

ORDINANCE NO. 20-__

Ordinance Of The City Council Of The City Of Emeryville Amending The Planning Regulations In Title 9 Of The Emeryville Municipal Code Regarding Bird-Safe Building Standards (CEQA Status: Exempt Pursuant To State CEQA Guidelines Section 15061(b)(3))

WHEREAS, on February 5, 2019, the City Council discussed bird-friendly design guidelines to reduce bird-to-building collisions and directed that the Planning Commission hold a study session on the topic; and

WHEREAS, on September 26, 2019, the Planning Commission held a study session and recommended adopting standards in the Planning Regulations to apply citywide; and

WHEREAS, on November 5, 2019, the City Council held a study session and directed staff to prepare an ordinance adopting standards in the Planning Regulations to apply citywide to reduce bird collisions with buildings; and

WHEREAS, on April 23, 2020, the Emeryville Planning Commission held a duly and properly noticed public hearing on the proposed ordinance and then voted unanimously to recommend that the City Council adopt it; and

WHEREAS, on June 16, 2020, the Emeryville City Council held a duly and properly noticed public hearing on the proposed ordinance; and

WHEREAS, the City Council has reviewed and considered the staff report and attachments thereto, all public comments, and the proposed amendments to Title 9 of the Emeryville Municipal Code, as set forth below, and the applicable provisions of the Emeryville Municipal Code;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EMERYVILLE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION ONE. PURPOSE AND INTENT.

The purpose and intent of this ordinance is to adopt standards to reduce bird collisions with buildings by adding a new Article 8, "Bird-Safe Buildings", and amending Article 7, "Other Site Development Regulations", in Chapter 4, "Site Development Regulations" in the Planning Regulations at Title 9 of the Emeryville Municipal Code.

SECTION TWO. REQUIRED FINDINGS FOR ADOPTING ORDINANCE.

The City Council hereby makes the following findings, pursuant to Section 9-7.1305 of the Emeryville Municipal Code:

- (a) The proposed amendment is consistent with the General Plan.

The Ordinance is consistent with General Plan goal CSN-G-5 “Preservation and protection of natural resources” because it will protect birds. The Ordinance is also consistent with General Plan goal CSN-G-1 “Protection of public health” because birds control insects and rodents that spread diseases.

- (b) The proposed amendment is necessary for public health, safety and welfare or will be of benefit to the public.

The Ordinance is necessary for public health, safety and welfare to protect birds from window collisions and other building injuries. Birds promote human health by controlling insects and rodents that spread diseases. Birds promote human welfare by providing beauty and songs for people to enjoy. Protection of birds will also benefit the public because birds pollinate plants and spread seeds.

- (c) The proposed amendment has been reviewed in compliance with the requirements of the California Environmental Quality Act.

The Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) under the “common sense exemption” at CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the amendment may have a significant effect on the environment.

- (d) For a change to the Zoning Maps, that the subject property is suitable for the uses permitted in the proposed zone in terms of access, size of parcel, relationship to similar or related uses, and other relevant considerations, and that the proposed change of zoning district is not detrimental to the use of adjacent properties.

No changes to the Zoning Map in Figure 3.103(a) or the Zoning Overlay Map in Figure 9-3.103(b) of the Planning Regulations are proposed.

SECTION THREE. ADDING ARTICLE 8 TO CHAPTER 4 OF TITLE 9 OF THE EMERYVILLE MUNICIPAL CODE.

Article 8 of Chapter 4 of Title 9 of the Emeryville Municipal Code is hereby added to read as follows:

ARTICLE 8. BIRD-SAFE BUILDINGS

9-4.801 Purpose.

The purpose of this Article is to reduce the risk of bird-to-building collisions.

9-4.802 Applicability.

The bird-safe building standards apply to the following types of projects when such projects require a building permit:

- (a) **New Construction.** New buildings, additions, and renovations involving new glass or other rigid transparent material.
- (b) **Window Replacement.** Any replacement window, glass door, or other rigid transparent material.
- (c) **Glass Structures.** Any new or replacement structure that has transparent glass or rigid transparent walls, including but not limited to freestanding glass walls, wind barriers, skywalks, balconies, greenhouses, gazebos, pavilions, passageways, and rooftop appurtenances.

The bird-safe glazing requirement must be met on any window or contiguous glazed segment (area within mullions and /or frames) with an area of 12 square feet or more.

9-4.803 Bird-Safe Glazing Requirement.

At least 90% of the glazing on any building façade or glass structure, and all glass near plants or water features, shall include features that enable birds to perceive the glass as a solid object. The requirement can be satisfied by using one or more of the following treatments:

- (a) External screens installed permanently over glass such that the glass does not appear reflective.
- (b) Translucent or opaque glass, or transparent or opaque film applied to glass.

- (c) Glass covered with patterns such as dots, stripes, images, art, or abstract patterns. Such patterns may be etched, fritted, stenciled, silk-screened, or applied to the glass as films or decals, or another method of permanently incorporating the patterns into or onto the glass. Elements of the patterns must be either at least 1/8 inch tall and separated by no more than 2 inches vertically, or at least 1/4 inch wide and separated by no more than 4 inches horizontally, or both (the 2 by 4 rule).
- (d) Weatherproof grates, netting or cords mounted outside of the glass, near but not touching the glass, meeting the 2-by-4 rule.
- (e) Grooved glass block.
- (f) Other glazing treatments providing an equivalent level of bird safety and approved by the Planning Director.

9-4.804 Alternative Compliance.

As an alternative to meeting Section 9-4.803 of this article, Bird-Safe Glazing Requirement, an applicant may propose building and fenestration designs that will minimize bird collisions and achieve an equivalent level of bird safety. The applicant shall submit a bird collision reduction plan along with the project application. The bird collision reduction plan shall be prepared by a qualified biologist. Design solutions may include but need not be limited to the following techniques, singularly or in combination:

- (a) Layering and recessing of glazed surfaces.
- (b) Angled or faceted glazing that minimizes reflectivity and transparency.
- (c) Louvres or grates not meeting the 2-by-4 rule.
- (d) Overhangs or awnings.
- (e) Clear (non-grooved) glass block.
- (f) Grilles that allow birds to perceive the grilles, together with the glass behind them, as solid.
- (g) Glass embedded with photovoltaic cells.
- (h) Placement of landscaping in such a way as to minimize bird collisions, including but not limited to placing outdoor plants directly against windows.

9-4.805 Interior Lighting.

- (a) Non-residential spaces shall have automatic light shutoff systems using timers, photo sensors, motion sensors, or a combination of sensors.
- (b) Shades, blinds, curtains, or other window coverings for all windows shall be included as part of the construction project for which the building permit is issued.

9-4.806 Site Design.

- (a) No mirrors shall be placed in or near planted areas or water features, or in locations where they would reflect trees, plants, or water.
- (b) Vent grates shall meet the 2-by-4 rule as described in Section 9-4.803(c).

SECTION FOUR. AMENDING SECTION 9-4.705 OF ARTICLE 7 OF CHAPTER 4 OF TITLE 9 OF THE EMERYVILLE MUNICIPAL CODE

Section 9-4.705 of Article 7 of Chapter 4 of Title 9 of the Emeryville Municipal Code is hereby amended as follows, with deletions shown in ~~strikeout~~ type and additions shown in double-underlined type.

9-4.705 Outdoor Lighting and Illumination.

- (a) **Applicability.** The provisions of this Section shall apply to all new and replacement outdoor lighting devices, not including signs.
- (b) **Exemptions.** The following types of light fixtures shall be exempt from the provisions of this Section:
 - (1) Temporary emergency lighting needed by police, fire, and other emergency services.
 - (2) Temporary lights used for holiday decorations.
 - (3) ~~Spotlights, search lights, and lasers for special events subject to a temporary use permit. Restrictions on such lighting may be included in the conditions of approval of the temporary use permit.~~

(c) **General Regulations.**

- (1) All exterior lighting shall be designed to confine direct rays to the premises. No light fixture shall emit any direct light above a horizontal plane through the fixture. No spillover beyond the property line shall be permitted, except onto public thoroughfares; provided, however, that no such light shall cause a hazard to motorists.
 - (2) Exterior light fixtures attached to a building shall be designed as an integral part of the building and may highlight building forms and architectural details.
 - (3) Lighting that highlights architectural features or art shall be limited to one 100-watt bulb or 20-watt equivalent LED, and emit less than 1,600 lumens, per fixture.
 - (34) All exterior lighting on a nonresidential property shall be on a time clock or photo-sensor system so as to be turned off during daylight hours and during any hours when the facility is not in use and the lighting is not required for security.
 - (5) Security wall lighting shall be limited to 8 feet above ground level.
 - (46) All lighting shall meet any applicable energy efficiency requirements of the Building Regulations in Title 8.
- (d) **Parking Lot Illumination.** Except for those serving four or fewer residential units, all open parking areas shall be provided with exterior lighting as required by Section 9-4.406(k).
- (e) **Prohibitions.** Outdoor lighting fixtures shall not include flickering or flashing lights, spotlights, searchlights, lasers, beams, floodlights, or mercury vapor lights.

SECTION FIVE. CEQA DETERMINATION.

The proposed amendment is exempt from the requirements of the California Environmental Quality Act (CEQA)) under the “common sense exemption” at CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the amendment may have a significant effect on the environment.

SECTION SIX. SEVERABILITY.

The City Council hereby declares that every section, paragraph, clause and phrase of this Ordinance is severable. If, for any reason, any section, paragraph, clause or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, clauses or phrases.

SECTION SEVEN. CODIFICATION.

Sections Three and Four of this Ordinance shall be codified in the Emeryville Municipal Code. Sections One, Two, Five, Six, Seven, and Eight shall not be codified.

SECTION EIGHT. EFFECTIVE DATE AND POSTING.

This Ordinance shall take effect 30 days following its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code Section 33693.

This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting held on Tuesday, June 16, 2020, and **PASSED AND ADOPTED** by the City Council at a regular meeting held on Tuesday, July 7, 2020, by the following vote:


AYES:	<input type="text"/>	<input type="text"/>
NOES:	<input type="text"/>	<input type="text"/>
ABSTAIN:	<input type="text"/>	<input type="text"/>
ABSENT:	<input type="text"/>	<input type="text"/>

ATTEST:

CITY CLERK

MAYOR

APPROVED AS TO FORM:



CITY ATTORNEY