

ORDINANCE NO. 20-2219

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING CITY CODE TO ADD CHAPTER 19.102: BIRD SAFE DEVELOPMENT
STANDARDS AND TO AMEND CHAPTER 19.08 DEFINITIONS TO IMPLEMENT
BIRD-SAFE REGULATIONS**

The City Council of the City of Cupertino finds that:

WHEREAS, while the City has certain General Plan Goals, Policies and Strategies that support bird-safe goals, it does not have regulations to promote effective Bird-safe policies, and that the proposed new Chapter 19.102: Bird Safe Development Standards will provide effective standards to promote Bird-safe policies;

WHEREAS, on October 28, 2019, Planning Commission provided staff guidance on potential Bird-safe and Dark Sky policies and guidelines;

WHEREAS, community meetings were held on February 12, 2020 and February 20, 2020 to allow the public an opportunity to review and provide comments on the preliminary development standards;

WHEREAS, following public notices given as required by the procedural ordinances of the City of Cupertino and the Government Code, the Planning Commission held a public hearing on August 11, 2020 and October 27, 2020 to consider the Ordinance; and

WHEREAS, with Resolution No. 6914 the Planning Commission has recommended on a 4-1-0 vote that the City Council adopt the Ordinance amending the Municipal Code in substantially similar form as presented in Planning Commission Resolution No. 6914; and

WHEREAS, on December 1, 2020 and December 15, 2020 upon due notice, the City Council has held public hearings to consider the Planning Commission's recommendation and the Ordinance; and

WHEREAS, the City Council is the decision-making body for this Ordinance; and

WHEREAS, the City Council does find as follows:

- a. That the proposed zoning is in accord with this title of the Municipal Code and the City's Comprehensive General Plan.

The Ordinance does not change any zoning designations, but rather it modifies Title 19: Zoning by adding a new chapter to create development standards for the implementation of regulations that support Bird-Safe policies. The proposed amendments do not render existing provisions of the Municipal Code inconsistent with those proposed.

The proposed amendments will also support the following General Plan Goals, Policies, and Strategies:

- *Goal LU-3: Ensure that project site planning and building design enhance the public realm through a high sense of identity and connectivity.*
- *Policy LU-3.3: Building Design: Ensure that building layouts and design are compatible with the surrounding environment and enhance the streetscape and pedestrian activity.*
- *Strategy LU-3.3.1: Attractive Design – Emphasize attractive building and site design by paying careful attention to building scale, mass, placement, architecture, materials, landscaping, screening of equipment, loading areas, signage and other design considerations.*
- *Goal LU-12: Preserve and protect the City’s hillside natural habitat and aesthetic values.*
- *Goal ES-5: Protect the city’s urban and rural ecosystems.*
- *Policy ES-5.1: Urban Ecosystem – Manage the public and private development to ensure the protection and enhancement of its urban ecosystem.*
- *Strategy ES-5.2.1: Riparian Corridor Protection – Require the protection of riparian corridors through the development approval process.*

The regulations will encourage incorporation of bird-safe mitigations which will reduce the number of bird collisions.

- b. The proposed zoning is in compliance with the provisions of the California Environmental Quality Act (CEQA).

The proposed Ordinance is exempt from environmental review under California Environmental Quality Act (“CEQA”) Guidelines section 15308 because these regulations are being adopted to assure the maintenance, restoration, enhancement, or protection of the environment; CEQA Guidelines section 15301 because the regulations would result in the minor alteration of existing public or private structures without any expansion of use; CEQA Guidelines section 15305 because the regulations involve minor alterations in land use limitations that do not alter permitted uses or density; and CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that these regulations related to glazing and lighting will have no possibility of a significant effect on the environment; and that none of the exceptions in CEQA Guidelines section 15300.2 apply.

- c. The site is physically suitable (including, but not limited to, access, provision of utilities, compatibility with adjoining land uses, and absence of physical

constraints) for the requested zoning designation(s) and anticipated land use development(s).

Not applicable. The proposed ordinance amendments do not change the zoning designation for any properties, nor does it change any land uses allowed. The amendments also do not propose any physical changes in the environment or increased development.

- d. The proposed zoning will promote orderly development of the City.

By creating regulations for Bird-Safe development standards, the ordinance will promote orderly and consistent implementation of the regulations for development in the City.

- e. That the proposed zoning is not detrimental to the health, safety, peace, morals and general welfare of persons residing or working in the neighborhood of subject parcels.

The proposed ordinance provides regulation to maintain the health, safety, peace, morals and general welfare of persons residing or working in the City by providing regulations that limit adverse impacts of development on the natural and built environment pertaining to birds.

- f. The proposed amendments are internally consistent with this title.

All the necessary chapters and sections of Title 19: Zoning have been amended to ensure internal consistency with the proposed regulations.

**NOW, THEREFORE, THE CITY COUNCIL OF THE OF CITY OF CUPERTINO
DOES ORDAIN AS FOLLOWS:**

SECTION 1. Adoption.

The Cupertino Municipal Code is hereby amended as set forth in Attachment A.

SECTION 2: Severability and Continuity.

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this ordinance is held invalid, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of such portion, and further declares its express intent that the remaining portions of this ordinance should remain

in effect after the invalid portion has been eliminated. To the extent the provisions of this Ordinance are substantially the same as previous provisions of the Cupertino Municipal Code, these provisions shall be construed as continuations of those provisions and not as an amendment to or readoption of the earlier provisions.

SECTION 3: California Environmental Quality Act.

The proposed ordinance is exempt from environmental review under the California Environmental Quality Act ("CEQA") Guidelines Section 15308 since these regulations are being adopted to assure the maintenance, restoration, enhancement, or protection of the environment. Further, the proposed ordinance is exempt from CEQA under CEQA Guidelines section 15301 because it would result in the minor alteration of existing public or private structures without any expansion of use and under CEQA Guidelines Section 15305 because the proposed ordinance involves minor alteration in land use limitations that do not alter permitted uses or density. Finally, the proposed ordinance is exempt from CEQA under CEQA Guidelines section 15061(b)(3) because it can be seen with certainty the Ordinance's regulation related to glazing and lighting will have no possible significant effect on the environment. None of the exceptions listed in CEQA Guidelines section 15300.2 apply to the proposed ordinance

SECTION 4: Effective Date.

This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937.

SECTION 5: Publication.

The City Clerk shall give notice of adoption of this Ordinance as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be prepared by the City Clerk and published in lieu of publication of the entire text. The City Clerk shall post in the office of the City Clerk a certified copy of the full text of the Ordinance listing the names of the City Council members voting for and against the ordinance.

INTRODUCED at a regular meeting of the Cupertino City Council on December 15, 2020 and **ENACTED** at a regular meeting of the Cupertino City Council on _____, 2021 by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Darcy Paul, Mayor City of Cupertino	 _____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	 _____ Date
APPROVED AS TO FORM: _____ Heather Minner, City Attorney	 _____ Date

Attachment A – An Ordinance of the City of Cupertino to implement Bird-safe policies and guidelines

This ordinance amends several portions of the Municipal Code. For ease of review, the amendments advancing the primary objective are presented first followed by conforming amendments. There is a separate heading in bold italics for each portion of the Code being amended. Each portion is shown beginning on a separate page.

The sections of the Cupertino Municipal Code set forth below are amended or adopted as follows:

*Text added to existing provisions is shown in bold double-underlined text (**example**) and text to be deleted is shown in strikethrough (~~example~~). Text in existing provisions is not amended or readopted by this Ordinance. Text in italics is explanatory and is not an amendment to the Code.*

Where the explanatory text indicates that a new section is being added to the City Code, the new section is shown in plain text.

1. Amendments to Title 19: Zoning adding Chapter 19.102: Bird-Safety Standards

19.102 BIRD-SAFE DEVELOPMENT STANDARDS

19.102.010 Purpose

19.102.020 Applicability of regulations

19.102.030 Bird-safe Development Requirements

19.102.010 Purpose

The purpose of this chapter is to regulate design and construction of structures and accessory elements in all zoning districts to protect the natural environment, particularly enhancing bird-safety. This Chapter establishes regulations to reduce bird mortality from windows, other specific glass features, and certain lighting elements that are known to increase the risk of bird collisions.

19.102.020 Applicability of regulations

Whenever an applicant is required to obtain a building permit or a Permit pursuant to Title 19, or whenever exterior lighting is added or replaced (whether temporary or permanent), the project shall meet the requirements of this Chapter. The following table indicates the applicability of regulations by type of project:

Type of Development	Applicable Sections
A. New primary or accessory building, structure, or site construction	Sections 19.102.030
B. Complete or Partial Remodel of primary or accessory building, structure, or site	Sections 19.102.030 apply to remodeled portions
C. Parking lot upgrade or redesign, excluding maintenance or repair activities (i.e., restriping, resealing, or repaving)	Section 19.102.030 (D)
D. New or replacement exterior glass windows, doors, or features	Section 19.102.030 (A), (B), and (E) apply only to the new exterior glass windows, doors, or features
E. New or replacement exterior lighting	Section 19.102.030 (D)
F. Exemptions	See Sections 19.102.030 (B)(4) and (D)(14)

19.102.030 Bird-safe Development Requirements

- A. Application submittal requirements: All projects that are subject to the bird-safe development requirements shall submit the following:
1. Elevation drawings indicating the bird-safe treatment and how the proposed treatment meets the requirements of Section 19.102.030 (B) and (D);
 2. Cross sections, if required;
 3. Other exhibits, plans and technical reports indicating consideration and incorporation of the regulations in Section 19.102.030 (B), (C), (D) and (E); and
 4. Biologist report in support of alternative compliance method pursuant to Section 19.102.030 (B)(3), if proposed.

B. Fenestration and Glass Requirements

1. Façades of all projects subject to bird-safe development requirements shall have:
 - a. No more than 10% of the surface area of the façade be untreated glass between the ground and 60 feet above ground.
 - b. No more than 5% of the surface area of the façade be untreated glass between 60 feet above ground and up.
2. Standard Compliance Treatments: The Planning Division may maintain a list of acceptable bird-safe treatments that may be updated from time to time. The list may include, but not be limited to acceptable treatments, such as opaque glass, window muntins, exterior insect screens, exterior netting, or special glass treatments such as fritting to provide visual cues and reduce the likelihood of bird collisions. Glass treatments must have high color contrast with the glass and be applied to the outermost glass. Prior to publication of the list, the Planning Department may review information available from interest groups, such as the National Audubon Society.

3. Alternative Compliance Method: Property owners/applicants may propose an alternate compliance method recommended by a qualified biologist, in order to meet the requirements and intent of this section. The alternate compliance method shall be peer-reviewed by a third-party consultant, paid for by the applicant, and subject to the approval of the Director of Community Development.
 4. Exemptions: The following are exempted from subsection 19.102.030(B):
 - a. Any historic structure, either as set forth in the General Plan Figure LU-3 Historic Resources or listed on the State or National Historical Registers; and
 - b. First floor commercial storefronts, up to a height of 15'.
- C. Non-residential Indoor Lighting Requirements: Install time switch control devices or automatic occupancy sensors on non-emergency interior lights that are programmed to turn off at eleven p.m. or within two hours after the business is closed.
- D. Outdoor Lighting Requirements:
1. All outdoor lighting shall be fully shielded fixtures, directed downward to meet the particular need and away from adjacent properties and rights-of way to avoid light trespass, except:
 - a. Low-voltage Landscape Lighting: Low-voltage landscape lighting, such as that used to illuminate fountains, shrubbery, trees, and walkways, do not have to be shielded fixtures and may use uplighting, provided that they use no more than ten (10) watt incandescent bulb or LED equivalent, or a maximum of 150 lumens (whichever is less), and not directed toward the right-of-way.
 - b. Architectural Features: Uplighting may be used to highlight special architectural features.
 - c. Public Art: Alternative lighting standards may be used to illuminate public art or serve as public art subject to the review and approval by the Fine Arts Commission.
 - d. Historic Lighting Fixtures: Lighting fixtures that are historic or that exhibit a historical period appearance, as determined by the Director of Community Development, need not be fully shielded.
 2. Notwithstanding any other requirement in the Municipal Code, exterior lighting shall not exceed 100 watt incandescent bulb or LED equivalent, or a maximum of 1600 lumens (whichever is less).
 3. Parking lots, sidewalks, and other pedestrian paths shall meet the requirements in Chapter 19.72, 19.60 and 19.124, as applicable. In the event there is a conflict with Chapter 19.72, the less stringent light standards shall apply.

4. Exterior lighting shall be fully extinguished or motion sensor operated after 11:00 p.m., or when people are no longer present in exterior areas, whichever is later, except for:
 - a. Lights required to remain on in compliance with the California Building Code.
 - b. Lighting of an appropriate intensity allowed in conjunction with uses permitted to operate past 11:00 p.m. with a conditional use permit.
 - c. Outdoor solar powered pathway lights that do not exceed 25 lumens.
 5. Automated control systems, such as motion sensors and timers, shall be used to ensure that outdoor lighting extinguishes 10 minutes after motion activation and turns off when sufficient daylight is available.
 6. Security lighting, necessary to protect persons and property, shall be programmable, motion sensor activated, and may illuminate a perimeter, such as a fence line, if such lights do not result in light trespass, and do not use lamps that exceed 100 watts incandescent bulb or LED equivalent, or a maximum of 1600 lumens (whichever is less).
 7. In addition to all other applicable standards, lighting fixtures in the ceiling of service station canopies shall be fully recessed in the canopy, and no light fixtures or illumination, other than approved signage, shall be allowed on top of the fascia of such canopies.
 8. All lighting must comply with the requirements of the California Building Code. Should a conflict exist with the provisions of this Chapter, the standards in the California Building Code shall prevail.
 9. The use of High Intensity Discharge lighting, spot lighting, flood lighting, or similar lighting is prohibited.
 10. The following are exempt from subsection 19.102.030 (D): lighting in the right of way, holiday seasonal lighting between October 15 and January 15 of each year, temporary construction or emergency lighting, temporary lighting associated with a special event, and lighting required pursuant to the Building Code, Fire Code, or state law. To the extent permitted by Building Code, Fire Code, or state law such required lighting shall additionally comply with the requirements of this Chapter.
- E. Bird-safe Design Requirements. All projects subject to bird-safe development requirements shall:
1. Avoid the funneling of flight paths along buildings or trees towards a building façade.
 2. Avoid use of highly reflective glass or highly transparent glass.
 3. Not include glass skyways or walkways, balconies, freestanding glass walls, transparent building corners, glass features, or other design elements through which trees, landscape areas, water features or the sky are visible from the exterior or from one side of the transparent element to the other, if such elements are untreated.

2. Additions to Chapter 19.08 concerning Definitions

The following definitions are inserted in alphabetical order in appropriate locations in Sections 19.08.030 (B), (G), (L), (M), (S), (U), and (W). No changes are made to the remainder of the definition sections.

“Bird-safe design” means when building design, site planning, design features, materials, exterior and interior lighting, are designed and developed to reduce hazardous conditions for birds.

“Bird-safe development” means development that incorporates bird-safe design and bird-safe treatment.

“Bird-safe treatment” means treatment to glass that provides visual cues to birds and reduce the likelihood of bird collisions.

“Bird-sensitive area”, for purposes of Chapter 19.102, Glass and Lighting Standards, means parcels that are in or within 300 feet of the Wildland Urban Interface; within 300 feet of watercourses; in Residential Hillside areas; and within 300 feet of public and private, open spaces and parks that are dominated by vegetation, including vegetated landscaping, forest, meadows, grassland, or wetlands.

“Glare” means the effect produced by a light source within the visual field that is sufficiently brighter than the level to which the eyes are adapted, which causes annoyance, discomfort, or loss of visual performance and ability.

“Glass features”, for purposes of Chapter 19.102, Glass and Lighting Standards, means such features as free-standing glass walls, wind barriers, skywalks, balconies, greenhouses, and rooftop appurtenances.

“Light Fixture” means a complete lighting unit consisting of one or more lamps, and ballast(s), where applicable, together with the parts designed to distribute the light, position and protect the lamp(s) and ballast(s), and connect the lamp(s) to the power supply.

“Light trespass” means light emitted by a light fixture that shines beyond the property on which it is installed.

“Muntins” means strips of wood, metal, or other materials that physically separate and support individual panes of glass in a window or visually separate a single pane of glass in a window into different sections.

“Shielded fixture” means a light fixture that is shielded or constructed so that light rays emitted by the lamp(s) are projected below the horizontal plane passing through the lowest point on the light fixture.

“Uplighting” means the placement and orientation of light fixtures such that light rays are directed upward.

“Watercourse”, for purposes of Chapter 19.102, Glass and Lighting Standards, means any natural or artificial arroyo, canal, channel, natural conduit, creek,

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culvert, ditch, gully, lake, ravine river, stream, waterway, or wash or other topographic feature on or over which waters flow at least periodically and adjacent areas in which substantial flood damage may occur from overflow or inundation.