 8:00 a.m. (Ord. #80-08; 1958 Code §9.10)

5-11.11 Exception, Permission Required.

Any person who shall desire to carry on or conduct an amusement or entertainment or dance for one night only, during the hours prohibited by subsection 5-11.10, may apply in writing to Community Development and Environmental Resources for permission to do so. Community Development and Environmental Resources may grant such permission to such applicant, in writing, when in its discretion the conduct of such amusement or entertainment at such time shall not be detrimental to the public health, safety, morals or welfare. Community Development and Environmental Resources shall either grant or deny such application within three (3) weekdays after such application has been received; and if permission has not been granted within such period, such application shall be deemed to have been denied. (Ord. #80-08; 1958 Code §9.11; Ord. #97-08)

5-11.12 Exception, Application to ~~Council~~—Planning and Zoning Commission.

Any person who shall desire to carry on or conduct any amusement or entertainment or dance during the hours prohibited by subsection 5-11.10 and for a longer

period than one (1) night, shall file a written application therefore with the ~~City Clerk for presentation to the City Council~~ **Community Development Department for presentation to the Planning and Zoning Commission.** Such application shall contain a detailed statement of the type of amusement or entertainment or dance which the applicant desires to carry on or conduct and a statement of the reasons which, in the applicant's opinion, warrant the granting of same. Such application shall be filed with the City Clerk at least fourteen (14) days prior to the date upon which the applicant desires the granting of such permission. Thereupon, the City Clerk shall refer the application to the Chief of Police or his agent for investigation pursuant to subsection 5-11.8 and his recommendation to the Council. The Council may grant such permission to applicant when, in its discretion, the nightly conduct of such amusement or entertainment or dance shall not be detrimental to the public health, safety, morals or welfare. (Ord. #80-08; 1958 Code §9.12)