

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

Agenda Date: July 6, 2009

Reviewed by: BP

SUBJECT: First Reading of Ordinance No. 09-011 an Ordinance of the Albany City Council Amending Chapter 20, Planning and Zoning of the Albany Municipal Code

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**STAFF RECOMMENDATION**

That the City Council approve for First Reading Ordinance #09-011 amending Chapter 20, Planning and Zoning of the Albany Municipal Code.

**BACKGROUND**

The City's current Planning and Zoning Code was updated in a comprehensive manner in 2004. As part of the implementation of the ordinance, the Community Development Department provided a "Zoning Ordinance Comments & Suggestions" notebook for members of the public, the Commission, and staff to insert comments and suggestions regarding potential revisions to the revised ordinance. Topics for further discussion have also been identified during Planning and Zoning Commission meetings. The September 23, 2008 Planning and Zoning Commission staff report details the comments received on the ordinance (Attachment 1).

The Planning and Zoning Code requires that the Commission initiate amendments to the Planning and Zoning Code by acting on a Resolution of Intention, which was approved on November 25, 2008 (Attachment 2). The Commission reviewed the zoning amendment changes, which included options and discussions for potential revision, over a series of eleven public hearings. Ultimately, on June 9, 2009, the Commission voted 4-0 to recommend that the City council approve the proposed ordinance and associated findings.

## **DISCUSSION**

The proposed ordinance (Attachment 3) includes both substantive changes to the code and technical corrections.

### ***Substantive Changes to the Planning and Zoning Code***

Summarized below are the substantive changes that the Commission recommends the Council take action on:

<b>Ordinance Section #</b>	<b>Muni Code Section #</b>	<b>Summary of Proposed Change</b>
1	20.08.020	Allows the Community Development Director to determine the “front yard” of a property. Current definition of front yard is the narrow side of a lot, regardless of the actual layout of the existing residence or surrounding properties.
5	20.20.130	Provides that the Planning and Zoning Commission rather than the City Council shall be responsible for granting entertainment permits.
9	20.24.020 Table 2.B. Note 4	Changes the required day light plane separating commercial districts from residential districts.
10	20.24.050 B.1.c	Requires that basements greater than four feet above grade be counted in the measurement of floor area ratio.
11	20.24.070 A	Changes the required day light plane separating commercial districts from residential districts.
12	20.24.070	Changes the required day light plane separating commercial districts from residential districts.
16	20.24.110 C.2	Modifies residential fence requirements in front yards and reduces allowed fence heights on side yards abutting a public street.
23 24 25	5-11.6 & 5-11.9 5-11.12	Makes corresponding changes to Chapter 5 associated with Planning and Zoning Commission granting of entertainment permits.

### ***Discussion of Proposed Changes Affecting Building Height and Building Area***

Height: One of the key issues that come up with review of planning applications is the height of proposed buildings. Currently, height is measured from existing grade, which is the level of the ground before the project starts. The proposed changes would change the location of the base height from which measurements are taken, using the higher of “existing grade” or “finished grade” that will exist at the end of the project. The proposed changes will eliminate the possibility of the grade being lowered during construction, leaving the finished project with the effect of being taller than allowed.

Area: A second common issue is the method of calculating the size of a residence. Currently basements that have an average height of six feet or less above existing grade, measured at the four corners of the basement, do not count in the calculation of the maximum floor area. The proposed changes reduce the height of the basement to an average of four feet. In addition, the height will be measured from entire perimeter of the structure, rather than just the four corners. The proposed change will eliminate situations where the lower level of a home has the appearance of being a full story, but the “basement” does not count in the floor area calculation.

Daylight plane: The third area of change is a series of clarifications to the use of daylight plane. Daylight planes are used in situations where commercial and residential district abut one another. The intent of the daylight plane is to require multi-story buildings to step back from the property line in order to allow sunlight in between the buildings. The proposed changes will increase the amount of setback, while providing the applicant some flexibility in meeting their design objectives.

### ***Entertainment Permits***

In general, the City Council does not make decisions on land use applications unless the project requires a rezoning, a general plan amendment, a subdivision of a parcel, or unless a Planning and Zoning Commission decision is appealed to the City Council. An exception is that pursuant to Chapter Five of the Municipal Code, applications for entertainment permits must be reviewed by the City Council. In some cases, the entertainment permit is a stand-alone permit, and no other City action is required. In other cases, simultaneously, the Planning and Zoning Commission is holding public hearings on other elements of the proposed project, such as conditional use permits or design review. The proposed changes would allow all elements of the project to be reviewed in a comprehensive manner. The proposed changes would reduce the number of public hearings that would be required for a project. As is standard with any project approval, decisions of the Commission could be appealed to the City Council by applicants, other interested parties, or called for review by a member of the City Council.

### ***Fencing on Side Yards and Front Yards***

The current definition of front yard and side yard is that the front yard is always the narrow width of the lot. This definition can create two issues. First, in some cases, the actual front of the house is not located in the front yard that is defined by the code, resulting in awkward implementation of setbacks. In addition, under the current code, fencing in front yards cannot exceed three feet, but side yard fences can be built to six. For homes on a corner lot, the result may be a large fence close to the edge of the sidewalk. The proposed changes allow the Community Development Director to make a determination of the location of the front yard, based on the circumstances of a particular location. In addition, the proposed changes require a ten-foot setback for fencing above three feet in height on a side yard facing a street. This allows for a more appropriate street frontage

***Technical Changes to the Planning and Zoning Code***

Summarized below are changes primarily of a technical nature:

<b>Ordinance Section #</b>	<b>Muni Code Section #</b>	<b>Summary of Proposed Change</b>
2	20.12.040, Table 1	Clarifies that a large family day care use is subject to a minor conditional use permit, per state law.
3	20.12.040 Notes, Table 1	Makes a correction to a cross-reference in the code.
4	20.20.020.B.2.d	Clarifies public noticing procedures for large family day care, per state law.
6	20.24.020 Table 2.A	Eliminates ambiguity about whether buildings must not exceed “three stories, or 35 feet”, by eliminating reference to the number of stories.
7	20.24.020 Table 2.A	Limits situations where home additions can be extended on non-conforming side yard walls.
8	20.24.020. Table 2.B.	Makes a correction to a cross-reference in the code.
13	20.24.070 B	Expands the application of the daylight plane requirements to streets beyond Kains and Adams.
14	20.24.080 B	Changes the review procedure for rooftop elements from a conditional use permit to design review.
15	20.24.080 C	Allows mixed-use and multi-family residential buildings to place mechanical appurtenances on the roof, subject to design review and screening.
17	20.24.110 C.2	Makes correction to approval process for a front yard arbor, trellis or pergola.
18	20.24.080 E.5	Copies an existing allowed exception to building heights to a more suitable location in the code.
19	20.24.130 H	Makes technical corrections to accessory building requirements.
20	20.28.050.A.1.c	Reduces parking space dimension standards for open parking so that the same standards apply to both enclosed and open parking.
21	20.40.080	Adds language to the City’s affordable housing provisions allowing applicants to file appeals of the requirements. The proposed language is in response to recent case law.
22	20.100.080.C.1	Minor change to appeal procedures.

***California Environmental Quality Act***

Changes to land use policies and regulations are subject to California Environmental Quality Act (CEQA) review. As part of the process of adoption of the Planning and Zoning Code amendment in 2004, the City Council approved a Mitigated Negative Declaration of Environmental Impacts. Staff has reviewed the 2004 Mitigated Negative Declaration, and recommends that the Council make a finding that the proposed clarifications and corrections are consistent with the 2004 environmental review. With this finding, no additional environmental review is required pursuant to CEQA Guidelines Section 15183 and Public Resources Code 21083.3. A copy of the 2004 Mitigated Negative Declaration is available for review at the Community Development Department office.

### **SUSTAINABILITY IMPACT**

The proposed changes may result in slightly smaller projects compared with the size of projects that could be approved under the existing code.

### **FINANCIAL IMPACT**

Overall, the proposed changes will not have a substantive effect on the amount of revenues received or the staff time required to process planning applications.

### **Attachments**

1. September 28, 2008 Planning and Zoning Commission Staff Report
2. November 25, 2008, Planning and Zoning Commission Resolution of Intention
3. Proposed Ordinance