



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: June 20, 2023
TO: Paul Buddenhagen, City Manager
FROM: Charles S. Bryant, Community Development Director
SUBJECT: **An Ordinance Of The City Council Of The City Of Emeryville Adding Chapter 15 To Title 4 Of The Emeryville Municipal Code (“Private Parking Facilities”) CEQA Determination: Exempt Pursuant To CEQA Guidelines Sections 15061(b)(3), 15378(a) And 15378(b)(5)**

RECOMMENDATION

Staff recommends that the City Council hold a public hearing, waive first reading, and introduce by title only the attached Ordinance adding Chapter 15 to Title 4 of the Emeryville Municipal Code (“Private Parking Facilities”).

BACKGROUND

In Spring 2021, CenterCal Properties (“CenterCal”) purchased the South Bayfront Retail/Mixed Use Project, more commonly known as “Bay Street”. Shortly thereafter, CenterCal began work to reposition the shopping center by improving the food terrace, pursuing approvals to construct a grocery store and improve pedestrian/bicycle infrastructure, and making other improvements to accommodate a variety of new tenants.

As part of these improvements, in 2022, CenterCal engaged a new parking management partner (ParkSmart) and modernized the parking infrastructure with the goal of improving the customer experience at Bay Street. Specifically, the previous access-controlled method of assessing parking charges was replaced in favor of a pay-by-space method which does not require gates at the garage entrances and exits.

Access controlled garages can decrease enforcement costs but at the expense of driver convenience and comfort, and in high volume periods, gates can create access issues as vehicles queue to enter or exit the parking facility. Conversely, gateless pay-by-space systems improve access and eliminate queuing issues but require a different enforcement approach to ensure that motorists are paying to park.

CenterCal has requested the ability to enforce paid parking through the use of mail-in parking charges (i.e. tickets). Without the ability to write and enforce mail-in parking charges, nonpaying drivers lower the overall turnover of parking spaces (as there are no consequences for parking longer than permitted) which impacts the efficiency of the Bay Street parking facilities. Additionally, nonpaying drivers negatively impact the revenues

generated by the parking facilities, which are used to support overall operation and maintenance of the shopping center.

California Vehicle Code (“CVC”) Section 21107.8 provides that a city may, by ordinance or resolution, find and declare that there are privately owned and maintained off-street parking facilities as described in the ordinance or resolution within the city that are generally held open for use of the public for purposes of vehicular parking. Upon enactment by a city of an ordinance or resolution, certain sections of the CVC apply to the privately owned parking facility, and the city may include in that ordinance or resolution authorization for the operator of a privately owned and maintained off-street parking facility to regulate unauthorized parking in that facility.

DISCUSSION

As noted above, CenterCal requested the ability to enforce parking regulations in the privately owned and operated parking garages at Bay Street. In order to accommodate parking enforcement through the issuance of mail-in parking charges at these privately owned garages, the City needs to adopt an ordinance in accordance with CVC Section 21107.8. Staff, in consultation with the City Attorney, has prepared an ordinance based on similar ordinances adopted by other local jurisdictions including Walnut Creek, Pleasant Hill, and Lafayette.

Given legal concerns raised by the City Attorney with respect to the scope of parking violations that may be subject to mail-in parking charges issued by private garage operators, and the ability of those operators to impose late fees pursuant to the authority provided to a city by the state statute, the proposed ordinance limits “unauthorized parking” to parking in violation of parking payment requirements, failure to pay or properly display proof of payment for parking when required, or leaving a vehicle parked in excess of the amount paid for or permitted, and does not include late fee provisions in order to avoid the risk of legal challenge.

The proposed ordinance provides that mail-in parking tickets cannot exceed the amount charged by the City for on-street parking citations, requires the posting of signs giving notice to patrons of the applicable parking restrictions as required by the CVC, and requires that notices of mail-in parking charges be clearly differentiated from the City’s parking citations. The proposed ordinance also requires that the private parking operator establish a dispute resolution process, including the ability to request an administrative hearing by qualified examiners, and ensuring an impartial hearing, with the dispute resolution procedures subject to review and approval by the City for compliance with the ordinance.

Staff conducted outreach to other Emeryville shopping centers that provide parking on private property including East BayBridge, Powell Street Plaza, and the Public Market. Neither East BayBridge nor Powell Street Plaza expressed any strong interest in an ordinance that provides for mail-in parking charges, but the Public Market expressed

support and indicated their plans to charge for parking in the future. Accordingly, and consistent with the recommendation of the Budget and Governance Committee as discussed below, the proposed ordinance applies only to the retail parking areas that are privately owned and held open to the public at Bay Street and the Public Market.

FISCAL IMPACT

If the City Council adopts the proposed ordinance, the fiscal impact would be for the City's review of dispute resolution procedures and hearing officer qualifications submitted by private parking operators. This impact is expected to be minimal, as the proposed ordinance is only applicable to parking facilities at Bay Street and the Public Market. The proposed ordinance would not be enforced by the City's Police Department, nor would the City collect any revenue from mail-in parking charges issued pursuant to the proposed ordinance.

STAFF COMMUNICATION WITH THE PUBLIC

As noted above, staff contacted the ownership of major Emeryville shopping centers including East BayBridge, Powell Street Plaza, the Public Market and Bay Street, to discuss the proposed ordinance.

A preliminary draft of the ordinance was reviewed by the Budget and Governance Committee of the City Council on February 7, 2023. The committee recommended forwarding the ordinance to the City Council for consideration with the following comments:

Concern regarding driver behavior

Vice Mayor Welch raised concerns that facilitating the removal of access control from privately owned public parking facilities as the mechanism to collect payments would make these facilities more accommodating for undesirable driving behavior (sideshow activity, racing, etc.). Staff consulted with the Police Department and the City Attorney's office to understand the applicability of the CVC on private lots held open to the public. As noted above, certain CVC provisions would be applicable to any parking facilities addressed by the proposed ordinance, including prohibitions on reckless driving, racing, and speeding. Additionally, the Police Department noted that, in general, reckless driving, driving under the influence, and certain other CVC violations are enforceable in private parking facilities held open to the public regardless of whether the City enacts the proposed ordinance. In summary, in consideration of existing law and the proposed ordinance, the Police Department has sufficient enforcement authority to mitigate undesirable driver behaviors if they occur in these facilities.

Concern regarding dispute resolution procedures

Mayor Bauters requested that the ordinance include provisions that allow the City to intervene if a private parking operator is found to be unfairly assessing mail-in parking

charges. The proposed ordinance includes the following provision at Section 4-15.07(d)(3):

“If the City receives evidence that the Private Parking Operator is not in compliance with the written procedures approved by the City Manager or any other provisions of this Chapter, the City Manager may rescind approval of the written procedures by written notice to the Private Parking Operator, which notice shall include a description of the corrective actions that must be taken for the Private Parking Operator. Upon issuance of such written notice, the Private Parking Operator shall be prohibited from issuing Notices of Parking Charges until corrective actions are taken by the Private Parking Operator and the written procedures and corrective actions to be taken are approved by the City Manager.”

CONFLICT OF INTEREST

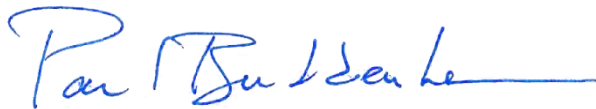
None.

CONCLUSION

Staff recommends that, after holding a public hearing, the City Council waive first reading and introduce by title only the attached Ordinance adding Chapter 15 to Title 4 of the Emeryville Municipal Code (“Private Parking Facilities”).

PREPARED BY: Chadrick Smalley, Deputy Director of Community Development

**APPROVED AND FORWARDED TO THE
CITY COUNCIL OF THE CITY OF EMERYVILLE:**

A handwritten signature in blue ink, reading "Paul Buddenhagen", is written over a horizontal line.

Paul Buddenhagen, City Manager

ATTACHMENTS

- Proposed Ordinance