

Division 3. - LIGHT POLLUTION ORDINANCE FOR EAST MOUNTAIN AREA

Sec. 30-201. - Title.

This division shall be known as the "Light Pollution Ordinance for the East Mountain Area".

(Ord. No. 91-2, § 1, 2-5-91)

Sec. 30-202. - Declaration of necessity.

Whereas, the regulation of the use of outdoor light fixtures can substantially reduce light pollution, and conserve energy; and

Whereas, it is pleasing to the senses and intellect of mankind to be able to gaze at the night sky with a minimum of interference from light pollution; and

Whereas, the residents of the East Mountain Area enjoy gazing into the night sky; and

Whereas, the residents of the East Mountain Area reside in an area of Bernalillo County that is unique to the East Mountain Area; and

Whereas, the East Mountain Area is designated as a rural area and the Albuquerque/Bernalillo County Comprehensive Plan recognizes the importance to the preservation of the distinct character and value of this portion of the region and further, that the unique rural attributes and environmental conditions warrant development standards that differ from those applied in urban areas.

Whereas, the East Mountain Area lies east of three panoramic mountain ranges; the Sandias, the Manzanitos, and the Manzanos and more specifically east of Range 4 East, New Mexico Prime Meridian.

Now, therefore, the board of county commissioners for the County of Bernalillo hereby, finds and declares that the East Mountain Area sky is an important aspect of our environment and that it is necessary, essential and a public purpose for the County of Bernalillo to regulate the use of outdoor light fixtures in the East Mountain Area to minimize light pollution which has a detrimental effect on the environment, amateur astronomy, and enjoyment of the night sky and causes unnecessary illumination of adjacent properties; and in order to conserve electrical energy.

(Ord. No. 91-2, § 2, 2-5-91)

Sec. 30-203. - Area included in division.

East Mountain Area for the purposes of this division shall consist of the eastern end of Bernalillo County bounded on the north by the Bernalillo/Sandoval county line; on the east by the Bernalillo/Santa Fe county and Bernalillo/Torrance county line; on the south by the Bernalillo/Torrance county line and on the west by the National Forest Land of the Sandia and Manzano Mountains and lands in Tijeras Canyon east of the eastern city limits of Albuquerque.

(Ord. No. 91-2, § 3, 2-5-91)

Sec. 30-204. - Purpose and intent.

The purpose of this division is to create standards for outdoor lighting so that its use does not unreasonably interfere with the reasonable use and enjoyment of adjacent property within the jurisdiction and with astronomical observations. It is the intent of this Code to encourage, through regulation of the types, kinds, construction, installation and uses of outdoor electrically powered illuminating devices, lighting practices and systems which will conserve energy while increasing nighttime safety, utility, security, and productivity.

(Ord. No. 91-2, § 4, 2-5-91)

Sec. 30-205. - Interpretation and conflict.

The regulations, restrictions, and requirements of this division shall be held to be the minimum standards to carry out the purpose of this division. This division is not intended to interfere with, abrogate, or annul any easement, covenant, or other agreement between parties, or other valid ordinance. Where this division imposes a greater restriction upon the use of an outdoor light fixture, regulations, easements, covenants, agreements, or ordinances, the provisions of this division shall control.

(Ord. No. 91-2, § 5, 2-5-91)

Sec. 30-206. - Approved materials and methods of construction or installation/operation.

The provisions of this division are not intended to prevent the use off any design, material or method of installation or operation not specifically prescribed by this division provided any such alternate has been approved. The zoning administrator may approve any such proposed alternate provided he finds that it:

- (1) Is equivalent to the applicable specific requirements of this Code; and
- (2) In otherwise satisfactory and complies with the intent of this Code; or
- (3) Has been designed or approved by a registered professional engineer and content and function promotes the intent of this Code.

(Ord. No. 91-2, § 6, 2-5-91)

Sec. 30-207. - Definitions.

As used in this Code, unless the context clearly indicates otherwise, certain words and phrases, shall mean the following: The word "shall" is mandatory and the word "may" is permissive.

*Filtration* [means] those outdoor light fixtures which have glass, an acrylic, or translucent enclosures (quartz glass does not meet this requirement.)

*Fully shielded* means 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 photometric test report.

*Installed* means the attachment, or assembly fixed in place, whether or not connected to a power source, of any outdoor light fixture.

*Light pollution* [means] artificial light which causes a detrimental effect on the environment, enjoyment of the night sky or causes undesirable glare or unnecessary illumination of adjacent properties.

*Nonconforming outdoor light fixtures* [means those] which do not conform to the light pollution regulations and which lawfully existed on the effective date of those regulations with which it does not conform.

*Outdoor light fixtures* means outdoor electrically powered illuminating devices, outdoor lighting or reflective surfaces, lamps and similar devices, permanently installed or portable, used for illumination or advertisement. Such devices shall include, but are not limited to, search, spot and flood lights for:

- (1) Buildings and structures;
- (2) Recreational areas;
- (3) Parking lot lighting;
- (4) Landscape lighting;

- (5) Security lighting;
- (6) Billboards and other signs (advertising or other);
- (7) Street lighting;
- (8) Product display area lighting;
- (9) Building overhangs and open canopies;

*Partially shielded* shall mean outdoor light fixtures shielded or constructed so that no more than ten percent of the light rays are emitted by the installed fixture at angles above the horizontal plane as certified by photometric test report.

*Person* means any individual, tenant, lessee, owner, or any commercial entity including but not limited to firm, business, partnership, joint venture, or corporation.

(Ord. No. 91-2, § 7, 2-5-91)

Sec. 30-208. - Shielding.

- (a) All non-exempt outdoor lighting fixtures shall have shielding as required by the table set forth in this section.

SHIELDING REQUIREMENTS TABLE

Fixture Lamp Type	Shielded	Filtered
Low pressure sodium (1)	Partially	None
High pressure sodium	Fully	None
Metal halide	Fully (2)	Yes (6)
Fluorescent	Fully (3)	Yes (5)
Quartz (4)	Fully	None
Incandescent Greater than 160W	Fully	None
Incandescent 160W or less	None	None
Any light source of 50W or less	None	None
Glass tubes filled with neon, argon, krypton	None	None
Other sources	As approved by the zoning official	

#### Footnotes

1. This is the preferred light source to minimize undesirable light emission into the night sky affecting astronomical observations.
  2. Metal halide lighting used primarily for display purposes shall not be used for security lighting after 11:00 p.m. Metal halide lamps shall be installed only in enclosed luminaries.
  3. Outdoor advertising signs of the type constructed of translucent materials and wholly illuminated from within do not require shielding. Dark backgrounds with light lettering or symbols are preferred, to minimize detrimental effects. Unless conforming to the above dark background preference, total lamp wattage per property shall be less than 41 watts.
  4. For the purposes of this division, quartz lamps shall not be considered an incandescent light source.
  5. Warm white and natural lamps are preferred to minimize detrimental effects.
  6. For filtering requirements for metal halide fixture lamp types, see section 30-109.
- (b) Any outdoor lighting used for security, landscape or building illumination, game or sport court lighting, or area illumination shall be additionally shielded so as to reflect no more than one foot candle onto any adjacent residentially zoned property.

(Ord. No. 91-2, § 8, 2-5-91)

#### Sec. 30-209. - Filtration.

Metal halide fixture lamp types shall be filtered. "Filtered" means any outdoor light fixture which has a glass, acrylic or translucent enclosure of the light source (quartz glass does not meet this requirement).

(Ord. No. 91-2, § 9, 2-5-91)

#### Sec. 30-210. - Outdoor advertising signs.

- (a) *Top mounted fixtures required.* Lighting fixtures used to illuminate an outdoor advertising sign shall be mounted on the top of the sign structure. All such fixtures shall comply with the shielding requirements of section 30-108.
- (b) *Prohibitions.* See subsections 30-112(e) and 30-112(f) for prohibitions.

(Ord. No. 91-2, § 10, 2-5-91)

#### Sec. 30-211. - Submission of plans and evidence of compliance with Code subdivision plats.

- (a) *Submission contents.* The applicant, for any permit required by any provision of the laws of this jurisdiction in connection with proposed work involving outdoor light fixtures shall submit (as part of the application for permit) evidence that the proposed work will comply with this Code. The submission shall contain but shall not necessarily be limited to the following, all or part of which may be required elsewhere in the laws of this jurisdiction upon application for the required permit:
- (1) Plans indicating the location on the premises, and the type, of illuminating devices, fixtures, lamps, supports, reflectors, and other devices;

- (2) Description of the illuminating devices, fixtures, lamps, supports, reflectors, and other devices and the description may include, but is not limited to, catalog cuts by manufactures and drawings (including sections where required);
  - (3) Photometric data, such as that furnished by manufacturers, or similar, showing the angle of cut off of emissions.
- (b) *Additional submission.* The above-required plans, descriptions, and data shall be sufficiently complete to enable the plans examiner to readily determine whether compliance with the requirements of this Code will be secured. If such plans, descriptions and data cannot enable this ready determination, by reason of the nature or configuration of the devices, fixtures or lamps proposed, the applicant shall additionally submit as evidence of compliance to enable such determination such certified reports of tests as will do so provided that these tests shall have been performed and certified by a recognized testing laboratory.
  - (c) *Subdivision plat certification.* If any subdivision will have public outdoor lighting, the plat shall contain a statement certifying that the applicable provisions of the light pollution ordinance for the East mountain area will be adhered to.
  - (d) *Lamp or fixture substitution.* Should any outdoor light fixture of the type of light source therein be changed after the permit has been issued, a change request must be submitted to the zoning administrator for his approval, together with adequate information to assure compliance with this Code, which must be received prior to substitution.

(Ord. No. 91-2, § 11, 2-5-91)

Sec. 30-212. - Prohibitions.

- (a) *Mercury vapor fixtures and lamp.* The installation of any mercury vapor fixture or lamp for use as outdoor lighting is prohibited, except that until (date to come), the provisions of this subsection shall not apply to any replacement lamp.
- (b) *Laser source light.* Except as provided in subsection 30-112(c), the use of laser source light or any similar high-intensity light for outdoor advertising or entertainment, when projected above the horizontal, is prohibited.
- (c) *Searchlights.* The operation of searchlights for advertising purposes is prohibited.
- (d) *Recreational facilities.* No outdoor recreational facility, public or private, shall be illuminated after 11:00 p.m. except to conclude a specific recreational or sporting event or any other similar activity conducted at or in the facility which was in progress under such illumination prior to 11:00 p.m.
- (e) *Outdoor advertising off-premise signs.* Electrical illumination of outdoor advertising off-site signs is prohibited in the East Mountain Area.
- (f) *Illuminated outdoor advertising signs.* All illuminated outdoor advertising signs shall be equipped with an automatic time controller that prevents the operation of the lighting fixtures between the hours of 11:00 p.m. and sunrise.
- (g) *Outdoor building and landscaping illumination.* The unshielded outdoor illumination of any building is prohibited except with incandescent fixtures with lamps of 160 watts or less.

(Ord. No. 91-2, § 12, 2-5-91)

Sec. 30-213. - Administration.

- (a) *Powers and duties.* The zoning administrator shall enforce this division, and in addition thereto and in furtherance of said authority who shall:

- (1) Issue all lighting certificates as required, and make and maintain records.
  - (2) Conduct inspection of buildings, structures, and lighting fixtures to determine compliance with these regulations.
  - (3) Maintain permanent and correct records of this division.
  - (4) Provide and maintain a public information bureau relative to all matters arising out of this division.
  - (5) Issue certificates of occupancy for nonconforming uses existing at the effective date of this division.
  - (6) In the event any lighting fixture is installed, erected, constructed, reconstructed, altered, repaired, converted or maintained in violation of this division, in addition to other remedies, may initiate any appropriate action or proceeding to prevent such unlawful action, to prevent any illegal act.
  - (7) Investigate all applications for temporary exemption. The request for temporary exemption shall contain the following information:
    - a. Specific exemption, or exemptions requested;
    - b. Type and use of outdoor light fixture involved;
    - c. Duration of time for requested exemption;
    - d. Type of lamp and calculated lumens;
    - e. Total wattage of lamp or lamps;
    - f. Proposed location on premises of the outdoor light fixtures(s);
    - g. Previous temporary exemptions, if any, and addresses of premises thereunder;
    - h. Physical size of outdoor light fixture(s) and type of shielding provided;
    - i. Such other data and information as may be required by the zoning official.
- (b) *Applications and filing fees.*
- (1) *Applications.* An application for a temporary exemption shall be filed with the zoning administrator on a form and accompanied by such data and information as he may prescribe.
  - (2) *Filing fee.* A fee of \$100.00 shall be paid at the time an application for temporary exemption is filed.
    - a. When an application for a temporary exemption is withdrawn after scheduling and advertising for public hearing by the zoning administrator, the filing fee shall not be refunded to the applicant.
- (c) *Hearing date and notice.* Upon the filing of an application for a temporary exemption, the zoning administrator shall set a time for holding a public hearing thereon, and shall give notice of hearing by at least one publication in a daily newspaper of general circulation in Bernalillo County at least 15 days prior to the hearing. Written notice of the hearing shall be mailed not less than five days before the date of the hearing to the owners of all property within 300 feet of the exterior boundaries, excluding public rights-of-way, of the property which is the subject of the application, using for this purpose the last known name and address of such owners shown in records of the Bernalillo County Assessor.
- (d) *Determination by the zoning administrator.* Upon making a ruling or determination relative to an application for a temporary exemption, the zoning administrator shall forthwith furnish a copy thereof to the applicant and the board of adjustment. Such determination shall be final except that an appeal may be taken as provided in the next subsection.

(e) *Appeals.* An appeal of a determination of the zoning administrator may be made in the manner prescribed in the following subsection. No temporary exemption permit shall become effective until after an elapsed period of 15 days from the date the written determination is made, during which time an appeal may be filed with the board of adjustment by any person aggrieved, or by any office board, department or bureau of the county.

(f) *Board of adjustment.*

(1) *Powers and duties.* The board of adjustment shall have the following powers:

- a. To hear and determine appeals where it is alleged there is error or abuse of discretion in any order, requirements, decision or determination made by the zoning administrator in the enforcement of the provision of the division.
- b. To hear and determine appeals from the ruling, decisions, and determination, of the zoning administration granting or denying applications for variation from any requirements of this division or granting or denying applications for temporary exemption authorized by this division.
- c. The board shall fix a reasonable and regular time and place for meetings, and it shall adopt such rules as may be necessary and proper to authorize its proceedings. Such rules shall be in conformance with requirements of this division. All meetings shall be opened to the public.

The board shall keep minutes of its proceedings, including a record of the vote of each member on each action, and such minutes shall be public records.

(g) *Appeals.*

- (1) An appeal shall be made in writing and shall be filed in duplicate in the office of the zoning administrator on forms provided by the board of adjustment. Such appeal must set forth specifically wherein it is claimed there was an error or an abuse of discretion by this action, or where the decision is not supported by evidence in the matter. A filing fee of \$60.00 shall accompany each appeal. When an appeal is withdrawn the filing fee shall not be refunded.
- (2) Any appeal not filed within 15 days after the rendition in writing of the decision appealed from shall be dismissed by the board of adjustment.
- (3) Within ten days after the filing of the appeal the zoning administrator shall transmit to the board of adjustment all papers involved in the proceedings, a copy of his findings and determination relative thereto, and one copy of the appeal. In addition, he may make and transmit to the board of adjustment such supplementary report as he may deem necessary to present clearly the facts and circumstances of the case.
- (4) Upon receipt of the record, the board of adjustment shall set the matter for hearing, and give notice by mail of the time, place, and purpose thereof to the appellant, to the zoning administrator, and to any interested party who has requested in writing to be so notified. No other notice thereof need be given except in those cases hereinafter mentioned.
- (5) Upon hearing of such appeals, said board of adjustment may enforce change, or modify the ruling, decision or determination appealed from, or in lieu thereof, make such other or additional determination as it shall deem proper.
- (6) The decision of the board of adjustment upon the appeal shall be in writing, concurred to by a majority of the members present of the board of adjustment, which shall forthwith transmit a copy thereof to the appellant and to the zoning administrator. Any such decision shall in all instances, be the final administrative decision and shall be subject to judicial review as may be provided by law.
- (7) No determination of the zoning administrator or board of adjustment permitting a variance or temporary exemption shall be valid for a period larger [longer] than six months.

- (h) *Zoning certification.* No building permit or zoning permit shall be issued by the zoning administrator unless the application of such permit has been examined by the office of the zoning administration indicating that the use complies with all the regulations of this division. Any permit or certification issued in conflict with the provisions of this division shall be null and void.

(Ord. No. 91-2, § 13, 2-5-91)

Sec. 30-214. - Nonconforming use.

- (a) All outdoor light fixtures lawfully installed prior to and operable on the effective date of this division shall be removed or converted to a conforming use within five years after the effective date of this division.

During this five-year period the owner of any nonconforming lighting fixture shall have the right to repair or remodel such nonconforming fixture, provided that such changes shall not enlarge the overall size of the fixtures or increase the number of fixtures located on the property and shall in no way be deemed to affect the five year amortization period set out herein.

- (b) All signs, billboards or advertising structures which do not conform with the provisions of this division shall be made to conform or shall be removed within five years after the effective date of the division.
- (c) Fossil fuel light. All outdoor light fixtures producing light directly by the combustion of natural gas or other fossil fuels are exempt from all requirements of this Code.
- (d) County, state and federal facilities. Outdoor light fixtures installed on, in and in connection with those facilities and land owned or operated by the federal government, the State of New Mexico, County of Bernalillo or any department, division, agency or instrumentality thereof, are exempt from all requirements of this Code. Voluntary compliance with the intent of this Code at those facilities is encouraged.

(Ord. No. 91-2, § 14, 2-5-91)

Sec. 30-215. - Penalty.

Any person who shall violate any of the provisions of this division shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding \$300.00 or imprisonment in the county jail for a period not exceeding 90 days, or both fine and imprisonment. Any violation continued for a period of 15 days after conviction shall be prosecuted and treated as a separate offense.

(Ord. No. 91-2, § 15, 2-5-91)

Secs. 30-216—30-240. - Reserved.