

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE INVOLVING LIGHTING POLICIES INCLUDING: DEFINITIONS, LIGHTING REQUIREMENTS, PROHIBITIONS, EXEMPTIONS, ADMINISTRATION AND ENFORCEMENT AND VARIANCES, PROVIDING AN EFFECTIVE DATE AND PROOF OF PUBLIC MEETING

WHEREAS, the State of Texas, pursuant to Chapter 211.003, has recognized that inappropriate or excessive outdoor lighting can cause light pollution and city regulation protecting the necessary for the government, interest, welfare, or good order of the general public is pursuant to Chapter 51.012 and Chapter 217.002 is so authorized; and

WHEREAS, the Montgomery area has experienced a significant increase in the use of outdoor lighting that causes light pollution; and

WHEREAS, inappropriate and poorly designed light fixtures can also cause glare, the unnecessary use of electric power, the diminishing ability to view the night sky, hazardous nighttime pedestrian and vehicular travel, and an unattractive townscape; and

WHEREAS, the City of Montgomery recognizes that the regulation of outdoor lighting, which provides consistent outdoor lighting standards and reduces light pollution, is in the best interest of the City; and

WHEREAS, the City of Montgomery desires to protect the health, safety and welfare of its citizens and visitors, the quality of life and economic well-being of the City; and

WHEREAS, the City of Montgomery believes that consistent outdoor lighting standards will enhance the safety of citizens and visitors, the security of property, and will result in more efficient, pleasant and cost-effective lighting.

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

**Sec. 98-380 Definitions.**

*Candela* means a unit of luminous intensity in any given direction. A candela is commonly called one candlepower.

*Changeable electronic variable message sign (CEVMS)* shall mean a sign which permits light to be turned on or off intermittently or which is operated in a way whereby light is turned on or off intermittently, including any illuminated sign on which such illumination is not kept stationary or constant in intensity and color at all times when such sign is in use, including an LED (light emitting diode) or digital sign, and which varies in intensity or color. A CEVMS sign does not include a sign located within the right-of-way that functions as a traffic control device and that is described and identified in the Manual on Uniform Traffic Control Devices (MUTCD) approved by the Federal Highway Administrator as the National Standard.

*Direct Light* means light emitted directly from the lamp, off of the reflector diffuser, or through the refractor or diffuser lens, of a luminary.

*Full Cutoff (FCO)* means a luminaire light distribution where zero candela intensity occurs at an angle of 90 degrees above nadir, and at all greater angles from nadir. Additionally, the candela per 1,000 lamp lumens does not numerically exceed 100 (ten percent) at a vertical angle of 80 degrees above nadir. This applies to all lateral angles around the luminaire. A full cutoff luminaire is also fully shielded. (See exhibit 1)

*Footcandle* means a unit of light measurement equal to one lumen per square foot.

*Glare* means direct light emitted from a luminaire that causes reduced vision or temporary blindness.

*Illuminance* means the quantity of light arriving at a surface measured in lux or footcandles.

*Intermittent Lighting* means luminaries that do not remain on for an extended period of time.

*Lumen* means a unit of luminous flux.

*Luminary* means a complete lighting unit, consisting of a lamp or lamps and parts designed to distribute light, position and protect lamps, and connect lamps to a power supply.

*Nadir* means the direction pointing vertically down from the lowest light emitting part of a luminary.

*Outdoor Lighting* means night-time illumination of an outside area or object by any man-made device.

*Sign Code Application Area* shall mean the corporate limits of the City.

*Temporary Outdoor Lighting* means lighting for a specific event of an outside area or object by any man-made device that produces light for a period less than 7 days and with at least 30 days passing before reuse.

*Trespass Lighting* means light emitted by a luminary that falls outside the boundaries of the property on which the luminary is installed.

## **Sec. 98-381 Lighting Requirements**

- (a) All commercial outdoor lighting installed within the corporate city limits of the City of Montgomery shall be in conformance with the requirements established by this Ordinance.
- (b) Control of Glare.
  - (1) Any luminary that is aimed, directed, or focused in such a manner to create glare perceptible to persons operating motor vehicles on public rights of way.
  - (2) A luminary used for public roadway illumination shall not exceed 25 feet in height, and the location of the luminary may be positioned up to the property edge.
- (c) Commercial Lighting.
  - (1) Exterior commercial lighting shall be reviewed by the City Administration.
  - (2) All exterior lighting on commercially zoned real property or property intended to be used as a multifamily residential development shall be full cutoff.
  - (3) *Service stations and other fueling facilities.* Gas station canopies must utilize canopy lights that are fully recessed into the canopy.
  - (4) *Parking Lot Lighting.* All parking lot lighting shall be full cutoff.
  - (5) Outdoor Advertising Signs.

- a. Lighting fixtures used to illuminate outdoor advertising signs shall conform to the requirements specified in the City's most current sign regulations and shall be full cutoff.
  - b. Outdoor advertising signage of the type constructed of translucent materials and internally illuminated does not require shielding and shall be allowed. Dark backgrounds with light lettering or symbols are preferred.
- (6) *Municipal Activities.* All municipal activities shall be exempt from the requirements of this Ordinance.

**Sec. 98-382. Prohibitions.**

- (a) *Laser Source Lighting.* The use of laser source lighting or any similar high intensity lighting, such as used for outdoor advertising or entertainment, when projected above the horizontal plane is prohibited unless authorized by City Council.
- (b) *Searchlights.* The operation of searchlights for advertising purposes is prohibited, unless authorized by City Council.
- (c) *Changeable Electronic Variable Message Signs.* From and after the effective date, no CEVMS shall be allowed within the Sign Code Application Area.
- (d) *New Off-premise Signs.* From and after the effective date, no new construction permit shall be issued or written permission granted for the erection of an off-premise CEVMS or the conversion of an existing non-CEVMS off-premise sign to a CEVMS, within the Sign Code Application Area.

**Sec. 98-383. Exemptions**

The following are exempt from the provisions of this Ordinance:

- (1) Traffic control signals and devices.
- (2) Temporary emergency lighting (i.e. fire, police, repair workers).
- (3) Moving vehicle lights.
- (4) Navigation lights (i.e. airports, heliports, radio/television towers).
- (5) Seasonal decorations in place no longer than 60 days.
- (6) Sports field outdoor lighting.
- (7) Special situations approved by the City Council for temporary or periodic events.
- (8) Security lights of any wattage that are controlled by a motion-sensor switch and which do not remain on longer than five (5) minutes after activation.
- (9) Lighting of a flag as long as no glare is perceptible to adjacent residential property owner.
- (10) Landscaping lighting as long as no glare is perceptible to adjacent residential property owner.

**Sec. 98-384. Effective date and grandfathering of nonconforming luminaries.**

- (a) This Ordinance shall take effect immediately upon approval by the City Council and publication, as required by law. This Ordinance shall supersede and replace all previous ordinances pertaining to outdoor lighting.
- (b) All luminaries in place prior to the effective date of the Ordinance shall be grandfathered.

**Sec. 98-385. Administration and enforcement.**

- (a) *Enforcement.* This Ordinance shall be enforced by the planning and zoning commission and the City.
- (b) *Penalties.* Anyone charged with negligently, recklessly, knowingly, or intentionally violating any provisions of this Ordinance shall be fined by a penalty of not less than \$200.00. Each day that such violation continues shall constitute a separate offense and shall be punishable accordingly.

**Sec. 98-385. Variances**

Variances to the terms of this Ordinance may be granted by the City Council where a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship. A variance request must be submitted to the City Administrator setting out the basis for the request along with any associated fees listed in the city fee schedule. No variance can be granted unless:

- (1) such variance will not be contrary to the public interest;
- (2) such variance will be in harmony with the spirit and purposes of this Ordinance;
- (3) the plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial; and
- (4) the variance will not substantially weaken the general purposes of this Ordinance.

**Sec. 98-386 - Severability.**

The city council declares that it is its intent to enact this Code and all provisions adopted by reference in this Code without invalid or unconstitutional provisions. The sections, subsections, paragraphs, sentences, clauses and phrases of this Code and all provisions adopted by reference in this Code are severable so that, if any section, subsection, paragraph, sentence, clause and phrase of this Code, or any provision adopted by reference in this Code, is declared unconstitutional or invalid by judgment of a court of competent jurisdiction, such judgment shall not affect the validity of any other remaining sections, subsections, paragraphs, sentences, clauses and phrases of this Code or of any provision adopted by reference in this Code.

**Sec. 98-387. - General penalty; continuing violations; additional remedies.**

- (a) Whenever in this Code or in any ordinance, resolution, rule, or police regulation of the city an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is provided, the violation of any provision of this Code or any ordinance, resolution, rule,
- (b) or police regulation shall be punished by a fine not exceeding \$500.00; provided, however, that the violation of any provision of this Code or any ordinance, resolution, rule, or police regulation that governs fire safety, zoning, or public health and sanitation, including dumping of refuse, shall be punished by a fine not exceeding \$2,000.00. Where the offense is

one for which a penalty is fixed by state law, the penalty for such offense shall be the same as fixed by state law.

(c) Except where otherwise provided in this Code, each day an offense continues shall constitute a separate offense.

(d) In addition to the penalty prescribed in this section, the city may pursue other remedies such as abatement of nuisances, injunctive or other equitable relief, administrative adjudications, and revocation of licenses or permits.

PASSED AND APPROVED AND ADOPTED this the \_\_\_\_ day of \_\_\_\_\_, 2016

CITY OF MONTGOMERY, TEXAS

By: \_\_\_\_\_

Mayor Kirk Jones

ATTEST:

(CITY SEAL)

\_\_\_\_\_  
City Secretary Susan Hensley

## STEPS IN CONSIDERATION/APPROVAL OF DARK SKY ORDINANCE

- 1) One - Meet with Mr. Solomon regarding his opinion of the dark sky ordinance and if he's willing to give a presentation regarding types of fixtures to the Planning and Zoning Commission and public.
- 2) Two - Draft a general information public information type of report that can go into the utility bills concerning the dark sky ordinance consideration and requesting the presence of the public at the public meetings regarding information about the ordinance and dark skies in general.
- 3) Three - Have a specific public hearing/information meeting about dark sky ordinance at a planning commission meeting. At that meeting have a presentation from a lighting fixture person, the city attorney give a legal opinion as to the ability of the city to regulate/enforce the ordinance, general public comments regarding a need for the ordinance, and throw it open for public discussion. Invite City Council to this meeting, not to speak, but simply hear the information.
- 4) Four - Planning and Zoning Commission has a full discussion of the ordinance, as an item on the agenda, with the city attorney present. This meeting would be after the public meeting, possibly the next month.
- 5) Five— Planning and Zoning Commission amends the ordinance as necessary and recommends/does not recommend the ordinance--but the ordinance goes onto the City Council whether recommended or not.
- 6) Six— City Council also has a specific public hearing/information meeting just as the Planning and Zoning Commission. Same information presented.
- 7) Seven— City Council amends the ordinance if necessary, and either Passes, rejects or tables the ordinance.