



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: April 6, 2021
TO: Christine Daniel, City Manager
FROM: Charles S. Bryant, Community Development Director
SUBJECT: Discussion on Prohibiting Crematories in Emeryville

RECOMMENDATION

Staff recommends that the City Council consider this report and provide comment and direction as appropriate.

BACKGROUND

At the City Council meeting on February 2, 2021, Council Member Bauters requested and received majority support for a future agenda item to discuss modifying Section 9-3.202 of the Planning Regulations at Title 9 of the Emeryville Municipal Code to prohibit Crematories in Emeryville. This item is responsive to that request.

To staff's knowledge, there have been two crematories in Emeryville. One is the Apollo Crematorium at 4080 Horton Street, operated by the Neptune Society from the 1980s until about five years ago, when it relocated its cremation activities to a new facility at 9850 Kitty Lane in Oakland, near the Oakland Airport. Although cremations are no longer performed here, the business maintains a current business license, and staff understands that, following cremation elsewhere, decedents' ashes are transported back to Emeryville where they are stored for family pick-up or delivery. Prior to the relocation of its cremation operations, there were numerous inquiries and complaints about it from adjacent property owners and residents concerning noise, odors, and potential health impacts. The facility does not have a planning permit from the City and is considered a legal nonconforming use.

The other crematory is Pacific Interment Services at 1094 Yerba Buena Avenue. About half of the property is in Oakland, but the business uses an Emeryville address, has an Emeryville business license, and has been in continuous operation for about 30 years. Staff is not aware of any complaints or alleged code violations from this facility. Its website (interment.com) includes positive client reviews, and notes that it was named as the best mortuary in the East Bay Express's "Best of the East Bay" edition of February 24-March 2, 2021. The facility received a conditional use permit (UP92-10) from the Planning Commission in 1992 (see Attachment 1).

DISCUSSION

Crematories are defined at Section 9-2.409 of the Planning Regulations as “Human or animal cremation facilities.” Funeralary services not involving cremation are classified as Funeral Homes, Mortuaries and Mausoleums, which are defined at Section 9-2.323 as “The care, preparation, or keeping of the dead. This use type includes space for services and assembly.” Both use types are listed as “Uses of Special Concern” in Section 9-7.201(j), which means that they can never be approved at a staff level, and have more rigorous nonconforming use regulations than other uses that are not Uses of Special Concern. According to Table 9-3.202, Crematories are allowed with a conditional use permit from the Planning Commission in the INL Light Industrial and the INH Heavy Industrial zones, while Funeral Homes, Mortuaries and Mausoleums are allowed with a conditional use permit from the Planning Commission in the MUR Mixed Use with Residential, MURS Mixed Use with Residential South, MUN Mixed Use with Non-Residential, OT Office/Technology, and INL Light Industrial zones. The portions of Table 9-3.202 for these two use types are included below for reference. Prohibiting Crematories would entail changing the “C” to an “X” in the INL and INH columns in the Crematories row of this table.

Table 9-3.202: Uses Permitted, Conditionally Permitted and Prohibited

	Base Zones															Overlay Zones			
	RM	RMH	RH	MUR	MURS	MUN	OT	OT/DH	INL	INH	P	M	PO	SM	UT	PA	NR	RR	TH
Use Classifications																			
Commercial and Institutional																			
Funeral Homes, Mortuaries and Mausoleums	X	X	X	C	C	C	C	X	C	X	X	X	X	X	X				
Industrial																			
Crematories	X	X	X	X	X	X	X	X	C	C	X	X	X	X	X		X		

It should be noted that prohibiting Crematories would not result in the existing Pacific Interment facility becoming nonconforming. This is because Section 9-5.1003(f) stipulates that “any use allowed under a planning entitlement, including but not limited to a conditional use permit, design review permit, or variance, that was approved prior to the adoption of these Planning Regulations and that has not expired, is deemed to be a conforming use and is subject to any conditions included in its approval.”

To the extent that it is still operating, the Apollo Crematorium would remain a legal nonconforming use. However, if it is still performing funerary functions but not operating a crematorium, it could now be classified as a Funeral Homes, Mortuaries and Mausoleums use type, which would be allowed with a conditional use permit from the Planning Commission in the MUR zone in which it is located. The owners have not applied for a conditional use permit under this use classification.

FISCAL IMPACT

This report is for informational purposes only and has no fiscal impact on the City's operations.

STAFF COMMUNICATION WITH THE PUBLIC

Staff has had no communication with the public on this City Council item.

CONCLUSION

Staff recommends that the City Council consider this report and provide comment and direction as appropriate.

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



Christine Daniel, City Manager

ATTACHMENTS:

- 1. Pacific Interment Conditional Use Permit Approval Documents, June 1992