



MEMORANDUM

TO: Deschutes County Planning Commission

FROM: Tarik Rawlings, Associate Planner
Will Groves, Planning Manager

DATE: December 30, 2021

SUBJECT: Deschutes County Outdoor Lighting Ordinance – Update and Panelist Selection

Based on previous input from the public, the Planning Commission, and the Board of County Commissioners (Board), the Community Development Department is revisiting Deschutes County Code (DCC) Chapter 15.10, Outdoor Lighting Control.¹ Staff input relating to the existing outdoor lighting standards is provided below. Also included is a tentative list of panelist positions for the Planning Commission’s consideration for a February 10 discussion.

I. Background

The Community Development Department’s (CDD) FY 2021-2022 Work Plan considers amending DCC Chapter 15.10 to comply with new technologies and Dark Skies Best Practices.² On November 15, 2021, the Board approved the request to begin the process.

II. Dark Skies Ordinance

Many local governments in the United States have enacted what is popularly called a Dark Skies Ordinance. It requires that most outdoor lighting face downward to the ground in an effort to reduce lighting pollution which have a detrimental effect on astronomical observations and public enjoyment of the night sky. The International Dark-Sky Association (IDA) currently lists over 50 US jurisdictions that have been designated as Dark Sky communities, parks, or reserves as of 2020.³ Support for the benefits of dark skies and the adoption of dark sky legislation has been expressed by policymakers, designers, public safety professionals, wildlife biologists, and land use planning entities across the country.

¹ https://deschutescounty.municipalcodeonline.com/book?type=ordinances#name=CHAPTER_15.10_OUTDOOR_LIGHTING_CONTROL

² <https://www.deschutes.org/cd/page/work-plan-annual-report>. Page 34.

³ <https://www.darksky.org/our-work/conservation/idsp/communities/>

III. Chapter 15.10, Outdoor Lighting Control

Deschutes County's Outdoor Lighting Ordinance was adopted in 1994.⁴ The ordinance received broad-based support in testimony to the Board in 1994. It continues to receive recognition today.

Several elements combine to make Central Oregon attractive for stargazers. East of the Cascade Mountains the lack of any large metropolitan cities makes for a darker night sky. Even with nearby Bend, Oregon's rapid growth, outdoor lighting standards are helping to keep light pollution and associated sky glow minimized. Deschutes County adopted an outdoor lighting ordinance which limits the types of lighting that can be used in order to help keep the rural skies sparkling with stars and the Milky Way. Locals know that they're lucky to live in an area with community support that will help to keep these dark night skies unspoiled. Even from their own backyards they are able to view thousands of stars.⁵

CDD produced a frequently asked questions factsheet.⁶ Ordinance 94-024 requires that:

- All private and commercial outdoor lighting fixtures installed after August 10, 1994 or replacing a fixture installed before that date 120 or brighter watt incandescent bulb (1,800 lumens) located in the unincorporated areas must be shielded by design or modification that directs light downward, and must limit direct line-of-sight of the fixture's lamp to the property on which the fixture is installed.

There are exceptions:

- Motion-sensitive lights which shine for not longer than 20 minutes.
- Decorative holiday lighting which shines for not more than 45 days.
- See the text of the ordinance for other exemptions which apply in certain circumstances.

Currently, Deschutes County does not require an application for outdoor lighting review nor any requirement for applicants to submit separate outdoor lighting plans in association with development proposals and application materials. In addition to design-specific shielding requirements and brightness limitations, the majority of outdoor lighting ordinances reviewed in comparison to Deschutes County utilize some amount of educational outreach. Dark Sky educational resources typically include example designs of dark sky-supportive outdoor lighting fixtures⁷, tips for working independently with neighbors to resolve outdoor lighting issues⁸, and a summary of dark sky benefits as related to local resources.

⁴ Ordinance 94-024. https://s3-us-west-2.amazonaws.com/municipalcodeonline.com-new/deschutescounty/ordinances/documents/1620317553_1994-34738-Ordinance%20No.%2094-024%20Recorded%209_1_1994.pdf

⁵ <https://www.darkskydefenders.org/blog/sunriver-designated-first-international-dark-sky-place-in-oregon>.

⁶ https://www.deschutes.org/sites/default/files/fileattachments/community_development/page/770/outdoor_lighting_-_frequently_asked_questions.pdf

⁷ <https://www.darksky.org/our-work/lighting/lighting-for-industry/fsa/fsa-products/>

⁸ <https://www.darksky.org/our-work/lighting/lighting-for-citizens/my-neighbors-lighting/>

IV. Preliminary Research and CDD Input

On December 10, representatives from CDD and County Legal Counsel met to discuss DCC Chapter 15.10 as it relates to reviewing and enforcing non-compliant outdoor lighting. Three constraints were identified, which are discussed in further detail below:

1. Deschutes County's legal authority related to outdoor lighting;
2. CDD Building Division capacity to review and/or inspect lighting fixtures; and
3. CDD Code Compliance capacity to enforce potential violations.

Legal Authority

State and federal laws prohibit a county from adopting retroactive ordinances that impose new standards upon uses that exist on the date that new regulations are adopted. For example, Deschutes County does not have the legal authority to require all existing exterior lighting in Deschutes County to come into compliance by a certain date. However, Deschutes County does have the authority to require outdoor lighting compliance for all new and existing lighting associated with a proposed development application.

The aforementioned legal constraints related to retroactive review of outdoor lighting features are not uncommon for Oregon jurisdictions. The following municipalities have outdoor lighting provisions that limit the application of outdoor lighting standards to outdoor lighting installations constructed after the effective date of their respective ordinances:

- City of Ashland⁹
- City of Dundee¹⁰
- City of Eugene¹¹
- City of Sisters¹²

These legal constraints are incorporated similarly into standards outside of Oregon in jurisdictions such as Goochland County, Virginia,¹³ and Coconino County, Arizona.¹⁴

Building Safety Capacity

The Building Safety Division administers and implements state and federal building codes. Plan reviewers and building inspectors do not have the capacity to review or inspect outdoor lighting fixtures. Their priorities focus on structural, mechanical, plumbing and electrical requirements and corresponding permits.

⁹ <https://ashland.municipal.codes/LandUse/18.4.4.050>

¹⁰ <https://www.codepublishing.com/OR/Dundee>. Hard copy obtained from Dundee City Recorder on December 21, 2021

¹¹ <https://eugene.municipal.codes/EC/9.6725>

¹² <https://www.codepublishing.com/OR/Sisters/#!/SistersDevCode02/SistersDevCode0215.html%232.15.2400>

¹³ <https://www.goochlandva.us/DocumentCenter/View/5632/Article-25--Outdoor-Lighting>

¹⁴ <https://www.coconino.az.gov/DocumentCenter/View/3004/Section17>

Code Compliance Capacity

The Board has established the following priorities for code violations:

1. Violations that present an imminent threat to public life, health and safety;
2. Violations which impact rivers, streams, floodplains, and wetlands;
3. Solid Waste Code violations, Environmental Soils violations, and Building Code violations consisting of ongoing non-permitted construction or failure to obtain permits; and
4. Land use violations.¹⁵

There is limited capacity for the Code Compliance Division to review outdoor lighting violations. Furthermore, according to code compliance staff, it is difficult to substantiate outdoor lighting complaints related to downward shielding. Currently, unshielded lighting may be in violation when in excess of regulated threshold (120 watt / 1,800 lumens). Throughout 2021, only five (5) code complaints were received related to outdoor lighting violations. No complaints were substantiated, due to the difficulty in quantifying the brightness of a given outdoor light from off-site and the low priority assigned to these violations.

V. Outdoor Lighting Panel

On February 10, the Planning Commission will convene a panel to discuss DCC Chapter 15.10 and any potential changes. Panelists could include representatives from partner agencies, CDD divisions, as well as Dark Skies experts from nonprofit or similar groups. A tentative list of suggested panelists are included below. Staff seeks feedback on the composition of the panel:

1. International Dark Sky Association (IDA)
2. Astronomer(s)
3. Wildlife Expert (ODFW / USFWS)
4. Audubon Society
5. Central Oregon Builders Association (COBA)
6. CDD Code Compliance

VI. Next Steps

Based on feedback from the Planning Commission, panelists will convene as the Deschutes County Outdoor Lighting Panel on February 10, 2022. Afterwards, staff will engage the Planning Commission to discuss next steps.

ATTACHMENTS:

1. Deschutes County Outdoor Lighting Control – DCC Chapter 15.10

¹⁵https://www.deschutes.org/sites/default/files/fileattachments/community_development/page/11842/code_compliance_policy_and_procedures_manual.pdf. Page 5.