

ORDINANCE NO. _____

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)

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

WHEREAS, on December 12, 2022, the City Council approved and introduced Ordinance No. 22-015 (effective January 19, 2023), in which Section 1-2.01(e) and (f) of Chapter 2 of Title 1 of the Emeryville Municipal Code (“Penalty Provisions”) was amended to eliminate or modify whether a misdemeanor or infraction penalty was available for certain EMC violations; and

WHEREAS, on October 3, 2023, the City Council approved and introduced Ordinance No. 23-003, in which the penalties imposed for code violations in the revised Section 1-2.01(e) and (f) of Chapter 2 of Title 1 were made consistent with those penalties included within the specific code sections, identified as “Group I Amendments” as further described below: Chapters 1 (“Business Taxes”), 3 (“Taxes”) and 7 (“Permits and Licenses”) of Title 3 (“Finance”); Chapters 2 (“Emergency Plans”), 12 (“Emergency Medical Services”) of Title 4 (“Public Safety”); Chapters 1 (“Abandoned Vehicles”), 3 (“Air Pollution”), 11 (“Massage Establishments”), 16 (“Pawnbrokers, Secondhand Jewelry Dealers”), 17 (“Alarm Systems”), 18 (“Poolrooms”), 19 (“Streets and Sidewalks”), 25 (“Hotels, Motels and Lodging Hotels”), 28 (“Cannabis”), 35 (“Certified Farmers’ Markets”), and 36 (“Irrigation Water Waste Prohibition”) of Title 5 (“Public Welfare”); Chapters 1 (“Animals

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and Fowl”), 2 (“Dangerous and Insanitary Conditions”), 4 (“Collection of Solid Waste and Recyclables”), 5 (“Laundries”), 7 (“Rodent Harborage”), 9 (“Water Wells”), 10 (“Weed and Refuse Abatement”), 11 (“Property Maintenance”), 12 (“Operation and Maintenance of Off-Street Parking Facilities”), and 14 (“Food Service Waste Reduction”) of Title 6 (“Sanitation and Health”); Chapters 3 (“Sidewalks, Curbs and Driveways”), 7 (“Standard Specifications for Public Works Construction”), and 10 (“Urban Forestry Ordinance”) of Title 7 (“Public Works”); Chapters 18 (“Seismic Hazard Identification and Mitigation Program for Unreinforced Masonry Buildings”), 21 (“Floodplain Management”), and 26 (“Construction and Demolition Waste Requirements”) of Title 8 (“Building Regulations”); Chapters 5 (“Planning Regulations”) and 7 (“Enforcement and Revocation”) of Title 9 (“Planning Regulations”); and Chapter 1 (“Rules and Regulations for the Emeryville Marina”) of Title 10 (“Tidelands”); (hereinafter referred to as “Group I Amendments”); and

WHEREAS, on June 4, 2024, the City Council approved and introduced Ordinance No. 24-007, in which further amendments were made to reduce or amend the criminal penalties imposed for code violations and to bring certain EMC Chapters into compliance with recent changes to state law, as set forth in the following municipal code chapters: Chapter 1 (“Penalty Provisions”) of Title 1; Chapters 6 (“Fireworks”), and 8 (“Vehicles for Hire”) of Title 4; Chapters 14.05 (“Interfering with Free Ingress and Egress - Willful and Malicious Obstruction of Public Rights-of-Way), 21 (“Bingo Games”), 23 (“Community Events”), 24 (“Parks”), 27 (“Sidewalk and Street Vendors”), 34 (“Signs on Public Sidewalks”) and 35 (“Certified Farmers’ Markets”) of Title 5, hereinafter referred to as “Group II Amendments”, and also repealed Chapter 11 (“Electric Personal Assistive Mobility Devices”) of Title 4 (“Public Safety”); (hereinafter referred to as “Group III Amendments”); and

WHEREAS, on September 9, 2024, the City Council held a Study Session meeting to study further amendments to criminal penalties for code violations for Chapter 9 (“Intoxication”) of Title 5 (“Public Welfare”), and whether certain EMC Chapters may be repealed in their entirety (Chapter 2 (“Advertising”) and Chapter 8 (“Gas, Water and Electric Meters”) of Title 5 (“Public Welfare”); and

WHEREAS, based on the recommendations from the City Council at the September 9, 2024 Study Session, further amendments are necessary to Chapter 9 (“Intoxication”) of Title 5 (“Public Welfare”) to allow for an infraction remedy for the first violation of EMC Section 5.9.03 (“Consumption of Alcoholic Beverages on Public Streets or on Private Property Adjacent Thereto”) and a misdemeanor penalty for a subsequent violation of Section 5.9.03 occurring within ninety (90) days of the first violation; and to amend the corresponding penalty charts in Chapter 2 (“Penalty Provisions”) of Title 1 (“General Provisions”) (hereinafter referred to as “Group III Amendments”), as indicated in Exhibits 1 and 2; and

WHEREAS, the sign regulations included in Chapter 2 (“Advertising”) of Title 5 (“Public Welfare”) are duplicative, outdated, and may conflict with other EMC sections regulating

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signage, 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”), and is no longer necessary for enforcement; and

WHEREAS, as the Penal Code Section 498 provides that anyone who tampers with a utility meter is subject to a misdemeanor, Chapter 8 (“Gas, Water and Electric Meters”) of Title 5 (“Public Welfare”) is duplicative and no longer necessary for enforcement; 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 language within the various EMC sections as set forth in the Group III Amendments, and to repeal Chapters 2 (“Advertising”) and 8 (“Gas, Water and Electric Meters”) of Title 5 of the EMC in its entirety.

SECTION TWO. REPEALING AND REPLACING VARIOUS EMERYVILLE MUNICIPAL CODE SECTIONS TO ELIMINATE OR MODIFY THE CRIMINAL AND ADMINISTRATIVE PENALTIES, AS IDENTIFIED AS “GROUP III AMENDMENTS.”

The EMC Chapters, identified herein as the Group III Amendments, are hereby repealed as indicated by ~~strikeout~~ and replaced with language marked in **bold**, as indicated in Exhibits 1 and 2, attached hereto and made a part hereof.

SECTION THREE. REPEALING CHAPTER 2 (ADVERTISING) OF TITLE 5 (PUBLIC WELFARE) IN ITS ENTIRETY.

Chapter 2 (“Advertising”) of Title 5 (“Public Welfare”) is hereby repealed in its entirety.

SECTION FOUR. REPEALING CHAPTER 8 (GAS, WATER AND ELECTRIC METERS) OF TITLE 5 (PUBLIC WELFARE) IN ITS ENTIRETY.

Chapter 8 (“Gas, Water and Electric Meters”) of Title 5 (“Public Welfare”) is hereby repealed in its entirety.

SECTION FIVE. 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) and 15061(b)(3).

SECTION SIX. SEVERABILITY

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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 SEVEN. 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 EIGHT. CODIFICATION

Sections Two, Three and Four of this Ordinance shall be codified in the Emeryville Municipal Code. Sections One, Five, Six and Seven 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, October 15, 2024, and **PASSED AND ADOPTED** by the City Council of the City of Emeryville at a regular meeting held Tuesday, November 19, 2024, by the following vote:

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Signed by:
Christie Crowl
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SPECIAL COUNSEL