

O202.2 Dark Sky Lighting Ordinance

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SECTION I - PURPOSE

This ordinance is intended to promote the preservation of dark skies over the Town of Berry and to protect the view of the night sky for the enjoyment of the citizens of the Town of Berry.

SECTION II - APPLICABILITY

- A. This ordinance applies to all outdoor lighting within the Town of Berry unless otherwise exempted in this Section.
- B. This ordinance does not apply to emergency lighting.
- C. This ordinance does not apply to temporary lighting.
- D. This ordinance does not apply to vehicular lighting.
- E. This ordinance does not apply to lighting on wheeled farm machines.

SECTION III - SEVERABILITY

Should any portion of this ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

SECTION IV - DEFINITIONS

- A. Light fixture means any device intended to produce illumination.
- B. "Dark Sky" fixture means any light fixture that emits its light below 90 degrees when measured from 0 to 180 degrees vertical. Dark Sky fixtures keep most of their light from reaching the night sky.
- C. "Dark Sky Cutoff" fixture means any light fixture that emits its light below 45 degrees when measured from 0 to 180 degrees vertical. Dark Sky Cutoff fixtures keep most of their light from reaching the night sky and also minimize ground reflection and reduce light scatter beyond the property line.
- D. "Dark Sky Shade" means anything that is used to shade a light fixture so that it behaves as a Dark Sky fixture. These include but are not limited to, for example,

- fixtures outfitted with caps or housings or installed under canopies, building overhangs, roof eaves or shaded by other structures, objects or devices.
- E. “Dark Sky Shield” means anything that is used to shield a light fixture so that it behaves as a Dark Sky Cutoff fixture. These include but are not limited to, for example, fixtures outfitted with caps or housings or installed under canopies, building overhangs, roof eaves or shielded by other structures, objects or devices.
 - F. “Motion sensor” means any device that turns a light fixture on when it detects motion and off when motion stops.
 - G. “Switch” means any device that can be manually controlled by a person to turn a light fixture on and off. For the purpose of this ordinance, switches include motion sensors but switches do not include light sensors or timers.
 - H. “Emergency” refers to lighting as required by civil officers, agents and officials to perform their duties to maintain the public health, safety and welfare.
 - I. “Temporary” refers to lighting as required by citizens to carry out legally approved activities for durations as specified in the permits for those activities. These include but are not limited to, for example, activities such as nighttime agricultural operations, construction work lighting, and seasonal decorations, but in no case for more than a period of 3 months without an exemption granted by the Town of Berry.
 - J. “Photocell” refers to an automatic means of turning lights on at dusk and off in daylight.
 - K. “Timers/Timeclocks” mean an electric-mechanical device to turn on lights at a predetermined time and off at a predetermined time.

SECTION V – GENERAL PROHIBITION OF NON-DARK SKY LIGHTS AND FIXTURES

Non-Dark Sky fixtures are prohibited in the Town of Berry unless the fixtures are permitted by this ordinance.

SECTION VI – LIGHT FIXTURES PERMITTED BY THIS ORDINANCE

- A. All light fixtures that were installed prior to the effective date of this ordinance are grandfathered, approved and permitted by this ordinance.
- B. All light fixtures that are Dark Sky fixtures and Dark Sky Cutoff fixtures are approved and permitted by this ordinance.
- C. All light fixtures that have a Dark Sky Shade or a Dark Sky Shield are approved and permitted by this ordinance.
- D. All light fixtures that were installed prior to the effective date of this ordinance may be repaired instead of being replaced at the owner’s discretion.

SECTION VII – REPLACEMENT OF NON-DARK SKY FIXTURES

- A. When a Non-Dark Sky fixture is replaced it shall be replaced with one of the following:
 - 1. Dark Sky fixture, or
 - 2. Dark Sky Cutoff fixture, or

3. Non-Dark Sky fixture that has a Dark Sky Shade or a Dark Sky Shield that causes it to operate as if it were a Dark Sky fixture or a Dark Sky Cutoff fixture.

SECTION VIII – INSTALLATION OF NEW DARK SKY FIXTURES AND DARK SKY CUTOFF FIXTURES

- A. When a new light fixture is installed, it shall be installed with a switch to allow it to be manually turned on and off or with a motion sensor to automatically turn it on when motion is detected and turn it off when motion ends.
- B. Lights may also be installed with photocell or the use of a timer/timeclock.

SECTION IX – LIGHT FIXTURES ENCOURAGED BUT NOT REQUIRED UNDER THIS ORDINANCE

- A. Light fixtures encouraged but not required.
- B. Light fixtures with motion sensors are encouraged to minimize the duration of nighttime lighting
- C. Light fixtures with soft yellow or orange lights instead of harsh white lights are encouraged to protect the view of the night sky.
- D. Dark Sky Shades and Dark Sky Shields are encouraged for old existing fixtures to protect the view of the night sky, minimize ground reflection and reduce light scatter beyond the property line.
- E. Dark Sky Cutoff fixtures are encouraged where light fixtures are mounted on structures or poles higher than the first level above ground level to protect the view of the night sky, minimize ground reflection and reduce light scatter beyond the property line.

SECTION X - EXEMPTIONS

- A. The Town of Berry Board may allow Exemptions from this ordinance as needed to relieve any unusual circumstances or difficulties or costs that would be encountered if an attempt were made to comply with this ordinance.
- B. The Town of Berry Board may allow Exemptions from this ordinance to recognize that a good faith attempt has been made to comply with this ordinance but compliance is still not possible due to unusual circumstances or difficulties or costs encountered.
- C. Lights for a specific purpose and time duration that do not fit the classification of temporary or seasonal lighting and the purpose served cannot be accommodated with a Dark Sky fixture shade or shield.

SECTION XI - LIABILITY

A person utilizing or maintaining an outdoor light shall be responsible for all costs and any other liability resulting from failure to comply with this ordinance. Responsibility for costs and liability begins from and after the day after passage and publication of this ordinance as required by law.

SECTION XII – ENFORCEMENT AND PENALTIES

- A. The Town Building Inspector and Town Board are authorized to enforce the provisions of this ordinance.
- B. The Town Building Inspector shall review all electrical permit applications for compliance with this Ordinance and shall inspect all electrical installations involving outside lighting for compliance.
- C. The penalty for violation of any portion of this ordinance shall be:
 - 1. First violation: A notice to the property owner requesting compliance within 6 months.
 - 2. Second violation: If after 6 months no Exemption from this ordinance has been granted and there is continued non-compliance, a forfeiture of \$100 plus the cost of prosecution, including actual reasonable attorneys fees. Penalties are doubled for third and subsequent offense

SECTION XIII - DISCLAIMER

The Town of Berry does not, by approving or disapproving a lighting fixture, warranty or make assurance of any kind whatsoever, specifically as to whether the subject of the approval or disapproval is safe, suitable for its intended purpose, merchantable, or in compliance with any applicable codes or regulations.

SECTION XIV – EFFECTIVE DATE

This ordinance is effective on publication or posting. This ordinance shall not apply to lighting installed pursuant to an existing electrical permit, issue prior to publication of this ordinance.

The town clerk shall properly publish this ordinance as required under s. 60.80, Wis. stats.

Adopted this 16th day of November, 2009

Published: November 26, 2009

Brenda Kahl, Clerk/Treasurer
Chris Upper, Supervisor
Susan Studz, Supervisor

Anthony Varda, Chair
Jim Laubmeier, Supervisor