



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: April 16, 2024
TO: Paul Buddenhagen, City Manager
FROM: John I. Kennedy, City Attorney
Chadrick Smalley, Community Development Director
SUBJECT: Tobacco Retailer License And Smoking Pollution Control Ordinances:

Introduction And First Reading Of An Ordinance Of The City Council Of The City Of Emeryville Adding Chapter 42, (“Tobacco Retailer License Requirements”), To Title 5 Of The Emeryville Municipal Code; And Authorizing The City Manager To Take Actions Related To Implementation And Enforcement: CEQA Determination: Exempt Pursuant To Guideline Sections 15378 And 15061(b)(3)

Introduction And First Reading Of An Ordinance Of The City Council Of The City Of Emeryville Amending Sections 5-29.02 And 5-29.09 Of Chapter 29, (“Smoking Pollution Control”), Of Title 5 Of The Emeryville Municipal Code To Add And Revise The Definitions For Certain Terms And Repeal The Exception For Private Smokers’ Lounges; And Authorizing The City Manager To Take Actions Related To Implementation And Enforcement; CEQA Determination: Exempt Pursuant To Guideline Sections 15378 And 15061(b)(3)

RECOMMENDATION

Staff recommends that the City Council introduce and waive first reading of the above-referenced ordinances to add tobacco retailer license requirements to the Emeryville Municipal Code and amend the existing smoking pollution control ordinance to add and revise definitions for certain defined terms and repeal the exception for private smokers’ lounges.

BACKGROUND

Future Study Session

At the October 17, 2023 City Council meeting, Mayor Bauters requested and received majority support for a future study session to consider adopting tobacco retailer license requirements and amending the City’s smoking pollution control ordinance to eliminate the smoking-room exception.

March 19th Study Session

On March 19th, a study session was held before the City Council which requested direction on two issues. The first was whether the City Council wants to define a “substantial change to a business operation” to include the transfer of an existing licensed location to a new proprietor. In response to this question, the City Council

indicated that a change of ownership or managerial interest in a licensed retailer should be considered a substantial change to a business operation for those Tobacco Retailers who have an existing license. The second question was whether the City Council wants to include mandatory compliance monitoring of licensed Tobacco Retailer establishments every 12-months which would include persons between the ages of 18 and 20 entering the licensed premises and attempting to purchase Tobacco Products as well as verifying that a Tobacco Retailer complies with all other licensing requirements. In response, the City Council provided direction that compliance checks be conducted once every year with a follow-up report back to council after the first year on results and any recommended changes.

Finally, the City Council directed that the definition of “Electronic Smoking Device” not include a device that is used for cannabis or cannabis products as defined in Chapter 28 of Title 5 of the Emeryville Municipal Code.

DISCUSSION

The City Attorney’s Office worked with staff from the Alameda County Public Health Department’s Tobacco Control Program, the Public Health Law Center, the American Cancer Society, and the American Heart Association, as well as city staff, to draft a proposed ordinance that would require a tobacco retailer license to sell Tobacco Products in Emeryville.

Proposed Changes

Tobacco Retailer License Ordinance

The attached ordinance would:

- require a Tobacco Retailer license for any person to sell, offer for sale, or offer to exchange, for any form of consideration, tobacco, Tobacco Products or Tobacco Paraphernalia;
- require that a Tobacco Retailer operate at a fixed location;
- require an application for a nontransferable license from each person with an ownership or managerial interest in a tobacco retail business;
- limit eligibility for a Tobacco Retailer license;
- impose additional requirements and prohibitions on the sale of Tobacco Products including prohibiting the sale of Flavored Tobacco Products and Electronic Smoking Devices;
- provide an appeal process for the denial or suspension of a Tobacco Retailer license and penalties if a Tobacco Retailer license is suspended or revoked; and
- provide for enforcement and penalties for violation of applicable requirements; and
- define a “substantial change to a business operation” to include the transfer of an existing licensed location to a new Proprietor who is someone with an ownership or managerial interest in the business; and
- require mandatory compliance monitoring of licensed

Tobacco Retailer establishments every 12-months which would include persons between the ages of 18 and 20 entering the licensed premises and attempting to purchase Tobacco Products as well as verifying that a Tobacco Retailer complies with all other licensing requirements.

Smoking Pollution Control Ordinance

The proposed amendments would add definitions for the terms “Cigar” and “Cigarette”, amend the existing definition for “Electronic Smoking Device” to be consistent with best practices but exclude from the definition a device that is used for Cannabis or Cannabis products as defined in Chapter 28 of Title 5 of the Emeryville Municipal Code, and repeal the exception for private smokers’ lounges.

ENVIRONMENTAL REVIEW

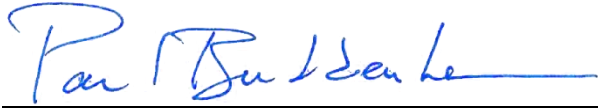
These ordinances are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15378 because they are not a “project” because they have no potential for resulting in a direct or indirect physical change in the environment; they involve merely an administrative action setting forth a regulatory licensing program and an administrative action repealing an exception to existing smoking regulations and neither ordinance involves an authorization of any construction or other activities that could impact the environment.

Further, these ordinances are exempt pursuant to CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that these amendments to the Emeryville Municipal Code will have a significant effect on the environment.

RECOMMENDATION

1. Open the public hearing and take testimony on the proposed ordinances.
2. Close the public hearing and consider the Staff Report and proposed ordinances.
3. Introduce and waive first reading of the attached ordinances.

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



Paul Buddenhagen, City Manager

ATTACHMENTS

- Attachment A – Staff Report from City Council Study Session on March 19, 2024
- Attachment B – Draft tobacco retailer license ordinance
- Attachment C – Draft smoking pollution control ordinance