



MEMORANDUM

TO: Deschutes County Planning Commission

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

DATE: February 17, 2022

SUBJECT: Deschutes County Outdoor Lighting Ordinance – Panel Recap and Continued Discussion

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 As the Planning Commission explores a Dark Skies Program, staff seeks direction as to the level of support the Commission may wish to convey to the Board of County Commissioners (Board) for such a program. If the Planning Commission wishes to convey such support to the Board, staff will relay relevant information and ultimately initiate a discussion with the Board about their willingness to allot staff resources to a Dark Skies Program or other dark sky-related initiatives.

Staff notes that a detailed Planning Commission review of the existing ordinance, cost-benefit analysis of potential regulatory approaches, analysis of limitations to enforcement and implementation, and specific code recommendations are likely premature at this time and would most likely be better approached through a subsequent process, following Board input.

However, this memo does include some detailed analysis of issues raised in the panel discussion, in response to questions raised in the panel 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. On January 13, 2022, the Planning Commission reviewed preliminary information related to the County's existing Outdoor Lighting Ordinance and directed staff to assemble an 8-person panel reflecting varying perspectives related to dark skies and

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.

outdoor lighting. On February 10, 2022, the Planning Commission convened the Outdoor Lighting/Dark Skies Panel and discussed the importance of dark sky best practices and the increase of light pollution in the regional area from approximately 2012-2020. At the conclusion of the panel discussion, the Planning Commission expressed general support for dark skies best practices and potentially scheduling additional discussions and future action items related to a more detailed review of the County's existing Outdoor Lighting Ordinance.

II. Examples from Other Jurisdictions

There are several jurisdictions within Oregon, and more throughout the country, that currently support Dark Skies Programs. During the course of revisiting Deschutes County's existing Outdoor Lighting Ordinance, staff reviewed several examples of Dark Skies Programs and Outdoor Lighting code from these jurisdictions and noted the central aspects of the various programs. The table below provides a summary of the different jurisdictions reviewed by staff and the various aspects of dark skies, light pollution mitigation, or lighting review emphasized by each program. The "Emphasis" column, below, provides a brief summary of the review mechanism and design requirements specified in each jurisdiction's Dark Skies Programs.

Dark Sky Information from Other Jurisdictions

Jurisdiction	Program Emphasis	Resources
Multnomah County, OR ³	Downward Shielding/Separate Application Review	Applies only to new and replacement lighting fixtures or bulbs
Sisters, OR ⁴	Downward Shielding	Educational materials include quick-reference guide for acceptable lighting fixtures
Troutdale, OR ⁵	Downward Shielding/Separate Application Review/Light Level Ratings/Fixture Dimensions	Existing ordinance assigns shielding requirements based on lamp type and wattage
Redmond, WA ⁶	Separate Application Review/Light Trespass Prohibition/Vegetation Standards/Motion Sensors, Timers, Dimmers	Regulations generally focus on prescribing specific design and trespass standards based on conflicting zoning districts and surrounding uses

³ <https://multco-web7-psh-files-usw2.s3-us-west-2.amazonaws.com/s3fs-public/PC-2013-3056%20Worksession%202016.pdf>

⁴ <https://www.ci.sisters.or.us/community-development/page/dark-skies-standards>

⁵ https://www.troutdaleoregon.gov/sites/default/files/fileattachments/community_development/page/8431/tmc_ch_8.26_-_outdoor_lighting.pdf

⁶ <https://redmond.municipal.codes/RZC/21.34.070>

Dark Sky Ordinances from Other Jurisdictions

Jurisdiction	Program Emphasis	Resources
Bainbridge Island, WA ⁷	Downward Shielding/Light Trespass Prohibition/No Illumination of Public Water Bodies/Vegetation Standards	Existing ordinance includes reference guide for acceptable fixtures and light trespass compliance related to topographic variations, vegetation, and other terrain characteristics
Black Diamond, WA ⁸	Downward Shielding/Separate Application Review/Light Trespass Prohibition/IESNA Standards/Curfew/Light Level Ratings/Vegetation Standards	Applies only to new and replacement lighting fixtures or bulbs
Flagstaff, AZ ^{9,10}	Downward Shielding/Wattage Restrictions	World's first "Dark-Sky Community" (2001). Educational information is available through the local Flagstaff Dark Skies Coalition non-profit group in collaboration with the City
Malibu, CA ¹¹	Downward Shielding/Light Trespass Prohibition/Curfew/Motion Sensors, Timers, Dimmers/Light Temperature/Fixture Dimensions	Recently approved, the City Council has directed staff to include a robust educational campaign to emphasize the importance of outdoor lighting best practices and aid with compliance.
Ketchum, ID ¹²	Downward Shielding/Light Trespass Prohibition/Light Temperature/IESNA Standards/Fixture Dimensions	Educational materials include quick-reference guide for acceptable lighting fixtures

⁷ <https://www.darks skiesnorthwest.org/2009/12/08/city-of-bainbridge-island/>

⁸ <https://hudsonvalleyregionalcouncil.org/wp-content/uploads/2019/08/BlackDiamondLightingOrdinance.pdf>

⁹ <https://www.flagstaff.az.gov/3799/Dark-Sky-Community>

¹⁰ <http://www.flagstaffdarks skies.org/>

¹¹ <https://www.malibucity.org/705/Dark-Sky-Ordinance>

¹² https://www.ketchumidaho.org/sites/default/files/fileattachments/planning_amp_building/page/133/dark_sky.pdf

Currently, Deschutes County does not require an application for outdoor lighting review or 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 reviewed outdoor lighting ordinances emphasize educational outreach. Dark Sky educational resources typically include example designs of dark sky-supportive outdoor lighting fixtures¹³, tips for working independently with neighbors to resolve outdoor lighting issues¹⁴, and a summary of dark sky benefits.

Since the Dark Skies Panel discussion on February 10, 2022, staff has reached out to representatives of City of Sisters, City of Troutdale, and Multnomah County (the three Oregon jurisdictions included in the table, above) concerning enforcement, fixture review, staff resources and other constraints related to the handling of their outdoor lighting regulations. For City of Troutdale and Multnomah County, both jurisdictions utilize a brief and simple preliminary review of building permit applications to ensure that the designs provide lighting fixtures that comply with the relevant code provisions. This review process largely mitigates any code enforcement issues for noncompliant fixtures associated with new structures or alterations to existing structures. City of Sisters emphasizes downward shielding associated with outdoor lighting fixtures, which tends to be a simpler design review process than assessing the potential brightness, color temperature, or other lighting characteristics. All three jurisdictions explained that, similar to Deschutes County, lighting-related code enforcement complaints are rare and are considered a low priority for code enforcement staff.

III. CDD Input

A memorandum to the Planning Commission dated December 30, 2021 (included in attachments) explains some constraints related to the review and enforcement of non-compliant outdoor lighting. Staff reiterates these constraints below.

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 replacement lighting associated with a proposed development application.

Legal Counsel continues to reiterate the heightened risk of applying retroactive review to existing fixtures as both a constitutional legal principle and a codified rule within state statute. Based on this legal guidance, staff will recommend to the Planning Commission that any reworking of DCC 15.10.170(A) be designed to clarify that light fixtures lawful on the date of installation will continue to be lawful under any new ordinance until such fixtures are eventually replaced. Only new and replacement fixtures may be the subject of any new regulation.

¹³ <https://www.darksky.org/our-work/lighting/lighting-for-industry/fsa/fsa-products/>

¹⁴ <https://www.darksky.org/our-work/lighting/lighting-for-citizens/my-neighbors-lighting/>

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 through a separate application for lighting review. Their priorities focus on structural, mechanical, plumbing and electrical requirements and corresponding permits. Currently, every building permit reviewed by the Building Safety Division Plan is stamped with a notation that exterior lighting must comply with Deschutes County's lighting regulations. At final inspection, however, not everything noted or stamped on a building plan is inspected. Nonetheless, if the expectations of the Planning Commission are to create such review through the Building Safety Division, this level of review will require hiring additional plans examiners and building inspectors, raising fees, likely delaying the issuance of building permits and the final inspection process. These actions could lead to unintended consequences relating to increasing housing costs, among others.

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

As detailed above and in past memorandums to the Planning Commission, lighting-related code enforcement violations are not considered a top priority. Throughout 2021, only five (5) code complaints were received related to outdoor lighting violations. No complaints were substantiated, due to the difficulty in quantifying potential violations from off-site and the low priority assigned to these violations.

IV. Next Steps and Board Recommendations

Based on the Planning Commission's level of support for dark sky best practices, the next steps in this process would likely involve conveying such support to the Board.

As part of this Board outreach, the Planning Commission may recommend additional panel discussions (including differing perspectives from the initial panelists), changes to the County's existing Outdoor Lighting Ordinance, non-regulatory programming such as educational campaigns and informational materials related to dark skies and light pollution, regulatory programming recommendations related to enforcement and lighting fixture review, or any additional recommendations envisioned by the Planning Commission.

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

Staff notes the future exploration of a Dark Skies program would likely span several months and entail convening a diverse stakeholder panel consisting of dark skies advocates and representatives from the building industry to discuss the different approaches local governments are taking to preserve dark skies and mitigate light pollution.

Following the Planning Commission discussion of Dark Skies to date, staff will present details of the Planning Commission's recommendations and engage the Board about their willingness to expend staff and budgetary resources on this program.

ATTACHMENTS:

1. 2021-12-30 PC Outdoor Lighting Memo