



MEMORANDUM

TO: Deschutes County Board of Commissioners

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

DATE: March 29, 2022

SUBJECT: Update – Deschutes County Dark Skies Ordinance Review

The Community Development Department (CDD) FY 2021-2022 Work Plan identifies updating the Deschutes County Outdoor Lighting Control Ordinance (aka Dark Skies Ordinance). Staff respectfully asks the Board of County Commissioners (Board) to support elevating its dark skies program for additional public input in the forthcoming Comprehensive Plan Update.

I. Background

CDD’s FY 2021-2022 Work Plan considers amending Deschutes County Code (DCC) Chapter 15.10, Outdoor Lighting Control, to comply with new technologies and Dark Skies Best Practices.¹ 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 Outdoor Lighting Ordinance and directed staff to assemble an 8-person panel reflecting varying perspectives related to dark skies and outdoor lighting. On February 10, the Planning Commission convened a panel and discussed the importance of dark sky best practices and the increases of light pollution in the region from approximately 2012-2020.² On February 24, the Planning Commission made a motion to the Board to: 1) update its existing dark skies ordinance; and 2) explore an educational campaign related to dark skies best practices.

II. Examples from Other Jurisdictions

There are three jurisdictions within Oregon that currently support dark sky programs. During the course of revisiting Deschutes County’s Dark Sky Ordinance, staff reviewed several other examples and noted their central aspects. Table 1 provides a summary. Only one represents a county jurisdiction (Multnomah), and it is primarily urban. The rest are small- to medium-sized municipalities throughout the Western States.

¹ <https://www.deschutes.org/cd/page/work-plan-annual-report>. Page 34.
² <https://www.deschutes.org/bc-pc/page/planning-commission-9>

Table 1 - Other Dark Sky Ordinances

Jurisdiction	Program Emphasis	Resources
Multnomah County, OR³	Downward Shielding/Separate Application Review	Applies only to new and replacement lighting fixtures or bulbs
Sisters, OR⁴	Downward Shielding	Educational materials include quick-reference guide for acceptable lighting fixtures
Troutdale, OR⁵	Downward Shielding/Separate Application Review/Light Level Ratings/Fixture Dimensions	Existing ordinance assigns shielding requirements based on lamp type and wattage
Redmond, WA⁶	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
Bainbridge Island, WA⁷	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, WA⁸	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

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>

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/>

Jurisdiction	Program Emphasis	Resources
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

III. CDD Input

The following discusses CDD’s constraints and concerns related to the review and enforcement of non-compliant outdoor lighting.

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 acknowledges 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.

Building Safety Capacity

The Building Safety Division administers and implements state building codes. Plans examiners 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 are to create such review through the Building Safety

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

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.¹³

As detailed above, 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

Staff offers the following options for the Board's consideration:

1. Given the current staffing limitations within CDD, elevate Deschutes County's Dark Skies Ordinance as a topic for discussion during the Comprehensive Plan Update.
2. Initiate a Dark Skies work program which would entail convening diverse stakeholders consisting of the Planning Commission, CDD, dark skies advocates and representatives from the building industry to discuss the different outdoor lighting approaches and make a recommendation to the Board.

This option will require returning to the Board with a list of other prominent projects in CDD's FY 2021-2022 CDD Work Plan that would need to be reprioritized and likely delayed.

3. Other.

¹³https://www.deschutes.org/sites/default/files/fileattachments/community_development/page/11842/code_compliance_policy_and_procedures_manual.pdf. Page 5.