



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: October 15, 2024

TO: Adam Politzer, Interim City Manager

FROM: John I. Kennedy, City Attorney
Christie Crowl, Special Counsel

SUBJECT: **Introduction And First Reading Of An Ordinance Of The City Council Of The City Of Emeryville Repealing And Replacing Various Municipal Code Provisions To Eliminate Or Modify Criminal Penalties, Identified As “Group III Amendments;” Repealing Chapter 2 (“Advertising”) And Chapter 8 (“Gas, Water And Electric Meters”) Of Title 5 (“Public Welfare”) In Their Entirety.**

CEQA Determination: Not A Project And Exempt Pursuant To CEQA Guidelines Sections 15378(b)(5) And 15061 (b)(3)

RECOMMENDATION

Staff recommends that the City Council waive first reading and introduce by title only the attached Ordinance repealing and replacing various Municipal Code provisions to eliminate or modify criminal penalties, identified as “Group III Amendments,” and repealing Chapter 2 (“Advertising”) and “Chapter 8 (“Gas, Water and Electric Meters”) of Title 5 (“Public Welfare”) in their entirety.

BACKGROUND

Article XI, Section 7 of the California Constitution grants cities the power to make and enforce all local, police, sanitary, and other ordinances and regulations not in conflict with general laws. In order to protect and safeguard the public health, welfare and safety of its citizens, the City of Emeryville Municipal Code (“EMC”) includes the use of criminal, civil and administrative penalties to enforce compliance with City codes and regulations. In connection with the permitted criminal penalties, Sections 1-2.01(e) and (f) of the EMC include penalty charts that designate whether a misdemeanor or infraction penalty is available as a remedy for code violations of identified EMC Chapters.

On July 21, 2020, following national attention on the issue that criminal penalties for certain municipal code violations tended to disproportionately impact people of color, the City Council requested that staff bring forward an agenda item to eliminate some or all of the criminal penalties in the EMC, while leaving in place civil and administrative penalties to enforce compliance. Thereafter, on September 15, 2020, and December 15, 2020, the City Council reviewed staff’s recommendations on the suggested penalties for specific municipal code violations and provided direction as to which criminal penalties were to be removed or modified or kept in place. Council also directed that several code sections be sent to either the Transportation Committee or Public Safety Committee for further review, and that other provisions be brought back to the

Council for a later study session for further review of the City's administrative citation/code enforcement procedures. The Council also agreed to repeal several EMC Chapters in their entirety.

On December 12, 2022, as an interim measure, the City Council approved and introduced Ordinance No. 22-015, which amended the penalty charts set forth in Chapter 2 of Title 1 of the EMC to either eliminate or modify the criminal penalty (either misdemeanor or infraction) for violations of the EMC provisions as directed by the City Council. At that time, staff intended to bring back further code amendments for Council consideration to bring the EMC into compliance with the revised penalty charts and to make other necessary code amendments as directed in the future by the relevant sub-committee or at City Council Study Session.

Due to the number of amendments necessary to comply with Council's direction, staff grouped the proposed code amendments for the Council's consideration with the following:

- Group I Amendments. These were "clean-up" amendments identified by staff to be made to thirty-five (35) EMC Chapters in order to bring the Chapters into compliance with the penalty charts included in the revised EMC Sections 1-2.01(e) and (f). These amendments were approved by the City Council on October 3, 2023 (Ord. No. 23-003).
- Group II Amendments. The Group III Amendments consisted of amendments to eleven EMC Chapters; in addition to eliminating or modifying the criminal penalties for some of these chapters, substantial changes were also made to several chapters to bring them into compliance with state law. Amendments to Chapter 2 of Title 1 ("Penalty Provisions") were also made to eliminate the option to escalate an infraction penalty to a misdemeanor as a result of four or more infractions within one year, and further amendments to increase the monetary fine for infractions, as set forth in EMC 1.2.01(b)(1). These amendments were approved by the City Council on June 4, 2024 (Ord. No. 24-007).
- Group III Amendments. On September 9, 2024, the City Council reviewed at a Study Session certain EMC Chapters that warranted further study and review as to the appropriate remedy for violations. The City Council generally agreed with staff's recommendations at the Study Session, with the exceptions as noted in the discussion below.

Staff now brings for the City Council consideration and approval a proposed Ordinance, with Exhibits 1 and 2, included as Attachment A to the staff report.

DISCUSSION

As a result of the feedback received from the City Council at the September 9, 2024, Study Session, staff recommends making the following changes to the municipal code:

1. EMC 5-9 (“Intoxication”). This Chapter provides that it is unlawful for any person to appear in a public place while intoxicated (EMC 5-9.01), be in possession of an open container of alcohol in public (EMC 5-9.02) or consume alcohol in public (EMC 5-9.03). EMC Sections 5-9.01 and 5-9.02 are currently subject to infractions, while violations of EMC 5-9.03 are subject to a misdemeanor penalty.

At the Study Session, the Police Department expressed recommendations to maintain the existing penalties as they believed that decriminalizing the behavior regulated by the EMC 5-9 could lead to, among other things, open parties in the street and excessive consumption of alcohol in the public, which in turn could lead to traffic collisions, loitering, bar hopping with open containers, and other instances of neighborhood blight. However, at the Study Session, the Police Department also indicated that they were amenable to lowering the penalty for the public consumption of alcohol (EMC 5-9.03) to an infraction for the first violation, and a misdemeanor for violations that occur within ninety (90) days after the first violation.

At the Study Session, a majority of the City Council indicated their support of the recommendation to modify the penalties for a violation of EMC 5-9.03, as suggested by the Police Department. Accordingly, staff has added a penalty section to 5-9.03 that makes the first violation of this section an infraction, with a subsequent violation occurring within ninety (90) days a misdemeanor. (See Exhibit 1 to Attachment A).

2. EMC 5-2 (“Advertising”). EMC 5-2 proposes to regulate advertising or signage on private premises and public places, and also prohibits individuals from carrying or distributing signs on any City sidewalk, street or public places.

At the Study Session, staff recommended that the City Council repeal this Chapter in its entirety based on the following:

- This code section is outdated and little used by staff in regulating signs.
- Instead, signs on private property and public property are already regulated by other City codes, including Article 16 of Title 9 (Sign Ordinance), Chapter 34 of Title 5 (Signs on Public Sidewalks), EMC 5-35-06 (Signs for Certified Farmers’ Markets) and Chapter 15 of Title 8 (Signs Adjacent to Landscaped Freeways).
- EMC 5-2.02 (Displaying: Locations Limited) prohibits signs from being located within fifty (50) feet from any dwelling or residence. This code section could directly conflict with the sign locations that are permitted under the City’s development code, or with permits that have been issued by the City.

At the Study Session, Councilmember Priforce expressed concerns about whether the repealing of EMC 5-2 could adversely affect free speech rights related to the upcoming elections.

In response to this concern, staff has researched City and state regulations concerning political signs and does not believe that the repealing of EMC 5-2 would have an adverse effect on individuals posting freedom speech, campaign, or political signs. First, EMC 5-2 is silent on the regulation of free speech or political signage, and does not provide any exemption for these types of signs to be displayed. Instead, other municipal code sections, notably the City's Sign Ordinance in the development code, expressly deems that these types of signs are exempt from regulation under the City's Sign Ordinance. Specifically, subsection (r) of EMC Section 9-5.1605 ("Exempt Signs") states that up to two small noncommercial signs (no larger than six square feet in area, and which could include freedom of speech signs, political signs and organization identification signs) that are displayed on a freestanding sign structure, window or building wall, are exempt from the City's Sign Ordinance.

Staff also notes that political signs may not be placed on private property without the permission of the owner under state law (Penal Code Section 556.1) and that both PG& E and CalTrans have their own rules and regulations on campaign signs or other political signs that are placed or adhered to their facilities.

Accordingly, as there are other City regulations and state law that cover political or free speech signs, and due to the fact that that EMC 5-2 is considered obsolete by staff, staff has recommended that EMC 5-2 be repealed in its entirety, as indicated in Attachment A.

3. EMC 5-8 (Gas, Water and Electric Meters): This chapter provides that anyone who tampers with a gas, water or electric meter is subject to a misdemeanor penalty. Staff recommends repealing this chapter, as indicated in the attached proposed Ordinance, because there is already an existing penalty available under state law (Penal Code Section 498) that provides anyone who tampers with a utility meter is subject to a misdemeanor.
4. EMC 1-2.01 (e) and (f) (Penalty Provisions). These EMC Sections include the penalty charts that describe which violations of municipal code sections are subject to misdemeanor (subsection (e)) and infraction (subsection (f)). Staff now proposes to amend these charts so that they are consistent with the Group III Amendments in the attached proposed Ordinance. In addition, staff has clarified when a misdemeanor penalty is available for violations under the existing 5-30 (Regulation of Firearms Dealers) in the penalty charts, as set forth in EMC Section 5-30.1.18(a) (Penalties). These proposed amendments are included in Exhibit 2 to Attachment A.

STAFF COMMUNICATION WITH THE PUBLIC

On September 9, 2024, the City Council held a Study Session to discuss the “Group III Amendments” to the EMC.

CEQA DETERMINATION

Adoption of the 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). In addition, the adoption of the Ordinance is covered by the “common sense” exemption of CEQA Guidelines 15061(b)(3) in that it can be seen with certainty that there is no possibility that the adoption of the code amendments may have a significant effect on the environment.

CONCLUSION

Staff recommends that the Council waive first reading and introduce by title only the attached Ordinance:

Ordinance of the City Council of the City of Emeryville Repealing and Replacing Various Municipal Code Provisions to Eliminate or Modify Criminal Penalties, Identified as “Group III Amendments;” Repealing Chapter 2 (“Advertising”) and Chapter 8 (“Gas, Water and Electric Meters”) of Title 5 (“Public Welfare”) In Their Entirety; CEQA Determination: Not a Project and Exempt Pursuant to CEQA Guidelines Sections 15378(b)(5) and 15061 (b)(3).

PREPARED BY: John I. Kennedy, City Attorney

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



Adam Politzer, Interim City Manager

ATTACHMENTS

Attachment A – Draft Ordinance, with Exhibits 1 and 2