

January 18, 2021

Response to Legal Review of the Lighting Ordinance

Three points to consider:

1. The cost of replacement of marine lights is indeterminate since both the type of lighting, and the purpose of the lighting is unclear. In discussion with the representative of the Adobe Resort it was suggested that the five lights referred to by the Planning Commission as Marine Lighting were actually functioning as security lighting. There are several fairly inexpensive security lighting changes which are available. One example is to change the wiring for the lights outside of each first floor room to be linked so that they are all turned on at dusk, and turned off at dawn. The cost of any changes was considered by the Planning Commission, and that was the reason for the 3 year implementation time.
2. The separate compliance time for residential versus commercial uses was recommended by the Planning Commission due to consideration of both cost and customer satisfaction considerations for the commercial use of marine lighting. Although the current marine lighting is not mentioned in advertising for local lodging businesses, it is considered to be a draw for returning customers. If we were to regulate commercial and residential marine lighting the same, it is not clear whether compliance times and curfews for residential customers should change to match commercial requirements, or visa versa, or a combination in between.
3. There is nothing special about the curfew being set at 11pm, except that 11pm is the time currently in use by the Overleaf Lodge. There is no suggestion being made that the specific time of 11pm is a requirement of the nearby marine life. The research suggests that a time of light, and a time of dark during each 24 hour period is a requirement for the survival of certain marine creatures. However, it should be noted that restrictions on marine lighting are not simply recommended in order to preserve marine life. The rationale includes the following points.
 - a) Preserve marine life.
 - b) The Marine Lighting is also Trespass Lighting as identified in 9.42.040A, and 9.42.040B.
 - c) Lighting on buildings shall not be placed above the eaves 9.42.040G.
 - d) Preexisting Nuisance Ordinance section 5.08.165A: Exterior lighting shall not be directed from the property of the owner onto private residential or commercial property, streets, parklands, or other public properties.

Other comments included:

- Further definition of “bright” is not required for enforcement of Trespass Lighting. However, it is easy to add.
- Definition of “temporary” refers to a holiday season. However, a definition can be added.
- The copyright for pictures used in the ordinance has been released. In fact their reuse is encouraged.
- It is standard practice to refer to enforcement to follow “after the passage of this ordinance” rather than specifying a specific date since the effective date may be delayed by discussions such as the current one.
- It is unclear why the standard variance process could not be used in review of judgments based on the lighting ordinance.

- YMC 9.42.070(2)(c) is not a regulation. It is an attempt by the Planning Commission to insure that issues brought forth by representatives of the local lodging industry are dealt with in detail, and that further discussions not delay implementation of other components of the Lighting Ordinance.
- YMC 9.42.050(E) is not a regulation. It was put in by the Planning Commission due to a comment arising from the last review of the Lighting Ordinance asking what can be done about street lights. It can be removed since, as stated, a resolution is already available.
- Several corrections have been made to section 9.42.050 Standards Based on Use. These changes ignored the intent of this section, and, in fact reversed what was intended. The Planning Commission is aware that what is built in some zones does not match the primary intent of the zoning. For example, in commercial zones other uses are allowed including those identified by R4, R3, R2, and R1 zones. In other words single family residences are allowed, and are, in fact, present, in C1 zones. The Planning Commission intended to draft regulations based on usage, not zoning.