



**COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION**

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3308 • FAX: (408) 777-3333
CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

Meeting: March 16, 2021

Subject

Municipal Code Amendments to adopt glazing and lighting regulations to implement the Fiscal Year 2019/20 City Council Work Program items related to Dark Sky and Bird-Safe Design. (Application No. MCA-2019-003 and MCA-2019-004; Applicant: City of Cupertino; Location: City-wide)

Recommended Action

That the City Council conduct the first reading of Ordinance No 21-_____ “An Ordinance of the City Council of the City of Cupertino Amending City Code to add 19.102: Glass and Lighting Standards and to Amend Chapter 19.40 Residential Hillside (RHS) Zones, Chapter 19.60 General Commercial (GC) Zones, Chapter 19.72 Light Industrial (ML) and Industrial Park (MP) Zones, and Chapter 19.124 Parking Regulations to Implement Bird-safe and Dark Sky Policies.” (Attachment A) which includes a finding that the proposed actions are exempt from CEQA.

As an alternative to conducting the first reading, the City Council could conduct the second reading of Ordinance No. 20-2219, the Bird-safe only regulations, to implement previously introduced regulations (Attachment B), which includes a finding that the proposed actions are exempt from CEQA. Subsequently, the Council could conduct the first reading of the Dark Sky regulations, to incorporate dark sky regulations into the Bird-safe only Ordinance (Attachment C), which also includes a finding that the proposed actions are exempt from CEQA.

Discussion

Background

The Bird-safe and Dark Sky regulations has been on the City’s Work Program since the FY 18/19 City Work Program. The following is a brief timeline of the ordinance development so far:

- Planning Commission study session – October 2019
- Community Outreach (postcard notification) – February 2020

- Draft Ordinance to Planning Commission – August 2020 (*directed staff to draft amendments to applicability of bird-safe regulations, present cost considerations, and distinguish lighting restrictions for commercial and residential*)
- Amended Draft Ordinance to Planning Commission – October 2020 (*recommended for approval with amendments to allow string lighting.*)
- City Council meeting (combined ordinance) – December 1, 2020 (*directed to present bird-safe only ordinance as alternative*)
- City Council meeting (combined ordinance and bird-safe only ordinance) – December 15, 2020 (*first reading of bird-safe only ordinance conducted on 4-1 vote (Moore – no) with an amendment to strike exemptions for R1 zoning outside of Bird-Sensitive Areas and 100% affordable housing developments; dark sky regulations postponed to January 19, 2021 to allow time for more input*)
- LAC meeting – January 8, 2021 (*staff met with Chamber members, answered questions, and heard input*)
- City Council meeting – January 19, 2021 (*continued both the second reading of the bird-safe only ordinance and the first reading of an amended dark sky ordinance to March 16, 2021 to allow additional discussion and understanding*)

Analysis

Subsequently, Staff went through comments received at the public hearings, input received at the Economic Development Committee on February 10, 2021, input received from community members in one-on-one meetings and a letter received from the Chamber of Commerce on March 5, 2021 (*discussed below*). The following concerns were identified:

- Applicability: The draft presented to Council on December 15, 2020 contained language to exempt “Residential development in R1 zoning districts outside of Bird-Sensitive Areas”. However, the Council moved to eliminate this exemption before conducting the first reading of the Bird-Safe Ordinance. Members of the public have indicated a concern with the deletion of this exemption at several subsequent Council meetings and in written communication. Therefore, staff has added this exemption into the proposed combined draft ordinance (Attachment A).

Bird-Sensitive Areas are defined as: “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.” A draft map, Attachment D, indicating the location of Bird-Sensitive Areas, as currently defined, has been prepared to inform Council decision making.

In lieu of adopting the exemption, the Council could alternatively adopt “screening” criteria to exempt applicability to certain kinds of windows: Windows smaller than

12 s.f. in area and/or those that are impeded by a building wall at the same height within a horizontal distance of 10 feet. The former option (exempting windows smaller than 12 s.f. in area) was presented to the Planning Commission but was rejected by the Commission as being too confusing and onerous for single family homeowners. The proposal was subsequently changed to exempt applicability to R1 properties outside Bird-Sensitive Areas.

“Screening” language could be added to subsection 19.102.030 (B) as a new subsection depending on whether Council would like to add either one or two screening criteria as follows:

“c. The following shall be considered treated glass for purposes of the calculations in subsections (a) and (b) above:

i. Windows that are twelve (12) square feet or less.”

OR

“c. The following shall be considered treated glass for purposes of the calculations in subsections (a) and (b) above:

i. Windows that are twelve (12) square feet or less and

ii. Windows that are entirely blocked or impeded by another building wall within ten (10) feet.”

If Council selects this option, subsection 19.102.030 (E)(3) and the definition of “Bird-Sensitive areas” would be deleted. It should be noted that if screening criteria only are adopted as proposed here, bird-safe treatment requirements would apply to all properties in the City.

- Availability of bird safe glass and Cost of Implementation for Bird-Safe Measures: There have been some concerns with regard to the availability of “bird-safe” glass. This is due to a lack of understanding of the treatments that are considered bird-safe. A draft flyer identifying acceptable bird safe treatments is included in Attachment E.

There have been additionally, concerns about the cost of implementing the proposed ordinance. However, based on discussions with two major companies that provide bird-safe treated products approved by American Bird’s Conservancy (ABC), it appears that the cost of implementation is not prohibitively high. Typical costs for curtain walls can vary between \$100-\$200 per square feet which includes the glass, framing and installation. Added bird-safe treatments such as fritting adds approximately \$5 per square feet. The treatment results in about an added 2.5% to 5% of curtain wall cost.

These are generic estimates from two companies. Each development may have variable costs that are dependent on the manufacturer, the construction of the window (e.g. full-frame replacement, energy efficient double-pane, etc.), the number of windows, potential bulk cost savings and the extent of architectural features built

in to implement bird safe design. Nevertheless, it appears based on these estimates that application of bird-safe treatments would not result in substantial increased costs for new or remodeled development.

Further, the ordinance allows property owners/applicants to propose an alternate compliance method recommended by a qualified biologist to meet the fenestration and glass requirements.

- Commercial vs Residential: Residential property owners have expressed concerns that commercial properties are treated differently from residential properties due to the proposed exemption for commercial storefronts that are up to a height of 15'. However, with inclusion of the exemption for R1 properties outside of Bird-Sensitive areas and/or additional screening criteria, as the Council directs, this concern may be resolved. Staff continues to recommend this exemption in the interests of economic development. Alternatively, though not recommended, the City Council could eliminate the exemption for commercial properties.
- Existing Non-Conforming: There has been a question regarding how the ordinance would be applied to existing non-conforming facilities. Generally, the proposed ordinance would not apply to any existing structure or lighting fixtures retroactively. A noncomplying facility may be maintained indefinitely. For example, if a window is broken by accident, the window may be replaced with the same design/specification as it existed without complying with the proposed ordinance, in compliance with the requirements of Chapter 19.140 of the Municipal Code.
- Applicability of bird-safe standards to residential buildings: Residential property owners have expressed a concern about bird-safe measures that would apply to shorter buildings. A peer-reviewed journal, *The Condor: Ornithological Applications* published an article titled "Bird-building Collisions in the United States: Estimates of Annual Mortality and Species Vulnerability" in January 2014. Their analysis found that 44 percent occurred at residences (1-3 stories). Therefore, staff continues to recommend that bird-safe standards be applied to residences.
- A letter was submitted by the Cupertino Chamber of Commerce (Attachment F) on March 5, 2021, regarding the proposed regulations. After reviewing the letter, staff recommends incorporation of the following for clarification:
 - Allow photometric plans to be prepared, stamped and signed by a licensed professional engineer qualified in outdoor lighting. The original draft specified that licensed electrical engineers for this task, but different licensed professional engineers may be qualified to prepare and certify documentation to ensure consistency with the proposed regulations.
 - Illumination levels in Section 19.102.040B(2) have been clarified to pertain to only exterior lighting.

- Clarification on illumination standards for service station canopy lighting.

Other edits: Staff is recommending a few other edits and clarifications to ensure clear language for implementation:

1. Clarification to ensure transparent elements are treated like glass in subsection 19.102.030(C).
2. Clarification that in the event of a conflict between Building Code standards and the proposed regulations regarding bird-safe treatments that the Building Code would prevail as a new subsection 19.102.030(F).
3. Clarification to make some standards objective by replacing “should” with “shall”.
4. Clarification that signs permitted pursuant to Chapter 19.104 are exempt from Dark Sky regulations.
5. Modification to portions Chapter 19.124: Parking Regulations for consistency and clarification of lighting standards.

Environmental Review

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 bird safety will have no possibility of a significant effect on the environment; and that none of the exceptions in CEQA Guidelines section 15300.2 apply to the proposed ordinance.

Public Noticing & Outreach

The following noticing has been conducted for this project:

Notice of Public Hearing, Site Notice & Legal Ad	Agenda
▪ Legal ad placed in newspaper (at least 10 days prior to hearing) ▪ Display ad placed in newspaper (at least 10 days prior to hearing)	▪ Posted on the City's official notice bulletin board (four days prior to hearing) ▪ Posted on the City of Cupertino's Web site (four days prior to hearing)

Additionally, between the January 19, 2021 meeting and the posting of the packet, Staff attended the Economic Development Committee (EDC) on February 10, 2021 to discuss the ordinance and met with members of the public to discuss the ordinance. In addition, one letter was received from the Cupertino Chamber of Commerce (*discussed above*).

Sustainability Impact

The proposed ordinance has no sustainability impact.

Fiscal Impact

There are no fiscal impacts to the City's General Fund.

Next Steps

Upon final decision by the City Council, the ordinance will need a second reading at a subsequent hearing, tentatively scheduled for April 6, 2021. If adopted, the ordinance will be effective 30 days after the second reading/adoption.

Alternatively, Council may conduct the second reading/adoption of the bird-safe only ordinance, which will then be in effect April 15, 2021. Subsequently, should the Council conduct the first reading of the dark sky only regulations, staff will present a second reading of that ordinance for the Council's consideration tentatively on April 20, 2021 once the bird-safe only ordinance goes into effect.

Prepared by: Erick Serrano, Senior Planner

Reviewed by: Piu Ghosh, Planning Manager

Approved for Submission by: Dianne Thompson, Assistant City Manager

Attachments:

A – Bird-Safe and Dark-Sky Ordinance

B – Ordinance No. 20-2210 (Bird-Safe Only Ordinance)

C – First Reading of Dark Sky Regulations incorporated into Bird Safe Regulations

D – Bird-Sensitive Areas Map

E – Glass Treatments

F – Letter from Cupertino Chamber of Commerce