



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** July 6, 2021

**TO:** Christine Daniel, City Manager

**FROM:** Charles S. Bryant, Community Development Director

**SUBJECT:** **Ordinance Of The City Council Of The City Of Emeryville Amending Article 2 Of Chapter 3 Of The Planning Regulations At Title 9 Of The Emeryville Municipal Code To Prohibit Crematories In All Zoning Districts (CEQA Status: Not A “Project” Under Public Resources Code Section 21065, And Common Sense Exemption At CEQA Guidelines Section 15061(b)(3))**

### RECOMMENDATION

The Planning Commission and staff recommend that the City Council amend the Planning Regulations to prohibit Crematories in all zoning districts.

### BACKGROUND

Council Direction. At the City Council meeting on February 2, 2021, Councilmember Bauters requested and received majority support for a future agenda item to discuss modifying Section 9-3.202 of the Planning Regulations at Title 9 of the Emeryville Municipal Code to prohibit Crematories in Emeryville. On April 6, 2021, the City Council discussed the issue and, citing health risks from Crematories, directed staff to move forward with an amendment to the Planning Regulations to prohibit Crematories citywide.

Health Risks. According to the Bay Area Air Quality Management District (BAAQMD or “Air District”) Permit Handbook, Crematories “can produce emissions of flyash, smoke, gases, and odor. Odor and visible emissions can be objectionable to many people on aesthetic grounds.” In addition, according to the Canadian National Collaborating Centre for Environmental Health, “the pollutants of most concern from crematoria emissions are PCDD/Fs [polychlorinated dibenzo-p-dioxins], Hg [mercury] and fine particulate matter (PM<sub>2.5</sub>). PCDD/Fs and Hg are known to be toxic to humans and can bioaccumulate in tissues. PCDD/Fs are classified as possible human carcinogens and Hg is a neurotoxin. Exposure to PM<sub>2.5</sub>, which can reach deep into the lungs, can increase the risks of heart disease, lung cancer, asthma, and adverse birth outcomes, and exacerbate other conditions such as diabetes. For these key pollutants, agencies such as the World Health Organization (WHO) and the United States Environmental Protection Agency (USEPA) advise that care should be taken to limit exposure, particularly for vulnerable populations such as babies, children, pregnant women, and the elderly.” The Air District routinely receives complaints and concerns from adjacent residents and businesses regarding crematories throughout the Bay Area.

Existing Crematories. To staff's knowledge, there have been two crematories in Emeryville. One is the Apollo Crematorium at 4080 Horton Street, operated by the Neptune Society from the 1980s until about five years ago, when it relocated its cremation activities to a new facility at 9850 Kitty Lane in Oakland, near the Oakland Airport. Although cremations are no longer performed here, the business maintains a current business license, and staff understands that, following cremation elsewhere, decedents' ashes are transported back to Emeryville where they are stored for family pick-up or delivery. Prior to the relocation of its cremation operations, there were numerous inquiries and complaints about it from adjacent property owners and residents concerning noise, odors, and potential health impacts. The facility does not have a planning permit from the City and was considered a legal nonconforming use because Crematories are not permitted in the Mixed Use with Residential Zone (MUR) in which the facility is located, but it predates this zoning designation and was therefore "grandfathered".

The other crematory is Pacific Interment Services at 1094 Yerba Buena Avenue. About half of the property is in Oakland, but the business uses an Emeryville address, has an Emeryville business license, and has been in continuous operation for about 30 years. Staff is not aware of any complaints or alleged code violations from this facility. Its website (interment.com) includes positive client reviews, and notes that it was named as the best mortuary in the East Bay Express's "Best of the East Bay" edition of February 24-March 2, 2021. The facility received a conditional use permit (UP92-10) from the Planning Commission in 1992.

Planning Commission Recommendation. The proposed zoning text amendment was considered by the Planning Commission at a public hearing on May 27, 2021. There were no speakers at the public hearing. Following the public hearing, the Commission voted unanimously to recommend that the City Council approve the proposed zoning text amendment.

## **DISCUSSION**

Existing Regulations. Crematories are defined at Section 9-2.409 of the Planning Regulations as "Human or animal cremation facilities." Funerary services not involving cremation are classified as Funeral Homes, Mortuaries and Mausoleums, which are defined at Section 9-2.323 as "The care, preparation, or keeping of the dead. This use type includes space for services and assembly." Both use types are listed as "Uses of Special Concern" in Section 9-7.201(j), which means that they can never be approved at a staff level, and have more rigorous nonconforming use regulations than other uses that are not Uses of Special Concern. According to Table 9-3.202, Crematories are allowed with a conditional use permit from the Planning Commission in the INL Light Industrial and the INH Heavy Industrial zones, while Funeral Homes, Mortuaries and Mausoleums are allowed with a conditional use permit from the Planning Commission in the MUR Mixed Use with Residential, MURS Mixed Use with Residential South, MUN Mixed Use with Non-Residential, OT Office/Technology, and INL Light Industrial zones. The portions of Table 9-3.202 for these two use types are included below for reference. (The "X" in the NR Neighborhood Retail Overlay Zone column means that a Crematory would not be allowed

in the NR Zone even if it were allowed in the base zone; thus, Crematories would be prohibited on sites zoned INL/NR or INH/NR.)

**Table 9-3.202: Uses Permitted, Conditionally Permitted and Prohibited**

Use Classifications	Base Zones															Overlay Zones			
	RM	RMH	RH	MUR	MURS	MUN	OT	OT/DH	INL	INH	P	M	PO	SM	UT	PA	NR	RR	TH
Commercial and Institutional																			
Funeral Homes, Mortuaries and Mausoleums	X	X	X	C	C	C	C	X	C	X	X	X	X	X					
Industrial																			
Crematories	X	X	X	X	X	X	X	X	C	C	X	X	X	X			X		

It should be noted that prohibiting Crematories would not result in the existing Pacific Interment facility becoming nonconforming. This is because Section 9-5.1003(f) stipulates that “any use allowed under a planning entitlement, including but not limited to a conditional use permit, design review permit, or variance, that was approved prior to the adoption of these Planning Regulations and that has not expired, is deemed to be a conforming use and is subject to any conditions included in its approval.”

If it were still operating as a Crematory, the Apollo Crematorium would remain a legal nonconforming use. However, since it now appears that it is performing funerary functions but not operating a crematorium, it would now be classified as a Funeral Homes, Mortuaries and Mausoleums use type, which would be allowed with a conditional use permit from the Planning Commission in the MUR zone in which it is located. The owners have not applied for a conditional use permit under this use classification. Therefore, the use is now considered legal nonconforming by virtue on not having a conditional use permit.

Proposed Amendment. Section 9-7.1303 stipulates that an amendment to the Planning Regulations may be initiated by an applicant, the City Council, or the Planning Commission on its own motion or on the recommendation of the Community Development Director. In this case, the amendment was initiated by the City Council when it directed staff to proceed with such an amendment at its meeting on April 6, 2021.

Prohibiting Crematories citywide would entail changing the “C” to an “X” in the INL and INH columns in the Crematories row of Table 9-3.202, as indicated below, and deleting the “X” from the NR Neighborhood Retail Overlay Zone column (which would now be redundant), where the proposed changes are denoted by ~~strike through type~~ for language that is deleted and underlined type for new language:

**Table 9-3.202: Uses Permitted, Conditionally Permitted and Prohibited**

Use Classifications	Base Zones															Overlay Zones			
	RM	RMH	RH	MUR	MURS	MUN	OT	OT/DH	INL	INH	P	M	PO	SM	UT	PA	NR	RR	TH
Industrial																			
Crematories	X	X	X	X	X	X	X	X	⊗	⊗	X	X	X	X	X		⊗		

Required Findings. In order to approve an amendment to the Planning Regulations, the City Council must be able to make the findings listed in the Amendment Procedure at Section 9-7.1305, as follows:

- (a) The proposed amendment is consistent with the General Plan.
- (b) The proposed amendment is necessary for public health, safety, and general welfare or will be of benefit to the public.
- (c) The proposed amendment has been reviewed in compliance with the requirements of the California Environmental Quality Act.
- (d) For a change to the Zoning Maps, that the subject property is suitable for the uses permitted in the proposed zone in terms of access, size of parcel, relationship to similar or related uses, and other relevant considerations, and that the proposed change of zoning district is not detrimental to the use of adjacent properties.

In the Planning Commission’s view, these findings can be made, as detailed in the attached proposed ordinance.

**ENVIRONMENTAL REVIEW**

The proposed amendments are not considered a “project” under Public Resources Code Section 21065 and are not subject to CEQA. Even if they were considered a project, they would be exempt from environmental review under the "common sense exemption" at CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposal may have a significant effect on the environment.

**FISCAL IMPACT**

None.

**STAFF COMMUNICATION WITH THE PUBLIC**

As required by the Planning Regulations, a legal advertisement was published in the Oakland Tribune. As noted above, the Planning Commission unanimously recommended adoption of the Planning Regulations amendment at its May 27, 2021 meeting.

## **CONCLUSION**

The Planning Commission and staff recommend that the City Council take the following actions:

1. Introduce the Ordinance after a motion to read by title only.
2. Take public testimony regarding the Ordinance.
3. Adopt the first reading of the Ordinance.

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



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Christine Daniel, City Manager

## **ATTACHMENTS**

- Proposed Ordinance