

ORDINANCE NO. 21-____

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))

WHEREAS, on April 6, 2021, the City Council directed staff to develop an amendment to the Planning Regulations to prohibit Crematories citywide; and

WHEREAS, 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”; and

WHEREAS, 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 (PM2.5). 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 PM2.5, 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”; and

WHEREAS, the City Council desires to minimize the health risks of Crematories to the Emeryville community by prohibiting any such future uses throughout the city; and

WHEREAS, the Emeryville Planning Commission held a duly and properly noticed public hearing on the proposed amendment to the Planning Regulations on May 27, 2021 to solicit public comments and review and consider the proposed amendment and then voted unanimously to recommend that the City Council adopt the amendment; and

WHEREAS, the City Council held a duly and properly noticed public hearing on the proposed amendment to the Planning Regulations on July 6, 2021 to solicit public comments and review and consider the proposed amendment; and

WHEREAS, the City Council has reviewed and considered the staff report and attachments thereto and all public comments for the proposed amendment to the Planning Regulations as set forth in this Ordinance and the applicable standards of the Emeryville Planning Regulations (“the Record”);

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

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SECTION ONE. PURPOSE AND INTENT

The purpose and intent of this Ordinance is to amend the Planning Regulations to prohibit Crematories in all zoning districts.

SECTION TWO. REQUIRED FINDINGS FOR ADOPTING ORDINANCE

The City Council of the City of Emeryville makes the following findings as required by Emeryville Municipal Code Sections 9-7.1305:

- (a) That the proposed amendment is consistent with the General Plan;

The proposed amendment will be consistent with the following General Plan principles, policies, and regulations:

Guiding Principle 9 of the General Plan, “Sustainability and innovation, with respect for the past”, states that “The Emeryville community strives to live within means that do not compromise the ability of future generations in Emeryville to enjoy a livable, healthy, and vibrant city.”

The Conservation, Safety, and Noise chapter on page 6-3, states that “Working with the Bay Area Air Quality Management District, the City can help to manage air pollutants. Moreover, the City can reduce exposure to sensitive receptors through regulations in the Zoning Ordinance.”

Amending the Planning Regulations to prohibit Crematories citywide would be consistent with these General Plan statements, and would also be consistent with the following General Plan goals:

CSN-G-1 Public health – A high level of public health and safety.

ST-G-1 A balance among the three E’s of sustainability – A healthy environment; equity in access to and distribution of goods, services and resources; and a vibrant economy for local businesses and the municipality.

- (b) That the proposed amendment is necessary for public health, safety, and general welfare or will be of benefit to the public;

The proposed amendments will benefit the public by avoiding the potential health risks posed by the establishment of future Crematories in the city.

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- (c) That the proposed amendment has been reviewed in compliance with the requirements of the California Environmental Quality Act.

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.

- (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.

No changes to the Zoning Map in Figure 3.103(a) or the Zoning Overlay Map in Figure 9-3.103(b) of the Planning Regulations are proposed.

SECTION THREE. AMENDING TABLE 9-3.202 OF ARTICLE 2, OF CHAPTER 3 OF TITLE 9 OF THE EMERYVILLE MUNICIPAL CODE, “USES PERMITTED, CONDITIONALLY PERMITTED, AND PROHIBITED”.

Table 9-3.202 of Article 2 of Chapter 3 of Title 9 of the Emeryville Municipal Code, “Uses Permitted, Conditionally Permitted, and Prohibited”, is hereby amended to read as follows (changes are denoted by ~~striketrough~~ type for language that is deleted and underlined type for new language):

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Chapter 3. Zoning Districts

Article 2. Uses Permitted, Conditionally Permitted, and Prohibited

9-3.202 Uses Permitted, Conditionally Permitted and Prohibited.

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	C	X	X	X	X	X	X		X		

SECTION FOUR. CEQA DETERMINATION

The City Council finds and determines that the proposed amendments are not considered a “project” under Public Resources Code Section 21065 and are not subject to CEQA; and 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

SECTION FIVE. SEVERABILITY

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

SECTION SIX. CODIFICATION

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

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SECTION SEVEN. EFFECTIVE DATE AND POSTING

This Ordinance shall take effect 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.

This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting held on Tuesday, July 6, 2021 and **PASSED AND ADOPTED** by the City Council at a regular meeting on Tuesday July 20, 2021 by the following vote:

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

ATTEST:

CITY CLERK

MAYOR

APPROVED AS TO FORM:

DocuSigned by:
Andrea Visveshwara
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INTERIM CITY ATTORNEY