



Planning Commission

AGENDA

REGULAR MEETING OF THE PLANNING COMMISSION

This meeting is held in a wheelchair accessible location.

Wednesday, March 1, 2023

7:00 PM

South Berkeley Senior Center

2939 Ellis Street, Berkeley

See “*MEETING PROCEDURES*” below.

All written materials identified on this agenda are available on the Planning Commission webpage: <https://berkeleyca.gov/your-government/boards-commissions/planning-commission>

PRELIMINARY MATTERS

- 1. Roll Call:** Merker, Blaine, appointed by Councilmember Kesarwani, District 1
Vincent, Jeff, appointed by Councilmember Taplin, District 2
Moore III, John E. “Chip”, appointed by Councilmember Bartlett, District 3
Oatfield, Christina, appointed by Councilmember Harrison, District 4
Mikiten, Elisa, Chair, appointed by Councilmember Hahn, District 5
Marthinsen, Emily, appointed by Councilmember Wengraf, District 6
Twu, Alfred, appointed by Councilmember Robinson, District 7
Hauser, Savlan, Vice Chair, appointed by Councilmember Droste, District 8
Ghosh, Barnali, appointed by Mayor Arreguin
- 2. Land Acknowledgement:** The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley’s residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley’s incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today. The City of Berkeley will continue to build relationships with the Lisjan Tribe and to create meaningful actions that uphold the intention of this land acknowledgement.

3. **Order of Agenda:** The Commission may rearrange the agenda or place items on the Consent Calendar.
4. **Public Comment:** Comments on subjects not included on the agenda. Speakers may comment on agenda items when the Commission hears those items. (See “*Public Testimony Guidelines*” below):
5. **Planning Staff Report:** In addition to the items below, additional matters may be reported at the meeting. **Next Commission meeting: April 19, 2023.**
6. **Chairperson’s Report:** Report by Planning Commission Chair.
7. **Committee Reports:** Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.
8. **Approval of Minutes:** Approval of Draft Minutes from the meeting on February 1, 2023.
9. **Future Agenda Items and Other Planning-Related Events:** None.

AGENDA ITEMS: All agenda items are for discussion and possible action. Public Hearing items require hearing prior to Commission action.

- | | |
|---|---|
| <p>10. Action:
Recommendation:
Written Materials:
Presentation:</p> | <p>Elections for Chair and Vice Chair
<i>Elect the Chair and Vice Chair of the Planning Commission.</i>
N/A.
N/A.</p> |
| <p>11. Action:
Recommendation:

Written Materials:
Presentation:</p> | <p>Public Hearing: Bird Safe Ordinance
Conduct a Public Hearing, take public comment, discuss draft Ordinance amendments, provide direction, and forward a recommendation to City Council.

Attached.
N/A.</p> |
| <p>12. Discussion:

Recommendation:

Written Materials:
Presentation:</p> | <p>Pacific Steel Casting Zoning and General Plan Amendments and EIR Update
Receive a project update, take public comment, and provide feedback on the proposed zoning text.

Attached.
N/A.</p> |
| <p>13. Action:
Recommendation:

Written Materials:
Presentation:</p> | <p>Meeting Start and End Time
Vote on a meeting start time and consider a vote on an end time.

N/A.
N/A.</p> |

ADDITIONAL AGENDA ITEMS: In compliance with Brown Act regulations, no action may be taken on these items. However, discussion may occur at this meeting upon Commissioner request.

Information Items:

- February 17, 2023 – Revised Adopted 2023-2031 Housing Element Update submitted to HCD. <https://berkeleyca.gov/construction-development/land-use-development/general-plan-and-area-plans/housing-element-update>
- February 15 and 16, 2023 – North Berkeley BART Community Meetings. <https://berkeleyca.gov/construction-development/land-use-development/general-plan-and-area-plans/ashby-and-north-berkeley>
- February 14, 2023 – City Council Meeting. Citywide Affordable Housing Requirements. <https://berkeleyca.gov/sites/default/files/documents/2023-02-14%20Item%2013a%20Citywide%20Affordable%20Housing.pdf>

Communications:

- General

Late Communications: (Received after the packet deadline):

Late Communications: (Received and distributed at the meeting):

ADJOURNMENT

Meeting Procedures

Public Testimony Guidelines:

Speakers are customarily allotted up to three minutes each. The Commission Chair may limit the number of speakers and the length of time allowed to each speaker to ensure adequate time for all items on the Agenda. **To speak during Public Comment or during a Public Hearing, please line up behind the microphone.** Customarily, speakers are asked to address agenda items when the items are before the Commission rather than during the general public comment period. Speakers are encouraged to submit comments in writing. See “Procedures for Correspondence to the Commissioners” below.

Consent Calendar Guidelines:

The Consent Calendar allows the Commission to take action with no discussion on projects to which no one objects. The Commission may place items on the Consent Calendar if no one present wishes to testify on an item. Anyone present who wishes to speak on an item should submit a speaker card prior to the start of the meeting, or raise his or her hand and advise the Chairperson, and the item will be pulled from the Consent Calendar for public comment and discussion prior to action.

Procedures for Correspondence to the Commissioners:

To distribute correspondence to Commissioners prior to the meeting date, submit comments by 12:00 p.m. (noon), eight (8) days before the meeting day (Tuesday) (email preferred):

- If correspondence is more than twenty (20) pages, requires printing of color pages, or includes pages larger than 8.5x11 inches, please provide 15 copies.
- Any correspondence received after this deadline will be given to Commissioners on the meeting date just prior to the meeting.
- Staff will not deliver to Commissioners any additional written (or emailed) materials received after 12:00 p.m. (noon) on the day of the meeting.
- Members of the public may submit written comments themselves early in the meeting. To distribute correspondence at the meeting, please provide 15 copies and submit to the Planning Commission Secretary just before, or at the beginning, of the meeting.
- Written comments should be directed to the Planning Commission Secretary, at the Land Use Planning Division (Attn: Planning Commission Secretary).

Communications are Public Records: Communications to Berkeley boards, commissions, or committees are public records and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission, or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service, or in person, to the Secretary of the relevant board, commission, or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the Secretary to the relevant board, commission, or committee for further information.

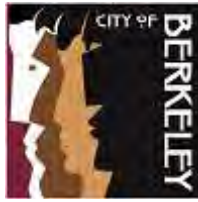
Written material may be viewed in advance of the meeting at the Department of Planning & Development, Permit Service Center, **1947 Center Street, 3rd Floor**, during regular business hours, or at the Reference Desk, of the Main Branch Library, 2090 Kittredge St., or the West Berkeley Branch Library, 1125 University Ave., during regular library hours.

Note: If you object to a project or to any City action or procedure relating to a project application, any lawsuit which you may later file may be limited to those issues raised by you or someone else in the public hearing on the project, or in written communication delivered at or prior to the public hearing. The time limit within which to commence any lawsuit or legal challenge related to these applications is governed by Section 1094.6, of the Code of Civil Procedure, unless a shorter limitations period is specified by any other provision. Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred.

Meeting Access: This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services

Specialist, at 981-6418 (V) or 981-6347 (TDD), at least three (3) business days before the meeting date.

Please refrain from wearing scented products to public meetings.



Planning Commission

1 **DRAFT MINUTES OF THE REGULAR PLANNING COMMISSION MEETING**
2 **February 1, 2023**

3 The meeting was called to order at 7:01 p.m.

4 **Location:** Virtual meeting via Zoom

5 **1. ROLL CALL:**

6 **Commissioners Present:** Blaine Merker, Jeff Vincent, Chip Moore, Christina Oatfield, Elisa
7 Mikiten, Emily Marthinsen, Alfred Twu, Savlan Hauser, and Barnali Ghosh.

8
9 **Commissioner Absent:** None.

10
11 **Staff Present:** Secretary Grace Wu, Clerk Zoe Covello, Steven Buckley, Ashley James,
12 Alene Pearson, Claudia Garcia, Eleanor Hollander, and Liz Redman Cleveland.

13 **2. LAND ACKNOWLEDGEMENT.** Guest speaker Toby McLeod.

14 **3. ORDER OF AGENDA:** No changes.

15 **4. PUBLIC COMMENT PERIOD:** 2.

16 **5. PLANNING STAFF REPORT:**

- 17 • Highlights Information Items (linked below):
- 18 ○ Results from the Southside Student Housing Survey
 - 19 ○ January 17th Council Meeting on the Citywide Affordable Housing Requirements –
20 back to Council for a first reading on Tuesday, February 14th
 - 21 ○ January 18th Council Meeting where Council approved and adopted the City's 6th
22 Cycle Housing Element.
 - 23 ▪ Council found it in substantial compliance with state law, prior to the
24 January 31st statutory deadline.
 - 25 ▪ The City received comments from HCD on January 30th. City staff and
26 consultants are taking a close look at the comments and have scheduled a
27 follow-up meeting with HCD to seek clarification on additional
28 improvements that might be necessary to receive state certification, beyond
29 Council's findings of substantial compliance with state law.
 - 30 ▪ Staff are currently prioritizing this work.
 - 31 • The Department of Public Parks, Recreation, and Waterfront will be holding the Berkeley
32 Marina Area Specific Plan Work Session at a Special Council meeting on March 7 at
33 6pm.

- 34 • There were several late communications; Commissioners were sent a packet this
35 afternoon.

36 **Information Items:**

- 37 • *December 18, 2022* – Southside Student Housing Survey Results.
38 [https://berkeleyca.gov/sites/default/files/documents/FinalSummary_Southside%20Area%](https://berkeleyca.gov/sites/default/files/documents/FinalSummary_Southside%20Area%20UC%20Student%20Housing%20Survey%20-%2019%20December%202022.pdf)
39 [20UC%20Student%20Housing%20Survey%20-%2019%20December%202022.pdf](https://berkeleyca.gov/sites/default/files/documents/FinalSummary_Southside%20Area%20UC%20Student%20Housing%20Survey%20-%2019%20December%202022.pdf)
40 • *January 17, 2023* – City Council Meeting – Citywide Affordable Housing Requirements.
41 [https://berkeleyca.gov/sites/default/files/documents/2023-01-](https://berkeleyca.gov/sites/default/files/documents/2023-01-17%20Item%2021%20Citywide%20Affordable%20Housing%20Requirements.pdf)
42 [17%20Item%2021%20Citywide%20Affordable%20Housing%20Requirements.pdf](https://berkeleyca.gov/sites/default/files/documents/2023-01-17%20Item%2021%20Citywide%20Affordable%20Housing%20Requirements.pdf)
43 • *January 18, 2023* – City Council Meeting – 2023-2031 Housing Element Update.
44 <https://berkeleyca.gov/city-council-special-meeting-eagenda-january-18-2023>

45 **Communications:**

- 46 • General.

47 **Late Communications:** *See agenda for links.*

- 48 • Supplemental Packet One
49 • Supplemental Packet Two

50 **6. CHAIR REPORT:**

- 51 • Chair Mikiten shared that the Planning Commission received a letter from Mayor
52 Arreguín regarding Item 12: Demolition Ordinance, and that the item would be heard
53 and public comment would be taken, but that the Planning Commission was not going
54 to take action at this meeting.

55
56 **7. COMMITTEE REPORT:** Reports by Commission committees or liaisons. In addition to the
57 items below, additional matters may be reported at the meeting.

- 58
59 • Bird Safe Subcommittee - staff has sent a draft outline to the Bird Safe Subcommittee
60 and plan to bring it back to the Planning Commission as a public hearing in March.

61 **8. APPROVAL OF MINUTES:**

62 Motion/Second/Carried (Twu/Moore) to approve the Planning Commission Meeting Minutes
63 from December 7, 2022.

64
65 Ayes: Merker, Vincent, Moore, Oatfield, Mikiten, Marthinsen, Twu, Hauser, Ghosh Noes:
66 None. Abstain: None. Absent: None. (9-0-0-0)

67
68 **9. OTHER PLANNING RELATED EVENTS:**

- 69 • None.

70 **AGENDA ITEMS**

71 **10. Action: 2023 Nominations and Elections for Chair and Vice Chair**

72 The Commission opted to hold nominations only, and postpone elections until the March
73 meeting.

74 Motions/seconds for Chair:

- 75 1. (Oatfield/Moore) to nominate Chair Mikiten,
- 76 2. (Ghosh/Vincent) to nominate Vice Chair Hauser, and
- 77 3. (Hauser/Merker) to nominate Commissioner Vincent.

78
79 Motions/seconds for Vice Chair:

- 80 1. (Mikiten/Vincent) to nominate Vice Chair Hauser, and
- 81 2. (Moore/Mikiten) to nominate Commissioner Oatfield.

82
83 Ayes: Merker, Vincent, Moore, Oatfield, Mikiten, Marthinsen, Twu, Hauser, Ghosh Noes:
84 None. Abstain: None. Absent: None. (9-0-0-0)

85

86 **Public Comments: 0**

87 **11. Discussion: Preparations for In-Person Meetings**

88 The Commission discussed exploring a start time of 6:00 pm or 6:30 pm once Planning
89 Commission is back in-person starting on March 1, 2023. Secretary Wu agreed to follow up with
90 the South Berkeley Senior Center to find out availability.

91 **Public Comments: 1**

92 **12. Public Hearing: Demolition Ordinance**

93 Chair Mikiten read a letter from Mayor Arreguin asking for the Planning Commission to delay
94 their recommendation on the Demolition Ordinance until the 4x4 Committee has another
95 opportunity to review the draft ordinance and make additional recommendations. Public
96 comment was taken, the public hearing was closed, and the commissioners held a brief
97 discussion. No action was taken.

98 Motion/Second/Carried (Mikiten/Vincent) to close the public hearing at 8:15 pm.

99
100 Ayes: Merker, Vincent, Moore, Oatfield, Mikiten, Marthinsen, Twu, Hauser, Ghosh Noes:
101 None. Abstain: None. Absent: None. (9-0-0-0)

102

103 **Public Comments: 7**

104 **13. Discussion: Pacific Steel Casting Zoning and General Plan Amendments and EIR**
105 **Scoping Session**

106 Senior Planner Ashley James presented and asked for feedback on (1) proposed text for a new
107 zoning district M-RD, Manufacturing, Research and Development for an 11-acre site in West
108 Berkeley, and (2) the scope and content of the EIR, and Economic Development Manager
109 Eleanor Hollander presented background information on West Berkeley's economy. Zoning map
110 amendment applicant Mark Rhodes also presented about his proposed project on the Pacific
111 Steel Casting site and outlined his preferred process for the rezoning of the site.

112 Following these presentations, staff received direction from public comments and
113 commissioners, and plans to return to the Planning Commission in March to report back with an
114 update to the draft zoning standards and the EIR timeline.

115 **Public Comments: 3**

116 Motion/Second/Carried (Oatfield/Moore) to adjourn the meeting at 9:54 p.m.

117
118 Ayes: Merker, Vincent, Moore, Oatfield, Mikiten, Marthinsen, Twu, Hauser, Ghosh Noes:
119 None. Abstain: None. Absent: None. (9-0-0-0)

120
121 **Members in the public in attendance: 38**

122 **Public Speakers: 13**

123 **Length of the meeting: 2 hr 53 minutes**



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: March 1, 2023
TO: Members of the Planning Commission
FROM: Justin Horner, Associate Planner
SUBJECT: Bird Safe Berkeley Requirements Referral Response

SUMMARY

At their meeting on March 2, 2022, the Planning Commission, in response to a referral (Attachment 1) from the Community Environmental Advisory Commission (CEAC) and the City Council, provided direction for amendments to the Berkeley Municipal Code (BMC) establishing bird safety requirements for new construction and significant renovations. At their meeting of October 19, 2022, the Planning Commission established a Subcommittee to develop BMC amendments for consideration by the full Planning Commission. This report presents those amendments and alternatives.

Pursuant to Planning Commission and Subcommittee policy recommendations, with consideration of recent precedent standards from other jurisdictions, the proposed bird-safe requirements apply exclusively to projects based on the primary land use¹ when such projects require a building permit and meet the following criteria:

1. New non-residential buildings, or residential and mixed-use buildings with a total gross floor area² of 10,000 square feet (sf) or greater;
2. Materials on the facades of residential and mixed-use buildings of *less than* 10,000 sf where transparent materials consist of more than 50 percent of that façade's³ total square footage;

¹ BMC 23.502.020(U)(10) Defined Terms (Use, Primary). *The main purpose for which a site is developed and occupied, including the activities that are conducted on the site a majority of the hours during which activities occur.* [https://berkeley.municipal.codes/BMC/23.502.020\(U\)\(10\)](https://berkeley.municipal.codes/BMC/23.502.020(U)(10))

² BMC 23.106.030 Floor Area, Gross. <https://berkeley.municipal.codes/BMC/23.106.030>

³ BMC 23.502.020(F)(1) Defined Terms (Façade). *Those portions of a building, including exterior walls, porches, chimneys, balconies, parapets and roof portions, which are visible from a public right-of-way or an adjacent building.* [https://berkeley.municipal.codes/BMC/23.502.020\(F\)\(1\)](https://berkeley.municipal.codes/BMC/23.502.020(F)(1))

3. New or replacement windows on existing buildings;
4. A minimum transparent material size of 12 sf for bird-safe requirements, or 24 sf for transparent buildings or building features.

Four pathways are provided for compliance with the Ordinance:

1. Threat factor rating. An element or material would comply with the Ordinance if it is listed in the ABC's online *Glass Collisions Products and Solutions Database*⁴ with a Threat Factor Rating of 30 or less at the time of Building Permit issuance.
2. Surface treatment. An element or material would comply with the Ordinance if it includes patterns that are etched, fritted, stenciled, silk-screened or otherwise permanently incorporated into the transparent material.
3. Screens and shutters. An element or material would comply with the Ordinance if it were covered with an exterior screen, shutter or shading device, or insect or solar screen that was permanently installed on the building exterior.
4. Biologist certification. A proposed project could also comply with the Ordinance if a qualified biologist were to indicate that the proposed construction methods and materials would reduce the risk of bird collision to an extent comparable to the other compliance paths.

Staff seeks Planning Commission's recommendation to the City Council on the proposed BMC amendments and alternative considerations.

BACKGROUND

At their meeting on March 2, 2022, the Planning Commission received a report and presentation on the referral from the CEAC, the studied effects of built environments on bird populations, a brief discussion of how Berkeley's particular geography relates to bird populations, and a review of existing regulatory efforts in Bay Area cities regarding bird safety (*Attachment 2*). Staff then presented a draft proposal and received feedback from the Design Review Committee at their September 15, 2022 meeting. At their meeting of October 19, 2022, the Planning Commission received an additional report with a more specific set of policy questions, held a discussion, and established a Subcommittee (*Attachment 3*).

The Planning Commission provided guidance to the Subcommittee that included the following:

- Bird-safe regulations should be based on the **area of a transparent material**, not the size or type of the underlying project; and
- **Non-residential projects and larger mixed-use and residential projects** should be immediately covered by the regulations. Smaller residential projects should be phased in to the regulations.

⁴ <https://abcbirds.org/glass-collisions/products-database/>

The Design Review Committee met on September 15, 2022 and provided the following feedback:

- Bird-safe regulations should apply to **new construction, particularly non-residential and larger residential projects**, due to availability of bird-safe materials. Smaller residential projects should be phased in at a later period.
- Consider the current **costs, availability, and terms of warranty** of bird-safe materials in the regulations.

The Planning Commission Subcommittee met on November 4, 2022 and provided the following feedback:

- Bird-safe regulations should immediately apply to all non-residential projects and residential and mixed-use projects of **10 units or more**;
- For residential and mixed-use project of 9 or fewer units, **bird-safe regulations should apply only** to a façade where transparent materials make up more than 50 percent of the total area of the façade; and
- Small windows of a **square meter or less** should be exempt.

PROPOSED ZONING ORDINANCE

Based upon guidance provided by the CEAC, the Planning Commission, the Bird-Safe Ordinance Subcommittee, the Design Review Committee, established precedents, and members of the public, staff has drafted a new Ordinance for BMC Section 23.304.150 Bird Safe Buildings (*Attachment 4*). The new Section 23.304.150 would include the following:

Purpose Statement

A. Purpose. The purpose of this section is to reduce bird mortality from windows and other transparent buildings or building features known to increase the risk of bird collisions.

Consistent with the Style Guide adopted as part of the Baseline Zoning Ordinance, the proposed Ordinance includes a Purpose statement. The proposed language is taken largely from the Purpose statement included in the CEAC's suggested Bird Safety Ordinance.

Applicability

The Ordinance would apply to projects that require a building permit, and vary based on primary land use and, for residential or mixed-use, the size of the overall building, as set forth in Table 1. Note, the requirements would *not* apply to existing windows or other transparent materials that are *not* proposed to be replaced. The Ordinance also includes an exemption for affordable housing projects. Consistent with the threshold

adopted for the Transportation Demand Management program, any residential projects, including the residential portions of mixed-use projects, in which the majority of the units are subject to recorded affordability restrictions, would be exempt.

Table 1. Bird-Safe Building Requirements

Project Type	Applicable Building Location(s)	
Non-Residential		
New Construction or Addition	Continuous transparent materials of 12 sf or larger located between the ground and 100 feet above grade.	
New or Replacement Transparent Materials on Existing Building	Continuous transparent materials of 12 sf or larger located between the ground and 100 feet above grade where 50% or more of the façade's total square footage consists of transparent material.	
New or Replacement Transparent Structures or Features	Continuous transparent material of 24 sf or larger, including but not limited to, freestanding glass walls, noise or wind barriers, skyways, balconies, greenhouses, and rooftop appurtenances.	
Residential or Mixed Use		
New Construction or Addition	Building with 10,000 sf or more gross floor area	Continuous transparent materials of 12 sf or larger located between the ground and 100 feet above grade.
	Building with less than 10,000 sf gross floor area	Continuous transparent materials of 12 sf or larger located between the ground and 100 feet above grade where 50% or more of the façade's total square footage consists of transparent material.
New or Replacement Transparent Materials on Existing Building	Building with 10,000 sf or more gross floor area	Continuous transparent materials of 12 sf or larger located between the ground and 100 feet above grade where 50% or more of the façade's total square footage consists of transparent material.
	Building with less than 10,000 sf gross floor area	Not applicable
New or Replacement Transparent Structures or Features	Continuous transparent material of 24 sf or larger, including but not limited to, freestanding glass walls, noise or wind barriers, skyways, balconies, greenhouses, and rooftop appurtenances.	

Project Type: The Ordinance would distinguish three project types:

1. New construction that includes transparent material;
2. New or replacement transparent materials on existing buildings; and
3. New or replacement buildings or building features that are largely transparent by design (e.g., greenhouses, glass walls, noise barriers).

Primary Land Use and Building Size: The Ordinance would distinguish between non-residential and residential/mixed-use uses, and would also distinguish between larger and smaller residential/mixed-use developments, consistent with the Planning Commission and Subcommittee direction.

While the Subcommittee recommended 10 units as the cut-off between large and small residential/mixed-use projects, staff recommends utilizing 10,000 sf of gross floor area as the threshold to account for units of varying sizes. An average housing unit is often estimated to have a floor area of approximately 900 to 1,000 gross square feet, so

10,000 sf is a comparable estimate. Square footage, as opposed to unit count, will also be the method by which proposed affordable housing requirements are calculated. For consistency, staff recommends utilizing square footage, not unit count, as the threshold metric.

- **Alternative Option – Building Size.** An alternative approach could be to eliminate the distinction between primary land uses and classify by building size. This would ease administration in the case of possible future land use changes between residential and non-residential uses. In addition, as noted below, the difficulty in locating and obtaining bird safe materials locally may justify requiring them only for larger projects, which may presumably have the capacity to source harder-to-obtain materials. Mountain View, as one example, utilizes a single 10,000 sf threshold for most development types.

Applicable Building Locations: Table 1 summarizes the types and locations of transparent materials that would be covered by the Ordinance for each project type. Notable aspects of these requirements include:

Continuous Transparent Material Panes 12 sf or Larger. Consistent with Planning Commission and Subcommittee direction to base bird-safe requirements on the size of transparent panes, bird-safe requirements would apply to windows or other continuous transparent materials of 12 sf or larger on eligible new construction and replacement projects. For purposes of the Ordinance, “continuous” means a transparent material that is not interrupted by a line, spacer, mullion, grille or other visible materials of at least 1/2” in width. Both Emeryville and the City of Alameda have adopted a 12 sf minimum threshold, and the Subcommittee recommended a 1 square meter threshold, which is roughly 11 sf.

- **Alternative Option – Size of Transparent Material:** The Subcommittee recommended the bird-safe requirements apply to windows and continuous transparent materials of 6 sf or larger, and that transparent materials would be considered “continuous” unless the transparent material was interrupted by a visible material of at least 4” in width.

100 Feet Above Grade. Consistent with the American Bird Conservancy’s (ABC) Model Ordinance and Planning Commission direction, bird-safe requirements would apply to eligible windows located between the ground and 100 feet above grade. For comparison, the City of New York’s requirements apply to the first 75 feet above grade, and Mountain View, Oakland, San Francisco and Evanston, Illinois (adopted June 2022) apply their standards only to the first 60 feet above grade.

Small Mixed-Use/Residential Standards and Window Replacement. Consistent with Planning Commission direction to avoid overly burdening smaller residential projects, the applicability of bird-safe requirements to smaller residential and mixed-use developments, as well as to projects that replace existing windows, would not be as broad as with larger projects. For these smaller projects, and for window replacements,

bird-safe requirements would only apply to transparent materials of 12 sf or larger that are also located on facades that include transparent materials on 50 percent or more of their surface area. In these cases—where the majority of the façade consists of transparent material and therefore constitutes a heightened risk of bird collision—bird-safe requirements would apply even if a project were smaller in scale.

This 50 percent threshold is consistent with the City of Alameda’s bird-safe regulations, as well as the CEAC’s recommended regulations.

- **Alternative Option – Size and Percentage for Smaller Projects:** The Subcommittee recommended that these bird-safe requirements for smaller projects be expanded to apply to materials of 6 sf or larger that are located on facades that include transparent materials as more than 30 percent of their surface area.

Specific Building Elements and Transparent Structures – No Grade Limit. For any continuous transparent material of 24 sf or larger, bird-safe requirements would apply, regardless of the element or structure’s distance from adjacent grade. Examples of these elements include freestanding glass walls, noise or wind barriers, skyways, balconies, greenhouses, and rooftop appurtenances.

These larger transparent elements are a particular collision risk, and a number of them, including noise and wind barriers, were specifically identified by the Planning Commission and Subcommittee as elements to be included. A number of jurisdictions, including New York City, City of Alameda, and Evanston, IL take similar steps to regulate these building elements. The American Bird Conservancy’s Model Ordinance includes them as well.

- **Alternative Option – Size for Transparent Buildings and Building Features:** The Subcommittee recommended that bird-safe requirements apply to any freestanding transparent walls, noise or wind barriers, skyways, balconies, greenhouses, and rooftop appurtenances of any size located anywhere in a project, as well as any corner location where transparent material meets transparent material, creating a total continuous transparent area of 6 sf or larger.

Bird Safe Requirements

The Ordinance includes the following four methods of compliance for windows, transparent materials or any elements or structures covered by the Ordinance.

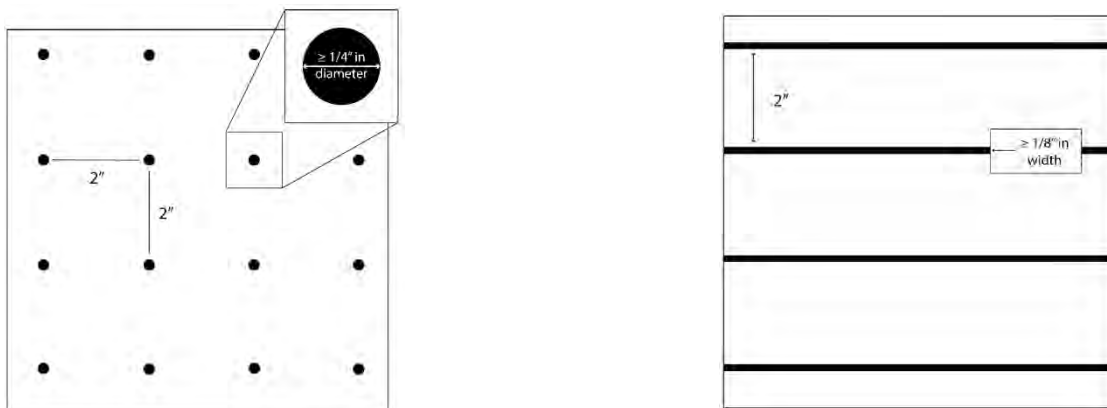
1. American Bird Conservancy Threat Factor Rating: An element or material would comply with the ordinance if it is listed in the ABC’s online *Glass Collisions Products and Solutions Database*⁵ with a Threat Factor Rating of 30 or less at the time of Building Permit issuance.

⁵ <https://abcbirds.org/glass-collisions/products-database/>

According to the ABC, a Threat Factor of 30 or less is the organization's upper threshold for categorizing materials as bird friendly. The ABC included this threshold in their Model Ordinance, and Evanston includes it as their upper threshold in their Bird Safe Guidelines.

2. Patterned Glazing Treatments: An element or material would comply with the Ordinance if it includes patterns that are etched, fritted, stenciled, silk-screened or otherwise permanently incorporated into the transparent material. For a pattern that utilizes dots or other isolated solid shapes, each dot or shape must be at least a 1/4" in diameter and be no more than 2' apart in any direction. If the pattern utilizes lines, it must be at least 1/8" in width and spaced no more than 2" apart. Figure 1 illustrates this compliance path.

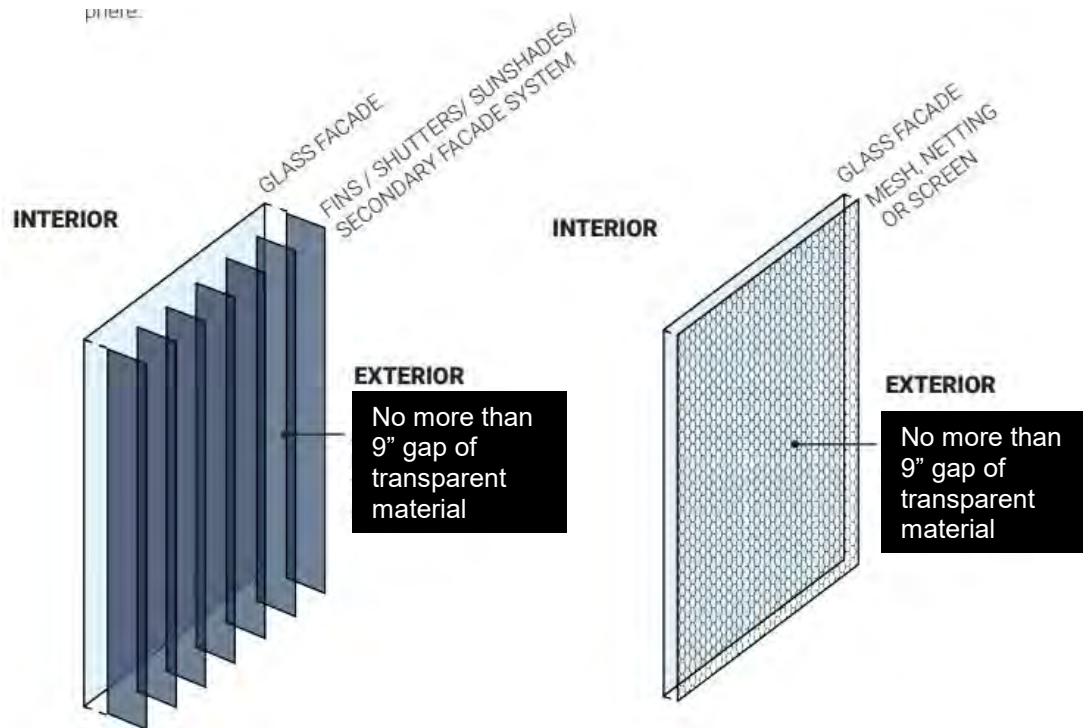
Figure 1. Patterned Glazing Treatments



The ABC Database also includes a number of products that would comply with this requirement.

3. External Screens, Shutters or Shading Devices: An element or material would comply with the Ordinance if it were covered with an exterior screen, shutter or shading device, or insect or solar screen that was permanently installed on the building exterior. Such a treatment would not create any gaps larger than 9" in any dimension (that is, a 9" diameter object could not pass through the treatment and strike the window or material). Figure 2 provides an illustration of this compliance path.

Figure 2. External Screens, Shutters or Shades



4. Biologist Certification: A project could also comply with the Ordinance if a qualified biologist were to indicate that the proposed construction methods and materials would reduce the risk of bird collision to an extent comparable to the other compliance paths. Staff recognize that there may be an alternative method or technology that is not yet listed in the three compliance paths above but could be equally effective. An ABC Threat Factor Rating of 30 represents a 50 percent reduction in collision risk compared to untreated materials so that threshold could be used by a biologist to determine that a project's methods and materials would meet that standard. Regulations in Mountain View, Emeryville and Alameda include compliance paths that permit biologist certification of bird safe measures.

- **Alternative Option – Remove Biologist Certification Path:** The Subcommittee recommended against including the option of Biologist Certification, believing it could allow a project sponsor to avoid bird safe requirements with unverifiable analysis and unenforceable recommendations. Note, additional standards could be established to require peer review and modification as part of a permit process to address this concern.

Phasing Regulations

Both the Planning Commission and the Design Review Committee recommended including a phase-in date in the Ordinance for the regulation of smaller (less than 10,000 sf) residential and mixed-use projects. The recommended phase-in dates ranged from 7 to 10 years from adoption of the Ordinance.

A phase-in date is not included in the proposed Ordinance because staff does not recommend pre-committing future City Councils, and future residents, to new regulations that far into the future, when circumstances may be entirely different and a variety of new factors could impact policy direction. There is also already a process to amend the Zoning Ordinance if future Planning Commissions and City Councils wish to change the requirements of the Ordinance.

Compliance and Enforcement

The draft Ordinance specifies that Bird Safe requirements would only apply to projects that require a building permit. Replacing broken windows or individual window panes are considered repairs and do not require a building permit. For example, an existing window that needs to be repaired because it was broken by an errant baseball would not be subject to Bird Safe requirements.

Project plans would be required to include a stamp from the project applicant attesting that the project would comply with Bird Safe requirements, and the window schedule for proposed projects would need to indicate the transparent materials subject to Bird Safe requirements and the compliance path being selected for each applicable material.

Public Information Document

Upon adoption of the proposed Ordinance, staff will prepare a public information document to explain the Bird Safe requirements and its purpose in common language, and provide guidance to project applicants as to where to obtain compliant materials.

While ABC's Database includes more than 150 rated materials, it does not provide information about where to purchase items or whether they are available in Berkeley or the Greater Bay Area. The public information document would include purchasing options for specific products included in the ABC Database.

Product Availability

Staff does register concern about the current availability of bird safe materials, particularly for smaller-scale residential projects. Both the Design Review Committee and the Planning Commission expressed similar concerns, and the proposed Ordinance strives to address the concern by distinguishing between projects that are larger or smaller than 10,000 square feet.

With the assistance of the City of Berkeley's Office of Economic Development, staff contacted 13 Berkeley-based building material retailers to inquire into the availability of bird safe products. None of the 13 businesses carried bird safe products, and at least three businesses had not heard of bird safe options for window products. This mirrors research done by a member of the Design Review Committee who contacted three local

residential window suppliers (Ashby Lumber, Associated Building Supply and Glass Concepts) and a territory manager for BMD, a distributor of Marvin windows. None of the local suppliers have much experience with bird-safe materials because of the added cost, and most of them had experiences with clients choosing not to use bird-safe materials because of cost.

That said, a number of projects that include bird safe glass have recently been approved in Berkeley. Berkeley Commons consists of two three-story research and development buildings located along the historic Berkeley shoreline. The project developer initially considered sourcing bird safe glass from Interpane, a German company, but switched to Viracon, a US company, due to supply chain issues. A representative approached by staff noted that obtaining glass with ceramic fritting was difficult and added more than \$8 per square foot to their window order. Another non-residential project also needed to switch from their original manufacturer to Viracon once the choice was made to use bird safe glass.

Staff will continue working to identify local retailers of bird safe products, but availability of bird safe materials may be a challenge in the near-term. Staff has requested assistance from Golden Gate Audubon to identify local sources of bird safe materials.

NEXT STEPS AND RECOMMENDATION

Staff recommends that the Planning Commission conduct a Public Hearing, receive public comment, discuss draft Ordinance amendments, provide direction, and forward a recommendation to City Council, with any changes identified through a vote of the Planning Commission.

ATTACHMENTS

1. November 12 2019, Bird Safe Referral. City Council.
2. March 2, 2022, Bird Safe Berkeley Requirements Referral. Planning Commission Report.
3. October 19, 2022, Planning Commission Report.
4. Proposed Bird Safe Buildings Ordinance



Community Environmental Advisory Commission

ACTION CALENDAR
November 12, 2019

To: Honorable Mayor and Members of the City Council
From: Community Environmental Advisory Commission (CEAC)
Submitted by: Ben Gould, Chairperson, CEAC
Subject: Bird Safe Berkeley Requirements

RECOMMENDATION:

Refer to the Planning Commission and the City Attorney the attached ordinance amending Berkeley Municipal Code Title 23C, adding a new Chapter 23C.27 establishing bird safety requirements for new construction and significant renovations and a new Chapter 23C.28 establishing a dark skies ordinance, for review and approval.

FISCAL IMPACTS OF RECOMMENDATION:

Potential for small additional ongoing costs associated with slightly increased requirements for staff review of new construction proposals to ensure compliance.

CURRENT SITUATION AND ITS EFFECTS

Bird safety is aligned with the City of Berkeley's Strategic Plan, advancing our goal to be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

According to the Audubon Society, bird collisions with windows is a leading cause of human-induced bird deaths (second only to outdoor house cats). Berkeley is located in the midst of the Pacific Flyway, a major migratory route for birds including hummingbirds, robins, blackbirds, numerous shorebirds, raptors, and more. When these birds encounter unfamiliar urban areas along the migratory path, they are at particular risk for collisions and death.

At present, there are no bird safety measures required for new construction or renovations. As a result, it is possible that new and existing buildings may incorporate features which pose preventable hazards to local and migratory birds.

Unfettered outdoor lighting also poses known risks to birds, as well as generating unwanted light pollution. The City of Berkeley's Downtown Area Plan¹, as well as

¹ Lighting, City of Berkeley Downtown Area Plan. Accessed August 2019:
https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_DAP/Chapter%2012%20Lighting.pdf

Bird Safe Berkeley Requirements

ACTION CALENDAR
November 12, 2019

Southside zoning regulations (BMC 23E.52.070.F.7), provide guidance or limitations on outdoor lighting, but no general policy exists citywide to prevent excessive light pollution from outdoor lighting.

At its September 12, 2019 meeting, the Community Environmental Advisory Commission voted to recommend the adoption of Bird Safe Berkeley requirements. Moved by Goldhaber, second by Hetzel, carried 6-0-0-2 (Ayes: Simmons, Ticconi, Hetzel, De Leon, Goldhaber, Gould. Noes: None. Abstained: None. Absent: Varnhagen, De Leon).

BACKGROUND

Berkeley is in the midst of the Pacific Flyway, a major migratory route for birds. The city is also adjacent to San Francisco Bay, one of North America's most ecologically important estuaries and a site of Western Hemispheric importance for shorebirds and waterfowl. Alameda County has recorded 407 species of resident and migratory bird species, including least terns, Ridgway's rails, and a variety of other uniquely local and/or threatened species.

New buildings can be designed to reduce bird deaths from collisions without compromising cost or aesthetics – in fact, many of the compliance methods in the attached ordinance can be incorporated into design or construction with virtually no additional cost or difficulty for architects or engineers, and in some cases facilitate achieving other environmental goals (like improved building energy efficiency).

Several other Bay Area cities have adopted bird safety ordinances, including San Francisco, Oakland, Alameda, and Richmond. The attached proposed ordinance is developed from the City of Alameda's adopted ordinance.

In addition, birds are drawn to light, whether from the moon or artificial lights, and lights affixed to buildings or structures pose a risk that birds may crash into them. A special danger comes from very bright lights, as well as lights aimed upward.

ENVIRONMENTAL SUSTAINABILITY

Implementing the Bird Safe Berkeley ordinance will ensure new construction does not pose undue hazards to local and migratory birds, thereby reducing human impact and benefiting the environment.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The proposed amendment to BMC Title 23C is categorically exempt from CEQA under CEQA Guidelines Sections 15061(b)(3), 15307, and 15308.

RATIONALE FOR RECOMMENDATION

Bird Safe Berkeley Requirements

ACTION CALENDAR
November 12, 2019

Berkeley's strategic plan calls for being a global leader in protecting the environment. The bird-safe glazing design standards contained within have been found to be effective at reducing or eliminating bird deaths, and can be implemented with little or no additional costs. The window size threshold for requiring implementation is the most stringent in the nation, and as a result adopting this policy strongly aligns with Berkeley's strategic plan. The dark skies ordinance is straightforward and simple, yet effective at reducing excessive and unwanted light pollution while conserving energy.

ALTERNATIVE ACTIONS CONSIDERED

CEAC considered taking no action on bird safety standards, but concluded that the environmental benefits substantially outweighed the burden imposed. CEAC also considered a less stringent window size requirement (of twenty-four (24) square feet instead of eight (8) square feet), but determined that window size was not a significant factor in either bird safety or cost or ease of compliance.

CEAC considered taking no action on dark skies, but concluded that the environmental benefits outweighed the burden imposed. CEAC also considered a more stringent dark skies ordinance, but concluded it would be unnecessarily difficult to enforce with minimal additional benefits.

CITY MANAGER

The City Manager takes no position on the content and recommendations of the Commission's Report.

CONTACT PERSON

Ben Gould, Chairperson, CEAC, 510-725-9176

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE TITLE 23C TO ESTABLISH GENERAL REQUIREMENTS FOR BIRD SAFETY IN BUILDINGS AND EXTERIOR LIGHTING FIXTURES; ADDING CHAPTER 23C.27 AND CHAPTER 23C.28

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That the Berkeley Municipal Code Chapter 23C.27 is added to read as follows:

**Chapter 23C.27
BIRD SAFETY**

Sections:

- 23C.27.010 Purpose**
- 23C.27.020 Applicability**
- 23C.27.030 Exemptions**
- 23C.27.040 Standards**

23C.27.010 Purpose

The purposes of the Bird Safety related regulations contained in this Chapter is to reduce bird mortality from windows or other specific building features known to increase the risk of bird collisions.

23C.27.020 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 with two (2) or more stories, and one or more façades in which glass constitutes fifty percent (50%) or more of the area of the individual façade. The bird-safe glazing requirement must be met on any window with dimensions of at least two (2) feet by four (4) feet, or an area of eight (8) square feet or more, located on such façade.

B. Window Replacement. On buildings with two (2) or more stories, and one or more facades in which glass constitutes fifty percent (50%) or more of the area of the individual façade, replacement of any window or other rigid transparent material with dimensions of at least two (2) feet by four (4) feet, or an area of eight (8) square feet or more. The requirement does not apply on existing windows that are not proposed to be replaced.

C. New or Replaced Glass Structures. Any structure that has transparent glass walls twenty-four (24) square feet or more in size, including but not limited to freestanding glass walls, wind barriers, skywalks, balconies, greenhouses, and rooftop appurtenances.

23C.27.030 Exemptions

The bird-safe building standards shall not apply to the following:

A. The replacement of existing glass on historic structures. However, the standards shall apply to new exterior additions to historic structures, and new construction on the site of historic structures, that are differentiated from the historic structures, if determined by the Planning Director to be consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

B. Glazing on the ground floor of commercial storefronts directly fronting a public street, alley, or sidewalk.

23C.27.040 Standards

A. Bird-Safe Glazing Requirement. At least ninety percent (90%) of the glazing on any building façade or freestanding glass structure 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 to be determined by the Planning Director as part of an application for a building permit:

1. External screens installed permanently over glass windows such that the windows do not appear reflective.
2. Light-colored blinds or curtains.
3. Opaque glass, translucent glass, or opaque or translucent window film.
4. Paned glass with mullions on the exterior of the glass.
5. Glass covered with patterns (e.g., dots, stripes, images, abstract patterns, lettering). Such patterns may be etched, fritted, stenciled, silk-screened, applied to the glass on films or decals, or another method of permanently incorporating the patterns into or onto the glass. Elements of the patterns must be at least one-eighth (1/8) inch tall and separated no more than two (2) inches vertically, at least one-quarter (1/4) inch wide and separated by no more than four (4) inches horizontally, or both (the "two-by-four rule").
6. Ultraviolet (UV)-pattern reflective glass, laminated glass with a patterned UV-reflective coating, or UV-absorbing and UV-reflecting film that is permanently applied to the glass. Where patterns are used, they shall meet the two-by-four rule.
7. Other glazing treatments providing an equivalent level of bird safety and approved by the Planning Director as part of building plan review.

B. Alternative Glazing Compliance. As an alternative to meeting subsection 4(a), Bird-Safe Glazing Requirement, an applicant may propose building and fenestration designs and/or operational measures 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 application for design review or other discretionary permit required for the project. The bird collision reduction plan shall be prepared by a qualified biologist. Design and operational solutions may include but need not be limited to the following techniques, singularly or in combination:

1. Layering and recessing glazed surfaces.
2. Angled or faceted glazing that minimizes reflectivity and transparency.
3. Louvres.
4. Overhangs and awnings.
5. Glass block.
6. Bird netting with openings one (1) square centimeter or smaller.
7. Decorative grilles that allow birds to perceive the grilles, together with the glass behind them, as solid.
8. Glass embedded with photovoltaic cells.
9. Placement of landscaping in such a way as to minimize bird collisions.

Section 2. That the Berkeley Municipal Code Chapter 23C.28 is added to read as follows:

**Chapter 23C.28
DARK SKIES**

Sections:

- 23C.28.010 Purpose**
- 23C.28.020 Applicability**
- 23C.28.030 Exemptions**
- 23C.28.040 Standards**

23C.28.010 Purpose

The purpose of the Dark Skies ordinance is to ensure exterior light fixtures are pointed downwards and turn off whenever possible, minimizing light pollution, sky glow, and hazardous risks to birds, while ensuring adequate illumination for safety, security, and the enjoyment of outdoor areas, including travel on public roads.

23C.28.020 Applicability

The dark skies ordinance applies to any project that requires a building permit or electrical permit for:

A. New exterior lighting, including lighting fixtures attached to buildings, structures, poles, or self-supporting structures; or

B. Additions or replacements of existing exterior light fixtures, including upgrades and replacements of damaged or destroyed fixtures.

23C.28.030 Exemptions

The following types of lighting are exempt from the requirements of this subsection:

A. Emergency lighting. Temporary emergency lighting used by law enforcement or emergency services personnel, a public utility, or in conjunction with any other emergency service.

B. Construction lighting. Temporary lighting used for construction or repair of roadways, utilities, and other public infrastructure.

C. Lighting Required by Building Code or Other Regulations. Lighting for exit signs, stairs, ramps, points of ingress/egress to buildings, and all other illumination required for building codes, OSHA standards, and other permitting requirements imposed by state, or federal agencies.

D. Signs. Signs and sign lighting.

E. Athletic Field Lights. Athletic field lights used within a school campus or public or private park.

F. Neon, Argon, and Krypton. All fixtures illuminated solely by neon, argon, or krypton.

G. Water Features. Lighting used in or for purposes of lighting swimming pools, hot tubs, decorative fountains, and other water features.

H. Flag Lighting. Lighting used to illuminate a properly displayed United States flag and/or State of California flag.

I. Holiday Displays. Seasonal and holiday lighting.

J. Temporary Lighting. Temporary lighting allowed under a permit.

K. Historic Fixtures. Historic lighting fixtures or fixtures that exhibit a historical period appearance, as determined by the Planning Director.

L. Architecture, Historic Structures, and Public Art. Lighting on historic structures, special architectural features, public art, monuments, and other similar objects of

interest shall be exempt if the lamps emit less than one thousand six hundred (1600) lumens per fixture and together draw less than one hundred (100) watts. However, the standards shall apply to new exterior additions to historic structures, and new construction on the site of historic structures, that are differentiated from the historic structures, if determined by the Planning Director to be consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

M. Low-Voltage Landscape Lighting. Low-voltage landscape lighting such as that used to illuminate fountains, shrubbery, trees, and walkways, provided that it uses no more than sixty (60) watts and no more than seven hundred and fifty (750) lumens per fixture.

23C.28.040 Standards

To minimize the harmful effects of light pollution, new construction and major renovation projects shall meet the following standards:

- A. Outdoor lighting shall be no brighter than 3000 Kelvin.
- B. Outdoor lighting shall be shielded and directed, with a full cut off fixture of no more than 2.5% of lamp lumens at or above 90°, and no more than 10% of lamp lumens at or above 80°.
- C. Wherever feasible, require motion sensors or timers to prevent unnecessary energy use and light pollution.
- D. Light shows and beams of light are not permitted during spring or fall migration seasons, roughly February 15 to May 31, and August 15 to November 30, respectively.



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: March 2, 2022
TO: Members of the Planning Commission
FROM: Zoe Covello, Assistant Planner
SUBJECT: Bird Safe Berkeley Requirements Referral

SUMMARY

On November 12, 2019, the Community Environmental Advisory Commission presented an action item to the City Council, recommending that the City of Berkeley amend the Berkeley Municipal Code (BMC) to include a new Chapter establishing bird safety requirements for new construction and significant renovations, as well as a new Chapter establishing a Dark Skies Ordinance. City Council unanimously adopted the Bird Safe Berkeley Requirements Referral (see Attachment 1) requesting the City Manager develop a response. This report provides background on bird safety requirements and recommends next steps for Planning Commission's consideration.

BACKGROUND

Birds do not have the same depth perception or contrast sensitivity as humans; as such they cannot see glass. And at night, which is when most birds migrate, guided by magnetic sensors in their retinas that pick up on red and warm-white light, light distracts and disorients them, often leading to collisions.¹ It's estimated that between one hundred million and one billion birds die every year in collisions with manmade structures.² According to the Audubon Society, bird collisions with windows are a leading cause of human-induced bird deaths in the United States, second only to outdoor house cats.

Why is it relevant to Berkeley?

Berkeley is located within the Pacific Flyway, a major migratory route for birds. When birds encounter unfamiliar urban areas along the migratory path, they are at particular risk for collisions and death. The City is also adjacent to the San Francisco Bay, one of North America's most ecologically important estuaries and an international biodiversity hotspot because of the large number of birds, animals, and plants found there, many of

¹ <https://www.audubon.org/news/building-collisions-are-greater-danger-some-birds-others>

² http://nas-national-prod.s3.amazonaws.com/documents/loss_et_al_bird-building_collisions_condor_2014.pdf

which are found nowhere else. The region is also recognized as a site of “Hemispheric Importance” for shorebirds by the Western Hemisphere Shorebird Reserve Network.³ Alameda County has recorded 407 species of resident and migratory bird species, including Least Terns, Ridgway’s Rails, and a variety of other uniquely local and/or threatened species.

As pointed out in the CEAC report, new buildings can be designed to reduce bird deaths from collisions without compromising cost or aesthetics. Many compliance methods can be incorporated into design or construction with no additional cost or effort for architects or engineers, and in some cases, bird safe measures help achieve other desirable environmental goals -- like improved building energy efficiency.

Existing bird safety regulations in Berkeley

There are currently no bird safety measures required for newly constructed or renovated buildings in Berkeley. There are some zoning regulations providing guidance or limitations on outdoor lighting (see BMC [23.304.100\(E\)](#) [Site Features in Residential Districts], BMC [23.304.130\(C\)\(2\)](#) [Non-residential Districts Abutting a Residential District], as well as the City of Berkeley’s Downtown Area Plan and the Southside zoning regulations (BMC [23.204.100\(B\)\(5\)\(c\)\(vii\)](#))), but there is no citywide policy preventing excessive light pollution.

What do bird safe requirements look like?

In an effort to mitigate these deaths, municipalities around the country have started adopting bird safety requirements – which primarily take the form of requiring bird safe glass and reducing light pollution at night.

Glass and façade treatments are the most common methods of prevention, and include solutions such as fritted and frosted glass, angled glass, ultra-violet glass, and film and art treatment of glass. The “2 by 4 rule” - patterns of 1/4-inch dots or stripes 4 inches apart horizontally or 1/8-inch dots or stripes 2 inches apart vertically - and other patterns that meet that rule, were found to greatly reduce bird-glass collisions.

Other primary methods of prevention include, but are not limited to:

- Installing exterior screens or netting
- Reducing large areas of transparent or reflective glass
- Keeping curtains or shades drawn
- Turning non-emergency lighting off at night (particularly during migration in February-May and August-November)⁴
- Putting lights on timers or photo-sensitive switches
- Cleaning buildings in the daytime
- Locating greenery away from clear glass
- Site design measures like fine-grained ventilation grates and gardens without mirrors

³ <https://ca.audubon.org/conservation/conservation/seas-shores/san-francisco-bay>

⁴ <https://www.bloomberg.com/news/features/2022-01-04/how-to-design-buildings-to-prevent-bird-crashes>

How are municipalities implementing requirements?

There are a variety of ways these regulations can be implemented. The referral suggests creating a new chapter in the Zoning Ordinance. Here are some other options, as well as the pros and cons of each option, as identified by the City of Emeryville:

- CEQA Review – The city could develop and apply general standards to mitigate potential impacts on migratory wildlife, which is part of the standard CEQA checklist for projects requiring environmental review.
- Project Conditions of Approval – Standard Conditions of Approval for projects could be amended to include new enforceable standards for bird safe measures for applicable projects.
- Design Guidelines – The Design Guidelines could be modified to include a section that would include standards that apply to applicable projects during Design Review. This would provide some flexibility in enforcement, as guidelines are not regulations and projects that bypass discretion are not subject to review or compliance.
- Planning Regulations – The Berkeley Municipal code could be amended to include new standards (as proposed by CEAC), providing consistent application to all projects.

Building Regulations – The Berkeley Municipal Code could be amended to include new standards under a local building code amendment, which would apply to all projects requiring a building permit.

Existing ordinances in Bay Area cities

San Francisco adopted the first bird-safe building ordinance in the United States in 2011, requiring glass façade treatment be applied to the lower 60 feet of buildings within a 300-foot buffer of two-acre open spaces. Oakland followed San Francisco, adopting measures applicable to buildings adjacent to one-acre open spaces. Similarly, Richmond adopted an ordinance in 2016 requiring the treatment of the lower 60 feet of glass adjacent to one-acre open spaces and panes with areas of 24 feet or more.

Alameda has also developed a bird safety ordinance, adopted in 2018, which applies to new construction and window replacements, as well as lighting. Both Emeryville's 2020 building standards ordinance and CEAC's recommended amendments to the zoning ordinances are modeled after Alameda's. A table detailing bird safe requirements in Alameda, Emeryville, Oakland, and CEAC's recommended ordinance is attached (see Attachment 2).

DISCUSSION

The referral includes two draft ordinances for Planning Commission's consideration. Staff proposes the following approach to this referral:

1. *Identify Implementation Opportunities and Challenges:* As stated above, draft language in the referral is similar to ordinances adopted in Emeryville and

Alameda a few years ago. Staff will reach out to planning staff in Emeryville and Alameda regarding lessons learned from ordinance implementation and suggest any necessary modifications.

2. *Confirm Consistency with California Building Code:* Since California Building Code is amended on a three-year cycle, staff will check with the Berkeley Building Official to ensure there are no conflicts in proposed zoning language and local or California Building Code.
3. *Confirm Consistency with Design Guidelines:* The Design Review Committee (DRC) has reviewed this referral and expressed an interest in seeing it move forward. Staff will work with the Secretary of the DRC to ensure the Committee's comments are addressed and that the Committee is informed of the referrals' progress as it makes its way through the public review.
4. *Redraft Zoning Language According to the BZO Style Guide:* The Baseline Zoning Ordinance or BZO – now referred to as the Zoning Ordinance – included a style guide. Since this referral predated adoption of the BZO, the draft ordinances will need to be modified to follow the style guide.
5. Finally, staff requests that the Commissioners consider the following questions:
 - Does the Commission suggest modifications to staff's proposed approach?
 - Should the standards apply citywide, or near large open spaces with vegetation and/or water?
 - Should the standards apply to the lower 60 feet of buildings or to the entire building?
 - Does the Commission have any other suggestions to inform the drafting of bird safe building standards in Berkeley?

After receiving this information, staff will draft a new ordinance or ordinances that follow the BZO style guide. This draft ordinance will then be shared with Planning Commission for consideration and development of a recommendation to City Council.

ATTACHMENTS

1. CEAC Report / City Council Referral
2. Local Ordinance Comparison Table



Community Environmental Advisory Commission

ACTION CALENDAR
November 12, 2019

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RATIONALE FOR RECOMMENDATION

Bird Safe Berkeley Requirements

ACTION CALENDAR
November 12, 2019

Berkeley's strategic plan calls for being a global leader in protecting the environment. The bird-safe glazing design standards contained within have been found to be effective at reducing or eliminating bird deaths, and can be implemented with little or no additional costs. The window size threshold for requiring implementation is the most stringent in the nation, and as a result adopting this policy strongly aligns with Berkeley's strategic plan. The dark skies ordinance is straightforward and simple, yet effective at reducing excessive and unwanted light pollution while conserving energy.

ALTERNATIVE ACTIONS CONSIDERED

CEAC considered taking no action on bird safety standards, but concluded that the environmental benefits substantially outweighed the burden imposed. CEAC also considered a less stringent window size requirement (of twenty-four (24) square feet instead of eight (8) square feet), but determined that window size was not a significant factor in either bird safety or cost or ease of compliance.

CEAC considered taking no action on dark skies, but concluded that the environmental benefits outweighed the burden imposed. CEAC also considered a more stringent dark skies ordinance, but concluded it would be unnecessarily difficult to enforce with minimal additional benefits.

CITY MANAGER

The City Manager takes no position on the content and recommendations of the Commission's Report.

CONTACT PERSON

Ben Gould, Chairperson, CEAC, 510-725-9176

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE TITLE 23C TO ESTABLISH GENERAL REQUIREMENTS FOR BIRD SAFETY IN BUILDINGS AND EXTERIOR LIGHTING FIXTURES; ADDING CHAPTER 23C.27 AND CHAPTER 23C.28

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That the Berkeley Municipal Code Chapter 23C.27 is added to read as follows:

**Chapter 23C.27
BIRD SAFETY**

Sections:

- 23C.27.010 Purpose**
- 23C.27.020 Applicability**
- 23C.27.030 Exemptions**
- 23C.27.040 Standards**

23C.27.010 Purpose

The purposes of the Bird Safety related regulations contained in this Chapter is to reduce bird mortality from windows or other specific building features known to increase the risk of bird collisions.

23C.27.020 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 with two (2) or more stories, and one or more façades in which glass constitutes fifty percent (50%) or more of the area of the individual façade. The bird-safe glazing requirement must be met on any window with dimensions of at least two (2) feet by four (4) feet, or an area of eight (8) square feet or more, located on such façade.

B. Window Replacement. On buildings with two (2) or more stories, and one or more facades in which glass constitutes fifty percent (50%) or more of the area of the individual façade, replacement of any window or other rigid transparent material with dimensions of at least two (2) feet by four (4) feet, or an area of eight (8) square feet or more. The requirement does not apply on existing windows that are not proposed to be replaced.

C. New or Replaced Glass Structures. Any structure that has transparent glass walls twenty-four (24) square feet or more in size, including but not limited to freestanding glass walls, wind barriers, skywalks, balconies, greenhouses, and rooftop appurtenances.

23C.27.030 Exemptions

The bird-safe building standards shall not apply to the following:

A. The replacement of existing glass on historic structures. However, the standards shall apply to new exterior additions to historic structures, and new construction on the site of historic structures, that are differentiated from the historic structures, if determined by the Planning Director to be consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

B. Glazing on the ground floor of commercial storefronts directly fronting a public street, alley, or sidewalk.

23C.27.040 Standards

A. Bird-Safe Glazing Requirement. At least ninety percent (90%) of the glazing on any building façade or freestanding glass structure 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 to be determined by the Planning Director as part of an application for a building permit:

1. External screens installed permanently over glass windows such that the windows do not appear reflective.
2. Light-colored blinds or curtains.
3. Opaque glass, translucent glass, or opaque or translucent window film.
4. Paned glass with mullions on the exterior of the glass.
5. Glass covered with patterns (e.g., dots, stripes, images, abstract patterns, lettering). Such patterns may be etched, fritted, stenciled, silk-screened, applied to the glass on films or decals, or another method of permanently incorporating the patterns into or onto the glass. Elements of the patterns must be at least one-eighth (1/8) inch tall and separated no more than two (2) inches vertically, at least one-quarter (1/4) inch wide and separated by no more than four (4) inches horizontally, or both (the "two-by-four rule").
6. Ultraviolet (UV)-pattern reflective glass, laminated glass with a patterned UV-reflective coating, or UV-absorbing and UV-reflecting film that is permanently applied to the glass. Where patterns are used, they shall meet the two-by-four rule.
7. Other glazing treatments providing an equivalent level of bird safety and approved by the Planning Director as part of building plan review.

B. Alternative Glazing Compliance. As an alternative to meeting subsection 4(a), Bird-Safe Glazing Requirement, an applicant may propose building and fenestration designs and/or operational measures 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 application for design review or other discretionary permit required for the project. The bird collision reduction plan shall be prepared by a qualified biologist. Design and operational solutions may include but need not be limited to the following techniques, singularly or in combination:

1. Layering and recessing glazed surfaces.
2. Angled or faceted glazing that minimizes reflectivity and transparency.
3. Louvres.
4. Overhangs and awnings.
5. Glass block.
6. Bird netting with openings one (1) square centimeter or smaller.
7. Decorative grilles that allow birds to perceive the grilles, together with the glass behind them, as solid.
8. Glass embedded with photovoltaic cells.
9. Placement of landscaping in such a way as to minimize bird collisions.

Section 2. That the Berkeley Municipal Code Chapter 23C.28 is added to read as follows:

**Chapter 23C.28
DARK SKIES**

Sections:

- 23C.28.010 Purpose**
- 23C.28.020 Applicability**
- 23C.28.030 Exemptions**
- 23C.28.040 Standards**

23C.28.010 Purpose

The purpose of the Dark Skies ordinance is to ensure exterior light fixtures are pointed downwards and turn off whenever possible, minimizing light pollution, sky glow, and hazardous risks to birds, while ensuring adequate illumination for safety, security, and the enjoyment of outdoor areas, including travel on public roads.

23C.28.020 Applicability

The dark skies ordinance applies to any project that requires a building permit or electrical permit for:

A. New exterior lighting, including lighting fixtures attached to buildings, structures, poles, or self-supporting structures; or

B. Additions or replacements of existing exterior light fixtures, including upgrades and replacements of damaged or destroyed fixtures.

23C.28.030 Exemptions

The following types of lighting are exempt from the requirements of this subsection:

A. Emergency lighting. Temporary emergency lighting used by law enforcement or emergency services personnel, a public utility, or in conjunction with any other emergency service.

B. Construction lighting. Temporary lighting used for construction or repair of roadways, utilities, and other public infrastructure.

C. Lighting Required by Building Code or Other Regulations. Lighting for exit signs, stairs, ramps, points of ingress/egress to buildings, and all other illumination required for building codes, OSHA standards, and other permitting requirements imposed by state, or federal agencies.

D. Signs. Signs and sign lighting.

E. Athletic Field Lights. Athletic field lights used within a school campus or public or private park.

F. Neon, Argon, and Krypton. All fixtures illuminated solely by neon, argon, or krypton.

G. Water Features. Lighting used in or for purposes of lighting swimming pools, hot tubs, decorative fountains, and other water features.

H. Flag Lighting. Lighting used to illuminate a properly displayed United States flag and/or State of California flag.

I. Holiday Displays. Seasonal and holiday lighting.

J. Temporary Lighting. Temporary lighting allowed under a permit.

K. Historic Fixtures. Historic lighting fixtures or fixtures that exhibit a historical period appearance, as determined by the Planning Director.

L. Architecture, Historic Structures, and Public Art. Lighting on historic structures, special architectural features, public art, monuments, and other similar objects of

interest shall be exempt if the lamps emit less than one thousand six hundred (1600) lumens per fixture and together draw less than one hundred (100) watts. However, the standards shall apply to new exterior additions to historic structures, and new construction on the site of historic structures, that are differentiated from the historic structures, if determined by the Planning Director to be consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

M. Low-Voltage Landscape Lighting. Low-voltage landscape lighting such as that used to illuminate fountains, shrubbery, trees, and walkways, provided that it uses no more than sixty (60) watts and no more than seven hundred and fifty (750) lumens per fixture.

23C.28.040 Standards

To minimize the harmful effects of light pollution, new construction and major renovation projects shall meet the following standards:

- A. Outdoor lighting shall be no brighter than 3000 Kelvin.
- B. Outdoor lighting shall be shielded and directed, with a full cut off fixture of no more than 2.5% of lamp lumens at or above 90°, and no more than 10% of lamp lumens at or above 80°.
- C. Wherever feasible, require motion sensors or timers to prevent unnecessary energy use and light pollution.
- D. Light shows and beams of light are not permitted during spring or fall migration seasons, roughly February 15 to May 31, and August 15 to November 30, respectively.

Bird Safety Berkeley Referral - Local Ordinance Comparison Table

Sections					
Jurisdiction	Form of Standard	Purpose	Applicability	Exemptions	Standards
Berkeley	Proposed Planning Regulations (amendment to municipal code) – as recommended by CEAC)	Purpose of Bird Safety Ordinance: To reduce bird mortality from windows or other specific building features known to increase the risk of bird collisions.	Standards that apply to projects that require a building permit: a) New Construction. New buildings with two (2) or more stories, and one or more façades in which glass constitutes fifty percent (50%) or more of the area of the individual façade. The bird-safe glazing requirement must be met on any window with dimensions of at least two (2) feet by four (4) feet, or an area of eight (8) square feet or more, located on such façade. b) Window Replacement. On buildings with two (2) or more stories, and one or more facades in which glass constitutes fifty percent (50%) or more of the area of the individual façade, replacement of any window or other rigid transparent material with dimensions of at least two (2) feet by four (4) feet, or an area of eight (8) square feet or more. The requirement does not apply on existing windows that are not proposed to be replaced. c) New or Replaced Glass Structures. New or Replaced Glass Structures. Any structure that has transparent glass walls twenty-four (24) square feet or more in size, including but not limited to freestanding glass walls, wind barriers, skywalks, balconies, greenhouses, and rooftop appurtenances.	Standards shall not apply to the following: A. The replacement of existing glass on historic structures. However, the standards shall apply to new exterior additions to historic structures, and new construction on the site of historic structures, that are differentiated from the historic structures, if determined by the Planning Director to be consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties. B. Glazing on the ground floor of commercial storefronts directly fronting a public street, alley, or sidewalk.	A. Bird-Safe Glazing Requirement. At least ninety percent (90%) of the glazing on any building façade or freestanding glass structure 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 to be determined by the Planning Director as part of an application for a building permit: <ol style="list-style-type: none"> External screens installed permanently over glass windows such that the windows do not appear reflective. Light-colored blinds or curtains. Opaque glass, translucent glass, or opaque or translucent window film. Paned glass with mullions on the exterior of the glass. Glass covered with patterns (e.g., dots, stripes, images, abstract patterns, lettering). Such patterns may be etched, fritted, stenciled, silk- screened, applied to the glass on films or decals, or another method of permanently incorporating the patterns into or onto the glass. Elements of the patterns must be at least one eighth (1/8) inch tall and separated no more than two (2) inches vertically, at least one-quarter (1/4) inch wide and separated by no more than four (4) inches horizontally, or both (the “two-by-four rule”). Ultraviolet (UV)-pattern reflective glass, laminated glass with a patterned UV reflective coating, or UV-absorbing and UV-reflecting film that is permanently applied to the glass. Where patterns are used, they shall meet the two-by-four rule. Other glazing treatments providing an equivalent level of bird safety and approved by the Planning Director as part of building plan review. B. Alternative Glazing Compliance. As an alternative to meeting the above Bird Safe Glazing Requirement, an applicant may propose building and fenestration designs and/or operational measures 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 application for design review or other discretionary permit required for the project. The bird collision reduction plan shall be prepared by a qualified biologist. Design and operational solutions may include but need not be limited to the following techniques, singularly or in combination: <ol style="list-style-type: none"> Layering and recessing glazed surfaces. Angled or faceted glazing that minimizes reflectivity and transparency. Louvres. Overhangs and awnings. Glass block. Bird netting with openings 1 square centimeter or smaller Decorative grilles that allow birds to perceive the grilles, together with the glass behind them, as solid. Glass embedded with photovoltaic cells

Bird Safety Berkeley Referral - Local Ordinance Comparison Table

					<p>9. Placement of landscaping in such a way as to minimize bird collisions.</p>
		<p>Purpose of Dark Skies Ordinance: To ensure exterior light fixtures are pointed downwards and turned off whenever possible, minimizing light pollution, sky glow, and hazardous risks to birds while ensuring adequate illumination for safety, security, and enjoyment of outdoor areas, including travel on public roads.</p>	<p>The dark skies ordinance applies to any project that requires a building permit or electrical permit for:</p> <ul style="list-style-type: none"> a) New exterior lighting, including lighting fixtures attached to buildings, structures, poles, or self-supporting structures; or b) Additions or replacements of existing exterior light fixtures, including upgrades and replacements of damaged or destroyed fixtures. 	<p>The following types of lighting are exempt from the requirements of this subsection:</p> <ul style="list-style-type: none"> A. Emergency Lighting. Temporary emergency lighting used by law enforcement or emergency services personnel, a public utility, or in conjunction with any other emergency service. B. Construction Lighting. Temporary lighting used for construction or repair of roadways, utilities, and other public infrastructure. C. Lighting Required by Building Code or Other Regulations. Lighting for exit signs, stairs, ramps, points of ingress/egress to buildings, and all other illumination required for building codes, OSHA standards, and other permitting requirements imposed by state, or federal agencies. D. Signs. Signs and sign lighting. E. Athletic Field Lights. Athletic field lights used within a school campus or public or private park. F. Neon, Argon, and Krypton. All fixtures illuminated solely by neon, argon, or krypton. G. Water Features. Lighting used in or for purposes of lighting swimming pools, hot tubs, decorative fountains, and other water features. H. Flag Lighting. Lighting used to illuminate a properly displayed United States flag and/or State of California flag. I. Holiday Displays. Seasonal and holiday lighting. J. Temporary Lighting. Temporary lighting allowed under a permit. K. Historic Fixtures. Historic lighting fixtures or fixtures that exhibit a historical period appearance, as determined by the Planning Director. L. Architecture, Historic Structures, and Public Art. Lighting on historic structures, interest shall be exempt if the lamps emit less than one thousand six hundred (1600) lumens per fixture and together draw less than one hundred (100) watts. However, the standards shall apply to new exterior additions to historic structures, and new construction on the site of historic structures, that are differentiated from the historic structures, if determined by the Planning Director to be consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties. M. Low-Voltage Landscape Lighting. Low-voltage landscape lighting such as that used to illuminate fountains, shrubbery, trees, and walkways, provided that it uses no 	<p>To minimize the harmful effects of light pollution, new construction and major renovation projects shall meet the following standards:</p> <ul style="list-style-type: none"> A. Outdoor lighting shall be no brighter than 3000 Kelvin. B. Outdoor lighting shall be shielded and directed, with a full cut off fixture of no more than 2.5% of lamp lumens at or above 90°, and no more than 10% of lamp lumens at or above 80°. C. Wherever feasible, require motion sensors or timers to prevent unnecessary energy use and light pollution. D. Light shows and beams of light are not permitted during spring or fall migration seasons, roughly February 15 to May 31, and August 15 to November 30, respectively.

Bird Safety Berkeley Referral - Local Ordinance Comparison Table

				<p>more than sixty (60) watts and no more than seven hundred and fifty (750) lumens per fixture.</p>	
<p>Mountain View</p>	<p>Amendment to the Green Building Code</p> <p>Also developed Bird Safe Design Standards and Guidelines and Nesting Bird Protection Standards and Guidelines for the North Bayshore Precise Plan</p>	<p>Purpose of the Bird Safe Design Standards: To minimize adverse effects on native and migratory birds, new construction and major renovations will incorporate design measures to promote bird safety. These measures will help reduce the likelihood of building collision fatalities through façade treatments and light pollution reduction. These measures apply to both residential and non-residential land uses except where specified.</p>	<p>Per the Green Building Code: Bird-safe glass shall be installed on the exterior of the structure where:</p> <p>a) The structure is equal to or greater than ten thousand (10,000) square feet; or b) The applicable precise plan requires it.</p> <p>Additionally, the mandatory new construction green building requirements requires bird-safe glass installed in:</p> <p>a) Mixed-use buildings greater than or equal to 10,000 sf b) Hotels greater than or equal to 10,000 sf c) Commercial buildings greater or equal to 10,000 sf</p> <p>Design standards are applicable in the North Bayshore neighborhood.</p> <p>Nesting bird protection standards are applicable to all new construction, building additions, building alterations, and tree/shrub removal.</p>	<p>Per the Design Standards as outlined in the North Bayshore Precise Plan:</p> <p>Exceptions to the design requirements. The City may waive or reduce any of this chapter’s bird safe design requirements based on analysis by a qualified biologist indicating that proposed construction will not pose a collision hazard to birds.</p>	<p>Per the Design Standards as outlined in the North Bayshore Precise Plan:</p> <p>Bird Safe Design Standards</p> <p>A. All new construction, building additions, and/or building alterations shall adhere to the Bird Safe Design standards in the North Bayshore Precise Plan.</p> <p>B. Façade treatments. No more than 10% of the surface area of a building’s total exterior façade shall have untreated glazing between the ground and 60’ above ground. (Ex. Opaque glass, covering clear glass surface with patterns, using paned glass with fenestration patterns, using external screens over non-reflective glass)</p> <p>C. Occupancy Sensors. For non-residential development, occupancy sensors or other switch control devices shall be installed on non-emergency lights. The lights should be programmed to shut off during non-work hours and between 10pm and sunrise.</p> <p>D. Funneling of flight paths. New construction shall avoid funneling of flight paths along buildings or trees toward a building façade.</p> <p>E. Skyways/Walkways/or Glass Walls. New construction and building additions shall avoid building glass skyways, walkways, freestanding glass walls, transparent building corners. New construction and building additions should reduce glass at the tops of buildings, especially when incorporating a green roof into the design.</p> <p>Guidelines</p> <p>A. Bird collision best management practices to promote bird safety.</p> <ol style="list-style-type: none"> 1. Collision monitoring 2. window covering 3. Work station lighting and window coverings 4. Daytime maintenance <p>B. Handling of food waste (to avoid attracting wildlife)</p> <p>Nesting Bird Protection Standards</p> <p>A. Pre-activity surveys. If construction, building additions, or removal of trees and shrubs occurs between February 1 and August 31, pre-activity surveys for nesting birds shall be conducted by a qualified biologist.</p> <p>B. Nest buffers. If an active nest is found sufficiently close to work areas to be disturbed by these activities, the biologist in coordination with the California Department of Fish and Wildlife, shall determine the extent of a disturbance-free buffer zone to be established around the nest. Typical buffer zones are 300 feet for raptors and 100 feet for non-raptors.</p> <p>Guidelines</p> <p>Avoidance of nesting season. If construction, building additions, or removal of trees and shrubs is scheduled to take place outside the nesting season, impacts to protected nesting birds would be avoided.</p>

Bird Safety Berkeley Referral - Local Ordinance Comparison Table

<p>Emeryville <i>(looked to Alameda as basis for their ordinance)</i></p>	<p>Building standards (ordinance amendment to zoning code) Article 8. Bird Safe Buildings.</p>	<p>The purpose of the Bird Safe Buildings Ordinance: To reduce the risk of bird-to-building collisions.</p>	<p>Standards are applied to projects that 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.</p> <p>The bird-safe glazing requirement must be met on any window or contiguous glazed segment (area with mullions and/or frames) with an area of 12 sf or more.</p>	<p>N/A</p>	<p>A. Bird-Safe Glazing Requirement. At least 90% of the glazing on any building facade 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 using one or more of the following treatments:</p> <ol style="list-style-type: none"> External screens installed permanently over glass such that the glass does not appear reflective. Translucent or opaque glass or film applied to glass. 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 other method of permanently incorporating the patterns into or onto the glass. Elements of the pattern must meet the 2x4 rule. Weatherproof grates, netting or cords mounted outside of the glass, near but not touching the glass, meeting the 2x4 rule. Grooved glass block. Other glazing treatments providing an equivalent level of bird safety and approved by the Planning Director. <p>B. Alternative Compliance. 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 their project application. Shall be prepared by a qualified biologist. Design solution may include, but need not be limited to:</p> <ol style="list-style-type: none"> Layering and recessing of glazed surfaces Angled or faceted glazing that minimizes reflectivity and transparency Louvre or grates not meeting the 2x4 rule Overhangs or awnings Clear (non-grooved) glass block Grilles that allow birds to perceive them Glass embedded with photovoltaic cells Placement of landscaping in such a way as to minimize bird collisions, including but not limited to placing outdoor plants directly against windows <p>C. Interior Lighting</p> <ol style="list-style-type: none"> Nonresidential spaces shall have automatic light shutoff systems using timers, photo sensors, motion sensors, or a combo thereof 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 <p>D. Site Design</p> <ol style="list-style-type: none"> No mirrors shall be placed in or near planted areas or water features or in locations where they would reflect trees, plants, or water Vent grates shall meet the 2x4 rule
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Bird Safety Berkeley Referral - Local Ordinance Comparison Table

<p>Alameda</p>	<p>Building standards (ordinance amendment to zoning code)</p>	<p>Bird Safe Glass</p> <p>To reduce bird mortality from windows or other specific building features known to increase the risk of bird collisions.</p>	<p>Apply to the following types of projects when applying for a building permit:</p> <p>a) New Construction. New buildings that are greater than 35' in height and have one or more façade in which glass constitutes 50% or more of the area of an individual façade. The req must be met on any window or unbroken glazed segment with an area of 12 sf or more</p> <p>b) Window Replacement. On buildings that meet the 35'/50%, the replacement of any window or other rigid transparent material with 12 sf or more. Does not apply to existing windows that are not proposed to be replaced.</p> <p>c) New or Replaced Glass Structures. Any structure with transparent glass walls or any unbroken glazed segment 24sf or more in size, including but not limited to freestanding glass walls, wind barriers, skywalks balconies, greenhouses and rooftop appurtenances.</p>	<p>Shall not apply to the following:</p> <p>A. Historic Structures. The replacement of existing glass on historic structures. However, the standards shall apply to new exterior additions to historic structures and new construction on the site of historic structures that are differentiated from the historic structures</p> <p>B. Glazing on Commercial Storefronts. The ground floor of commercial storefronts directly fronting a public street, alley, or sidewalk.</p>	<p>A. Bird Safe Glazing Requirements. At least 90% of the glazing on any building façade or freestanding glass structure shall include features that enable birds to perceive the glass as a solid object. The requirement can be satisfied using one or more of the following treatments to be determined by the Planning Director as part of an application for a building permit:</p> <ol style="list-style-type: none"> 1. External screens installed permanently over glass windows such that the windows do not appear reflective. 2. Light colored blinds or curtains. 3. Opaque glass, translucent glass, or opaque or translucent window film. 4. Paned glass with mullions on the exterior of the glass. 5. Glass covered with patterns (e.g., dots, stripes, images, abstract patterns, lettering). Such patterns may be etched, fritted, stenciled, silk-screened, applied to the glass on films or decals, or another method of permanently incorporating the patterns into or onto the glass. Elements of the patterns must meet the 2x4 rule. 6. UV-pattern reflective glass, laminated glass with a patterned UV-coating, or UV-absorbing and UV-reflecting film that is permanently applied to the glass. Where patterns used, must meet 2x4 rule 7. Other glazing treatments providing an equivalent level of bird safety and approved by the Planning Director as part of the building plan review. <p>B. Alternative Compliance. Alternative to meeting 4a, must present a bird collision reduction plan prepared by a biologist. Design/solutions may include the following:</p> <ol style="list-style-type: none"> 1. Layering and recessing glazed surfaces 2. Angled or faceted glazing that minimizes reflectivity/transparency 3. Louvres 4. Overhangs/awnings 5. Glass block 6. Bird netting 7. Decorative grilles 8. Glass embedded with photovoltaic cells 9. Placement of landscaping in such a way as to minimize bird collisions
		<p>Dark Skies Ordinance</p> <p>A. Allow adequate illumination for safety, security, utility, and the enjoyment of outdoor areas.</p> <p>B. Prevent excessive light and glare on public roadways</p>	<p>Unless otherwise expressly stated, the standards of this subsection (c), Outdoor Lighting, apply to any project that requires a building permit or electrical permit for:</p> <p>a) New exterior lighting, including lighting fixtures attached to buildings, structures, poles, or self-supporting structures; or</p> <p>b) Additions or replacements of existing exterior light fixtures, including upgrades and replacements of damaged or destroyed fixtures</p>	<p>Exemptions. The following types of lighting are exempt from the requirements of this subsection (c), Outdoor Lighting:</p> <p>A. Emergency Lighting. Temporary emergency lighting used by law enforcement or emergency services personnel, a public utility, or in conjunction with any other emergency service.</p> <p>B. Construction Lighting. Temporary lighting used for the construction or repair of roadways, utilities, and other public infrastructure.</p> <p>C. Airport Lighting. Lighting for public and private airports and any other uses that are regulated by the Federal Aviation Administration.</p>	<p>Standards. Exterior lighting shall be consistent with these standards:</p> <p>A. Shielding. All exterior lighting fixtures shall be fully shielded, and lighting shall be directed downward, with the following exceptions:</p> <ol style="list-style-type: none"> 1. Low-voltage Landscape Lighting. Low-voltage landscape lighting such as that used to illuminate fountains, shrubbery, trees, and walkways, may be unshielded provided that it uses no more than sixty (60) watts, or twelve (12) watt equivalent LED, and emits no more than seven hundred fifty (750) lumens per fixture. 2. Architecture and Public Art. Uplighting may be used to highlight special architectural features, historic structures, public art and monuments, and similar objects of interest.

Bird Safety Berkeley Referral - Local Ordinance Comparison Table

		<p>and private properties.</p> <p>C. Minimize artificial outdoor light that can have a detrimental effect on human health, the environment, astronomical research, amateur astronomy, and enjoyment of the night sky.</p> <p>D. Minimize light that can be attractive disorienting, and hazardous to migrating and local birds.</p>		<p>D. Lighting Required by Building Codes or Other Regulations. Lighting for communication towers, exit signs, stairs/ramps, points of ingress/egress to buildings, and all other illumination required by building codes, OSHA standards, and other permitting requirements imposed by state or federal agencies.</p> <p>E. Signs. Signs and sign lighting. (See Section 30-6.6, Illumination of Signs, for sign lighting standards.)</p> <p>F. Athletic Field Lights. Athletic field lights used within a school campus or public or private park, provided, however, that athletic field lights shall be selected and installed so as to minimize glare and light trespass outside the playing area. Athletic field lights shall be turned off no later than 11:00 p.m. or where an event requires extended time, no later than thirty (30) minutes after conclusion of the event.</p> <p>G. Neon, Argon, and Krypton. All fixtures illuminated solely by neon, argon, or krypton.</p> <p>H. Fossil Fuel Light. All outdoor light fixtures producing light directly through the combustion of fossil fuels, such as kerosene lanterns, and gas lamps.</p> <p>I. Water Features. Lighting used in or for the purpose of lighting swimming pools, hot tubs, decorative fountains, and other water features.</p> <p>J. Flag Lighting. Lighting used to illuminate a properly displayed United States flag and/or State of California flag.</p> <p>K. Holiday Displays. Seasonal and holiday lighting</p> <p>L. Temporary Lighting. Temporary lighting allowed under a Special Events Permit or Film/Photography Permit</p>	<p>Lamps used for such uplighting shall use less than one hundred (100) watts, or twenty (20) watt equivalent LED, and emit less than one thousand six hundred (1,600) lumens per fixture.</p> <p>3. Historic Lighting Fixtures. Lighting fixtures that are historic or that exhibit a historical period appearance, as determined by the Planning Director, need not be fully shielded.</p> <p>B. Light Trespass. Exterior lighting shall be directed downward and away from property lines to prevent excessive glare beyond the subject property. No light, combination of lights, or activity shall cast light exceeding one (1) foot-candle onto an adjacent or nearby property, with the illumination level measured at the property line between the lot on which the light is located and the adjacent lot, at the point nearest to the light source.</p> <p>C. Correlated Color Temperature for Light-Emitting Diode (LED) Lighting. All LED light sources shall have a maintained correlated color temperature of less than or within the range of two thousand seven hundred to three thousand (2,700—3,000) Kelvins.</p> <p>D. Security Lighting. Adequate lighting shall be provided to protect persons and property and to allow for the proper functioning of surveillance equipment.</p> <ol style="list-style-type: none"> 1. Security lighting shall consist of shielded fixtures that are directed downward. Floodlights shall not be permitted. 2. Vertical features, such as walls of a building, may be illuminated for security to a height of eight (8) feet above grade. 3. Security lights intended to illuminate a perimeter, such as a fence line, are allowed only if regulated by a programmable motion detection system and compliant with the light trespass limitations in subsection (b). 4. Security lighting fixtures that utilize one hundred (100) or more watts, or twenty (20) watt equivalent LED, or emit one thousand six hundred (1,600) or more lumens shall be controlled by a programmable motion-sensor device, except where continuous lighting is required by the California Building Standards Code. <p>E. Parking Lot Lighting. Parking lot lighting shall be consistent with the standards of Section 30-7.17, Illumination of Parking Areas.</p> <p>F. Service Station Canopies. Service station canopies are subject to the following standards:</p> <ol style="list-style-type: none"> 1. Lighting fixtures in the ceiling of canopies shall be fully recessed in the canopy. 2. Light fixtures shall not be mounted on the top or fascia of such canopies. 3. The fascia of such canopies shall not be illuminated, except for approved signage. <p>G. Street and Park Lighting. Lighting installed within a public or private right-of-way or easement for the purpose of illuminating streets or roadways and lighting in City parks shall be in accordance to lighting</p>
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Bird Safety Berkeley Referral - Local Ordinance Comparison Table

					<p>standards of the Public Works Department and Alameda Recreation and Parks Departments, except all LED lighting shall have a maintained correlated color temperature of less than or within the range of two thousand seven hundred to three thousand (2,700—3,000) Kelvins.</p> <p>Code Compliance. All exterior lighting shall be consistent with all applicable parts of the California Building Standards Code. In the case of any conflict between the standards of this section and the California Building Standards Code, the later shall prevail.</p>
Oakland	Bird Safety Measures added to Building Permit Requirements	N/A	<p>Applies to all construction projects which include glass as part of the building’s exterior and at least one of the following:</p> <ul style="list-style-type: none"> a) The project is located immediately adjacent to a substantial water body (e.g. Oakland Estuary, SF Bay, Lake Merritt) b) The project is located immediately adjacent to rec area or park larger than 1 acre which contains substantial vegetation c) The project includes a substantial vegetated or green roof but excluding container gardens d) The project includes an existing or proposed substantial vegetated area (generally contiguous one acre in size or larger) located directly adjacent to project buildings. e) The structure contains an atrium which will contain vegetation. 	N/A	<p>A. Bird Collision Reduction Measures Requirement: Project applicant shall submit a Bird Collision Reduction Plan for City review and approval to reduce potential bird collisions to the max feasible extent. The Plan shall include all of the following mandatory measures, as well as applicable and specific project Best Management Practice (BMP) strategies to reduce bird strike impacts to the maximum feasible extent. The Project applicant shall implement the approved Plan. <i>Mandatory measures include all of the following:</i></p> <ol style="list-style-type: none"> 1. Comply with federal aviation safety regulations for large buildings by installing minimum intensity white strobe lighting with three second flash instead of solid red or rotating lights. 2. Minimize the number of and co-locate rooftop-antennas and other rooftop structures. 3. Monopole structures or antennas shall not include guy wires. 4. Avoid the use of mirrors in landscape design. 5. Avoid placement of bird-friendly attractants (i.e. landscaped areas, vegetated roofs, water features) near glass unless shielded by architectural features taller than the attractant that incorporate the bird friendly treatments no more than two inches horizontally, four inches vertically, or both (the “two-by-four” rule). <p>B. Glazing Treatments Apply bird friendly glazing treatments to no less than 90 percent of all windows and glass between the ground and 60 feet above ground or to the height of existing adjacent landscape or the height of the proposed landscape. Examples of bird friendly glazing treatments include the following:</p> <ol style="list-style-type: none"> 1. Use of opaque glass in window panes instead of reflective glass. 2. Uniformly cover the interior or exterior of clear glass surface with patterns (e.g., dots, stripes, decals, images, abstract patterns). Patterns can be etched, fritted, or on films and shall have a density of no more than two inches horizontally, four inches vertically, or both (the “two-by-four” rule). 3. Install paned glass with fenestration patterns with vertical and horizontal mullions no more than two inches horizontally, four inches vertically, or both (the “two-by-four” rule). 4. Install external screens over non-reflective glass (as close to the glass as possible) for birds to perceive windows as solid objects.

Bird Safety Berkeley Referral - Local Ordinance Comparison Table

					<p>5. Install UV-pattern reflective glass, laminated glass with a patterned UV reflective coating, or UV-absorbing and UV-reflecting film on the glass since most birds can see ultraviolet light, which is invisible to humans.</p> <p>6. Install decorative grilles, screens, netting or louvers, with openings no more than two inches horizontally, four inches vertically, or both (the “two-by-four” rule).</p> <p>7. Install awnings, overhangs, sunshades, or light shelves directly adjacent to clear glass which is recessed on all sides. Another option is to use louvers with 2” x 4” spacing.</p> <p>8. Install opaque window film or window film with a pattern or design or marketing message which also adheres to the 2” x 4” rule for coverage.</p> <p>C. Reduce Light Pollution Examples include the following:</p> <ol style="list-style-type: none"> 1. Extinguish nighttime architectural illumination treatments during bird migration season (February 15 to May 31 and August 1 to November 30). 2. Install time switch control devices or occupancy sensors on non-emergency interior lights that can be programmed to turn off during non-work hours and between 11:00 p.m. and sunrise. 3. Reduce perimeter lighting whenever possible. 4. Install full cut off, shielded or directional lighting to minimize light spillage, glare or light trespass. 5. Do not use beams of lights during the spring (February 15 to May 31 or fall migration (Aug 15 to November 30). <p>D. Bird Safety B.M.P.s to include the implementation of a building operation and management manual that promotes bird safety. Example measures in the manual include the following:</p> <ol style="list-style-type: none"> 1. Donation of discovered dead bird specimens to an authorized bird conservation organization or museum (i.e. U.C. Berkeley Museum of Vertebrate Zoology) to aid in species identification and to benefit scientific study, as per all federal, state and local laws. 2. Distribution of educational materials on bird-safe practices for the building occupants. Contact Golden Gate Audubon or American Bird Conservancy for materials. 3. Asking employees to turn off task lighting at their work stations and draw office blinds, shades, curtains or other window coverings at end of work day. 4. Install interior blinds, shades, or other window coverings in windows above the ground floor visible from the exterior as part of the construction contract, lease agreement, or CC&Rs. 5. Schedule nightly maintenance during the day or to conclude before 11 p.m., if possible. <p>When Required: Prior to approval of construction-related permit Initial Approval: Planning and Zoning Division Monitoring/Inspection: Building Services Division</p>
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Bird Safety Berkeley Referral - Local Ordinance Comparison Table

					<p>E. Implementation of Bird Collision Reduction Plan After Construction Requirement: The project applicant shall continue to implement the approved Bird Collision Reduction Plan following construction of the project. When Required: Ongoing Initial Approval: N/A Monitoring/Inspection: Building Services Division</p>
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Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: October 19, 2022
TO: Members of the Planning Commission
FROM: Justin Horner, Associate Planner
SUBJECT: Bird Safe Berkeley Requirements Referral

SUMMARY

At their meeting on March 2, 2022, the Planning Commission, in response to a referral from the Community Environmental Advisory Commission (CEAC) and City Council, provided direction for amendments to the Berkeley Municipal Code (BMC) establishing bird safety requirements for new construction and significant renovations. This report presents a more specific set of policy questions for the Planning Commission's consideration, based on staff's additional research and feedback from the Design Review Committee (DRC) and Golden Gate Audubon.

The policy questions pertain to:

- What types of projects should be required to comply?
- For projects that are subject to the requirements, how much glazing should be required to be bird safe?
- For the purposes of compliance, what materials are considered bird safe?

Staff seeks Planning Commission's direction in order to return to the Commission for a public hearing on December 7, 2022 with specific Zoning Ordinance amendments.

BACKGROUND

At their meeting on March 2, 2022, the Planning Commission received a report and presentation on the referral from the CEAC, the studied effects of built environments on bird populations, a brief discussion of how Berkeley's particular geography relates to bird populations, and a review of existing regulatory efforts in Bay Area cities regarding bird safety (*Attachment 1*).

After hearing public comment, the Planning Commission provided direction to staff to return with bird safety regulations that are:

- Included in the Berkeley Municipal Code/Zoning Ordinance¹;
- Applicable to new buildings and major renovations *citywide*; and
- Based on the most up-to-date science with respect to birds and the built environment.

Accordingly, Commissioners asked staff to analyze recently-adopted bird safe regulations from New York City and Mountain View, and to consult with the Golden Gate Audubon Society.

On September 15, 2022, staff provided an informational presentation on proposed bird safe regulations to the DRC, which provided the following feedback:

- **Costs and feasibility for smaller residential projects.** The DRC expressed concern about the cost of bird safe glass for single family homeowners and builders of smaller residential projects (e.g. 2-4 units) . Committee members also questioned whether bird safe glass was sufficiently available for smaller residential projects. One Committee member contacted three local window retailers, none of whom had experience with requests for bird safe glass. It was noted that bird safe glass could potentially double the cost of a glass order for a smaller project.
- **Phased approach to bird safe requirements.** Given concerns about the availability and cost of bird safe glass for smaller residential projects, DRC members recommended phasing in bird safe requirements. New construction of commercial projects and larger-scale residential and mixed-use projects would be subject to bird safe requirements, while new smaller-scale residential and residential rehabilitation projects would be covered at a later date as the costs and benefits become clearer. The DRC noted that larger projects would be in a better position to absorb any increase in per window cost because the project as a whole is better financed. In addition, larger window orders that would come from larger projects may result in less per-unit costs.
- **Tiered approach to bird safe requirements.** DRC members suggested that bird safe requirements could be tiered to include more features as project size increases. i.e. larger projects could be subject to more comprehensive requirements while smaller residential projects or rehabs could be subject to fewer requirements. For instance, larger projects could be required to use bird safe glass throughout the project while smaller projects could be permitted to use alternative methods or use them on specific portions of the project.
- **Point-of-Sale Requirement:** Existing residences could be required to comply with bird safe requirements at point of sale.

¹ Other options considered and dismissed included adopting bird safe regulations through CEQA review mitigation measures, project conditions of approval, design guidelines, or local building code.

- **Historical Landmarks:** DRC members supported provisions that would require a minimally intrusive compliance option—or exemption—for designated historical landmarks.
- **Public Education:** DRC members recommended a public information campaign to introduce residents to the concept of bird safe building strategies and to raise awareness of future regulations. This would not only include bird safe glass, but lighting, landscaping and other project design elements that encourage bird safety. Golden Gate Audubon is exploring how they could coordinate such an effort.

Given Planning Commission’s direction in March 2022, and feedback from the DRC, community members, and Golden Gate Audubon, the development of a bird safe ordinance will be informed by answers to the following questions:

- What types of projects should be required to comply?
- For projects that are subject to the requirements, how much glazing should be required to be bird safe?
- For the purposes of compliance, what materials are considered bird safe?

To provide parameters for the Planning Commission’s discussion, Table 1 summarizes the Bird Safety Ordinance recommended by the CEAC and City Council in its referral and the American Bird Conservancy’s (ABC) Model Bird Friendly Ordinance.² CEAC’s suggested ordinance was presented in 2019 and was based on the City of Alameda’s regulations. ABC’s Model Bird Friendly Ordinance constitutes a more expansive policy approach which it characterizes as “the leading edge of creating a bird-friendly bird environment.” That said, ABC itself suggests that jurisdictions may feel the need to soften some of its provisions to meet local conditions.

Table 1. Bird Safe Ordinance Summaries

	CEAC’s Proposed Ordinance	ABC’s Model Ordinance
What types of projects are covered?	<ul style="list-style-type: none"> • For new construction, windows on a façade of a building with 2 or more stories where glass constitutes 50% or more of the façade’s area. • Replacement of existing windows on a façade of a building with 2 or more stories where glass 	<ul style="list-style-type: none"> • 100% of all new projects • Replacement of at least 50% of existing glass on existing structures • Any new glass on an existing building • All high-risk building features.³

² <https://abcbirds.org/wp-content/uploads/2020/12/American-Bird-Conservancy-Model-Bird-Friendly-Building-Ordinance.docx>

³ “High-risk building features” include skyways/walkways and building connectors, transparent outside building corners, areas with parallel glass, courtyards, atria and areas above green roofs.

	<ul style="list-style-type: none"> constitutes 50% or more of the façade’s area. Any new or replaced glass structure (e.g. greenhouse) with any transparent walls 24 sq ft or more in size 	
Exemptions	<ul style="list-style-type: none"> Replacement of existing glass on historic structures Glazing on ground floor of commercial storefronts directly fronting a public street, alley or sidewalk Windows that are smaller than 2ft x 4ft (8 sq ft) 	<ul style="list-style-type: none"> None
How much glazing is to be bird safe?	<ul style="list-style-type: none"> 90% of eligible glazing on any regulated façade or free-standing structure 	<ul style="list-style-type: none"> 100% of glazing within 100 ft from grade 100% of glazing within three floors adjacent to or above a green roof
What materials are considered bird safe?	<ul style="list-style-type: none"> Opaque glass or film Paneled glass Glass covered with patterns UV reflective glass External screens Light colored blinds or curtains Other treatments approved by the Planning Director 	<ul style="list-style-type: none"> Products with an ABC Threat Factor Rating of 30 or less Glass with obstructions no larger than 12” in any direction Untinted glass with less than 15% reflectance and contains visual markers

What types of projects should be covered?

Table 1. Bird Safe Ordinance Summaries provides parameters for the types of projects that could be covered by a bird safe ordinance. While ABC’s model ordinance covers nearly all glazing on all new buildings, CEAC’s proposed ordinance applies only to buildings of 2 or more stories, and only to each building façade that meets a minimum requirement, and then only to windows on that façade that meet minimum size requirements.

As noted above, the DRC was concerned about the feasibility of requiring bird safe glass for single family homes and smaller residential developments. An exemption for projects of only one story could partially address that concern, but it is likely, particularly with proposed implementation programs in the Housing Element Update to encourage residential development including Middle Housing, that a large proportion of future smaller-scale residential development will be at least two stories.

The Planning Commission may want to consider exempting projects by type, as opposed to, or in addition to, by size. For example, the City of Evanston's (Illinois) recent Bird Friendly Building Design Ordinance⁴ exempts detached one- and two-family dwelling and multiple single-family dwellings (townhouses) altogether, as well as residential buildings of three stories or less.

It should be noted that a not insignificant proportion of bird strikes on buildings occur at lower levels, as strikes are common at buildings adjacent to bird habitat, such as street trees and bushes. At the DRC meeting, Berkeley Parks, Recreation and Waterfront Commissioner Erin Diehm noted that approximately 44% of collisions occur at 1-2 story buildings, while 56% occur at 3-11 stories.

An additional option is to limit the applicability of the bird safe requirements to glazing of a certain size, regardless of, or in addition to, overall provisions regarding project size. CEAC's ordinance, for example, applies bird safe requirements only to glazing that is larger than 2 ft by 4 ft, or 8 sq ft. At the DRC meeting, testimony from Golden Gate Audubon's Executive Director identified 1 square meter, or 3.3 ft by 3.3 ft (roughly 11 sq ft), as a common size threshold for glazing.

Exemption for Historic Resources. An exemption from, or reduction in, bird safe requirements was included in CEAC's ordinance and noted by the DRC. The Planning Commission may consider a similar exemption, or recommend less stringent requirements for the replacement of windows on such structures. CEAC's ordinance distinguished between replacing existing windows on an historic structure and new construction associated with an historic structure.

Phasing In Regulations. A number of DRC members recommended only subjecting new commercial and larger-scale residential projects to bird safe regulations in the short term, while eventually phasing-in smaller-scale residential projects. This would provide time for Berkeley homeowners to learn about and prepare for the introduction of bird safe requirements, while also providing time for the bird safe glass market to ramp up to better serve smaller-scale users. Some members suggested including a specific phase-in date in the ordinance, for predictability and to aid in moving the bird safe window market, while other members suggested expanding the applicability of the ordinance through future amendments.

How much glazing should be bird safe?

ABC's Model Bird Safety Ordinance is "based on a 100/100/100 framework: 100% of all glass and other building materials should be bird friendly in the first 100 feet of 100% of buildings." Many existing ordinances, as well as CEAC's proposed ordinance, however, require 90% of eligible glazing to be bird safe. It is not uncommon to exempt some percentage of otherwise eligible glass (the Leadership in Energy and Environmental

⁴ <https://www.cityofevanston.org/home/showpublisheddocument/74672/637993547035470000>

Design (LEED) Bird Collision Deterrence credit, for example, exempts up to 5% of eligible glass). The primary reason for these small exemptions is to address concerns some retailers have of the impact of bird safe glass on the look and feel of store frontages. A 10% exemption of eligible glass on a ten-story building, for instance, could exempt the entire ground floor. There may also be other, as yet unforeseen reasons to create some flexibility in requirements.

An additional threshold relates to the height at which bird safe glass is required. ABC's Model Bird Safety Ordinance calls for bird safe glass in the first 100 feet above grade and three stories above or adjacent to any green roof. The City of Evanston's ordinance requires a more stringent safety standard in the first 60 feet above grade and a lower standard for building surfaces above 60 feet. LEED's credit distinguishes between the first 40 feet above grade, and building surfaces between 40 feet and 100 feet above grade.

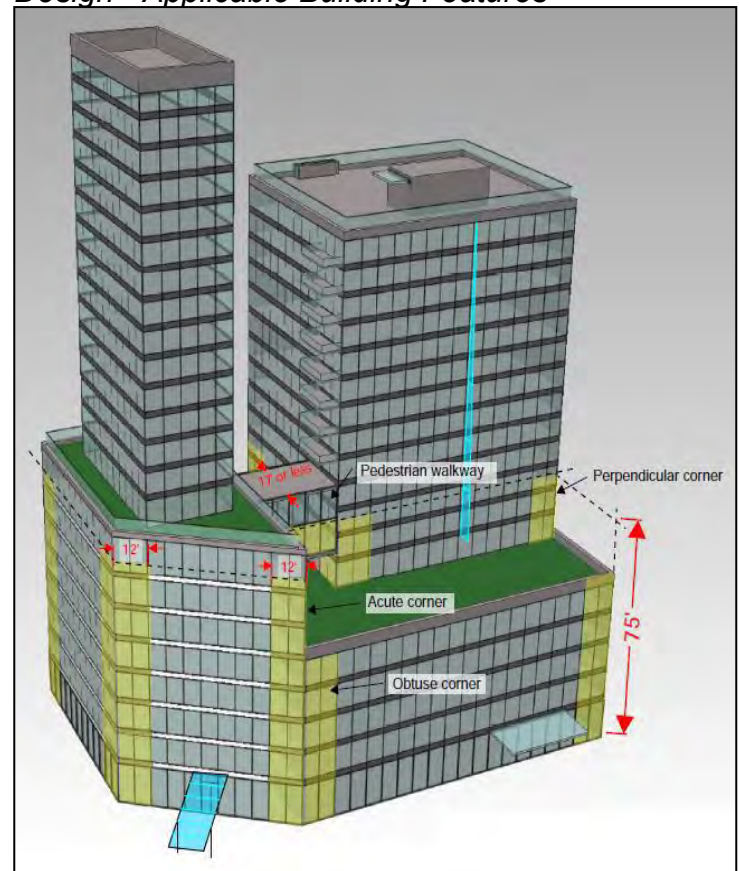
It is also common for ordinances to require bird safe glass on surfaces or building features regardless of their distance from grade. For example, glazing above or adjacent to green roofs in new buildings are often required to be bird safe, as are building corners and other potential "fly through" features.

Common building features that are subject to bird safe requirements include:

- Elevated pedestrian building connections, such as skyways or skybridges;
- Parallel glass walls;
- Glass atriums; and
- Architectural projections, such as railings, balconies, louvers, or noise or wind barriers.

New York City's Bird Friendly Building Design Guidance Document⁵ includes a figure (Figure 1) which illustrates how their regulations apply to specific building features. However, this may be difficult to enforce; New York City does not retroactively require retrofitting of windows adjacent to newly—or subsequently—created applicable building features.

Figure 1. New York City Bird Friendly Building Design - Applicable Building Features

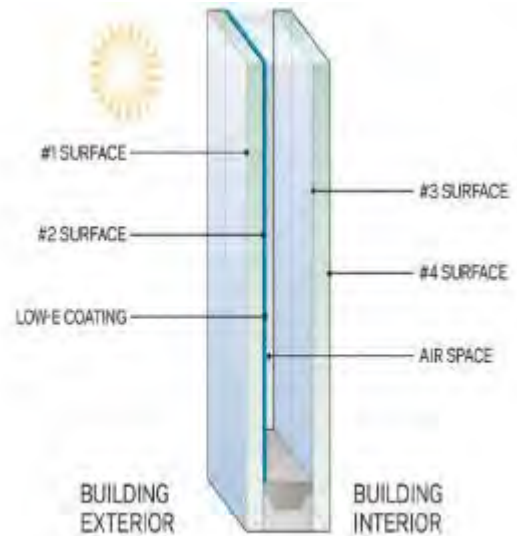


⁵ www1.nyc.gov/assets/buildings/bldgs_bulletins/bird_friendly_guidance_document.pdf

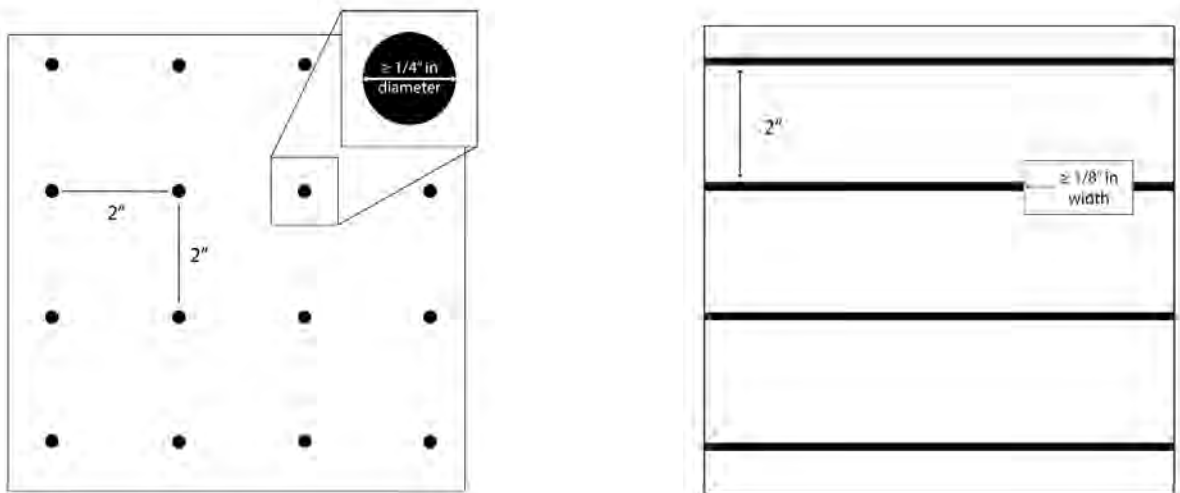
What materials are considered bird safe?

The American Bird Conservancy's Model Ordinance provides the following definition for bird safe glass.

- A product with an American Bird Conservancy Material Threat Factor Rating of 30 or less⁶;
- Glass with an exterior surface (surface 1, right) obstructed and effectively covered by building-integrated structures that do not have gaps larger than 12 in. in any dimension, including non-glass double-skin facades, metal screens, fixed solar shading, exterior insect or solar screens, and other features as determined by the Zoning Officer that meet these conditions; or
- Un-tinted glass with an outer total reflectance of no more than 15% that contains a pattern of visual markers that are on the exterior surface (surface 1, right) or the interior surface of a pane of glass on the building exterior (surface 2, right) that conforms to the following rules:
 1. Dots or other isolated solid shapes that are at least a ¼" in diameter and are no more than 2' apart in any direction (below, left); or
 2. Lines that are at least ⅛" in width and spaced no more than 2" apart (below, right).



⁶ ABC's Material Threat Factor (TF) rating system tests, assesses and classifies materials on a scale of 0 to 100 to provide a relative measure of birds' ability to see and avoid patterned glass and other materials. The lower the TF, the more effective the material will be at reducing collisions. For more information, see ABC's Threat Factor page: <https://tinyurl.com/4k2v2stb>. For ABC's regularly updated database of materials, which include TF ratings, see: <https://abcbirds.org/glass-collisions/products-database/>.



ABC's Threat Factor Rating is used by the City of Evanston and LEED's Bird Collision Deterrence Credit, and CEAC's ordinance recommends visual markers consistent with 1), above.

It should be noted that most of these requirements can be met either by specific bird safe glass and window assemblies or by film or adhesives that can be added to existing windows or to newly purchased windows that are not specifically bird-safe. Film can be a more cost-effective compliance path, although there could be instances where the application of a film could affect, or even void, a window's warranty.

Some bird safe regulations also permit the use of blinds or curtains to reduce window transparency. These approaches are considered sub-optimal, however, as they depend on the efforts of individual building users to be effective.

The Planning Commission is asked to review the Discussion topics above and provide feedback and direction to staff on the preparation of a Bird Safe Ordinance. Specifically, staff requests feedback on the following questions:

1. *What types of projects should be covered by bird safe requirements?*
 - Should there be provisions made for project size or for small-scale residential projects? What would be the threshold (e.g. above a certain number of units or square footage)?
 - Should certain projects (e.g. designated landmarks) be exempt?
 - Should there be a phase-in period for certain projects within the ordinance or should staff return with amendments to expand requirements, when appropriate?
2. *How much glazing should be bird safe?*
 - To what height should bird safe glazing be required?
 - Should requirements be on a whole-building or per-façade basis?
 - Should bird safe requirements only apply to glass panes of a minimum size?

- What other building features (e.g. elevated pedestrian building connections, glass walls, glass atriums; and architectural projections, such as railings, balconies, louvers, or noise or wind barriers) should be subject to bird safety requirements?
- 3. *What materials qualify as bird safe?*
 - Should the ordinance include specific requirements, per ABC's Model Ordinance, or should there be more discretion given to staff to ascertain compliance?

NEXT STEPS

Based on direction provided by the Planning Commission, staff will prepare Zoning Ordinance amendments for a public hearing at the Commission's meeting on December 7, 2022, consistent with BMC Chapter 23.412 Zoning Ordinance Amendments.

ATTACHMENTS

1. March 2, 2022, Bird Safe Berkeley Requirements Referral. Planning Commission Report.

23.304.150 Bird Safe Buildings.

A. Purpose. The purpose of this section is to reduce bird mortality from windows and other transparent buildings or building features known to increase the risk of bird collisions.

B. Applicability.

1. *Applicability.* The bird safe building requirements apply to the following types of projects based on the primary land use when such projects require a building permit.

Table 1 - 23.304.XX. Bird Safe Building Requirement Applicability

Project Type	Applicable Building Location(s)	
Non-Residential		
New Construction or Addition	Continuous transparent materials of 12 sf or larger located between the ground and 100 feet above grade.	
New or Replacement Transparent Materials on Existing Building	Continuous transparent materials of 12 sf or larger located between the ground and 100 feet above grade where 50% or more of the elevation's total square footage consists of transparent material.	
New or Replacement Transparent Buildings or Features	Continuous transparent material of 24 sf or larger, including but not limited to, freestanding glass walls, noise or wind barriers, skyways, balconies, greenhouses, and rooftop appurtenances.	
Residential or Mixed Use		
New Construction or Addition	Building with 10,000 sf or more gross floor area	Continuous transparent materials of 12 sf or larger located between the ground and 100 feet above grade.
	Building with less than 10,000 sf gross floor area	Continuous transparent materials of 12 sf or larger located between the ground and 100 feet above grade where 50% or more of the façade's total square footage consists of transparent material.
New or Replacement Transparent Materials on Existing Building	Building with 10,000 sf or more gross floor area	Continuous transparent materials of 12 sf or larger located between the ground and 100 feet above grade where 50% or more of the façade's total square footage consists of transparent material.
	Building with less than 10,000 sf gross floor area	Not applicable
New or Replacement Transparent Buildings or Features	Continuous transparent material of 24 sf or larger, including but not limited to, freestanding glass walls, noise or wind barriers, skyways, balconies, greenhouses, and rooftop appurtenances.	

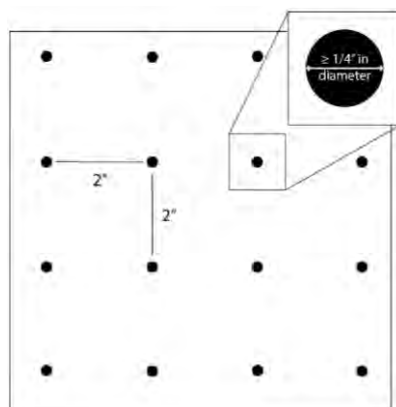
2. *Exemptions.*

- a. The bird safe building requirements do not apply to existing windows or other transparent materials that are not proposed to be replaced.
 - b. Residential projects, including the residential portion of mixed-use projects, with the majority of the units are subject to recorded affordability restrictions. If added to an existing building or property, the entire building or property is exempt.
3. *Continuous Transparent Material.* Transparent material that is not interrupted by a line, spacer, mullion, grille or other visible material at least 1/2" in width.

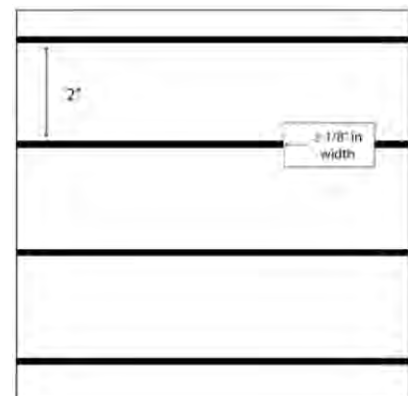
C. Bird Safe Requirements. Any regulated continuous transparent material must meet at least one of the following conditions:

1. *Threat Factor Rating.* A product with an American Bird Conservancy Threat Factor Rating of 30 or less.
2. *Patterned Glazing Treatment.* Panes with patterns that are etched, fritted, stenciled, silk-screened, or otherwise permanently incorporated into the transparent material. If the pattern utilizes dots or other isolated solid shapes, each dot or shape must be at least a 1/4" in diameter and be no more than 2' apart in any direction (see Figure 23.304.XXX, left). If the pattern utilizes lines, they must be at least 1/8" in width and spaced no more than 2" apart (see Figure 23.304.XXX, left).

Figure 23.304.XXX Patterned Glazing Treatment Requirements



Dots or Isolated Solid Shapes



Lines

3. *External Screens, Shutters, or Shading Devices.* Panes with exterior screens, shutters or shading devices installed permanently over windows, structures, or building features such that there is no gap larger than 9 inches in one dimension. Building integrated treatments include, but are not limited to, metal screens, shutters, fixed solar shading such as louvres, and exterior insect or solar screens.

 4. *Biologist Certification.* Analysis by a qualified biologist indicating that the proposed construction would reduce collision risk to an extent comparable to the requirements of this section.
-



Planning and Development Department
Land Use Planning Division

DATE: March 1, 2023

TO: Members of the Planning Commission

FROM: Ashley James, Senior Planner

SUBJECT: Pacific Steel Casting / Gilman Forge Zoning and General Plan
Amendments and Environmental Impact Report -- Project Update

SUMMARY

In response to a City Council referral to create a zoning overlay at the former Pacific Steel Casting site and a request for a zoning map amendment submitted on behalf of the majority property owner (referred to as Gilman Forge), City staff are preparing Zoning Ordinance and Zoning Map amendments and associated General Plan amendments to re-zone an approximately 11-acre area within the West Berkeley Plan Area from M (Manufacturing) to a new district entitled M-RD (Manufacturing, Research and Development) that encompasses all of the properties on those blocks between Gilman and Camelia Streets west of the railroad (3rd Street). At their February 1, 2023 meeting, the Planning Commission received a presentation on proposed draft zoning amendments and conducted a public hearing on the scope and content of the Environmental Impact Report (EIR) being prepared for the amendments and an associated development concept plan. Based on the feedback received at that meeting, staff have revised the draft zoning standards and the Planning Commission is asked to receive a follow-up staff presentation and provide additional feedback to confirm project direction in order to advance the EIR.

BACKGROUND

At the February 1, 2023 Planning Commission meeting, staff presented draft proposed M-RD development standards for feedback, which included height, floor area ratio, setbacks and building separation, lot coverage, and vehicular and bicycle parking. The Commission was also requested to provide comment on whether an open space standard should be included to provide additional amenities for employees and visitors, and whether objective design standards should be developed to ensure high-quality site and building design. The Commission also received a presentation from the Zoning Map Amendment applicant regarding the Gilman Forge Concept Plan, and a presentation from the City's environmental consultant, LSA, regarding the environmental review

process. Commissioners and community members provided comments on the scope and content of the EIR.

Planning Commission supported allowing all MU-LI uses, and acknowledged some adjustments could be useful to ensure office space does not outcompete R&D space. The Commission did not support a 50% maximum lot coverage, but instead suggested adopting the MU-LI district standard (100%) in order to avoid creating non-conformities, or using 75% to reflect the needs of the Gilman Forge concept plan. The Commission did not support creating an open space standard, as it could have consequences for future development, and the project area is not likely to be a destination for residents. The Commission was interested in ensuring bicycle and pedestrian access to the site and increasing bicycle parking and car share facilities. The Commission did not support creating objective design standards, as the City's current design review process has produced projects with a high quality of design.

REVISED ZONING REGULATIONS

Based on Commission feedback at the February 1, 2023 meeting, staff have revised the draft M-RD zoning regulations, as summarized in Table 1 below.

Table 1. Summary of Revised M-RD Development Standards

Regulation	Existing M Standard	February 1, 2023 Proposed Standard	March 1, 2023 Proposed Standard
Maximum Height	45 feet	105 feet	105 feet (No change)
Maximum Floor Area Ratio (FAR)	2.0	2.0	2.0 (No change)
Minimum Setbacks, and Building Separation	Not regulated	Not regulated	Not regulated (No change)
Maximum Lot Coverage	Not regulated	50% maximum	80% maximum (Increased)
Minimum Off-Street Parking and Minimum Bicycle Parking	Vehicle: See BMC Table 23.322-4	Vehicle: Same as Table 23.322-4, with following changes: <ul style="list-style-type: none"> All non-residential uses except uses listed below: 1 per 1,000 sq. ft. Laboratories: 1 per 1,000 sq. ft. 	Vehicle: Same as Table 23.322-4, with following changes: <ul style="list-style-type: none"> All non-residential uses except uses listed below: 1 per 1,000 sq. ft. Laboratories: 1 per 1,000 sq. ft. (No change)
	Bicycle: 1 per 2,000 sq. ft	Bicycle: 1 per 2,000 sq. ft.	Bicycle: 1 per 2,000 sq. ft (No change)

Allowed Uses

The goal of the Council referral is to facilitate reinvention of the project site so that it contributes to the City's tax base and vitality of the local economy. The purpose of the current zoning designation – Manufacturing (M) – is to encourage heavy manufacturing uses, whereas development interest for this area is towards biotechnology laboratories, warehouse and commercial uses, and office space. Pension and environmental clean-up costs, which are unique to this site, require greater investment and thus return from a potential buyer than what is feasible under the current zoning.

Given these factors, the proposed zoning targets land uses that provide higher rents and wages, and greater job creation rates. As described in the report by the City's Office of Economic Development, research and development-intensive uses constitute a significant portion (over 60 percent) of overall manufacturing jobs in West Berkeley and the uses produce higher job creation rates and wages than heavy manufacturing industries, and command higher rents than traditional manufacturing.¹

Therefore, staff recommends including allowed uses from the MU-LI district that focus on greater job creation, employment density, and target innovation industries in the M-RD district. Staff recommends that the following MU-LI uses be excluded from the M-RD district:

- **Vehicle Service and Sales use categories:** Large Vehicle Sales and Rental, Vehicle Service and Sales, Vehicle Repair and Service, Vehicle Wrecking.
- **Industrial and Heavy Commercial use category:** Bus/Cab/Truck/Public Utility Depot, Commercial Excavation, Contractors Yard, Dry Cleaning and Laundry Plant, Construction Products Manufacturing, Recycled Materials Processing, and Recycling Redemption Center.
- **Miscellaneous uses:** Live/Work.

It is anticipated that the project area would likely transform over time towards new development of in-demand uses described above. Under the M-RD zoning, current uses, including the vehicle rental use at 600 Gilman Street and recycled materials processing use at 1433 Eastshore Highway would become lawful non-conforming; the live/work use at 1306 Third Street would remain lawful non-conforming. The Berkeley Zoning Ordinance allows lawful non-conforming uses to remain occupied in their current condition as of right, and both changes to and substantial expansions of non-conforming uses are allowed by obtaining a Use Permit.² Also, portions of the project site and surrounding areas contain semi-vacant and vacant parcels that area conducive to temporary uses, such as contractor yards. The M-RD zoning would not prohibit a

¹ February 1, 2023 Planning Commission meeting, *Pacific Steel Casting Zoning and Plan Amendments and Draft EIR Scoping Session*, Attachment 4: City of Berkeley, Office of Economic Development. *The Innovation Ecosystem in West Berkeley: An Economic Snapshot*, January 2023. https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-02-01%20PC%20Agenda%20Packet_0.pdf

² Berkeley Municipal Code [Section 23.324.040](#) – Nonconforming Uses.

temporary use from operating on any of these sites, as they are allowed at various permit levels depending on the nature of the use.³

Maximum Lot Coverage

As shown in the Gilman Forge Concept Plan presented to the Commission in February, it is not feasible to build a 3 to 6 story building at 100 percent lot coverage given a maximum FAR of 2.0 and 105-foot maximum height. Consistent with the Gilman Forge concept plan (75 percent coverage), staff recommends a maximum coverage of 80 percent to ensure reasonable open space for future projects in this zone. The EIR will study a 100 percent coverage option in response to comments from the Commission.

Minimum Off-Street Vehicle and Bicycle Parking

In all manufacturing districts, R&D and office uses must provide at least 2 spaces per 1,000 square feet of gross floor area, and laboratory uses must provide at least 1 space per 650 square feet. Based on these requirements, Fehr & Peers estimates that Vehicle Miles Traveled (VMT) induced by future development within the project site would be significant (in order words, above the City's threshold) by 5 percent, and transportation demand management strategies would be needed to reduce VMT.

Also, the current requirements create implementation challenges, as multiple uses may concurrently occupy one building, and the amount of floor area dedicated to a given use may change over time. Therefore, staff recommends lowering and standardizing the required minimum off-street parking for R&D, office, and laboratory uses, which may reduce potential VMT impacts, and provide flexibility for future development projects and tenants as needs change over time (**Table 1**).

In all manufacturing districts, new buildings or expansions of existing buildings must provide at least 1 bicycle parking space per 2,000 square feet of gross floor area for industrial, commercial, or non-residential uses. This requirement is in line with the Berkeley Bicycle Plan, adopted in 2017 (**Table 2**), and is higher than neighboring jurisdictions. For example, San Francisco requires a minimum ranging from 1 space per 12,000 square feet of industrial to 1 space per 5,000 square feet of office. In Oakland, 1 short-term space is required per 10,000 square feet, and 1 long-term space is required per 20,000 square feet of R&D. For these reasons, staff is recommending the minimum bicycle parking requirement in Table 2 above.

Table 2. Minimum Bike Parking Requirements, Berkeley Bicycle Plan

Use	Long-Term Spaces	Short-Term Spaces
Office	2, or 1 space per 2,500 square feet	2, or 1 pace per 10,000 square feet
Industrial, manufacturing and wholesale	1, or 1 space per 30,000 square feet	None required

Source: Berkeley Bicycle Plan, Appendix F, Facility Design Toolbox; [Berkeley-Bicycle-Plan-2017_AppendixF_Facility_Design_Toolbox.pdf \(berkeleyca.gov\)](#)

³ Berkeley Municipal Code [Section 23.302.030](#), Temporary Uses and Structures.

Open Space and Objective Design Standards

At the February meeting, staff requested Commission feedback on whether an open space standard should be included. There was a consensus among the Commission that open space should not be regulated, as the project area is not likely to become a destination for residents and regulating it could have consequences for future development projects. Based on that feedback, staff is not proposing inclusion of an open space standard. Staff also requested feedback on whether objective design standards should be included and there was consensus among the Commission that the current Design Review process is sufficient in shaping high-quality building and site designs for industrial development; therefore, objective design standards are not proposed.

DISCUSSION

The purpose of this item is to report back and receive additional comments from the Planning Commission and the public on the revised M-RD zoning regulations to confirm project direction in order to advance the EIR.

NEXT STEPS

- Once the applicant has provided all of the required technical reports and they have been reviewed and deemed adequate by the City as the Lead Agency, the **Draft EIR** will be prepared over a time period of approximately 10 weeks.
- The Draft EIR will be circulated for the required **45-day public comment period**, during which the Planning Commission will hold a public hearing to provide comments.
- **Responses to comments** on the Draft EIR will be prepared and any necessary revisions will be made based on those comments.
- This **Final EIR** will be presented to the Planning Commission for recommendation to the City Council, who will make a final decision on the proposed changes and certify the EIR.
- The amended **Zoning Ordinance** would be effective 30 days after the second reading at Council. At the time the zoning is effective, the Zoning Adjustments Board would be able to act on any use permit application for development within the zoning district boundary.

Communications

From: Wu, Grace
Sent: Monday, February 6, 2023 9:58 AM
Cc:
Subject: FW: Waterfront Focus Group 4 - Wednesday, February 15, 2023, from 5:00 pm to 6:15pm

Good morning, Commissioners,

In case you haven't already received this, I was just forwarded the below information on registering to participate in the Waterfront Focus Groups this week and next.

Sincerely,

Grace

: BMASP

Sent: Monday, January 30, 2023 3:33 PM
To: BMASP <BMASP@cityofberkeley.info>
Cc: AEndress@cityofberkeley.info
Subject: Waterfront Focus Group - Invitation to Sign Up

Good Afternoon,

You are invited to participate in a Berkeley Waterfront focus group. The goal for these groups is to hear and discuss priorities for Cesar Chavez Park at the Berkeley Waterfront. **Please note that no development is being considered at Cesar Chavez Park in the Specific Plan process.**

Each focus group will run for 75 minutes on Zoom. We have four options for you to participate:

- Tuesday, February 7, 2023, from 5:15pm to 6:30pm
- Tuesday, February 7, 2023, from 6:45pm to 8pm
- Wednesday, February 15, 2023, from 3:30pm to 4:45pm
- Wednesday, February 15, 2023, from 5:00 pm to 6:15pm

Please click here <https://www.signupgenius.com/go/10C0E44A4A62BA4F8C70-waterfront> to sign up and reserve your spot.

For accommodations, assistance, questions or comments please email bmasp@cityofberkeley.info. A zoom link will be emailed in advance of the meetings. For more information visit the project website at: <https://berkeleyca.gov/your-government/our-work/capital-projects/berkeley-marina-area-specific-plan-bmasp-project>.

Sincerely,

Ali Endress

Waterfront Manager | City of Berkeley; Parks, Recreation & Waterfront | Waterfront Division

Waterfront Office: (510) 981-6740

Email: bmasp@cityofberkeley.info



<image002.png>

Communications

From: Wu, Grace
Sent: Wednesday, February 8, 2023 1:53 PM
To: Vishnu Malhotra <vishnu@yesinmybackyard.org>
Cc: Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>
Subject: RE: HAA Letter Submission - 1752 Shattuck Avenue

Hi Vishnu,

As mentioned on our call, I have cc'd the Zoning Adjustments Board email regarding your letter about the Use Permit project located at 1752 Shattuck Avenue.

Per your request, I will share it with the Planning Commission, but the Zoning Adjustments Board is the decision-making body for this project, not the Planning Commission.

Hope that helps,

Grace

From: Vishnu Malhotra <vishnu@yesinmybackyard.org>
Sent: Wednesday, February 8, 2023 12:47 PM
To: Wu, Grace <GWu@cityofberkeley.info>
Subject: HAA Letter Submission - 1752 Shattuck Avenue

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Mrs.Wu & Berkeley Planning Commission,

I hope this finds you well. Please see the attached letter regarding the proposed development at 1752 Shattuck Avenue. Let me know if this letter is properly received by the Commission. Thanks!

Best,
Vishnu Malhotra he/him
Legal Intern
352-340-7399

YIMBY Law

57 Post St, Suite 908
San Francisco, CA 94104
hello@yimbylaw.org



YIMBY LAW

2/8/2023

Berkeley Planning Commission
1947 Center Street
Berkeley, CA 94704

gwu@cityofberkeley.info
Via Email

Re: 1752 Shattuck Avenue
ZP2022-0011

Dear Berkeley Planning Commission,

YIMBY Law is a 501(c)3 non-profit corporation, whose mission is to increase the accessibility and affordability of housing in California. YIMBY Law sues municipalities when they fail to comply with state housing laws, including the Housing Accountability Act (HAA). As you know, the Planning Commission has an obligation to abide by all relevant state housing laws when evaluating the above captioned proposal, including the HAA. Should the City fail to follow the law, YIMBY Law will not hesitate to file suit to ensure that the law is enforced.

This project located at 1752 Shattuck Avenue, Berkeley, CA 94709, will not replace any existing businesses or tenants. The property will have 68- units (11 studios, 29 two-bedroom, 28 three-bedroom). There is also a 1,210 SF commercial space, and six parking spaces. The project will accommodate 30 bicycle spaces. Residents will access the property via a residential lobby on Shattuck Avenue.

New street trees would be planted along Francisco Street and the property will have 2,102 square feet of open space. A 5-foot setback is proposed along the West and East elevations. Measures have been taken to accommodate our neighbor to the East (a pre-school). These include setting back the property on the 7th floor, creating a landscaping privacy screen on the ground floor, second floor, and roof deck.

California Government Code § 65589.5, the Housing Accountability Act, prohibits localities from denying housing development projects that are compliant with the locality's zoning ordinance or general plan at the time the application was deemed complete, unless the locality can make findings that the proposed housing development would be a threat to public health and safety.

The above captioned proposal is zoning compliant and general plan compliant, therefore, your local agency must approve the application, or else make findings to the effect that the proposed project would have an adverse impact on public health and safety, as described above. Furthermore, with the requested concessions and/or waivers available under State

Density Bonus Law, this project is zoning and general plan compliant. Should the City fail to comply with the law, YIMBY Law will not hesitate to take legal action to ensure that the law is enforced.

I am signing this letter both in my capacity as the Executive Director of YIMBY Law, and as a resident of California who is affected by the shortage of housing in our state.

Sincerely,

A handwritten signature in black ink that reads "Sonja Trauss". The signature is written in a cursive, flowing style with a prominent flourish at the end of the name.

Sonja Trauss
Executive Director
YIMBY Law

Communications

From: Wu, Grace
Sent: Friday, February 10, 2023 5:08 PM
To: Wu, Grace
Cc:
Subject: A few Planning Commission items

Dear Planning Commissioners,

A few items to share before the long weekend –

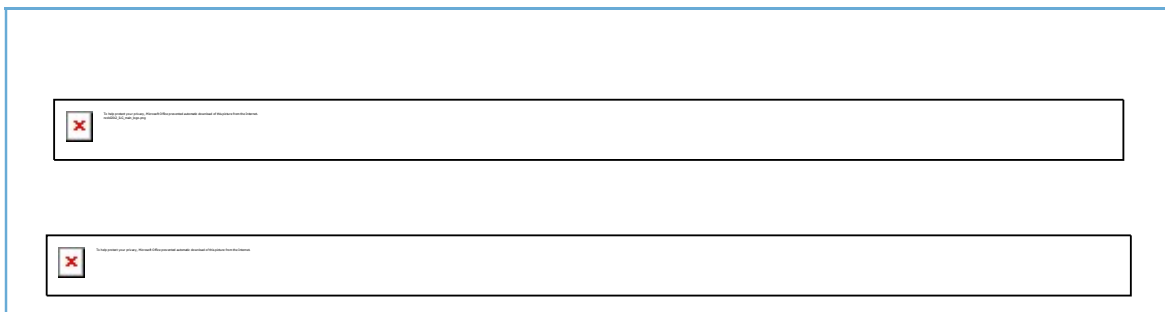
1. **March In-Person Meeting.** A reminder that our March 1st Planning Commission meeting will be at 7:00pm in-person at the South Berkeley Senior Center (2939 Ellis Street).
2. **Nominations and Elections.** I confirmed with the City Clerk that additional members may be nominated at or prior to our March meeting. The existing Chair and Vice-Chair will continue their role for the March meeting until a new Chair (and Vice-Chair) is elected. So far, three members have been nominated for Chair: Elisa Mikiten; Savlan Hauser; and Jeff Vincent. Two members are nominated for Vice Chair: Savlan Hauser and Christina Oatfield.
3. **Start/End Time.** The South Berkeley Senior Center confirmed that their programming and services end by 4:30pm. I will add an action item on the March agenda to vote on a start time and potentially adding an end time to the Commission's bylaws. End time can be extended with a vote of the Commission.
4. **Health Protocols.** I have not received any communication from the Clerk's office on health protocols for in-person Commission meetings. Will pass that information along if and when I receive it.
5. **Trainings.** There are several upcoming Planning Commissioner trainings offered, see below. Check with your councilmember for possible reimbursement.

Have a great weekend,

Grace

From: Institute for Local Government <info+ca-ilg.org@ccsend.com>
Sent: Tuesday, February 7, 2023 9:45 AM
Subject: Last Chance to Register: San Luis Obispo Planning Commissioner Training

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Regional Planning Commissioner Trainings

Last Chance to Register!

San Luis Obispo, Santa Barbara and Ventura Counties,

Training located in San Luis Obispo, February 17, 2023

ILG is hosting a series of regional planning commissioner trainings throughout the state in 2023. These sessions are offered **free of charge exclusively for city and county planning commissioners** and designed to benefit both new and seasoned professionals.

The interactive training sessions help planning commissioners better understand:

- Role of a planning commission
- How to work effectively with staff and the governing board
- Effective community engagement
- CEQA basics
- Required planning documents
- Local planning challenges and opportunities

In each training session, we reserve time to network and discuss local planning challenges and opportunities, specific for each given region. These trainings are designed to give participants the opportunity to engage with experts in the field and learn from fellow planning commissioners about best practices, emerging trends and lessons learned.

All sessions will run in-person from 9:30am to 4:00pm, with coffee and networking beginning at 9:00am. Please click on your region below for more information and to register. Must be a current planning commissioner or planning commission staff and pre-registered to attend.

Planning Commissioners who miss their county's training may attend a future session in a different county. Local Government agency staff not currently on a Planning Commission may attend these sessions if space allows. Priority is given first to Planning Commissioners and Planning Commission staff.

Please send an email to pctrainings@ca-ilg.org with any questions you may have.

Upcoming trainings:

- [San Luis Obispo, Santa Barbara and Ventura Counties, February 17, 2023](#)
- [Shasta, Trinity, Siskiyou, Lassen, Plumas and Modoc Counties, February 24, 2023](#)
- [Kern, Tulare, Kings and Fresno Counties, March 3, 2023](#)
- [Tehama, Glenn, Butte, Colusa, Yuba and Sutter Counties, March 10, 2023](#)

Past trainings:

- Sacramento and Yolo Counties, April 22, 2022
- El Dorado, Placer and Sierra Counties, April 29, 2022
- Calaveras, Tuolumne, Mariposa, Nevada and Amador Counties, May, 13, 2022
- San Joaquin, Stanislaus, Merced and Madera Counties, May 20, 2022
- Imperial County, June 16, 2022
- San Diego County, June 17, 2022
- Santa Cruz, San Benito and Monterey Counties, July 22, 2022
- Sonoma, Napa, Solano and Marin Counties, July 29, 2022
- Alpine, Mono and Inyo Counties, August 12, 2022
- San Bernardino and Riverside Counties, August 26, 2022
- Los Angeles County, September 12, 2022
- San Mateo and Santa Clara, October 7, 2022
- Humboldt, Mendocino, Del Norte and Lake Counties, October 14, 2022
- Alameda, Contra Costa San Francisco Counties, October 21, 2022
- Orange County, November 18, 2022

[Register Here](#)

These trainings are hosted by ILG in partnership with PlaceWorks and the California Department of Housing & Community Development.



[Sign Up for ILG's Newsletter!](#)

Stay up-to-date on the latest resources and educational events for local agency officials in California.



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Share This Email

Communications

From: Wu, Grace
Sent: Tuesday, February 14, 2023 5:34 PM
Cc:
Subject: FW: Health and Safety Protocols for In-Person Commission Meetings
Attachments: Health and Safety Protocols for Commissions Feb 2023.pdf

Dear Planning Commissioners,

In preparation for return to in-person meetings starting March 1, 2023, the City Clerk just sent the attached health and safety protocols for all City of Berkeley commissions.

These protocols were developed in coordination with the Public Health Officer, the City Attorney's Office, and the City Manager's Office. They are not subject to modification by the commission.

Sincerely,

Grace

Grace Wu, AICP, LEED AP (she/her)
Principal Planner, Land Use Planning Division
1947 Center St., 2nd Floor, Berkeley, CA 94704
E: gwu@cityofberkeley.info | P: 415-961-9518
<https://berkeleyca.gov/construction-development>
[Zoning](#) | [Permit Forms](#) | [Boards & Commissions](#)

Health and Safety Protocols for In-Person Meetings of Berkeley Boards and Commissions February 2023

The policy below applies to in-person meetings of Berkeley Boards and Commissioners held in accordance with the Government Code (Brown Act) after the end of the State-declared emergency on February 28, 2023.

I. Vaccination Status

All attendees are encouraged to be fully up to date on their vaccinations, including any boosters for which they are eligible.

II. Health Status Precautions

For members of the public who are feeling sick, including but not limited to cough, shortness of breath or difficulty breathing, fever or chills, muscle or body aches, vomiting or diarrhea, or new loss of taste or smell, it is recommended that they do not attend the meeting in-person as a public health precaution. In these cases, the public may submit comments in writing in lieu of attending in-person.

If an in-person attendee has been in close contact, as defined below, with a person who has tested positive for COVID-19 in the past five days, they are advised to wear a well-fitting mask (N95s, KN95s, KF94s are best), test for COVID-19 3-5 days from last exposure, and consider submitting comments in writing in lieu of attending in-person.

Close contact is defined as someone sharing the same indoor airspace, e.g., home, clinic waiting room, airplane, etc., for a cumulative total of 15 minutes or more over a 24-hour period within 2 days before symptoms of the infected person appear (or before a positive test for asymptomatic individuals); or having contact with COVID-19 droplets (e.g., being coughed on while not wearing recommended personal protective equipment).

A voluntary sign-in sheet will be available at the meeting entry for in-person attendees. This will assist with contact tracing in case of COVID-19 contact resulting from the meeting.

Members of City Commissions are encouraged to take a rapid COVID-19 test on the day of the meeting.

III. Face Coverings/Mask

Face coverings or masks that cover both the nose and mouth are encouraged for all commissioners, staff, and attendees at an in-person City Commission meeting. Face coverings will be provided by the City and available for attendees to use at the meeting. Members of Commissions, city staff, and the public are encouraged to wear a mask at all times, except when speaking publicly from the dais or at the public comment podium, although masking is encouraged even when speaking.

Health and Safety Protocols for In-Person Meetings of Berkeley Boards and Commissions February 2023

IV. Physical Distancing

Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a Commission meeting.

Audience seating capacity will be at regular allowable levels per the Fire Code. Capacity limits will be posted at the meeting location. However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as “distanced seating” to accommodate persons that need to distance for personal health reasons.

Distancing will be implemented for the dais as space allows.

V. Protocols for Teleconference Participation by Commissioners

Upon the repeal of the state-declared emergency, all standard Brown Act requirements will be in effect for Commissioners participating remotely due to an approved ADA accommodation. For Commissioners participating remotely, the agenda must be posted at the remote location, the remote location must be accessible to the public, and the public must be able to participate and give public comment from the remote location.

- A Commissioner at a remote location will follow the same health and safety protocols as in-person meetings.
- A Commissioner at a remote location may impose reasonable capacity limits at their location.

VI. Hand Washing/Sanitizing

Hand sanitizing stations are available at the meeting locations. The bathrooms have soap and water for handwashing.

VII. Air Flow/Circulation/Sanitizing

Air filtration devices are used at all meeting locations. Window ventilation may be used if weather conditions allow.