

ORDINANCE NO. 2022-20

AN ORDINANCE OF THE CITY OF SEALY, TEXAS, ADDING A NEW ARTICLE XIV OF CHAPTER 28; ESTABLISHING RULES AND REGULATIONS FOR OUTDOOR LIGHTING; PROVIDING FOR REPEAL; PROVIDING FOR SEVERABILITY; PROVIDING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

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WHEREAS, the City Council for the City of Sealy, Texas ("City") seeks to provide rules and regulations for outdoor lighting within the City limits, and when possible through agreements and contracts, the extraterritorial jurisdiction ("ETJ"); and

WHEREAS, the City Council seeks to maintain the value of Sealy's scenic beauty and rural charm, which are the keystones of the City's quality of life, through a comprehensive regulatory program that includes subdivision control, and regulations and restrictions on outdoor lighting; and

WHEREAS, the City Council finds that unnecessary and improperly designed outdoor light fixtures cause glare, skyglow, light trespass, obtrusive light, and waste resources; and

WHEREAS, the glare and light pollution can result in: hazardous circulation conditions for all modes of transportation; the diminishing ability to view the night sky; light trespass; negative effects to nocturnal habitat; and an unattractive cityscape; and

WHEREAS, the people who live in and near the City value the natural environment, including the beauty of the natural landscape and high quality of the night sky; and

WHEREAS, these lighting regulations will not sacrifice the safety of our citizens or visitors, or the security of property, but instead will result in safer, efficient and more cost-effective lighting; and

WHEREAS, pursuant to Texas Local Government Section 51.001, the City has general authority to adopt an ordinance or police regulation that is for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SEALY, TEXAS:

Section 1. The facts and recitations contained in the preamble to this ordinance are true and correct and incorporated herein for all purposes.

Section 2. A new Article XIV of Chapter 28 is added to read as follows:

"Chapter 28 - DEVELOPMENT RULES, REGULATIONS AND STANDARDS

ARTICLE XIV. - Outdoor Lighting

Section 28-111. Purpose and Scope

- (a) The purpose of this Section is to provide for the preservation of night skies, protect property rights by preventing light trespass, save energy by eliminating waste, and increase safety by eliminating glare.
- (b) This Ordinance applies to all new **Non-Residential and Multi-Family** property. The lighting legally installed and already in existence for any Non-Residential (e.g. business, commercial, industry) or Multi-Family on the effective date of this Ordinance shall be exempt from this Ordinance except, all **Non-Residential and Multi-Family** properties going through re-development through extension, reconstruction, resurfacing, or structural alteration of at least fifty (50) percent increase in size or value, whichever is less, must come into compliance with this Ordinance. Land plan approval shall be conditioned on compliance with this Ordinance. This ordinance does not apply to single-family residential.
- (c) Nothing herein shall be construed as preventing or limiting the City from applying this Section to the ETJ through agreements with property owners, or as a term affixed to a conditional approval (such as a variance).
- (d) Exemptions to this ordinance include those itemized in Section 28-128.

Section 28-112. Definitions

Applicant: A person or entity who submits an application for an approval required by this Ordinance. To be qualified as an Applicant, the person or entity must have sufficiently documented legal authority or proprietary interests in the land to commence and maintain proceedings under this Ordinance. To avoid confusion, the term will not include anyone other than the property owner(s), tenant(s), or a duly authorized agent and representative of the Property Owner. As to enforcement between tenant(s) and Property Owner(s) of a particular piece of property, the Property Owner(s) shall have ultimate liability for violations of this Ordinance.

City: The City of Sealy, Texas, an incorporated municipality located in Austin County, Texas.

Full Cut-Off Fixtures: Fixtures, as installed, that are designed or shielded in such a manner that all light rays emitted by the fixture, either directly from the lamps or indirectly from the fixture, are projected below a horizontal plane running through the lowest point on the fixture where light is emitted.

Glare: Lighting entering the eye directly from luminaires or indirectly from reflective surfaces that causes visual discomfort or reduced visibility.

Holiday Lights: Lighting used for a specific celebration which may be one of the following types:

- (a) Festoon type low-output lamps, limited to small individual bulbs on a string.
- (b) Low-output lamps used to internally illuminate yard art.
- (c) Flood or spotlights producing less than 2000 lumens each, whose light source is not visible from any other property, and which are used only as temporary lighting.

IESNA: The Illuminating Engineering Society of North America.

Lighting: Any source of light that does not include natural light emitted from celestial objects or fire. The term includes any type of lighting, fixed or movable, designed or used for outdoor illumination of buildings or homes, including, but not limited to, lighting for billboards, streetlights, canopies, fuel station islands, searchlights used for advertising purposes, externally or internally illuminated on- or off-premises advertising signs, and area-type lighting. The term includes luminous elements or lighting attached to structures, poles, the earth, or any other location.

Light Trespass: Light emitted from fixtures designed or installed in a manner that unreasonably causes light to fall on a property other than the one where the light is installed, in a motor vehicle driver's eyes, or upwards toward the sky.

LZ1: Light Zone 1 is the IESNA's recommended default zone for rural and low-density residential areas for low ambient lighting levels.

Logo: A representation or symbol adopted by a business, organization, or an individual used to promote instant public recognition.

Lumen: The unit of measurement used to quantify the amount of light produced by a bulb or emitted from a fixture (as distinct from "watt", a measure of power consumption). For the purposes of this Ordinance, the lumen output values shall be the initial lumen output ratings of a lamp. The lumen rating associated with a given lamp is generally indicated on its packaging or may be obtained from the manufacturer (abbreviated lm).

Luminaire: The complete lighting unit (fixture) consisting of a lamp, or lamps and ballasts, together with the parts designed to distribute the light (reflector, lens, diffuser), to position and protect the lamps, and to connect the lamps to the power supply.

Luminous Elements (of a Light Fixture): The lamp (light bulb), any diffusing elements, and surfaces intended to reflect or refract light emitted from the lamp individually or collectively comprise the luminous elements of a light fixture (luminaire).

Major Addition: Enlargement of fifty percent (50%) or more of the building's gross floor area , seating capacity, or parking spaces, either with a single construction project or cumulative series of construction projects, after the enactment of this Section. The term also includes replacement of twenty-five percent (25%) or more of installed outdoor lighting.

Multi-Family Dwelling: A structure designed to contain three or more complete separate living facilities for single family occupancy . Multi-family dwellings shall include, but are not limited to, apartments, condominiums, triplex and quadruplex.

Non-residential: any property or dwelling not included in the definition of Multi-Family Dwelling, including but not limited to businesses , commercial, and industrial property.

Outdoor Lighting: Temporary or permanent lighting that is installed, located or used in such a manner to cause light rays to shine outdoors. Non-residential fixtures that are installed indoors that cause light to shine outside are considered outdoor lighting for the intent of this Ordinance. (See Figure A). Residential fixtures installed indoors generating more than 6200 lumens (approximately equal to a 300-watt incandescent bulb) that cause light to shine outside are also considered outdoor lighting for the intent of this Ordinance. Figure A is an elevation view showing a non-residential application of indoor lighting, labeled FS, which will be subject to this Ordinance and indoor lighting, labeled A, which is installed so that it is not subject to this Ordinance.

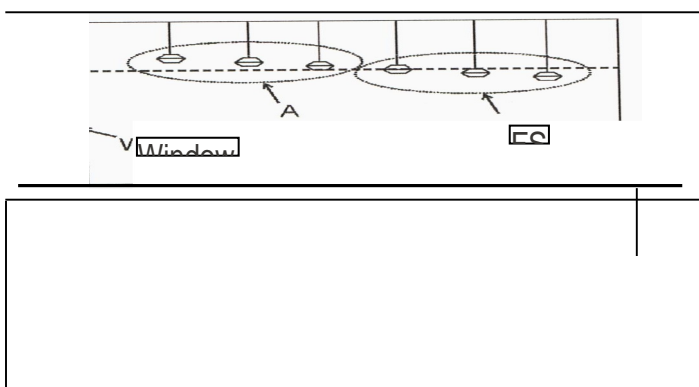


Figure A

Outdoor Recreational Facility: an open-air arena, stadium, playing field or similar facility primarily used to host sporting events and that is open to the general public and includes an area for spectators.

Person: Any individual, partnership, co-partnership, association, firm, company , corporation, association, joint stock company, trust, estate, governmental entity, political subdivision, or any other legal entity, or their legal representatives, agents

or assigns. This definition includes all federal, state, and local governmental entities. It includes but is not limited to, corporation , agency , unincorporated association, partnership, or sole proprietorship.

Property Line: The boundary line between two pieces of property.

Shielded Lights: Outdoor light fixtures shielded or constructed so that no light rays are emitted by the installed fixture at angles above the horizontal plane as certified by a photometric test report. The bulb is not visible with a shielded light fixture, and no light is emitted from the sides of the fixture. This light is also considered a Full Cut-Off Fixture.

Single-Family Dwelling: A property having one or two complete separate living facilities for single family occupancy .

Sky Glow: The brightening of the nighttime sky that results from scattering and reflection of artificial light by moisture and dust particles in the atmosphere. Sky Glow is caused by light directed or reflected upwards or sideways and reduces one's ability to view the night sky.

Temporary Lighting: Lighting intended for uses which by their nature are of limited duration. For example: holiday decorations , civic events, or construction projects.

Uplighting: Lighting that is directed in such a manner as to shine light rays above the horizontal plane.

Section 28-113. General Requirements

- (a) All new outdoor lighting shall be installed in conformance with the provisions of this Ordinance.applicable City electrical, energy, and building ordinances, except as provided herein.
- (b) All lighting, except publicly-owned traffic signals, shall be located, aimed, or shielded so as to minimize visible glare and stray light.
- (c) Except for identification signs such as logos, lighting shall not be used with the intent of attracting customers.
- (d) A US or Texas flag flying at night will be considered properly illuminated as long as flag is minimally visible.

Section 28-114. Non-Residential and Multi-Family

All outdoor lighting installed on Non-Residential and Multi-Family properties shall conform to the standards of this Ordinance , except as provided herein.

Section 28-115. Nonconforming existing lighting.

All existing outdoor lighting that was legally installed before the enactment of this Ordinance, that does not conform with the standards specified and imposed by this Ordinance shall be considered nonconforming . Nonconforming outdoor lighting is allowed to remain until required to be replaced pursuant to the terms of this Ordinance.

Section 28-116. Conformance Required

- (a) **Destruction.** If more than fifty percent (50%) of the total appraised value of a structure (as determined from the records of the Austin County Appraisal District), has been destroyed , the nonconforming status expires and the structure 's previously nonconforming outdoor lighting must be removed and may only be replaced in conformity with the standards of this Ordinance.
- (b) **New Uses or structures, or Change of Use.** Whenever there is a new use, new owner, or new tenant of a property , or the use on the property is changed, all outdoor lighting on the property shall be brought into compliance with this Ordinance before the new or changed use commences.
- (c) **Major Addition.** All existing outdoor lighting located on a subject property that is part of an application for a construction permit, building permit, or subdivision approval, for an addition is required to be brought into conformance with this Ordinance before final inspection, issuance of a Certificate of Occupancy, or final plat recordation, when applicable. For the following permits issued by the City, the Applicant shall have a maximum of 90 days from date of permit issuance to bring the lighting into conformance: land development permit, sign permit for an externally or internally-illuminated outdoor sign, initial alcoholic beverage permit, initial food establishment permit, and on-site sewage facility permit.
- (d) **Abandonment of Nonconforming.** A nonconforming structure shall be deemed abandoned if the structure remains vacant for a continuous period of six (6) months. In that instance, the nonconforming status expires and the structure's previously nonconforming outdoor lighting must be removed and may only be replaced in conformity with the standards of this Ordinance .
- (e) It is unlawful to expand, repair, or replace outdoor lighting that was previously nonconforming, but for which the prior nonconforming status has expired, been forfeited, or otherwise abandoned.

Section 28-117. Parking.

All parking lot lighting shall have no light emitted above an angle of 90 degrees (i.e.,light shall not shine above the horizon).

Section 28-118. Shielding.

All outdoor lighting, except governmental owned street lights, shall be shielded so that the luminous elements of the fixture are not visible from any other property. Mounting height or proximity to property lines may cause the luminous elements of a light fixture to need additional shielding. The following are examples of shielding and lack of shielding: (See Figures Band C).

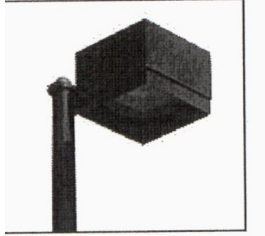


Figure 8 (Typical *Shielded* Outdoor Lighting)

In Figure C (below), the lights on the left are non-conforming. Those on the right can be used in most cases. However, the mounting height and proximity to the property line may cause them to need additional shielding to prevent the luminous elements from being visible from any other property.

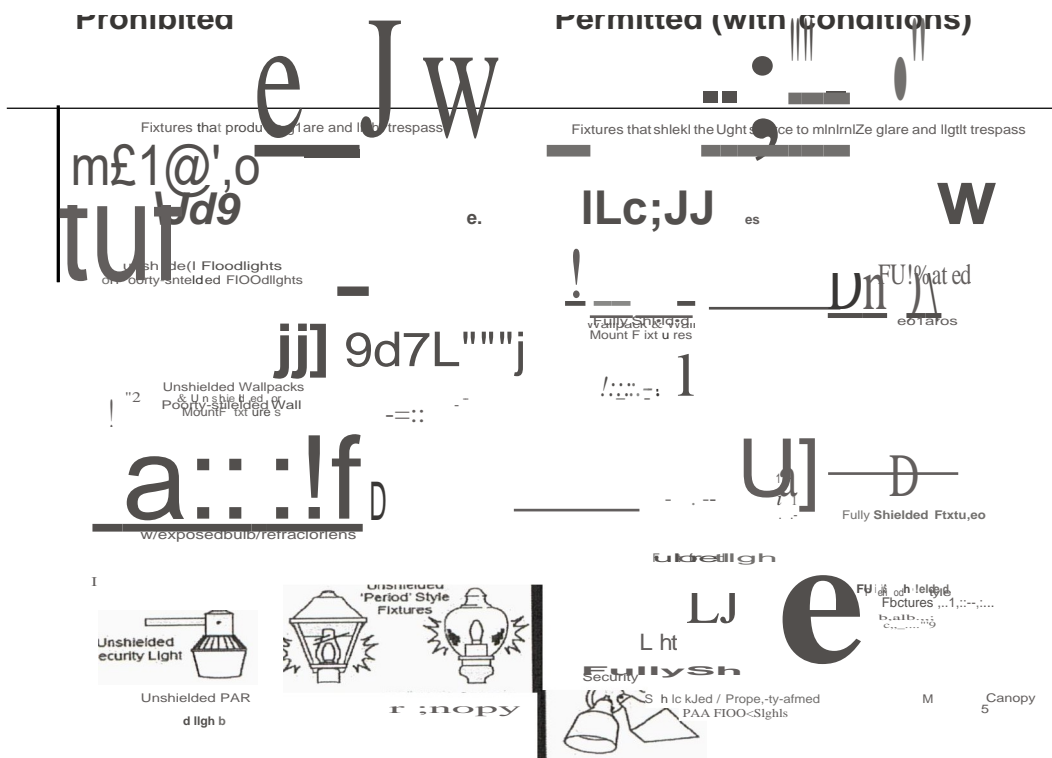


Figure C (Examples of Prohibited and Permitted Outdoor Lighting)

Section 28-119. Public Lighting.

Governmental owned street lights shall meet the qualifications to be full cut-off fixtures in order to limit Light Trespass. (See Figure D).

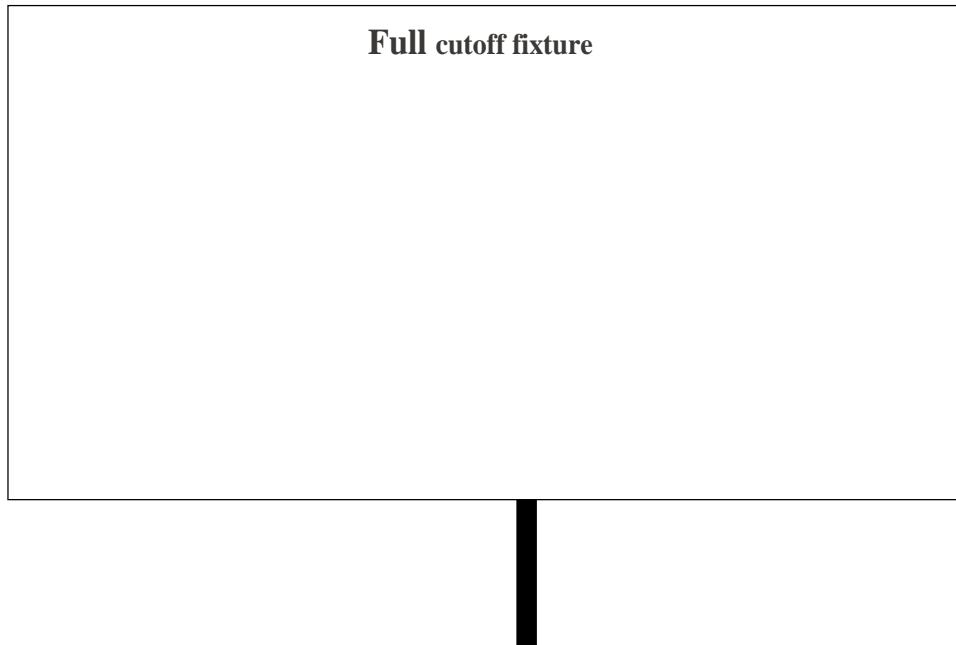


Figure D (Full Cut-Off Fixture that Limits Light Trespass)

Section 28-120. Outdoor Recreational Facilities.

Outdoor recreational facilities are subject to the shielding requirements in this Section. Where fully shielded fixtures are not available, lighting fixtures using external louvers or shields that, in the final installed configuration, extend to within 3 inches on the lowest portion of the light fixture opening are required. (See Figure E). The fixtures shall be installed and maintained with aiming angles that permit no greater than 1% of the light emitted by each fixture to project above the horizontal line.

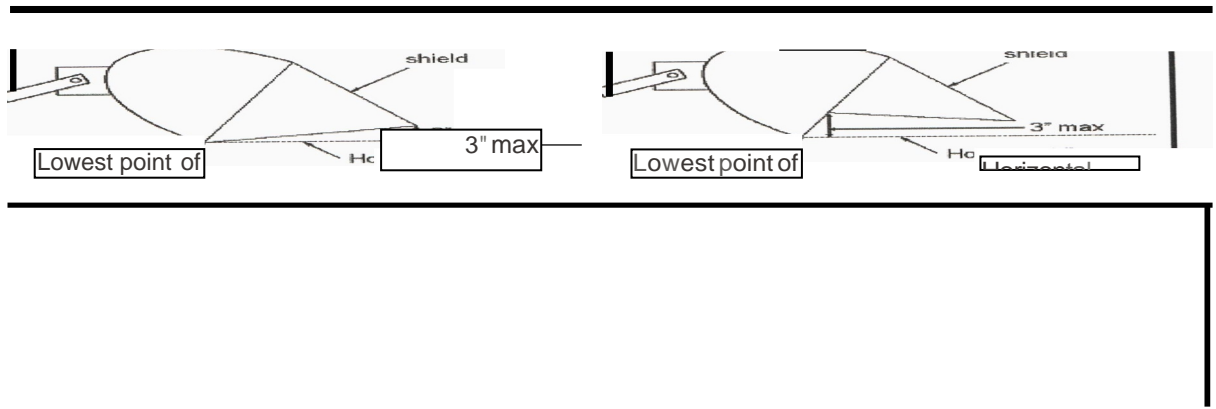


Figure E (Sports Lighting where Fully Shielded Fixtures are Not Available)

Section 28-121. Lighting Under Canopies , Building Overhangs, or Roof Eaves.

All Outdoor light fixtures located under canopies , building overhangs, or roof eaves must conform to all provisions of this Ordinance.

Section 28-122. Neon Lighting.

Neon lighting is permitted. Such lighting shall be subject to the shielding requirements of this Ordinance unless exempted Linder Section 28-128.

Section 28-123. Lighting Curfews.

- (a) Outdoor lighting intended to be illuminated for more than one (1) hour after closing, or for the completion of activities after closing, must be reduced to 25% or less of the normal lumen output. Motion sensor activation may be allowed to cause the light to resume normal lumen output only when activated and to be reduced back to 25% or less of normal lumen output within 5 minutes after activation has ceased, and the light shall not be triggered by activity off the property.
- (b) Illumination for all advertising signs, both externally and internally illuminated, shall be turned off by the later of closing time or 11:00 P.M.; provided, however, that such signs may be turned back on prior to sunrise, but no more than one hour prior to opening.
- (c) Street Lighting, other than at the intersection of roadways, shall utilize half-night photocells or timers to turn off the lights halfway between dusk and dawn.
- (d) Lighting for outdoor recreational facilities is allowed between one hour prior to sunset and 11:00 p.m., unless it is needed to complete a specific organized activity or event already in progress at 11:00 p.m.

Section 28-124. Prohibitions

- (a) The installation of any **mercury vapor** fixture or lamp for use as outdoor lighting is prohibited.
- (b) The installation of any wall pack style fixture for use as outdoor lighting is prohibited unless the fixture is rated by the manufacturer as full cut-off. Examples of acceptable wall packs, when mounted with light directed downward only are shown in Figure F.

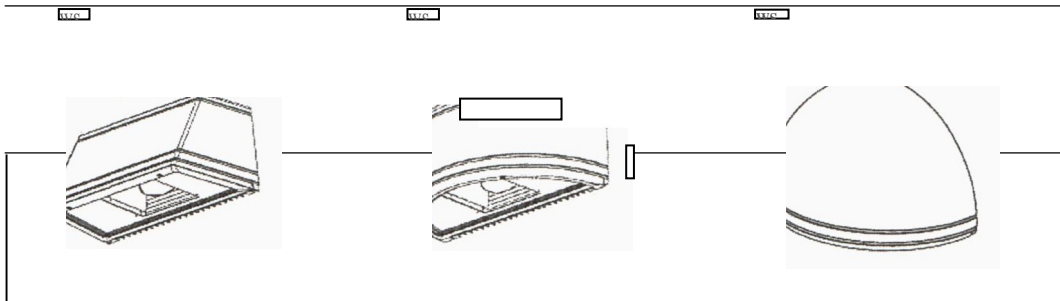


Figure F (Examples of Acceptable Wall Packs)

- (c) The installation of any barn-light style fixture for use as outdoor lighting is prohibited unless the fixture includes a full opaque reflector instead of the standard translucent lens as shown in Figure G.
An example of barn-light style with and without the required opaque reflector is shown in Figure G.

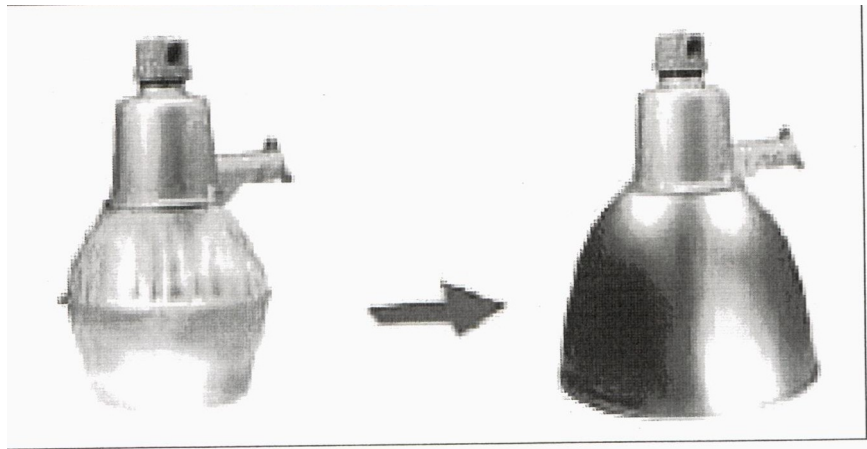


Figure G (Prohibited Fixture (left) vs. Acceptable Fixture (right))

- (d) Searchlights, lasers, or any similar high-intensity light are not permitted, except in emergencies where temporary lighting is needed by police, emergency medical technicians and fire personnel; or for meteorological data gathering purposes.
- (e) It shall be unlawful and an offense for any person/entity to do the following:
 - (1) Install lighting contrary to this Ordinance; and/or
 - (2) Fail to comply with any terms or conditions set forth in a permit issued under this Ordinance.
- (f) Outdoor Uplighting is prohibited, except in cases where the fixture is shielded by a roof overhang or similar structural shield and a licensed architect or engineer has stamped a prepared lighting plan that ensures that the light fixture(s) will not cause light to extend beyond the structural shield, and except as specifically permitted in this Section.

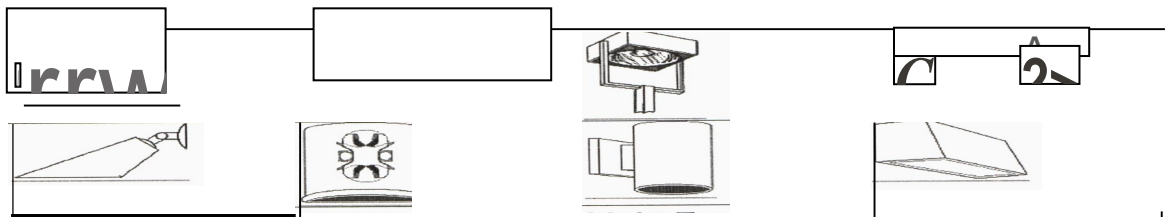


Figure H (Permitted Fixtures with Zero Light Escape above Horizontal Plane)

- (g) Lighting fixtures, except Uplighting covered in this Section, are not allowed to have light escape above a horizontal plane running through the lowest point of the luminous elements. (See Figures Hand I).

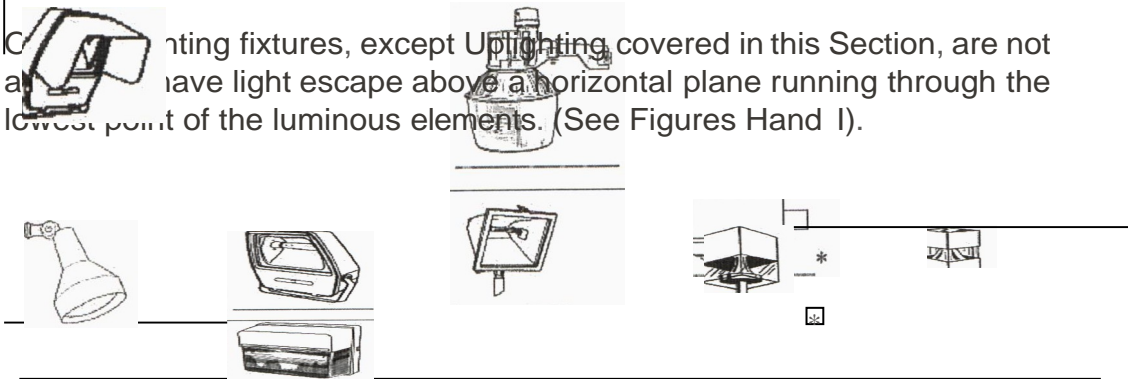


Figure I (Prohibited Fixtures with Light Escape above Horizontal Plane)

- (h) There shall be no Light Trespass across property lines. The photometric measurement shall be zero (0) at all locations three (3) feet past the property perimeter.

Section 28-125. Submission of plans and evidence of compliance

All Non-Residential and Multi-Family building permit applications must include an outdoor lighting plan which includes the following information:

Section 28-126. Plan requirements

- (a) The location of all existing and proposed light fixtures (may be included on land plan or construction plan).
- (b) A lighting fixture table that includes the total area to be illuminated, the fixture descriptions, lamp types (i.e., LED, etc.), number of lumens , and mounting height of all existing and proposed lamps.
- (c) Specification sheets for all existing and proposed light fixtures.
- (d) A statement signed by the property owner(s) and acknowledged before a Notary Public that the Applicant has received notification of the provisions of this Ordinance and that the photometric measurement shall be zero (0) at all locations three (3) feet past the property line perimeter.

Section 28-127. Inspection .

Verification that a Non-Residential and Multi-Family construction project requiring a building permit application has complied with the provisions of this Ordinance shall occur during the final electrical inspection by the City Inspector.

Section 28-128. Exemptions.

The following lighting instances are exempt from this Ordinance :

- (a) Holiday lights as defined in this Ordinance are exempt from the requirements of this Ordinance from November 15 to January 15 during the hours from 6:00 A M. to midnight each day, annually.
- (b) Lighting required by law to be installed on motor vehicles.
- (c) Lighting needed during activities of law enforcement , fire , and other emergency services.
- (d) Lighting employed during emergency repairs of roads and utilities may be unshielded provided the lights are positioned so they do not shine in the eyes of passing drivers.

- (e) Lighting required for the safe operation of aircraft.
- (f) Temporary lighting required to save life or property from imminent peril provided the lights are positioned so they do not shine in the eyes of passing drivers.
- (g) Publicly-owned traffic signs/signals or emergency information signs
- (h) Lighting of the United States and/or Texas flags, properly displayed in accordance with the law is exempt from specific aspects of this ordinance when in direct conflict with Texas or US law. In such cases, all attempts should be made to comply with the spirit of this ordinance.
- (i) Festoon type low-output warm white lamps (2900K or less) having a clear or frosted white bulb on a string intended to create ambience where guests are permitted to gather shall be exempt on outdoor patio and garden areas at restaurants and bars during operating hours and rental event venues during event hours.

Section 28-129. Variances.

The City shall review each variance application. A variance will only be considered prior to installation of any light design considered for a variance. A variance permit may be granted if, upon review, the City confirms that the lighting design minimizes Glare, minimizes Sky Glow, minimizes Light Trespass, and meets the Illuminating Engineering Society of North America's (IESNA) Zone 1 (LZ1) (Low Ambient Lighting) lighting levels as certified by a certified lighting professional. City Council shall hear and decide all variance requests.

Section 28-130. Methods of Installation.

This Ordinance is not intended to prohibit the use of any design, material or method of prescribed installation not specifically proscribed by this Ordinance, provided such alternative meets the intent of this Ordinance.

Section 28-131. Compliance with Building Ordinance.

All lighting installations commenced in accordance with this Ordinance must be in compliance with all adopted building and technical codes.

Section 28-132. Stop Work Order.

In the event work is not being performed in accordance with this Ordinance, the City may issue a stop work order and all work shall immediately cease. No further work shall be undertaken on the project as long as a stop work order is in effect.

Section 28-133. Public Nuisance.

Any violation of this Ordinance that results in Light Trespass or an unreasonable interference with the common and usual use of neighboring property is hereby declared to be a public nuisance , which is prohibited by this Ordinance .

Section 28-134. Offense.

It is an offense under this Ordinance for a person to emit light onto the property of another unreasonably interfering with the neighboring property owner's use or enjoyment of their property.

Section 3. *Repeal.* All ordinances or parts of ordinances in conflict herewith are repealed.

Section 4. *Severability.* In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part of provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Sealy, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 5. *Penalty.* Any person who violates or causes, allows, or permits another to violate any provision of this ordinance, rule, or police regulation of the city shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine or penalty not to exceed five hundred dollars (\$500.00). If such rule, ordinance, or police regulation governs fire safety or public health and sanitation, other than the dumping of refuse, the fine or penalty shall not exceed two thousand dollars (\$2,000.00). If such rule, ordinance, or police regulation governs the dumping of refuse, the fine or penalty shall not exceed four thousand dollars (\$4,000.00). Each occurrence of any violation of this ordinance , rule, or police regulation shall constitute a separate offense. Each day on which any such violation of this ordinance, rule, or police regulation occurs shall constitute a separate offense.

Section 6. *Effective Date.* This ordinance shall become effective immediately and enforceable when published as required by law.

PASSED AND APPROVED at this first reading on the 1st day of November, 2022.

PASSED, APPROVED AND ADOPTED at this second reading on the 6th day of December, 2022.

CarolynBilsi,Mayor

ATTEST:

rdamJM \ J
· Sandra Vrablec, City Secretary

