



**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: January 19, 2021

Subject

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

Recommended Action

That the City Council:

1. Find the proposed actions are exempt from CEQA; and,
2. Conduct the first reading of Ordinance No. 21-_____ "An Ordinance of the City Council of the City of Cupertino Amending City Code to rename and amend Chapter 19.102: Bird-Safe Development Standards to Chapter 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 Dark Sky Policies." (Attachment A)

Discussion

On December 1 and December 15, 2020, the City Council considered a combined bird-safe and dark sky ordinance. However, at the December 1, 2020 Council hearing, Council directed staff to present a bird-safe only ordinance as an alternative. This bird-safe only ordinance, which included outdoor lighting regulations intended to provide for bird safety, was presented to Council at the December 15, 2020 meeting. The Council conducted the first reading of the bird-safe ordinance (Attachment B) on a 4-1-0 vote (Moore voting no). The Council postponed adoption of dark sky regulations to January 19, 2021, to allow for more time for input.

At the December 15, 2020 Council hearing, several topics were discussed related to the applicability of proposed lighting regulations to existing lighting, landscape lighting, and critical areas of illuminations. The following were clarified at the meeting:

- Existing lighting does not need to comply with the proposed regulations unless changes are made to the electrical system for any reason. It should be noted that the only exception is parking lot lighting, which must be retrofitted when a parking lot is upgraded or reconfigured.
- Light bulbs may be replaced, however, if a fixture is replaced, it must comply with the applicable provisions of the ordinance (i.e., shielded, downward facing, etc.).
- The ordinance includes provisions to allow outdoor landscape lighting.
- Critical areas of illumination such as stairways, ramps and main walkways may have a higher illumination level and later operating hours. The illumination levels of these areas are regulated by the California Building Code (CBC) and the California Energy Code (CEC), and include different illumination standards dependent on the use.

The proposed ordinance (Attachment A, redlines shown in Attachment C) adopts the dark sky regulations and integrates them with the bird safe regulations. Because the bird-safe only ordinance (Attachment B) (presented to the Council for a second reading at this January 19, 2021 meeting) contains several provisions relating to lighting, combined regulations will be easier for both the public and City staff to understand and apply. Specifically, the proposed ordinance (Attachment A) incorporates all outdoor lighting regulations (including those related to both bird safe and dark sky) as a in a single code section and makes other conforming changes.

Since the proposed ordinance would modify the code sections to be adopted by the bird-safe only ordinance (to integrate lighting regulations), the proposed ordinance should only be introduced if the Council moves forward with a bird-safe ordinance. As discussed below, the second reading of the dark sky ordinance would, therefore, occur after the effective date of the bird-safe only ordinance.

Modifications

In integrating dark sky lighting regulations, this draft ordinance also proposes modifications to the lighting regulations in the bird safe only ordinance. Based on comments received from the public and concerns about safety and trip hazards, a proposed modification to the lighting regulations is recommended regarding outdoor lighting in section 19.102.040 (B)(4)(e). The proposed modification would allow that outdoor lighting illuminating a pedestrian pathway may remain illuminated past 11:00pm provided it is at a maximum height of four (4) feet, fully shielded and downward directed. Examples of pathway lighting include bollards, in-step lights and building mounted lights.

Additionally, in response to concerns from the business community about struggling retailers, the lighting regulations have been modified to allow interior window display lighting for retail uses to remain illuminated at any time, provided it is downward

directed, low voltage, and fully shielded. This change is reflected in section 19.102.030 (C).

Further, based on analysis of existing dark sky ordinances, availability of lighting fixtures and lamps, it is recommended that the maximum lighting temperature be changed from 2,700 Kelvin to 3,000 Kelvin.

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
<ul style="list-style-type: none">▪ Legal ad placed in newspaper (<i>at least 10 days prior to hearing</i>)▪ Display ad placed in newspaper (<i>at least 10 days prior to hearing</i>)	<ul style="list-style-type: none">▪ Posted on the City's official notice bulletin board (<i>four days prior to hearing</i>)▪ Posted on the City of Cupertino's Web site (<i>four days prior to hearing</i>)

Additionally, Staff presented the ordinance to the Chamber of Commerce on the January 8, 2021 meeting.

Sustainability Impact

The proposed ordinance has no sustainability impact.

Fiscal Impact

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

Next Steps

Adoption of this ordinance is dependent on the bird-safe only ordinance taking effect. Consequently, the second reading for this ordinance, if introduced at this meeting, will be scheduled after the bird-safe only ordinance is effective; the second reading is

tentatively set for March 2, 2021. If adopted, the ordinance will be effective 30 days after the second reading/adoption.

Prepared by: Erick Serrano, Senior Planner

Reviewed by: Piu Ghosh, Planning Manager

Approved for Submission by: Dianne Thompson, Assistant City Manager

Attachments:

A – Draft Ordinance

B – Ordinance No. 20-2219 (Bird-Safe Only Ordinance)

C – Redlined Ordinance