



MEMORANDUM

DATE: June 4, 2024

TO: Paul Buddenhagen, City Manager

FROM: Chadrick Smalley, Community Development Director

SUBJECT: **Introduction And First Reading Of An Ordinance Of The City Council Of The City Of Emeryville Adding Two New Land Use Classifications To Section 9-2.339 (“Motor Vehicle Sales And Services”) In Article 3 Of Chapter 2 Of Title 9 Of The Emeryville Municipal Code; Adding A New Definition To Section 9-8.201 (“A” Terms) In Article 2 Of Chapter 8 Of Title 9; And Modifying Table 9-3.202 In Section 9-3.202 (Uses Permitted, Conditionally Permitted And Prohibited) In Article 2 Of Chapter 3 Of Title 9; Concerning Certain Auto-Related Uses And Indoor Public Storage Uses (CEQA Determination: Exempt Pursuant To Guidelines Section 15061(B)(3))**

RECOMMENDATION

Staff and the Planning Commission recommend that the City Council introduce and waive first reading of the attached ordinance adding two new land use classifications to Section 9-2.339 (“Motor Vehicle Sales and Services”) in Article 3 of Chapter 2 of Title 9 of the Emeryville Municipal Code; adding a new definition to Section 9-8.201 (“A” terms) in Article 2 of Chapter 8 of Title 9; and modifying Table 9-3.202 in Section 9-3.202 (uses permitted, conditionally permitted and prohibited) in Article 2 of Chapter 3 of Title 9; concerning certain auto-related uses and indoor public storage uses.

BACKGROUND

At the January 16, 2024, study session Council provided direction to make the following modifications to the Planning Regulations (Title 9 of the Emeryville Municipal Code):

- (1) Changes to Table 9-3.202 (Uses Permitted, Conditionally Permitted, and Prohibited) so as to not allow car washes, auto dealerships, and personal storage uses anywhere in the City;
- (2) Create two new use classifications – Alternative Fuel Charging Stations and Alternative Fuel Showrooms; and
- (3) Allow Alternative Fuel Charging Stations and Alternative Fuel Showrooms in certain zones.

On March 28, 2024, the Planning Commission held a study session to review

background information regarding the regulatory framework for auto-centric uses and personal storage uses in the City as well as the information on existing businesses classified as these use types. In addition, staff provided the Commission with Alternative Energy Vehicle Showroom and Alternative Energy Vehicle Service Station case studies. This information is summarized in the “Discussion” section below.

DISCUSSION

Alternative Energy Vehicle Showrooms Case Studies

Staff researched similar cities and cities that have auto dealers that use the showroom model. Staff identified cities with similar population sizes, geographic areas, and sales tax base, and then identified cities where the showroom model is used by auto dealers such as Tesla, Rivian, and VinFast.

Staff researched the following cities:

City	Area	Population (2020)	Zoning Code Language for Showrooms (Yes/ No)	Alt. Energy Auto Showrooms (Yes/ No)
1. Emeryville	2.25 sq mi	12,905	•	•
2. Berkeley	17.7 sq mi	124,321	No	Yes
3. Palo Alto	26.00 sq mi	68,572	Yes	Yes
4. Corte Madera	4.40 sq mi	10,222	Yes	Yes
5. Milpitas	13.52 sq mi	80,273	Yes	No
6. San Francisco	46.9 sq mi	873,965	No	Yes
7. Fremont	88.46 sq mi	230,504	Yes	No
8. San Jose	181.36 sq mi	1,013,240	Yes	Yes
9. Santa Monica	16.00 sq mi	93,076	Yes	Yes

Staff found that cities do not explicitly call out the sale of Electric Vehicles (or alternative energy vehicles) separate from Auto/Vehicle sales (traditional dealerships) or call out electric vehicle showrooms as a stand-alone use category. The language around “showrooms” is limited to whether showrooms are permitted in certain commercial and mixed-use oriented zones and in most cases local regulations do not establish specific development standards, such as size, for showrooms. In many cases, showrooms are permitted as a use in commercial and industrial oriented zones regardless of the type of vehicles being sold. See Attachment 1 for regulatory details around auto/vehicle showrooms in individual cities.

Given that the cities reviewed did not have explicit regulatory frameworks for electric vehicle showrooms, staff visited the following showrooms in the Bay area to investigate size and operating characteristics:

1. Tesla, 333 Santana Row #1015, San Jose, CA 95128
2. Tesla. 660 Stanford Shopping Center #359B, Palo Alto, CA 94304
3. VinFast, 1733 Fourth St, Berkeley, CA 94710
4. VinFast, 1506 Redwood Hwy, Corte Madera, CA 94925
5. Lucid, 1802 Redwood Hwy, Corte Madera, CA 94925
6. Polestar, 1700 Redwood Hwy, Corte Madera, CA 94925

The main purpose of these showrooms is to test drive vehicles and help with purchases that are done online. There are typically two to three vehicles in the showroom, and they store between three and ten vehicles in the parking lot, with the exception of Santana Row where a garage is used to store 30 vehicles for test driving. The size of the visited showrooms varied from 1,800 sq. ft. to 5,000 sq. ft. When a vehicle is purchased, most require pick up at a secondary location or the vehicle manufacturer’s headquarters, or the vehicle gets delivered to the customer’s home. Attachment 2 provides details and photographs of these showrooms.

Alternative Energy Vehicle Charging Stations Case Studies

In response to the Council’s direction to prohibit fossil fuel gas stations and add a use classification for alternative energy charging stations, staff researched similar cities and cities that have alternative fuel service stations or electric charging stations. Typically, “alternative fuel/ alternative energy” and “auto charging stations” regulations are simply limited to whether alternative fuel stations are permitted in certain zones. In most cases, the regulations do not establish parameters outside of commercial and retail regulation. In many cases, alternative fuel stations are permitted as an incidental and accessory auto use regardless of the type of vehicles being sold or serviced.

Other cities’ regulations regarding commercial/retail lot sizes, setbacks, etc. varied. Staff researched the following cities:

City	Zoning Code Use Classification Language for Alt. Energy Charging (Yes/ No)	Alt. Energy Charging (Yes/ No)
1. Emeryville	•	•
2. Berkeley	Yes	Yes
3. Palo Alto	No	Yes
4. Corte Madera	No	Yes
5. Fremont	Yes	Yes

The regulations for electric vehicle charging stations primarily are intended to ensure that they are permitted and compliant with the applicable building and electric codes. Please see Attachment 3 for details on these cities regulations of charging stations.

Analysis

The City Council indicated that the inclination to prohibit car dealerships is motivated by two reasons – 1) to deemphasize fossil-fueled auto-centric uses and 2) to prohibit land uses that typically require a large amount of surface parking to function. The City Council also expressed interest in allowing alternative energy vehicle showrooms, as these vehicles decrease reliance on fossil fueled vehicles and do not require large spaces to function. Staff’s review of cities that have alternative energy vehicle showrooms indicates that they have not created new use categories to allow showrooms or established specific development parameters such as size limitations. Reviewing the operations of existing showrooms indicates that the size of the showrooms varies from 1,800 to 5,000 square feet and typically entails the storage of two to three vehicles indoors and use a common parking lot to store test drive vehicles.

PLANNING COMMISSION DISCUSSION AND RECOMMENDATION

March 28th Planning Commission Study Session:

The Planning Commission reviewed the proposed modifications of the Planning Regulations at a March 28th study session. After some clarifying questions, one Commissioner questioned the reason for the prohibitions and thought that certain uses, such as car washes, would be a good use to permit inside existing garages and that alternative fuel vehicles also require cleaning. Another Commissioner suggested that the prohibition should also include auto body shops. The Commission, on the whole, was generally in support of the proposed modifications and suggested that staff carefully evaluate the proposed definition of “alternative fuel” to ensure that the amendments allow for future non-hydrocarbon-based fuels. In refining the definition of “Alternative Fuel,” staff realigned the definition to “Alternative Energy” to prioritize future fuel technologies.

April 25th Planning Commission Public Hearing:

At an April 25th meeting, the Planning Commission reviewed the proposed ordinance and an updated definition of “Alternative Energy Vehicles.” The Commission moved to recommend the amendments to Emeryville Municipal Code (EMC) Section 9-2.339 (“Motor Vehicle Sales and Services”); add a new definition to Section 9-8.201 (“A” terms); and modify Table 9-3.202 in Section 9-3.202 as further outlined below.

PROPOSED ORDINANCE

The first and second sections of the proposed ordinance (“Ordinance”) establish the purpose, intent and findings, respectively, for the proposed changes to the Planning Regulations. The third section of the Ordinance adds new subsections (g) and (h) to Section 9-2.339 of the Planning Regulations which is entitled “Motor Vehicle Sales and Services” under Article 3 “Commercial and Institutional Use Types”. These new

subsections define “Alternative Energy Vehicle Showrooms” and “Alternative Energy Vehicle Charging Stations” as outlined below:

Alternative Energy Vehicle Showrooms – means “indoor showrooms for Alternative Energy Vehicles for sale or lease, without incidental storage and maintenance of said vehicles. Such showrooms shall be 5,000 sq. ft. or less.”

Alternative Energy Vehicle Charging Stations – means “Alternative fuel sales for electric or any other Alternative Energy Vehicles. Accessory uses may include minor repair services and the sale of packaged food, replacement parts, and accessories.”

The fourth section of the Ordinance adds a new subsection (u) to Section 9-8.201 (“A” Terms”) under Article 2 (“General Definitions”) definition for “Alternative Energy Vehicle” as outlined below:

Alternative Energy Vehicle (AEV) – refers to a vehicle that is powered and operated using renewable fuels including electricity stored in fuel cells or batteries, biodiesel, green hydrogen, and other sustainable technologies, excluding vehicles powered by fuels derived from hydrocarbons such as coal, petroleum, and natural gas.

The fifth section of the Ordinance amends the existing Table 9-3.202.

The Ordinance provides that “Alternative Energy Vehicle Showrooms” are conditionally permitted in the MUR, MURS, MUN, INL, and INH zones. These are zones where the majority of retail activities occur in the City. If a showroom is proposed in an existing building, then a minor Conditional Use Permit (CUP) is required; if proposed in a new building, then a Major CUP is required.

The Ordinance provides that “Alternative Energy Vehicle Charging Stations” are conditionally permitted in MUR, MURS, and MUN zones. Typically, since charging an electric vehicle takes longer than filling a vehicle with gasoline, they would be ideally located in commercial areas where there are other activities for patrons to spend time while their vehicles are charged.

The Ordinance also prohibits certain auto-centric uses, including car washes, car dealerships, gas stations, and the industrial land use of personal storage uses.

The proposed changes are denoted by ~~striketrough~~ type for language that is deleted and underlined type for new language.

Table 9-3.202. Uses Permitted, Conditionally Permitted, and Prohibited.

Base Zones	Overlay Zones
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Use Classifications	RM Medium Density Residential	RMH Medium High Density Residential	RH High Density Residential	MUR Mixed Use with Residential	MURS Mixed Use with Residential South	MUN Mixed Use with Non-Residential	OT Office/Technology	OT/DH Office/Technology Doyle Hollis North Area	INI Light Industrial	INH Heavy Industrial	P Public	M Marina	PO Park/Open Space	SM Shoreline Management	UT Utilities/Transportation	PA Park Avenue District	NR Neighborhood Retail	RR Regional Retail Overlay	TH Transit Hub Overlay
Commercial and Institutional																			
Motor Vehicle Sales and Services																			
Cleaning (Car Wash)	X	X	X	X	X	C	X	C	C	X	X	X	X	X	X			C	
Sales and Leasing (Dealerships)	X	X	X	C	C	C	X	C	C	X	X	X	X	X	X				
Sales and Leasing (Alternative Energy Vehicle Showrooms)	X	X	X	C	C	C	X	X	C	C	X	X	X	X	X				
Service Station (Gas stations)	X	X	X	X	X	C	X	X	X	X	X	X	X	X	X	X	X	C	X
Service Station (Alternative Energy Vehicle Charging Stations)	X	X	X	C	C	C	X	X	X	X	X	X	X	X	X	X	X	C	X
Industrial																			
Storage and Distribution																			
Personal	X	X	X	C	C	C	X	C	C	X	X	X	X	X	X	X	X		

Key: X – Prohibited; C – Conditionally Permitted; CM – Minor Conditional Use Permit* P – Allowed by Right.

FISCAL IMPACT

There are no direct fiscal impacts as a result of the proposed changes. A limitation on the potential location of gas stations and automotive sales may correspondingly limit sales tax revenues from these uses in the future, however, the financial impact cannot be reliably estimated.

STAFF COMMUNICATION WITH PUBLIC

As specified by EMC Section 9-7.202, Planning Regulations and Zoning Map Amendments require a public hearing and standard general public noticing requirements for City Council agenda items. As noted above, the Planning Commission discussed the proposed Planning Regulations Amendments at a study session on March 28, 2024 and a Public Hearing on April 25, 2024, and recommended the City Council adopt the proposed amendments.

ENVIRONMENTAL REVIEW

The proposed ordinance is exempt from environmental review under State CEQA Guidelines Section 15061(b)(3), the “general rule” that CEQA does not apply to projects where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

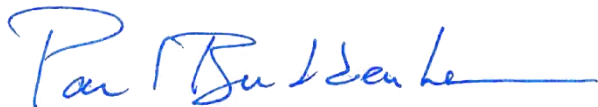
RECOMMENDATION

Staff recommends that the City Council:

1. Open the public hearing and take testimony on the proposed Ordinance regarding amendments to Title 9 (*Planning Regulations*) of the EMC.
2. Close the public hearing and consider the Staff Report and proposed Ordinance.
3. Introduce and waive first reading of the attached Ordinance.

PREPARED BY: Miroo Desai, Planning Manager
REVIEWED BY: Chadrick Smalley, Community Development Director

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



Paul Buddenhagen, City Manager

ATTACHMENTS:

1. Regulatory Framework for Auto Sales in Neighboring Cities
2. Operating Characteristics of six EV Showrooms in the Bay Area
3. Regulatory Framework for Alternative Energy Vehicle Charging Stations in Neighboring Cities
4. Draft Ordinance