



**MEMORANDUM**

**TO:** Deschutes County Planning Commission

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

**DATE:** February 3, 2022

**SUBJECT:** Deschutes County Outdoor Lighting Ordinance – Outdoor Lighting Panel

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Based on previous direction from the Planning Commission, staff has assembled an Outdoor Lighting Panel consisting of eight (8) relevant panelists. The selected panelists will provide a variety of perspectives on outdoor lighting best practices, and specific feedback and recommendations related to the language and criteria contained in Deschutes County's Outdoor Lighting regulations (Deschutes County Code (DCC) Chapter 15.10, Outdoor Lighting Control<sup>1</sup>).

**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.<sup>2</sup> On November 15, 2021, the Board approved the request to begin the process. On January 13, 2022, the Planning Commission gave direction on the types of panelists and perspectives desired for the Outdoor Lighting Panel. In preparation for the Planning Commission meeting and initial Outdoor Lighting Panel discussion on February 10, 2022, staff contacted several individuals and received numerous messages expressing interest in serving on the Panel.

**II. Outdoor Lighting Panel**

On February 10, 2022 the Planning Commission will convene an Outdoor Lighting Panel to discuss DCC Chapter 15.10 and any potential changes to the existing code. Based on direction from the Planning Commission, staff has assembled the following panelists:

1. Grant Tandy (Observatory Manager, Worthy Garden Club / NASA/JPL Solar System Ambassador)
2. Bill Kowalik (Chairperson, Oregon Chapter of International Dark-Sky Association)

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<sup>1</sup> [https://deschutescounty.municipalcodeonline.com/book?type=ordinances#name=CHAPTER\\_15.10\\_OUTDOOR\\_LIGHTING\\_CONTROL](https://deschutescounty.municipalcodeonline.com/book?type=ordinances#name=CHAPTER_15.10_OUTDOOR_LIGHTING_CONTROL)  
<sup>2</sup> <https://www.deschutes.org/cd/page/work-plan-annual-report>. Page 34.

3. Ron Thorkildson (Deschutes County Property Owner and Resident)
4. Russell Robertson (Building Inspector, City of Bend)
5. Jerry Jones (Senior Director of Land Development, Pahlisch Homes)
6. Rima Givot (Science Teacher, Sisters High School / Amateur Astronomer)
7. Peter Gutowsky (Deschutes County CDD Director and Code Compliance Representative)
8. Elise Wolf (Director and Avian Rehabilitator, Native Bird Care / East Cascades Audubon Society)

### III. Chapter 15.10, Outdoor Lighting Control

Deschutes County's Outdoor Lighting Ordinance, adopted in 1994<sup>3</sup>, is the focus of the Panel discussion. Utilizing the expertise and perspectives from the Panel, a primary goal of this discussion is to provide specific feedback related to the criteria and language contained in the County's existing Outdoor Lighting Control development code (DCC 15.10).

#### **Legal Authority**

In previous discussion with the Planning Commission, staff identified legal prohibitions against "retroactive ordinances", which make lawfully installed light fixtures illegal. Interestingly, the currently adopted DCC 15.10.170(A)(1)(a-b), includes such a retroactive provision:

**15.10.170. Exemptions.**

A. *Nonconformance.*

1. *All other outdoor light fixtures lawfully installed prior to and operable on the effective date of the requirements codified in this ordinance are exempt from all such requirements except those regulated in DCC 15.10.150(A), (B) and (C) or as follows:*
  - a. *All replacement of outdoor lighting fixtures, as of the date of adoption, shall be subject to the provisions of this ordinance.*
  - b. *Until a date six years after the date of adoption of this code, August 31, 2000.*

This existing code section allows a period of six (6) years for existing fixtures to comply with the County's outdoor lighting regulations, if those fixtures are not otherwise exempted under DCC 15.10.170(A).

Since the Planning Commission meeting on January 13, 2022, staff has further coordinated with County Legal Counsel on the legal interpretation, applicability, and enforceability of DCC 15.10.170(A). 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 in ORS 92.285 and ORS 215.110(6). These statutes and underlying legal principles have been applied at the state-level in the case of *Church v. Grant County*, 37 Or LUBA 646 (2000).

Based on this legal guidance, as part of the current review of the outdoor lighting ordinance, Staff will recommend to the Planning Commission a reworking of DCC 15.10.170(A) to clarify that light fixtures

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<sup>3</sup> 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](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)

lawful on the date of installation will continue to be lawful under any new ordinance. Only new and replacement fixtures may be the subject of any new regulation.

#### **IV. Next Steps**

Based on the Outdoor Lighting Panel discussion, the Planning Commission may schedule a second date to convene the Panel for further input and feedback. If the Planning Commission does not find a second Panel gathering necessary, staff will engage the Commission on next steps.

#### **ATTACHMENTS:**

1. Deschutes County Outdoor Lighting Control – DCC Chapter 15.10