RESOLUTION NO. 2016-56

A RESOLUTION OF THE ALBANY CITY COUNCIL ADOPTING FINDINGS FOR APPROVAL OF PA 16-033 CONDITIONAL USE PERMIT FOR ORANGE THEORY FITNESS AT 1495 SOLANO AVE. UPHOLDING THE DECISION OF THE PLANNING & ZONING COMMISSION

WHEREAS, On December 6, 2004, the City Council of the City of Albany adopted Ordinance #04-09 establishing Chapter XX “Planning and Zoning” of the Albany Municipal Code; and

WHEREAS, Chapter XX established development standards and review procedures for Conditional Use Permits; and

WHEREAS, gyms and health clubs require a Conditional Use Permit pursuant to Section 20.12.040 Table 1 of the Albany Municipal Code; and

WHEREAS, the applicant filed an initial Planning Application for Conditional Use Permit for Orange Theory Fitness on April 5, 2016; and

WHEREAS, the property at 1495 Solano Avenue is located in the “SC” (Solano Commercial) zoning district; and

WHEREAS, the abutting properties to the north located on Curtis St. are located in “R-1” (Residential Single Family) zoning district; and

WHEREAS, where the Planning & Zoning Commission reviewed and approved a Conditional Use Permit for Orange Theory Fitness at 1495 Solano Ave on April 27, 2016; and
WHEREAS, David Long on behalf of Orange Theory Fitness filed an appeal of the Planning & Zoning Commission decision on May 10, 2016; and

WHEREAS, the appeal cites a desire to have an opening hour of 5:30 am where 6am was approved by the Planning & Zoning Commission; and

WHEREAS, City staff scheduled the hearing on July 5, 2016 pursuant to Section 20.100.080 (E) (1) which requires that the appeal be scheduled within thirty (30) days of the initial filing; and

WHEREAS, a public hearing notice was mailed to property owners within 300 ft. of the subject site and was posted in three public places on Tuesday June 21, 2016 for the City Council appeal pursuant to Government Code Section 65090; and

WHEREAS, on July 5, 2016 the City Council held a public hearing, considered all public comments received, the presentation by City staff, the staff report, and all other pertinent documents regarding the proposed request;

WHEREAS, Planning and Zoning Code Section 20.100.080.F establishes the following standards for review of appeals:

When reviewing any decision of the Planning and Zoning Commission on appeal, the City Council shall use the same standards for decision making and is required to make findings in accordance with the Municipal Code. The Council may adopt the Planning and Zoning Commission’s decision and findings as its own. In either case, the City Council shall have the option to prepare a resolution stating the council’s decision or shall render its decision by minute action.
NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Albany approves application request PA 16-03 3 and upholds the decision of the Planning & Zoning Commission:

1. FINDINGS FOR EXEMPTION FROM CEQA

Finding: The project is Categorically Exempt from the California Environmental Quality Act Guidelines pursuant to Section 15332 “In-Fill Development Projects”.

Evidence: The proposed application would result in minor changes to the interior and exterior of an existing structure.

2. FINDINGS FOR APPROVAL OF CONDITIONAL USE PERMIT

1. Finding Required for Approval: The size, location and intensity of the project are desirable and compatible with the neighborhood and community.

Evidence: The operation will occupy a previously vacant store front on the Solano Ave. corridor. The fitness studio is compatible with surrounding uses which include various restaurant operations, and other retail and service oriented businesses in the corridor.

2. Finding Required for Approval: The project will not be detrimental to the health, safety, convenience or general welfare of people residing or working in the vicinity, or injurious to property, improvements or potential development in the vicinity, with respect to aspects including but not limited to the following:

a. The nature of the proposed site, including its size and shape, and the proposed size, shape and arrangement of structures.
Evidence: The proposal is in scale and harmony with existing development near the site. The business will be located within an existing commercial building along the Solano Ave. corridor. Adverse impacts are not expected with the business operation.

b. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading.

Evidence: The patron-driven demand for parking is expected to be short term and will be 6am-10am and 4:30pm-8pm Monday-Friday, and peak in the afternoon.

c. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor.

Evidence: The proposed location is within an existing building and is surrounded by existing businesses on either side.

d. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs.

Evidence: The proposed location is an interior space with fully operating businesses on either side with frontage on Solano Ave. as the only access point.

Finding Required for Approval: That such use or feature as proposed will comply with the applicable provisions of this Chapter and will be consistent with the policies and standards of the General Plan.

Evidence: The project as proposed is consistent with the Zoning Ordinance and General Plan.

PASSED AND ADOPTED by the City Council of the City of Albany on the 5th day of July, 2016.

[Signature]

PETER MAASS, MAYOR
EXHIBIT A

CONDITIONS OF APPROVAL PLANNING APPLICATION 16-033

AS APPROVED BY THE PLANNING & ZONING COMMISSION for Orange Theory Fitness, 1495 Solano Ave.

Special Project Conditions

SP 1- The Planning & Zoning Commission reserves the right review the Use Permit at any time to insure compliance with all project conditions. Failure to comply with the Conditions may result revocation of the Use Permit subject to public notification and formal public hearing.

SP2- All functions in the space must comply with City noise standards.

SP3-The applicant shall install bicycle racks and work with City staff on the selection and placement of the facilities. The City may pay for the installation of the bicycle racks and seek full reimbursement from the applicant for the cost of the racks and installation.

SP4- Orange Theory Fitness shall encourage patrons to utilize on-site parking between 10am- and 7pm. (Per Planning & Zoning Commission review 4/27/16)

SP5- The rear deck may not be utilized by employees or patrons before 8am. (Per Planning & Zoning Commission review 4/27/16)

SP6- Orange Theory Fitness shall reduce noise at the rear of building by reducing the volume of music, installing sound rated insulation or installing new dual pane windows. (Per Planning & Zoning Commission review 4/27/16)
SP7- The earliest class offering permitted is 6 am. (Per Planning & Zoning Commission review 4/27/16)

SP8- A compliance report shall be presented to the Planning & Zoning Commission 6 months after the date of operation commencement. (Per Planning & Zoning Commission review 4/27/16)

SP9- Orange Theory Fitness shall provide two (2) indoor bicycle parking spaces. (Per Planning & Zoning Commission review 4/27/16)

SP10- To the maximum extent feasible, the applicant shall work with the landlord to allow 90 minute off-street parking in the attached parking garage. (Per Planning & Zoning Commission review 4/27/16)

SP11- If it is determined that the business operation is compliant with the Noise Ordinance and has not generated complaints or impacts from adjacent neighbors during the first six months of operation, the Planning & Zoning Commission at the time of the 6-month compliance may change the opening hour to 5:30 am without a formal application filing and at no cost to the applicant. (Per City Council July 5, 2016)

**GENERAL PROJECT CONDITIONS**

Project Approval. This Conditional Use Permit approval is for 1495 Solano Ave., as substantially shown and described on the project plans, except as may be modified by conditions herein. Plans provided by David Long, date received April 5, 2016, as presented to the Planning and Zoning Commission on April 27, 2016. For any condition herein that requires preparation of a Final Plan where the project developer has submitted a conceptual plan, the project developer shall submit final plan(s) in
substantial conformance with the conceptual plan, but incorporate the modifications required by the conditions herein for approval by the City.

Project Approval Expiration. This Conditional Use Permit approval expires on May 11, 2017 (one year from the date on which this approval becomes effective) or at an alternate time specified as a condition of approval, unless a building permit has been issued and construction diligently pursued. The approval may be renewed by the Community Development Director for a period up to an additional two (2) years, provided that, at least ten (10) days before expiration of one (1) year from the date when the approval becomes effective, an application for renewal of the approval is filed with the Community Development Department. The Community Development Director may grant a renewal of an approval where there is no change in the original application, or there is no request to change any condition of approval.

Fees. The applicant shall pay any and all City and other related fees applicable to the property, as may be modified by conditions herein. Fees shall be based on the current fee structure in effect at the time the relevant permits are secured, and shall be paid before issuance of said permit or before any City Council final action approval. Notice shall be taken specifically of Plan Check, Engineering, Fire and Inspection Fees. The project developer shall also reimburse the City for direct costs of planning; building and engineering plan check and inspection, as mutually agreed between the City and developer.

Appeals. The Albany Municipal Code provides that any action of the Planning staff may be appealed to the Planning and Zoning Commission, and any action of the Planning and Zoning Commission may be appealed to the City Council as per the procedures described in Section 20.100.080.
The City Clerk will then schedule the matter for the next available City Council meeting.

**Requirement for Building Permit.** Approval granted by the Planning and Zoning Commission does not constitute a building permit or authorization to begin any construction or demolish an existing structure. An appropriate permit issued by the Community Development Department must be obtained before constructing, enlarging, moving, converting, or demolishing any building or structure within the City.

**Fire Department Approval.** As part of a building permit application, the applicant shall submit written documentation that all requirements of the Albany Fire Department have, or will be, met to the satisfaction of the AFD.

**Engineering Approval.** As part of a building permit application, the applicant shall submit written documentation that all requirements of the Public Works Department have, or will be, met to the satisfaction of the City Engineer.

**Construction Hours.** Construction activity shall be restricted to the hours of 8:00 a.m. to 6:00 p.m. Mondays through Saturdays, and 10:00 a.m. to 6:00 p.m., Sundays and legal holidays, unless otherwise approved in writing by the City Engineer for general construction activity. Failure to comply with construction hours may result in stop work orders or other administrative actions.

**Archeological Remains.** In the event subsurface archeological remains are discovered during any construction or preconstruction activities on the
site, all land alteration work within 100 feet of the find shall be halted, the Community Development Department notified, and a professional archeologist, certified by the Society of California Archeology and/or the Society of Professional Archeology, shall be notified. Site work in this area shall not occur until the archeologist has had an opportunity to evaluate the significance of the find and to outline appropriate mitigation measures, if deemed necessary. If prehistoric archeological deposits are discovered during development of the site, local Native American organizations shall be consulted and involved in making resource management decisions.

**Modifications to Approved Plans.** The project shall be constructed as approved. Planning staff may approve minor modifications in the project design, but not the permitted land use (per MC 20.12). A change in an item requiring discretionary approval and any other changes deemed appropriate by the Planning staff shall require further Planning and Zoning Commission approval through the Design Review process.

**Hold Harmless Agreement.** The applicant (including any agent thereof) shall defend, indemnify, and hold harmless, the City of Albany and its agents, officers and employees, from any claim, action, or proceeding against the City or its agents, officers or employees to attack, set aside, void, or annul the City's approval concerning this application, which action is brought within the time period provide for in Section 66499.37. The City will promptly notify the applicant of any such claim action or proceeding and cooperate fully in the defense.

**Public Improvements Standards.** Public improvements shall be designed and constructed in accordance with the City's Standard
Specifications and Standard Details, unless specifically waived in writing by the City Engineer.

**GEN-13 Title 24 Standards.** All construction shall be designed and built in accordance with California Title 24 handicap accessibility standards. Appropriate details and specifications shall be incorporated into the plans and submitted at time of building permit application.

**GEN-14 Energy Conservation Standards.** All buildings shall be designed in accordance with the State of California energy conservation standards for non-residential buildings. The necessary plans and documentation shall be submitted at time of building permit application.

**LIGHTING CONDITIONS**

**LGH-1 Exterior Lighting.** All exterior lighting shall be installed in such a manner that glare is directed away from surrounding properties and rights-of-way. If required, exterior light fixtures shall be equipped with “cut off” lenses to minimize light and glare spill over onto adjacent properties.

**LGH-2 Shielding of Lighting.** Prior to the certificate of occupancy, all accent lighting shall be directed downward and, if necessary, fixed with cut-off lenses to ensure that no glare spills onto neighboring properties.

**LANDSCAPING CONDITIONS**

**LNDSC-1 Street Tree Requirement.** The applicant shall apply for one street tree before the issuance of the building permit. The City’s Environmental Resource Assistance will determine the type and location of the tree and
may waive this requirement if site conditions will not reasonably support
establishment of a new tree.

SIGN CONDITIONS

SIGN –1 Signage Design Review Approval.

All construction/installation of signage shall conform to the approved sign plan
and color samples approved the Community Development Department.
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PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF ALBANY,
the 5th day of July, 2016, by the following votes:

AYES: Council Members Barnes, McQuaid, Nason, Pilch and Mayor Maass
NOES: none
ABSENT: none
ABSTAINED: none
RECUSED: none

WITNESS MY HAND AND THE SEAL OF THE CITY OF ALBANY, this
6th day of July, 2016.

Eileen Harrington
DEPUTY CITY CLERK