

ORDINANCE NO. 22 - ____

An Ordinance Of The City Council Of The City Of Emeryville Repealing And Replacing Sections 1-2.01 (D), (E) And (F) Of Chapter 2 Of Title 1 (“Penalty Provisions”) For Violations Of The Emeryville Municipal Code; CEQA Determination – Not A Project Under CEQA Guidelines 15378(B)(5)

WHEREAS, Chapter 2 of Title 1 of the Emeryville Municipal Code (“Penalty Provisions”) provides the applicable penalty for violations of the Emeryville Municipal Code (“EMC”); and

WHEREAS, Section 1-2.01 (d) in Chapter 2 mandates that no person shall violate any provision or fail to comply with any of the requirements of the EMC; and

WHEREAS, Section 1-2.01 (e) in Chapter 2 provides a chart of the violations of the EMC that are misdemeanors; and

WHEREAS, Section 1-2.01 (f) in Chapter 2 provides a chart of the violations of the EMC that are infractions; and

WHEREAS, on July 21, 2020, the City Council requested that staff bring forward an agenda item to eliminate some or all of the criminal penalties in the EMC following national attention to these types of penalties and their potential to disproportionately impact people of color; and

WHEREAS, on September 15, 2020, staff presented an overview of the different code enforcement measures and tools previously used by the City, and the Council directed staff to bring back a list of all municipal code violations that were either subject to a criminal misdemeanor or infraction penalty (or both) and proposed recommendations for code enforcement penalties; and

WHEREAS, on December 15, 2020, the City Council reviewed staff’s recommendations on the removal or modification of criminal penalties for certain EMC violations; and

WHEREAS, on December 15, 2020, the City Council determined that criminal penalties for some EMC code violations had the potential to disproportionately impact people of color and were not necessary because other code enforcements options such as administrative citations, civil remedies, or other state Penal or other state law enforcement measures were available. Accordingly, the City Council agreed with staff’s recommendations to remove or lessen the criminal penalties imposed for certain EMC violations; and

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF EMERYVILLE HEREBY ORDAINS AS FOLLOWS:

SECTION ONE. PURPOSE AND INTENT

The purpose and intent of this Ordinance is to repeal and replace the language of Sections 1-2.01(e) and (f) of Chapter 2 of Title 1 of the Emeryville Municipal Code to

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eliminate the imposition of a criminal misdemeanor penalty or lessen a misdemeanor penalty to an infraction penalty for violations of certain Emeryville Municipal Code provisions. In addition, it is the intent of this Ordinance to clarify that, notwithstanding other provisions of the Emeryville Municipal Code, only the identified Emeryville Municipal Code provisions are subject to misdemeanor and infraction penalties, respectively, as set forth in the amended Section 1-2.01(e) and 1-2.01(f). It is also the intent of this Ordinance to amend Section 1-2.01(d) to clarify that the City may pursue other legal remedies for any violations of the Emeryville Municipal Code, including but not limited to the administrative citation program as provided in Chapter 7 of Title 1 of the Emeryville Municipal Code.

SECTION TWO. REPEALING AND REPLACING SECTIONS 1-2.01(E) and (F) OF CHAPTER 2 OF TITLE 1 OF THE EMERYVILLE MUNICIPAL CODE

Sections 1-2.01(d), (e) and (f) of Chapter 2 of Title 1 of the Emeryville Municipal Code are hereby repealed and replaced with the language and tables marked in **bold** as indicated in Exhibit 1, attached hereto and made a part hereof.

SECTION THREE. CEQA DETERMINATION

The City Council finds that adoption of this Ordinance is not a project as defined by the California Environmental Quality Act ("CEQA") because it is an organizational or administrative activity that will not result in direct or indirect physical changes to the environment pursuant to CEQA Guidelines 15378(b)(5).

SECTION FOUR. 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 FIVE. 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.

SECTION SIX. CODIFICATION

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

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This Ordinance was **INTRODUCED AND FIRST READ** by the City Council of the City of Emeryville at a regular meeting held Monday, December 12, 2022, and **PASSED AND ADOPTED** by the City Council of the City of Emeryville at a regular meeting held Tuesday, December 20, 2022, by the following vote:

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

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:
DocuSigned by:
John Kennedy
2C934D02DB55407

CITY ATTORNEY

ATTACHMENTS

- Exhibit A – EMC Chapter 2: Penalty Provisions

CHAPTER 2.
PENALTY PROVISIONS

Sections:

- 1-2.01 Violations Misdemeanors or Infractions
- 1-2.02 Prohibited Acts
- 1-2.03 Imposition of Penalties
- 1-2.04 Determination of Punishment
- 1-2.05 Place of Confinement
- 1-2.06 Fees, Charges, Licenses and Taxes Made a Civil Debt
- 1-2.07 Violations of Administrative Provisions
- 1-2.08 Public Nuisance
- 1-2.09 Continuing Violations
- 1-2.10 Alternate Civil Remedies

1-2.01 Violations Misdemeanors or Infractions.

(d) No person shall violate any provision or fail to comply with any of the requirements of this Code. In addition to any other legal remedies which may be pursued by the City, any violation of this Code may be subject to administrative citation as provided in Chapter 7 of Title 1 of this Code.

(e) Notwithstanding any other provision of this Code, any person violating or failing to comply with only the following provisions of this Code shall be guilty of a misdemeanor:

Title	Chapter	Article/Section	Chapter Description
4	2	Entire	Emergency Plans
4	11	Entire	Electric Personal Assistive Mobility Devices (EPAMD)
5	5	Entire	Card Rooms
5	8	Entire	Gas, Water and Electric Meters
5	9	.03	Intoxication; Consumption of Alcoholic Beverages on Public Streets or on Private Property Adjacent Thereto
5	14	.05	Obstructions to Streets and Sidewalks; Interfering with Free Ingress or Egress – Willful and Malicious Obstruction of Public Property
5	20	2	Weapons; Saturday Night Special/Junk Gun Sales Prohibition
5	21	.12	Bingo Games; Profits; Separate Accounts; Records; Violations; Penalties
5	30	Entire	Regulation of Firearms Dealers
6	1	1.107	Animals and Fowl; Keeping of Vicious Animals Within City Prohibited

Title	Chapter	Article/Section	Chapter Description
6	13	Entire	Stormwater Treatment Design, Management and Discharge Control Program
7	1	Entire	Datum Plane
7	5	.13	Grading; False Statements and Data
7	8	Entire	Wastewater Collection System
9	6	1.105	Subdivisions; Prohibitions

(f) Notwithstanding any other provision of this Code, any person violating or failing to comply with only the following provisions of this Code shall be guilty of an infraction:

Title	Chapter	Article/Section	Chapter Description
4	2	Entire	Emergency Plans
4	5	Entire	Fire Code
4	6	Entire	Fireworks
4	8	Entire	Vehicles for Hire; Taxicabs; Limousines
4	10	Entire	Parking Meters
4	11	Entire	Electric Personal Assistive Mobility Devices (EPAMD)
5	2	Entire	Advertising
5	4	Entire	Cabarets and Dances
5	9	.02	Intoxication; Possession of Open Alcohol Beverage Container
5	13	Entire	Noise
5	14	Entire (except 5-14.05)	Obstructions to Streets and Sidewalks
5	20	Entire	Weapons
5	21	Entire (except 5-21.12)	Bingo Games
5	23	Entire	Community Events
5	24	Entire	Parks
5	27	Entire	Sidewalk and Street Vendors
5	29	Entire	Smoking Pollution Control
5	30	Entire	Regulation of Firearms

Title	Chapter	Article/Section	Chapter Description
5	34	Entire	Signs on Public Sidewalks
5	38	Entire	Skateboard Facilities
6	2	.02 and .03	Dangerous and Insanitary Conditions; Littering and Accumulations: Public Places, Parks and Schools
6	6	Entire	Obstructions to Watercourses
6	13	Entire	Stormwater Treatment Design, Management, and Discharge Control Program
7	2	Entire	Excavations and Encroachments in the Public Right-of-Way
7	8	Entire	Wastewater Collection System
8	1	Entire	Building Code
8	2	Entire	Historical Building Code
8	3	Entire	Existing Building Code
8	4	Entire	Residential Code
8	5	Entire	Mechanical Code
8	7	Entire	Electrical Code
8	8	Entire	Green Building Standards Code
8	9	Entire	Property Maintenance Code
8	11	Entire	Dangerous Buildings Code
10	1	Entire	Rules and Regulations for the Emeryville Marina
10	1 and 2	Entire	Tidelands: Rules and Regulations for the Emeryville Marina; Activities in the Tidelands Within the City of Emeryville