

ORDINANCE NO. 23-__

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)

WHEREAS, in 2021, CenterCal Properties (“CenterCal”) purchased the South Bayfront Retail/Mixed Use Project (“Bay Street”) and began to make certain improvements; and

WHEREAS, CenterCal’s improvements included modernization of the parking infrastructure at Bay Street, including a pay-by-space method of assessing parking charges; and

WHEREAS, gateless pay-by-space parking facilities improve access and queuing of vehicles during high-volume periods; and

WHEREAS, in order to enforce paid parking requirements at Bay Street using a gateless pay-by-space method, CenterCal requested the ability to issue mail-in parking charges for nonpaying patrons; and

WHEREAS, 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; and

WHEREAS, upon enactment by a city of an ordinance or resolution pursuant to CVC Section 21107.8, CVC Sections 22350, 23103, and 23109 and the provisions of Division 16.5 (commencing with Section 38000) apply to the privately owned parking facility; and

WHEREAS, CVC Section 21107.8 provides that 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 through the use of mail-in parking charges; and

WHEREAS, on February 7, 2023 the Budget and Governance Committee of the Emeryville City Council reviewed a preliminary draft ordinance providing for the issuance of mail-in parking charges by operators of private parking facilities; and

WHEREAS, the Budget and Governance Committee of the Emeryville City Council provided direction on the geographic scope, dispute resolution procedures provisions, and issues relating to undesirable driver behavior related to the preliminary draft ordinance and referred the ordinance to the City Council for consideration; and

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WHEREAS, adoption of the proposed ordinance is exempt from the California Environmental Quality Act (“CEQA”) because it is not a “project” defined by section 15378 of the CEQA Guidelines, as the ordinance only involves organizational or administrative activities that will not result in direct or indirect physical changes in the environment, and is also exempt from CEQA because it can be seen with certainty that there is no possibility that the proposed ordinance may have a significant effect on the environment because it does not propose or commit to any construction activities.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EMERYVILLE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION ONE. ADDING CHAPTER 15 TO TITLE 4 OF THE EMERYVILLE MUNICIPAL CODE

Chapter 15 is hereby added to Title 4 of the Emeryville Municipal Code to read as follows:

CHAPTER 15.

PRIVATE PARKING FACILITIES

4-15.01. Purpose and Intent.

(a) The City Council finds and declares that there are privately owned and maintained off-street parking facilities within the City that are generally held open for use by the public for the purpose of vehicular parking.

(b) The City Council finds and declares that off-street parking space turnover and customer confidence in parking can affect sales tax revenue, property taxes and the success of businesses. The use of gateless off-street parking facilities, customer validation systems, mobile payment options and credit card payment enabled meters can greatly increase customer confidence in having a good parking experience as well as the ability to better manage off-street parking space turnover in prime off-street parking areas.

(c) The City Council further finds and declares that the owners of privately owned off-street parking facilities designated by the City are authorized to regulate unauthorized parking in such facilities in accordance with the provisions of this Chapter in order to improve existing parking and traffic conditions and to make spaces more readily available in the City’s business and commercial districts.

(d) This ordinance shall not take effect unless a public hearing has been held before the City Council and written notice to the Private Parking Operators who own and maintain Off-street Parking Facilities set forth in Section 4-15.09 has been provided ten (10) days prior to that public hearing.

4-15.02. Definitions.

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As used in this Chapter, the following terms shall have the following meanings:

- (a) "Mail-in Parking Fee" or "Mail-in Parking Charge" means a charge that is assessed to a vehicle for Unauthorized Parking in an Off-street Parking Facility.
- (b) "Notice of Parking Charge" means a written notice affixed to a vehicle which notifies the driver of a Mail-in Parking Fee or Mail-In Parking Charge that is due as a result of Unauthorized Parking in an Off-street Parking Facility.
- (c) "Off-street Parking Facility" means a garage, lot, or facility that is privately owned and maintained on private property set aside for the storage and parking of vehicles that is generally held open for use by the public.
- (d) "Person" means any natural person, firm, company, corporation, partnership, governing body, institution or association.
- (e) "Private Parking Operator" means any person who owns or controls, or who acts on behalf of or at the behest of a person who owns or controls, an Off-street Parking Facility.
- (f) "Unauthorized Parking" means (i) parking at an Off-Street Parking Facility in violation of parking payment requirements established by a Private Parking Operator; (ii) failing to pay or properly display proof of payment for parking at an Off-Street Parking Facility where payment is required; or (iii) leaving a vehicle parked over-time at an Off-Street Parking Facility for a period of time in excess of the amount paid for or permitted.

4-15.03. Mail-in Parking Fees.

A Private Parking Operator may charge a Mail-in Parking Fee for the Unauthorized Parking of a vehicle to the registered owner of the vehicle parked in an Off-street Parking Facility.

4-15.04. Maximum Amount of Mail-in Parking Fees.

The Mail-in Parking Fee charged pursuant to this Chapter shall not exceed the fine amount established by the City of Emeryville for violation of Section 4-10.08.

4-15.05. Posting of Signs Specifying Parking Restrictions and Charges.

- (a) Signs indicating the applicable parking restrictions for parking in an Off-street Parking Facility shall be posted as required by the Vehicle Code. A Notice of Parking Charge may be issued only if there are signs posted which comply with the Vehicle Code requirements.
- (b) Nothing in this chapter shall be construed to modify the authority of the City to issue citations as authorized under state law.

4-15.06. Notice of Parking Charge.

- (a) A Private Parking Operator is authorized to place on a vehicle a Notice of Parking Charge as a result of Unauthorized Parking in an Off-street Parking Facility which states

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at the top of the notice in at least 12-point font the words “MAIL-IN PARKING FEE OR CHARGE” with the name, telephone number and street address of the Private Parking Operator, the name of the Off-Street Parking Facility where the notice was issued, and the amount of the Mail-in Parking Fee or Charge that is being assessed in at least 7-point font.

(b) Every Notice of Parking Charge shall also state, in at least 12-point font, “This Parking Invoice Fee Notice Is Not Issued By The City of Emeryville” and shall not in any manner resemble any Notice of Parking Citation that is issued by the City of Emeryville and shall be approved by the City Manager and Chief of Police for the City of Emeryville prior to issuance.

(c) The Notice of Parking Charge shall include the instructions for contesting any Mail-in Parking Fee or Charge as set forth in Section 4-15.07.

(d) The Notice of Parking Charge shall state that the Mail-in Parking Fee or Charge shall be cancelled if the fee is not upheld as a result of a person successfully contesting the fee or if the Private Parking Operator dismisses the Unauthorized Parking violation for any reason.

4-15.07. Dispute Resolution Procedure for Contested Parking Charges.

(a) Every Private Parking Operator shall provide instructions for contesting a Notice of Parking Charge that is posted at the Off-street Parking Facility and on its publicly accessible website which shall be in compliance with Vehicle Code section 40215. These instructions shall include a notice that a person may contest a Notice of Parking Charge within twenty-one (21) days after issuance or fourteen (14) days after a person requests a copy of the original Notice of Parking Charge from the Private Parking Operator. The procedure for contesting a Notice of Parking Charge shall include a request for an initial review by the Private Parking Operator, which can be made by telephone, in writing, or in person. There shall be no additional charge for filing such a request.

(b) If, following the request for initial review, the Private Parking Operator is satisfied that a violation did not occur, the registered owner was not responsible for the violation, or that extenuating circumstances make dismissal appropriate, the Notice of Parking Charge shall be dismissed. The Private Parking Operator shall mail the results of its initial review to the person contesting the violation within thirty (30) days after receipt of a protest. If a protest is denied, the Private Parking Operator shall include the reason the protest is being denied and provide instructions for requesting an administrative hearing.

(c) If the person who was issued the Notice of Parking Charge is dissatisfied with the result of the initial review, the person may request an administrative hearing no later than 21 calendar days following the mailing of the of the initial review determination. The request may be made by telephone, in writing, via email, or in person. The person requesting an administrative hearing shall deposit the amount of the Mail-in Parking Fee

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or Charge with the Private Parking Operator; however, the Private Parking Operator shall adopt written procedures for allowing a person who is indigent to request an administrative hearing without payment of the Mail-in Parking Fee or Charge, which procedures must be approved by the City Manager in writing prior to their implementation. The administrative hearing shall be held within 90 calendar days following the receipt of a request for an administrative hearing, which is subject to one continuance, not to exceed 21 calendar days, upon request by the person requesting the administrative hearing.

(d) The administrative hearing shall provide for the following:

1. The person requesting a hearing shall have the choice of a hearing by mail or in person. An in-person hearing shall be conducted within the City of Emeryville.
2. If the person requesting the hearing is a minor, that person shall be permitted to appear at a hearing or admit responsibility for the Mail-in Parking Fee or Charge without the necessity of the appointment of a guardian.
3. The administrative hearing shall be conducted in accordance with written procedures established by the Private Parking Operator and approved by its governing body or chief executive officer. The written procedures must also be approved by the City Manager of the City of Emeryville in advance of any scheduled hearing. The hearing shall provide for an independent, objective, fair, and impartial review of any contested Notice of Parking Charge. 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 any Notice of Parking Charge until corrective actions are taken by the Private Parking Operator and the written procedures are approved by the City Manager.
4. (A) The Private Parking Operator shall appoint or contract with qualified examiners or administrative hearing providers that employ qualified examiners to conduct the administrative hearings subject to the approval of the City Manager of the City of Emeryville in writing. Any designated examiner shall not be employed, managed, or controlled by the Private Parking Operator, and shall be separate and independent from any Mail-in Parking Fee or Charge collection or processing function utilized by the Private Parking Operator. An examiner's continued employment, performance evaluation, compensation, and benefits shall not, directly or indirectly, be linked to the amount of Mail-in Parking Fees or Charges collected by the examiner.

- (B) Examiners shall have a minimum of 20 hours of training. The examiner is responsible for the costs of the training, but the Private Parking Operator may reimburse the examiner for these costs. Training may be provided through (i) an accredited college or university, (ii) Commission on Peace Officer Standards and Training, (iii) American Arbitration Association or (iv) any program approved by the City of Emeryville, including a program developed and provided by, or for, the Private Parking Operator. Training programs shall include topics relevant to the administrative hearing, including, but not limited to, applicable laws and regulations, parking enforcement procedures, due process, evaluation of evidence, hearing procedures, and effective oral and written communication. Upon the approval by the City of Emeryville, up to 12 hours of relevant experience may be substituted for up to 12 hours of training. In addition, up to eight hours of training requirements described in this subparagraph may be credited to an individual, at the discretion of the City of Emeryville, based upon training programs or courses described in (i) to (iv), inclusive, that the individual attended within the last five years.
5. The Private Parking Operator or its employees shall not be required to participate in an administrative hearing. The Private Parking Operator shall not be required to produce any evidence other than the Notice of Parking Charge or copy thereof and information received from the Department of Motor Vehicles identifying the registered owner of the vehicle. The documentation in proper form shall be prima facie evidence of the violation.
 6. The examiner's decision following the administrative hearing shall be personally delivered to the person who was issued the Notice of Parking Charge by the examiner or sent by first-class mail, and, if the notice is not cancelled, include a written reason for the denial of the cancellation.
 7. The examiner or the Private Parking Operator shall, at any stage of the initial review or the administrative hearing process, and consistent with the written guidelines established by the Private Parking Operator, allow payment of the parking charge in installments, or the Private Parking Operator may allow for deferred payment for persons who show evidence of an inability to pay the parking penalty in full.

4-15.08. Private Parking Operator Registration.

(a) Every Private Parking Operator who issues a Notice of Parking Charges shall register with the Emeryville Police Department before doing business in the City of Emeryville. In addition to the information required by this Chapter, the Emeryville Police Department may require other information as may enable the Emeryville Police Department to determine compliance with this Chapter.

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(b) The registration information provided to the Emeryville Police Department shall include the name, address, telephone number, email address, website, and City of Emeryville business license number of the Private Parking Operator.

(c) The Private Parking Operator shall also provide to the Emeryville Police Department a list of all Off-street Parking Facilities in the City of Emeryville operated by the Private Parking Operator where Notices of Parking Charges are proposed to be issued which shall be updated within one month of any change, and the name, address, and telephone number of each contact person who oversees the parking enforcement program for each Off-street Parking Facility.

4-15.09. Areas of Applicability.

This Chapter shall apply to the following Off-Street Parking Facilities within the City of Emeryville:

(a) The portions of the privately-owned parking structures at the South Bayfront Retail/Mixed Use Planned Unit Development that are held open to the public for retail parking as described in Ordinance No. 99-009, commonly known as “Bay Street”, within Assessor’s Parcel Numbers 49-1039-3, -4, -5, and -6.

(b) The portions of the privately-owned parking lots and structures at the Marketplace Redevelopment Project that are held open to the public for retail parking as described in Ordinance No. 08-004, within Assessor’s Parcel Numbers 49-1556-9, -15, and -16.

SECTION TWO. CEQA DETERMINATION

The City Council finds, pursuant to Title 14 of the California Administrative Code, Section 15061(b)(3) and Section 15378(a), that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project that has the potential for causing a significant effect on the environment. This action is further exempt from the definition of a Project in Section 15378(b)(3) in that it concerns general policy and procedure making.

SECTION THREE. SEVERABILITY

Every section, paragraph, clause, and phrase of this Ordinance is hereby declared severable. If, for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining section, paragraphs, clauses, or phrases.

SECTION FOUR. EFFECTIVE DATE

This Ordinance shall take effect thirty (30) days following its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code section 33693.

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SECTION FIVE. CODIFICATION

Section One of this Ordinance shall be codified in the Emeryville Municipal Code. Sections Two, Three, Four and Five shall NOT be so codified.

This Ordinance was **INTRODUCED AND FIRST READ** by the City Council of the City of Emeryville at a regular meeting held Tuesday, June 20, 2023, and **PASSED AND ADOPTED** by the City Council of the City of Emeryville at a regular meeting held Wednesday, July 5, 2023, by the following vote:

AYES: _____
NOES: _____
ABSTAIN: _____
ABSENT: _____

MAYOR

ATTEST:

APPROVED AS TO FORM:

CITY CLERK

DocuSigned by:
John Kennedy
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CITY ATTORNEY