



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: December 12, 2022
TO: Adam Politzer, Interim City Manager
FROM: John Kennedy, City Attorney
Christie Crowl, Special Counsel
SUBJECT: De-Criminalization Ordinance:

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

An Ordinance of the City Council of the City of Emeryville Repealing Chapter 6 of Title 5 (“Criminal Records: Security”), Chapter 7 of Title 5 (“Fortunetelling”), Chapter 12 of Title 5 (“Minors”), and Chapter 15 of Title 5 (“Patrol Services”) in Their Entirety

CEQA Determination: Not a Project Pursuant to CEQA Guidelines 15378(b)(5)

RECOMMENDATION

Staff recommends that the City Council waive first reading and introduce by title only the attached Ordinance 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, and the attached Ordinance Repealing Chapter 6 of Title 5 (“Criminal Records: Security”), Chapter 7 of Title 5 (“Fortunetelling”), Chapter 12 of Title 5 (“Minors”), and Chapter 15 of Title 5 (“Patrol Services”) 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 has adopted the use of criminal, civil and administrative penalties in the EMC to enforce compliance with City codes and regulations.

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, while leaving in place civil and administrative penalties to enforce compliance. On September 15, 2020, staff presented an overview of the different code enforcement measures and tools that the City had

utilized in recent years. At the September 15, 2020 meeting, 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 to provide recommendations as to what the criminal penalty, if any, that should apply. In addition, it was recommended that staff bring forward a cost estimate of transitioning to a code enforcement system that did not utilize criminal enforcement which staff intends to do at a later date as indicated below.

At its December 15, 2020 meeting, staff presented a chart for Council's review that listed each EMC section, the corresponding existing criminal penalty (either misdemeanor or infraction), and staff's recommendation as to whether the penalty should be removed, modified or remain as drafted. After reviewing staff's recommendation, the Council 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. Council also agreed to repeal several EMC Chapters in their entirety. (Council's direction at its December 15, 2020 meeting is memorialized in the chart attached as Attachment A).

Staff now brings forward a draft Ordinance (Attachment B) for Council's review and approval, which eliminates or modifies the criminal penalty (either misdemeanor or infraction) for violations of identified EMC provisions (as further described below) in Chapter 2 of Title 1 of the EMC, as directed by Council at its December 15, 2020 meeting. The proposed ordinance also clarifies that, notwithstanding what is included in other sections of the EMC, the revised charts of EMC Sections 1-2.01(e) and (f) reflect the only instances in which the misdemeanor and infraction penalties for the corresponding EMC provisions are applicable for EMC violations. With the additional language added to EMC Section 1-2.01(d), the proposed Ordinance also confirms that the City's pursuance of other civil remedies, such as the issuance of administrative citations, remains available to address EMC violations.

It is staff's intention to subsequently bring forward "clean up" amendments to the EMC for Council's approval in order to make the remainder of the EMC consistent with the revised penalty charts included in EMC Sections 1-2.01(e) and (f).¹ Additionally, staff will present the recommendations made by the Transportation and Public Safety Committees, as well as those code provisions identified for further Council review, at a later Council meeting, which may require further amendments to the penalty charts included in 1-2.01(e) and (f).

Staff also recommends approval and adoption of an additional Ordinance (Attachment C), in which four chapters of the EMC (Chapters 6 ("Criminal Records: Security"), 7

¹It should be noted that Council has already eliminated the criminal penalty measure for the failure to obtain a bicycle license with the recently adopted Ordinance No. 22-002 Eliminating Bicycle License Requirements in Sections 4-1.03 through 4-1.05 of Title 4 of the EMC, approved by Council at its May 17, 2022 meeting.

("Fortunetelling"), 12 ("Minors") and 15 ("Patrol Services") of Title 5) are repealed in their entirety, as directed by Council at its December 15, 2020 meeting.

DISCUSSION

Chapter 2 of Title 1 of the EMC provides the penalty framework for the implementation of criminal penalties for violations of the EMC. As mandated in Section 1-2.01 ("Violations Misdemeanors or Infractions"), a person convicted of a misdemeanor shall be subject to a fine of one thousand dollars (\$1,000) or by imprisonment in the County Jail for a period not exceeding six (6) months, or both fine and imprisonment. Infractions are punishable for a first conviction by a fine of not more than one hundred dollars (\$100), for a second conviction within a period of one year by a fine of not more than two hundred dollars (\$200), and for a third conviction within the year, by a fine of not more than four hundred dollars (\$400). After the third conviction, any repeat violation within one year may be charged as a misdemeanor.

Sections 1-2.01(e) and (f) of the EMC include penalty charts for violations that are subject to misdemeanor or infraction penalties, respectively. In addition, many of the code violations include specific provisions that provide for either misdemeanor or infraction enforcement options for the City.²

Due to the number of code provisions that require amendment, staff recommends that the Council approve the draft Ordinance in Attachment B, which proposes amended language to limit the availability of criminal penalties as a code enforcement tool to only those code sections listed in Sections 1-2.01(e) and (f). Staff will then bring subsequent amendments to the specific violation as "clean up" amendments to the EMC. Moreover, further amendments to the penalty charts may be made once Council provides further direction on the code sections reviewed by subcommittees or at future Council study sessions. The amended language to Section 1-2.01(d) also clarifies that the City may pursue additional civil remedies in ensuring compliance with the code.

Council Direction: Elimination of Misdemeanor Penalty

As presented in Attachment A, at its December 15, 2020 meeting, the Council agreed with staff's recommendations to eliminate the misdemeanor penalty for many code violations.

Below is a list of the code chapter provisions in which Council recommended the removal of a misdemeanor penalty:

- EMC 3-503 Utility Users Tax

² As noted by staff at the September 15, 2020 Council meeting, it does not appear that the charts for misdemeanor and infraction penalties in Sections 1-2.01(e) and (f) have been kept up to date or are consistent with the penalty provisions provided in other chapters of the code. Accordingly, the proposed Ordinance also includes an update to the misdemeanor and infraction charts, in addition to the proposed removal of the criminal penalty.

- EMC 3-7 Permits and Licenses
- EMC 4-4 Fallout and Blast Shelters
- EMC 7 Repealed
- EMC 4-11 Electric Personal Assistive Mobility Devices*
- EMC 4-12 Emergency Medical Services
- EMC 5-5 Card Rooms
- EMC 5-6 Criminal Records: Security (Repeal)
- EMC 5-16 Pawnbrokers, Secondhand Jewelry Dealers and Auction Sales

- EMC 5-25 Hotels, Motels and Lodging Houses
- EMC 5-28 Cannabis
- EMC 6-2.02 Dangerous and Insanitary Conditions: Littering and
& 6-2.03 Accumulations: Public Places, Parks and Schools*
- EMC 6-7 Rodent Harborage
- EMC 6-11 Property Maintenance
- EMC 6-12 Operation and Maintenance of Off-Street Parking Facilities
- EMC 7-7 Standard Specifications for Public Works Construction
- EMC 8-15 Signs Adjacent to Landscaped Freeways
- EMC 8-18 Seismic Hazard Identification and Mitigation Program
- EMC 8-21 Floodplain Management
- EMC 10-1 Rules and Regulations for the Emeryville Marina*

*Recommended reduction of penalty from misdemeanor to infraction

The Council had also recommended at the December 15, 2020 meeting that the misdemeanor penalty be removed for all planning regulation penalties. However, staff recommends that the misdemeanor penalty remain for violations of the City's Subdivision Map Ordinance (EMC 9-6.105(a)(5)) because this penalty is required under state law for violations of the state Subdivision Map Act.

The elimination of a misdemeanor penalty for the above-listed code sections are reflected in the revised Section 1-2.10(e), which is included in the draft Ordinance in Attachment B (at Exhibit 1).

Council Direction: Elimination of Infraction Penalty:

Below is a list of code sections that the Council directed removal of the infraction penalty as a code enforcement tool:

- EMC 3-1 Business Taxes
- EMC 4-2 Emergency Plans

- EMC 4-12 Emergency Medical Services
- EMC 5-1 Abandoned Vehicles
- EMC 5-3 Air Pollution
- EMC 5-7 Fortunetelling (Repeal)
- EMC 5-11 Massage Establishments
- EMC 5-16 Pawnbrokers, Secondhand Jewelry Dealers and Auction Sales

- EMC 5-17 False Alarms; Prohibitions and Penalties
- EMC 5-18 Poolrooms
- EMC 5-19 Streets and Sidewalks
- EMC 5-35 Certified Farmers' Markets
- EMC 5-36 Irrigation Water Waste Prohibition
- EMC 6-1 Pigeons
- EMC 6-2 Dangerous and Insanitary Conditions (except 2.02 and 2.03)
- EMC 6-3 Food Establishments
- EMC 6-4 Collection of Solid Waste and Recyclables
- EMC 6-5 Laundries
- EMC 6-9 Water Wells
- EMC 6-10 Weed and Refuse Abatement
- EMC 6-11 Property Maintenance
- EMC 6-12 Operation and Maintenance of Off-Street Parking Facilities
- EMC 6-14 Food Service Waste Reduction
- EMC 7-3 Sidewalks, Curbs and Driveways
- EMC 7-4 Underground Utility Facilities
- EMC 7-6 Required Installations of Public Improvements
- EMC 7-7 Standard Specifications for Public Works Construction
- EMC 7-10 Urban Forestry Ordinance
- EMC 8-18 Seismic Hazard Identification and Mitigation Program
- EMC 8-19 Regulations for the Conversion of Commercial/Industrial Buildings to Live/Work

- EMC 8-20 Building Permit Fees for the Installation of Photovoltaic Solar
- EMC 8-21 Floodplain Management
- EMC 8-26 Construction and Demolition Waste Requirements
- EMC 9 Planning Regulations

The elimination of an infraction penalty for the above-listed code sections are reflected in the revised Section 1-2.10(f), which is included in the draft Ordinance in Attachment B (at Exhibit 1).

Council Direction: Repeal of Ordinances

The Council also agreed with staff's recommendations made at its December 15, 2020 meeting to repeal the following four code chapters in their entirety:

- EMC 5-6 Criminal Records: Security
- EMC 5-7 Fortunetelling
- EMC 5-12 Minors
- EMC 5-15 Patrol Services

Accordingly, staff has also included a proposed Ordinance that repeals these code chapters in their entirety, included as Attachment C.

CEQA DETERMINATION

Adoption of these Ordinances 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).

RECOMMENDATION

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

- 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
- Ordinance of the City Council of the City of Emeryville Repealing Chapter 6 of Title 5 ("Criminal Records: Security"), Chapter 7 of Title 5 ("Fortunetelling"), Chapter 12 of Title 5 ("Minors"), and Chapter 15 of Title 5 ("Patrol Services") in Their Entirety

PREPARED BY: John Kennedy, City Attorney

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



Adam Politzer, Interim City Manager

ATTACHMENTS

- Attachment A – Emeryville Municipal Code (EMC) Penalty Chart, with Council direction
- Attachment B - Ordinance 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
- Attachment C - Ordinance Repealing Chapter 6 of Title 5 (“Criminal Records: Security”), Chapter 7 of Title 5 (“Fortunetelling”), Chapter 12 of Title 5 (“Minors”), and Chapter 15 of Title 5 (“Patrol Services”) in Their Entirety