

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

Agenda date: 07/14/09

Prepared by: JB

Reviewed by: NA

**ITEM/**           **6d**

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

**SITE:**           **City-wide**

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**RECOMMENDATION**

That the Planning and Zoning Commission review City Council comments on the draft ordinance containing proposed amendments to the Planning and Zoning Code, and consider revisions to the Commission recommendation.

**BACKGROUND**

The Commission completed its review of the revisions to the Planning and Zoning Code on June 9, 2009 and made a recommendation to the City Council that the proposed ordinance be approved. A public hearing on the proposed changes was held by the City Council on July 6, 2009. Attached is the staff report prepared for the City Council and an email to the City Council from Clay Larson.

**DISCUSSION**

A webcast of the Council discussion can be seen at <http://www.albanyca.org/index.aspx?page=363>. The key elements of Council discussion that would require modification of the draft ordinance include:

- Section 6: the Council suggested a height limit of three stories and 35 feet. It also was suggested that any portion of the stories that exceeds four feet above grade would count as a story.
- Section 10: prepare language codifying that measurement is taken to the bottom of floor joists.
- Section 11 and 12: Eliminate alternative 1B in order to ensure setback at rear property line;
- Section 14: The Council expressed an interest in maintaining 300-foot public notice, thus retaining existing language requiring a conditional use permit.
- Section 16: Add a process for exceptions to side yard fence requirements;

The City Council voted to refer the ordinance back to the Commission for the July 14 meeting, and to continue the City Council public hearing to September 21.

**Attachment** – City Council Staff Report and email from Clay Larson

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**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

REPORT BY: Jeff Bond, Planning and Building Manager  
Amber Curl, Associate Planner  
Ann Chaney, Community Development Director

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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.

**ATTACHMENT**

## **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

1                                   **ORDINANCE No. 09-011**  
2                                   **AN ORDINANCE OF THE ALBANY CITY COUNCIL AMENDING**  
3                                   **CHAPTER 20, PLANNING AND ZONING**  
4                                   **OF THE ALBANY MUNICIPAL CODE**  
5  
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7                   **WHEREAS**, the City of Albany has adopted a Zoning Ordinance in the form  
8 of Chapter XX of the Albany Municipal Code, Planning and Zoning; and  
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10                   **WHEREAS**, on December 4, 2004, the City council adopted a substantial  
11 update to the Planning and Zoning Code; and  
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13                   **WHEREAS**, during the course of implementation, a variety of applications  
14 have been received and processed pursuant to the new code; and  
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16                   **WHEREAS**, whereas the Community Development Department has  
17 maintained a binder, available to the public, Commissioners, and staff to catalog areas  
18 of the new code that require correction or clarification; and  
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20                   **WHEREAS**, the Planning and Zoning Commission discussed proposed  
21 changes at their regular meetings of September 23, 2008, October 14, 2008, October  
22 28, 2008, November 25, 2008, December 9, 2008, January 27, 2009, March 24, 2009,  
23 April 14, 2009, May 12, 2009, May 26, 2009; June 9, 2009; and  
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25                   **WHEREAS**, on November 25, 2008, the Planning and Zoning Commission  
26 approved a Resolution of Intention to Amend the Planning and Zoning Code; and  
27

28                   **WHEREAS**, the Albany Planning and Zoning Commission, on March 24,  
29 2009, after due public notice, held a public hearing on the proposed amendments to  
30 Chapter XX to address corrections and clarifications to the Code, and  
31

32                   **WHEREAS**, pursuant to the California Environmental Quality Act, the City  
33 has determined that the Mitigated Negative Declaration of Environmental Impacts  
34 certified on December 4, 2004 is consistent with the proposed clarifications and  
35 corrections and no additional environmental review is required pursuant to CEQA  
36 Guidelines Section 15183 and Public Resources Code 21083.3; and  
37

38                   **WHEREAS**, the Albany City Council, on July 6, 2009, after due public  
39 notice, held a public hearing on the proposed amendments to Chapter XX to address  
40 corrections and clarifications to the Code.  
41

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43                   **NOW, THEREFORE, THE ALBANY CITY COUNCIL DOES HEREBY**  
44                   **ORDAIN AS FOLLOWS:**  
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46

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 X	PF	W F
b) Large Family 19	<u>UP-M</u>	<u>UP-M</u>	<u>UP-M</u>	<u>UP-M</u>	<u>UP-M</u>	-	-	-	-	-

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:**

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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:  
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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:  
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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.  
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21  
22 **Section 10:** Chapter XX of the Albany Municipal Code, Section 20.24.050 B.1.c,  
23 titled "Floor-Area-Ratios" is hereby amended to include the following text:  
24

25 c. Any covered area on or below the first or main floor, ~~for which the~~  
26 ~~average height of the four (4) corners is greater than six (6) feet, shall be~~  
27 ~~included in the calculation of gross square footage, shall be calculated in the~~  
28 ~~floor-area ratio if the average height of the perimeter is greater than four (4)~~  
29 ~~feet, except a single parking area may be excluded as provided in paragraph B.1.b.~~  
30 ~~above. Measurement of height shall be taken from the lower of natural or~~  
31 ~~finished grade to the top of finished floor of the first, main or story above.~~  
32

33 **Section 11:** Chapter XX of the Albany Municipal Code, Section 20.24.070 A, titled  
34 "Setbacks with Daylight Planes, Interior Property Lines Abutting Residential District  
35 Boundaries," is hereby amended to include the following text:  
36

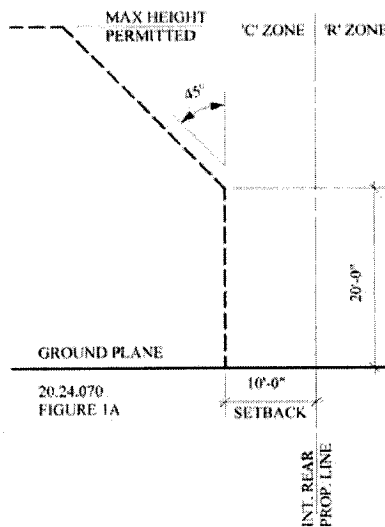
37 **A.1. Interior Property Lines Abutting Residential District Boundaries:** The minimum  
38 setback where an interior lot line of a property in a Solano Commercial or San Pablo  
39 Commercial District abuts a residential district boundary shall be five (5) feet on the  
40 side.  
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42 The minimum setback at the rear shall be one of the following two options: 1) A  
43 20 feet in height at a point 10 feet back from the property line, plus a 45 degree  
44 daylight plane to the maximum permitted height, or 2) A 12 feet in height at the  
45 property line, then, horizontally to a point 10 feet from the property line, plus 35  
46 degree from vertical daylight plane to the maximum permitted height. (See

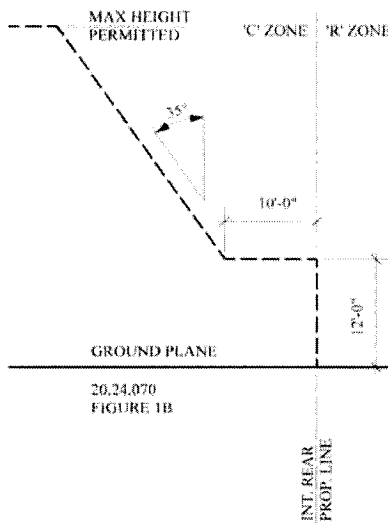
1 subsection 20.24.070.A., Figure 1.a & 1.b) If there is a difference in grade planes  
2 between two adjacent parcels, the Community Development Director shall  
3 determine appropriate grade plane to be used for daylight plane calculation.

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

7  
8 and ten (10) feet on the rear. An additional setback for any portion of any  
9 structure extending above twenty (20) twelve (12) feet in height, up to the  
10 maximum height permitted in the Commercial District, shall be defined by a  
11 daylight plane extending from a base point located twenty (20) twelve (12) feet  
12 above the ground plane lower of natural or finished grade at the line of the  
13 minimum required setback, inclined away from the vertical at a forty-five (45o)  
14 thirty five (35) degree angle. (See Figure 1.a., below.) Alternatively the base  
15 point for the daylight plane may be located twelve (12) feet above the ground  
16 plane at the property line that abuts a residential district, with no setback from  
17 the property line required. (See Figure 1.b., below.)  
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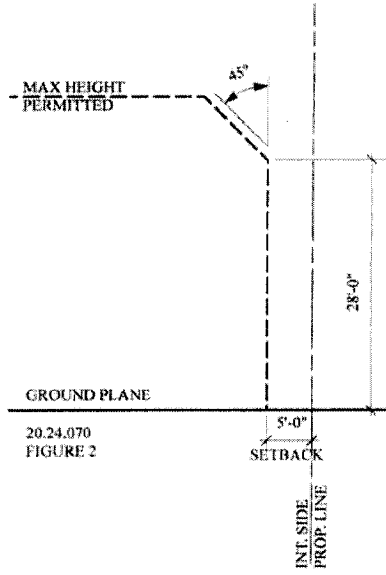
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**Section 12:** Chapter XX of the Albany Municipal Code, Section 20.24.070, titled “Setbacks with Daylight Planes, Interior Property Lines Abutting Residential District Boundaries,” is hereby amended to include the following text:

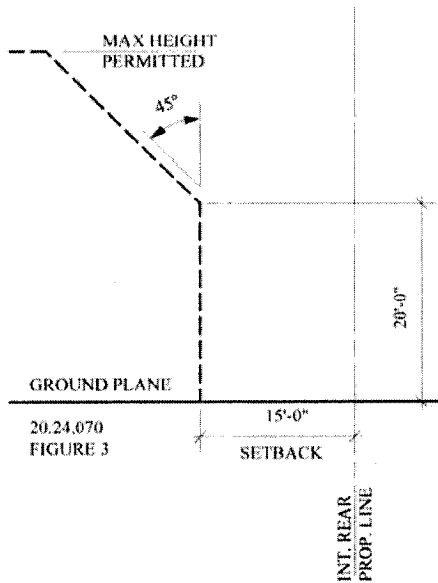
**A2. The minimum setback, where an interior lot line of a property in a higher density residential district abuts a lower density residential district, and Municipal Code Section 20.24.030 does not apply, the minimum side yard setback shall be five (5) feet on the side. An additional setback for any portion of any structure extending above twenty (28) feet in height, up to the maximum height permitted in the zoning district, shall be defined by a daylight plane extending from a base point located twenty (28) feet above the ground plane at the line of the five (5) foot required side yard setback, inclined away from the vertical at a forty-five degree angle (See figure 2) 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.**



20.24.070  
FIGURE 2

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**A.3. The minimum setback, where an interior lot line of a property in a higher density residential district abuts a lower density residential district, and Municipal Code Section 20.24.030 does not apply, shall be fifteen (15) feet at the rear. An additional rear yard setback for any portion of any structure extending above twenty (20) feet in height, up to the maximum height permitted in the district shall be defined by a daylight plane extended from a base point located twenty (20) feet above the ground plane at the line of the required setback, inclined away from the vertical at a forty-five (45) degree angle (See figure 3). 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.**



20.24.070  
FIGURE 3

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

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

**Section 14:** Chapter XX of the Albany Municipal Code, Section 20.24.080 B, titled “Height Limits and Exceptions,” is hereby amended to include the following text:

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

**Section 15:** Chapter XX of the Albany Municipal Code, Section 20.24.080 C, titled “Height Limits and Exceptions,” is hereby amended to include the following text:

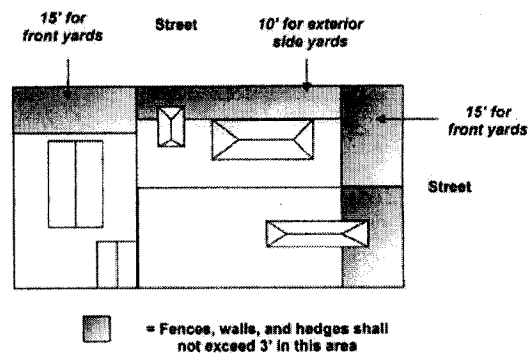
**C. Mechanical Appurtenances.** Mechanical appurtenances covering not more than twenty (20%) of the roof area of the top floor of any ~~nonresidential nonresidential, mixed-use or multi-family structure~~ to which they are attached may exceed the height limit prescribed by the regulations for the district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

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

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

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property line any property line abutting a street. No exceptions shall be made for residential structures with nonconforming front yard setbacks (see illustration below).



MC 20.24.110

Areas Where the Height of Fences, Walls and Hedges are Limited to Three (3) Feet

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

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

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

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

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

5 a. The existing house has a partial ground story that causes an increase in the  
6 overall height of the building, and there are sound design reasons from considering  
7 a roof line that exceeds twenty-eight (28) feet.

8 b. The natural downward or upward topography of the site causes an increase in  
9 the overall height of the building. The minimum roof pitch has been maintained on  
10 the addition to be consistent with the existing architectural design of the house. The  
11 height has been measured from the natural or finished grade to the highest point  
12 on the roof.

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

18  
19 **Section 19:** Chapter XX of the Albany Municipal Code, Section 20.24.130 H, titled  
20 "Accessory Buildings," is hereby amended to include the following text:

21  
22 H. Setbacks. Accessory buildings ~~located in rear setback areas~~ shall be within  
23 six (6") inches of the side or rear lot line, or shall be set back at least three (3')  
24 feet, and shall be subject to the following provisions:

- 25  
26 1. Accessory buildings shall not have openings (windows, doors, and vents)  
27 within three (3) feet of the property line. This includes openings on walls  
28 that are perpendicular to a property line. An exception shall be made for  
29 garage (vehicle) doors.  
30 2. Accessory buildings located on the street side yard of corner lots are  
31 required to meet the minimum setback requirements for the main building.  
32 3. ~~Accessory buildings on the interior side yard shall not encroach into~~  
33 ~~the required side yard setback.~~

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35 **Section 20:** Chapter XX of the Albany Municipal Code, Section 20.28.050.A.1.c and  
36 Table 6, titled "Parking Area Standards," is hereby amended to include the following  
37 text:

- 38 c. Open Parking. The minimum dimensions for an open parking  
39 space meeting the parking requirements for a newly constructed  
40 single-family dwelling shall be eight (8) feet six (6) inches in  
41 width and eighteen (18) feet in length. The minimum width  
42 dimension for a double-car open parking space shall be sixteen  
43 (16) feet. ~~All minimum width dimensions shall be increased by~~  
44 ~~an additional one (1) foot of width adjacent to each wall, fence,~~  
45 ~~property line or other fixed obstruction that restricts access~~  
46 ~~abutting the long dimension of the parking space.~~



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<b>Table 6. 20.28.050 Residential Parking Dimensions.</b>			
<b>Type of Parking</b>	<b>Width</b>	<b>Length</b>	<b>Height</b>
<i>Enclosed Parking:</i>			
Single space	8'6" <sup>±</sup>	19'	7'
Side-by-side spaces	16' <sup>**</sup>	19'	7'
<i>Covered Parking:</i>			
Single space	8'6" <sup>±</sup>	18'	7'
Side-by-side spaces	16' <sup>**</sup>	18'	7'
<i>Open Parking:</i>			
Single space	8'6" <sup>±</sup>	18'	N/A
Side-by-side spaces	16' <sup>**</sup>	18'	N/A
<i>Driveways</i>			
Single	7'	N/A	N/A
Double	15'	N/A	N/A

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~~\* 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)  
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**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:

**Jeff Bond**

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**From:** Clay Larson [clayl@comcast.net]  
**Sent:** Monday, July 06, 2009 7:21 AM  
**To:** Marge Atkinson (E-mail); Joanne Wile (E-mail); Robert Lieber; Javandel, Farid; Peggy Thomsen  
**Cc:** Amber Curl; Ann Chaney; Jeff Bond  
**Subject:** Council Agenda Item 6-4, Amendments to the Zoning Ordinance

Mayor Atkinson, City Council Members;

I would like to offer several comments on Item 6-4 on tonight's agenda, the proposed amendments to Albany's Zoning Ordinance (Albany Municipal Code, Chapter 20, Planning and Zoning).

Entertainment Permits (Revised Ordinance Sections 5, 23 - 25)

Albany's current Municipal Code (5-11.6) requires persons providing entertainment in a place serving food or refreshments to obtain an entertainment permit from the City Council. Chapter 5 of the municipal code covers licensing and business regulations, not land-use regulations, and it's appropriate that the authority to issue entertainment permits remains with the Council. Albany's two commercial districts immediately abut residential areas, so there's a potential for problems associated with entertainment activities. The City Council is the appropriate body to deal with these potential problems.

The Planning and Zoning Commission is already authorized to determine the land use issues associated entertainment activities, since these uses require a conditional use permit. Authorizing the Planning and Zoning Commission to also issue entertainment permits as part of a project, would not add another level of review.

The current entertainment permit requirements appear to be working effectively. The Community Development Department noted that the requirement to obtain permits from two bodies was a problem with an application for a project (1161-1175 Solano Avenue) in 2007. In fact, it appears that the permits were issued very expeditiously in this instance. The applicant never proceeded with the project, but this apparently had nothing to do with the permitting process.

The proposed amendments to Municipal Code 5-11.9 (Section 24) would also authorize the Planning and Zoning Commission to adopt the rules and regulations for the issuance of entertainment permits. As noted above, these would be business regulations and the Council is again the appropriate body for this responsibility. It should be noted that the current code here actually already allows the Council to designate another body, such as the Planning and Zoning Commission, to assume this responsibility. The Council has not chosen to do this.

The current entertainment permit procedures aren't broken and don't need fixing.

Height Limits - Maximum Number of Stories (Revised Ordinance Sections 6 & 9)

The revisions proposed under Sections 6 and 9 would eliminate the references to a three-story

height limit in high-density residential and business districts. The staff report describes this as a "technical change" to "eliminate ambiguity." It's a technical change only because it simply codifies current practice. In a remarkable exercise in statutory deconstruction, staff and the P&Z commission have chosen to simply ignore the three-story limit in the current ordinance. If a developer can squeeze four stories into the allowed height limit, that's become acceptable. This was not the intent of the 2004 revisions to the zoning ordinance. The clear intent here was to limit the maximum number of building stories allowed. Eliminating the limit on the number of stories could facilitate the development of five-story buildings in situations where density bonus concessions apply.

I think that three-story maximum is appropriate for Albany in our residential districts and for our San Pablo and also Solano Commercial areas. If the language of current ordinance is truly ambiguous, we should revise it to clearly define a building story and include a three-story height limit based on this.

#### Floor Area Ratios, Inclusion of Basement Space (Revised Ordinance Section 10)

The staff report notes that the threshold height where a basement space can be included in the calculation of floor area ratio (FAR) will be reduced from six feet to four feet. The staff report fails to point out that the method of measuring basement height will also be changed. It will now be measured from the top of the finished floor of the story above. Previously, it was measured as the height of the basement. The difference (floor joists and flooring) amounts to an additional 10" to 12". So what we have actually proposed here is a 50% reduction (6' to 3') in the maximum allowed height of a basement for purposes of including basement space in the FAR calculation. This is a radical change! With Albany's small lot sizes, it is easy to reach the 0.55 FAR limit. The new rules would prevent many Albany homeowners from digging out, grading, and reconditioning basement areas into habitable space. This is actually a fairly innocuous way to improve the usability on Albany homes, since there is no change in the mass of the house.

It is not clear that the Planning and Zoning Commission fully understood the impact of the proposed change. The commission's primary concern was apparently one new construction project on a sloping lot where the current rules permitted a residential home, which had the appearance of a four-story structure. The commission did not adequately consider the general applicability of the new rules. Here it would have been valuable for staff to have provided the commission with an overview of the projects approved under the old standard that would have been denied under the new rules. The commission was not provided with this information.

I would encourage the Council to reject this proposed change and ask the Planning and Zoning Commission to provide a less radical, more carefully crafted ordinance here.

#### Setbacks and Daylight Planes (Revised Ordinance Sections 9 and 11)

The staff report states the proposed changes to the daylight plane requirement "will increase the amount of setback." In fact, there are no changes to the rear setback line, which still includes two options, a zero setback and a 10' setback. While the bulk of the building for the zero setback option has been reduced, it is still the option that provides the greatest building mass and presumably most developers will choose a zero setback.

A rear setback line requirement in the San Pablo and Solano commercial districts is critical to

minimize the impact of large-scale commercial or mixed-use projects on adjoining residential districts. There needs to be a separation, a buffer, between these very large projects and neighboring residential parcels. As shown in a 4/14/09 staff report, most neighboring cities impose rear setback line requirements under these circumstances. There are also general problems inherent in building to the lot lines, both during initial construction and for subsequent maintenance, since the neighboring property owner would have to provide permission to access and work on the building. Albany should establish a rear-yard setback line where commercial abuts residential.

The revised ordinance does properly recognize the additional complexity in calculating the daylight plane requirements that occurs when the grade of two parcels is different. However, the new language, "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." could be improved by providing some direction as to how the appropriate grade plane is to be determined.