

REQUEST FOR LEGAL SERVICES

RECEIVED

By Corporation Counsel at 1:51 pm, May 17, 2022

Date: May 17, 2022

From: Kelly Takaya King, Chair

Climate Action, Resilience, and Environment Committee

TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Keola Whittaker, Esq.

Subject: **BILL 21, PROPOSED CD1 (2022)** (CARE-74)

Background Data: Please see the attached revised bill. Revisions are not sought. Please submit the signed bill to care.committee@mauicounty.us with a reference to CARE-74.

Work Requested: ☒ FOR APPROVAL AS TO FORM AND LEGALITY

☐ OTHER:

Requestor's signature  Kelly Takaya King	Contact Person <u>Brittney Sunderland or James Forrest</u> (Telephone Extension: <u>7141 or 7137</u>)
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☐ ROUTINE (WITHIN 15 WORKING DAYS)

☐ RUSH (WITHIN 5 WORKING DAYS)

☐ PRIORITY (WITHIN 10 WORKING DAYS)

☐ URGENT (WITHIN 3 WORKING DAYS)

☒ SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): May 24, 2022

REASON: For posting on the June 1, 2022, CARE Committee agenda.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO: <u>KRW</u>	ASSIGNMENT NO. <u>2021-0007</u>	BY: <u>GMR</u>
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TO REQUESTOR: ☐ APPROVED ☐ DISAPPROVED ☐ OTHER (SEE COMMENTS BELOW)

☒ RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): Attached is a suggested revised version of the Outdoor Lighting Bill. Please note that due to time constraints we have not received comments from Public Works or other departments. We recommend getting feedback from Public Works on this version.

DEPARTMENT OF THE CORPORATION COUNSEL

Date May 27, 2022

By 

(Rev. 7/03)

care:ltr:074acc02:brs

Attachment

ORDINANCE NO. _____

BILL NO. 21 CD1 (2022)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 20.35,
MAUI COUNTY CODE, RELATING TO OUTDOOR LIGHTING

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. The purpose of this Ordinance is to protect the health, safety and welfare of the public and protect the natural habitat, including that of Hawaiian seabirds, by minimizing light pollution, glare, and light trespass; conserving energy and resources while maintaining safety, utility, and security; and curtailing the degradation of the nighttime visual environment.

SECTION 2. Section 20.35.030, Maui County Code, is amended to read as follows:

“20.35.030 Administration. This chapter [shall be] is administered and enforced by the department of public works_ [and environmental management.]”

SECTION 3. Section 20.35.040, Maui County Code, is amended to read as follows:

“20.35.040 Definitions. For purposes of this chapter, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used in this chapter are defined as follows:

“Artificial sky glow” means the brightening of the night sky attributable to man-made light sources.

[“Augmented monochromatic lighting” means a lighting system designed in conformance with lighting standards adopted by the Illuminating Engineering Society of North America, such that at least ninety per cent of the total lumens emitted are produced by low pressure sodium lamps, and no more than ten per cent of the

total lumens emitted are produced from lamps that emit light across a broad portion of the light spectrum.

“Class I lighting” means outdoor lighting used for outdoor sales areas, service stations, outdoor eating areas, outdoor assembly or repair areas, and recreational facilities.

“Class II lighting” means all outdoor lighting used for, but not limited to, illumination for equipment yards, parking lots, outdoor security, and other similar applications in which general illumination of the ground is the primary concern.

“Class III lighting” means any outdoor lighting used for decorative effects, including but not limited to, waterfall and pond lighting, landscaping, and walkways.

“Class IV lighting” means all lighting used for the illumination of roadways.

“Committee” means the Maui County outdoor lighting standards committee.】

“Director” means the director of public works [and environmental management] of the County [of Maui] or the director's duly authorized representative.

“Flood or spot lamps” means any light fixture incorporating a reflector or refractor to concentrate and direct light output in a particular direction.

“Fully shielded” means the outdoor lighting fixture is constructed so that all of the light emitted by the fixture is projected downward below the horizontal plane of the lowest point of the fixture.

【“High pressure sodium” or “HPS” means a bulb that is filled with high pressure sodium vapor and emits light across a broad portion of the light spectrum.】

“Kelvin” means the measure of the color temperature of a light source. Warmer temperatures are a lower number, and cooler temperatures are a higher number.

“Light source” means the initial source of the light, a bare bulb.

“Light trespass” means artificial light or illuminance that falls beyond the property boundaries of the property where the light is located.

【“Light spectrum” means the band of electromagnetic radiation (light) that is visible to the human eye.

“Lighting system” means a project's outdoor lighting plan for class II uses.

“Low pressure sodium” or “LPS” means a bulb that is filled with low pressure sodium vapor and emits light across a narrow portion of the light spectrum.】

“Lumen” means the unit of light emission from a light source.

“Luminaire” means a complete lighting unit consisting of a light source and all necessary mechanical, electrical, and decorative parts.

“Mercury vapor” means any lamp containing mercury in a fused quartz tube [which] that emits light across a broad portion of the light spectrum.

["Metal halide" means a lamp containing metal halide additives in addition to mercury vapor and emits light across a broad portion of the light spectrum.]

“Outdoor lighting fixture” means any artificial outdoor lighting device, permanently installed or portable, that is intended to provide illumination for visibility or decorative effects[.] but does not include automotive exterior lighting such as headlamps or taillights.

["Partially shielded" means the outdoor lighting fixture is constructed so that at least ninety per cent of the light emitted by the fixture is projected below the horizontal plane of the lowest point of the fixture.]

“Security lighting” means any outdoor artificial lighting device that is intended to discourage or prevent crime.

“Searchlight” means a powerful outdoor electric luminaire with a concentrated beam directed in a specific direction, or motorized to change direction.

“String lights” means a maximum 2.8-watt system designed for exterior installation and use featuring individual bulb receptacles connected by exposed electrical wires that are designed to hang between two points.

“Temporary outdoor lighting” means specific illumination of an outside area or object by any man-made device located outdoors that produces light by any means for a period of less than sixty consecutive days, with at least one-hundred and eighty consecutive days passing before being used again.”

SECTION 4. Chapter 20.35.060, Maui County Code, is amended to read as follows:

“20.35.060 General Requirements. [A. All new outdoor lighting fixtures shall comply with the requirements of section 20.35.090.

B. All outdoor lighting fixtures that were legally installed before January 25, 2007 shall comply with section 20.35.090 by January 1, 2020; except class III lighting fixtures that were legally installed before January 25, 2007 shall be exempt from section 20.35.090.

C. Mercury vapor shall not be used for new outdoor lighting fixtures or for the replacement of existing

outdoor lighting fixtures. All existing mercury vapor outdoor lighting fixtures shall be removed within ten years of the enactment of this ordinance.]

A. Unless otherwise exempted, the following are prohibited:

1. Mercury vapor lights.
2. Up-lighting.
3. Unshielded flood or spot lamps.
4. Architectural or landscape lighting.
5. Search lighting except by police, fire, and other emergency response personnel.
6. Flashing or blinking lights except by police, fire, and other emergency response personnel.

B. All outdoor lighting fixtures, except for neon, must comply with the following requirements:

1. All fixtures must be aimed and shielded so that the direct illumination shall be confined to the property boundaries of the source and ensure no direct illumination of the ocean.
2. The correlated color temperature of all outdoor lighting shall be 3,000 degrees Kelvin or less. The director may approve outdoor lighting with a color temperature up to 5,000 degrees Kelvin only when required for public safety or law enforcement purposes.

C. Unless otherwise provided, free-standing luminaries must be mounted at a height no greater than twenty feet measured from the final grade to the bottom of the luminaire. The director may approve greater mounting or pole heights under the following conditions:

1. The greater mounting height is required for safety or security reasons or due to unique topography;
2. Fewer luminaries will be required for the site as a result of the greater mounting height; or
3. The greater mounting height will contribute less artificial sky glow by reducing the intensity of the lighting beneath the luminaire.”

SECTION 5. Section 20.35.070, Maui County Code, is amended to read as follows:

“20.35.070 Exemptions. The following [shall be] are exempt from the provisions of this chapter:

A. All outdoor lighting fixtures producing light directly by the combustion of fossil fuels, such as kerosene and gasoline[;].

B. [Low wattage fixtures used for holiday decorations only;]Low-lumen holiday lights as long as the lights are used no more than 75 days during a 12-month period and turned off by midnight.

C. Temporary outdoor lighting used for public safety, road construction or emergency repair, field harvesting, and road crossing[;].

D. Temporary outdoor lighting used as hotel and condominium beach security lighting[;].

E. [Safety and security lighting for water features, except that water feature lighting such as for waterfalls, jet sprays, and bubblers shall be subject to the usage restrictions of section 20.35.090;] Underwater lighting in a swimming pool or other water feature provided it is not intended to illuminate features above water.

F. [Replacement of outdoor lighting fixtures legally installed before the enactment of this ordinance with the same or like fixtures; provided, that such lighting fixtures shall be subject to sections 20.35.060.B and 20.35.060.C;] All outdoor lighting fixtures installed prior to the enactment of the ordinance establishing section 20.30.060 are exempt.

G. [Outdoor lighting fixtures on a motion sensor timed to turn off within a five-minute time limit;] Motion-sensor controlled light source that is set to turn the artificial light source off five minutes after the last detection of motion, provided that:

1. The light output equal to or less than 1,800 lumens.

2. The color temperature of the light source does not exceed 5,000 degrees Kelvin.

3. Lighting shall not be triggered by any activity outside the property boundary.

4. The artificial light source is sufficiently shielded to prevent light trespass on adjacent properties.

H. Lighting on federal and State properties and on areas under the jurisdiction of the federal and State government, including[, but not limited to,] Hawaiian home lands, State conservation districts, airports, and harbors.

I. Recreational Lighting. Due to their unique requirements for nighttime visibility and their limited hours of operation, baseball fields, playing fields, tennis courts, and sports stadiums may operate with the following conditions and exceptions:

1. All fixtures must be fully shielded.

2. The height of outdoor recreational posts must not exceed seventy feet above the final grade except that fixtures in existence as of the effective date of this ordinance are not required to comply with the height restriction.

3. Lighting at public recreational facilities or private schools shall be turned off within one hour of the completion of the last game, practice, or event.

4. Lighting at private recreational facilities must be turned off by 11:00 p.m.

J. Up-lighting is permitted for special events on a temporary basis at County-owned or managed facilities. All up-lighting shall be shielded and/or have a beam-angle control and shall be aimed to limit the directed light to the illuminated object only. Up-lighting is permitted thirty minutes before sunset and until 11:00 p.m.

K. Outdoor lighting intended for an occasional event, such as a wedding, party, social gathering, or other event that occurs on an occasional basis, provided it is in compliance with the following:

1. Occasional event lighting shall be turned off by 10:30 p.m. and any remaining lighting must comply with this chapter.

2. Occasional events must not occur more than twice per month on the same property.”

SECTION 6. Section 20.35.090, Maui County Code, is amended to read as follows:

“20.35.090 Shielding requirements and usage restrictions. [Outdoor lighting fixtures shall conform to the following shielding requirements and usage restrictions:

Lamp Type	Shielding Requirement	Usage Restrictions
Class I		
Augmented monochromatic	Fully shielded	None
Low pressure sodium	Fully shielded	None
Metal halide	Partially shielded	Off from 11:00 p.m. to sunrise*
All others	Fully shielded	None
Class II		

Augmented monochromatic	Fully shielded	None
Low pressure sodium	Fully shielded	None
All others (existing)	Fully shielded	None
All others (new)	Fully shielded	None
Class III		
Low pressure sodium	Fully shielded	None
High pressure sodium	Fully shielded	None
Neon	None	Off from 11:00 p.m. to sunrise*
Others	Fully shielded	None
Others	Partially shielded	Off from 11:00 p.m. to sunrise*
Class IV		
Existing	Fully shielded	None
Low pressure sodium	Fully shielded	None
High pressure sodium	Fully shielded	None
Others	Fully shielded	None

*These lights may be used between 11:00 p.m. and sunrise if business or recreational activities are taking place, but shall be turned off no later than one hour after conclusion of activities.]

A. All non-exempt fixtures must be full cutoff fixtures with the light source fully shielded and directed downward.

B. All fixtures using metal halide or neon lights must be turned off by 11:00 p.m.

C. The following are exempt from the fully shielded requirement:

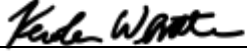
1. String lights may be used year-round to illuminate decks, porches, and patios but are prohibited from illuminating landscaping or outlining structures.

2. Pathway lighting less than eighteen inches in height with a total light output that is less than 300 lumens.”

SECTION 7. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 8. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:



KEOLA R. WHITTAKER
Deputy Corporation Counsel
Department of the Corporation Counsel
County of Maui

LF2021-1677
CARE-74 2022-05-27 Ord Amd Ch 20.35
care:misc:074abill05

CARE Committee

From: Keola Whittaker <Keola.R.Whittaker@co.maui.hi.us>
Sent: Friday, May 27, 2022 10:45 AM
To: CARE Committee
Cc: Graham Resell
Subject: CARE 74
Attachments: CARE-74 2022-05-17 RFLS Sunderland Ord Amd Ch 20.35 RAFL.PDF

Attached please find a proposed revised version of the Outdoor Lighting Ordinance. Since significant changes were made, we did not include a redline. This version attempts to capture the intent of the original bill as it relates to blue light content and height limits.

Please note that we have not had an opportunity to review this version with the Department of Public Works and recommend you obtain their feedback on the enforceability of this version.

Keola Whittaker
Deputy Corporation Counsel
County of Maui
200 High Street, 3rd Floor
Wailuku, Hawaii 96793
Ph: (808) 270-7740 (main)