



June 4, 2024

TECHNICAL STAFF REPORT

TO: Prince George's County Planning Board

FROM: Natalia Gomez Rojas, AICP, Planner IV - Planning Director's Office

SUBJECT: Legislative Drafting Request LDR-82-2024
Development Standards – Prohibited Lighting

The Prince George's County Planning Department's legislative team has reviewed the proposed legislative amendment to the Zoning Ordinance and presents the following evaluation and findings leading to a recommendation of **OPPOSE**, as described in the Recommendation section of this technical staff report.

I. EVALUATION CRITERIA

Proposed legislative amendments to the Zoning Ordinance are reviewed under the requirements of Section 27-3501, Legislative Amendment, of the Prince George's County Zoning Ordinance. The Planning Department has considered the following in reviewing this proposed legislative amendment:

- A. The Prince George's County Zoning Ordinance;
- B. The *Plan Prince George's 2035 Approved General Plan*;
- C. The current area master plans, sector plans, and functional master plans for Prince George's County;
- D. The Prince George's County Climate Action Plan; and
- E. Referral comments.

II. COMPLIANCE WITH LAW, ASSESSMENT OF TECHNICAL DRAFTING CONVENTIONS, AND PROPOSED AMENDMENTS

Section 27-3501(c)(2)(A) of the Prince George's County Zoning Ordinance states in part that **"the Council's Legislative Counsel shall prepare the proposed amendment in consultation with the Planning Director,...."** The Planning Department is submitting this memorandum to provide clarifications and any recommendations for consideration.

Pursuant to Section 27-3501(c)(2)(C) of the Zoning Ordinance, this technical staff report **"shall contain an independent, non-substantive assessment of the technical drafting conventions of the proposed legislative amendment, in order to ensure consistency with the legislative style and conventions of the current Zoning Ordinance."** As such,

The Department has determined that LDR-82-2024 was not drafted in a manner consistent with the legislative style and conventions of the current Zoning Ordinance.

Specifically, LDR-82-2024 proposes to add a new subsection to a list. Typically, list items in the Zoning Ordinance are separated by semi-colons and the last item on a list is preceded by “and” at the end of the prior line. To properly insert a new list item, the prior items should be incorporated in the bill because the location of the word “and” will move. As such, the bill should include Subsections 27-6704(d) and (e) from the existing Zoning Ordinance.

In addition, the convention of section references in the current Ordinance is to include the section number and the name. LDR-82-2024 leaves out the name of Section 27-61504, of the Zoning Ordinance. Finally, as there are other sections following Section 27-6704, of the Zoning Ordinance, Prohibited Lighting, asterisks denoting skipped text should be included on Page 2, Line 7.

To ensure consistency with the technical drafting conventions of the Zoning Ordinance, and if the proposed legislation were to move forward, LDR-82-2024 should, at minimum, be revised prior to presentation as a potential Council Bill to read as follows starting on Page 2, Line 3:

- “(d) Searchlights, except when used by Federal, State, or local authorities, or where they are used to illuminate alleys, parking garages, and working (maintenance) areas, so long as they are shielded and aimed so that they do not result in lighting on any adjacent lot or public right-of-way exceeding two foot-candles;
[and]
- (e) Light types of limited spectral emission, such as low-pressure sodium or mercury vapor lights. Light sources shall be color-correct types such as Halogen, LED, or metal halide[.]; and
- (f) Exposed light emitting diode (LED) lights or other similar lighting installed on or around the framing of windows, along the perimeter of building windows, and other locations that are visible from the exterior of a building or structure and that serve to attract attention to a nonresidential use, except illuminated signs in accordance with Section 27-61504, General Standards.

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Aside from the technical drafting conventions of LDR-82-2024, and as will be extensively addressed below, the Department recommends providing amendments to the County’s Building Codes, in coordination with DPIE, in lieu of amending the Zoning Ordinance. Existing regulations in the current Zoning Ordinance currently includes development standards for exterior lighting, light spillage and glare, and light pollution, while it appears the goal of this legislation is to address temporary and impermanent lights installed on or around window frames and building perimeters that distract motorists and otherwise impact health, safety, and welfare. The Department is more than happy to work with the sponsor for additional coordination on LDR-82-2024, with the goal to review other potential alternatives at the direction of the bill’s sponsor.

III. BACKGROUND

- A. **Purpose:** LDR-82-2024 proposes to amend Section 27-61503 of the Zoning Ordinance to “prohibit light emitting diode (LED) lights in commercial storefronts to reduce the harmful effects of light pollution on Prince George’s County residents and neighborhoods.”
- B. **Impacted Property:** At a minimum, the proposed legislative amendment would impact all properties in Prince George’s County that allow nonresidential uses that intend to have illuminated storefronts.
- C. **Policy Analysis:** LDR-82-2024 would prohibit LED lights or other similar lighting in new commercial storefronts “installed on or around the framing of windows, along the perimeter of building windows, and other locations that are visible from the exterior of a building or structure and that serve to attract attention to a nonresidential use,” except for illuminated signs, in accordance with Section 27-61504, General Standards, of the Zoning Ordinance and illuminated storefront signs that are currently legal.

The Department notes the purpose states “commercial storefronts,” but the proposed language is significantly broader and extends to “nonresidential use” and recommend this discrepancy be resolved.

The Department understands the proposed amendment is intended to reduce the harmful effects of light pollution on Prince George’s County residents and residential neighborhoods. However, there is no information whatsoever in LDR-82-2024 that identifies what, exactly, such harmful effects may be and why LED lighting in particular is more harmful than other forms of lighting. The Department notes that the Zoning Ordinance already includes exterior lighting purposes pertaining to light pollution. Specifically, Section 27-6701, Purpose and Intent, of the Zoning Ordinance states among other purposes the following:

- (b) **Assure that excessive light spillage and glare are not directed at adjacent lands, neighboring areas, and motorists;**
- (c) **Curtail light pollution, reduce skyglow, and preserve the nighttime environment;....**

To implement these purposes, the standards of Section 27-6700, Exterior Lighting, of the Zoning Ordinance, require full cut-off fixtures for exterior luminaries – which would include exterior-mounted LED window framing light fixtures – to direct light downward; and include maximum illumination levels at the lot line for the very commercial or mixed-uses and industrial uses that LDR-82-2024 may be concerned with.

These lighting standards are new to the current Zoning Ordinance, and the Department believes they align with the goals referenced by LDR-82-2024 once more businesses are subject to these standards. The Department’s preliminary assessment is that most of the establishments that may be of concern were potentially approved under the prior Zoning Ordinance, and would not be impacted by LDR-82-2024 in any way.

The Department interprets that LDR-82-2024 would prohibit all types of LEDs regardless of their flux and intensity. In addition, the amendment would also prohibit "other similar lighting," without clearly defining what types of lighting are considered similar to LED. The broadness of the proposed regulations may lead to subjective interpretations and enforcement challenges in the future. The Department recommends including specifications related to allowable flux, intensity, and color of LEDs to facilitate easier measurement of pollution levels, and that lighting "similar to" LED lighting must be clearly identified.

Lastly, LDR-82-2024 does not address LED lighting included in developments that were approved and/or built under the prior Zoning Ordinance. It also does not mention whether existing legal LED lights would continue to be "grandfathered" if future amendments to the lights were proposed.

By excluding such language, the Department concludes as part of the consultation process that LDR-82-2024 will be prospective in application only and would have no impact on any LED lighting approved under the prior Zoning Ordinance. Additionally, the proposed regulations may not be applicable towards future applications (including permit applications) associated with "grandfathering" by the transition provisions, pursuant to Section 27-1700 of the Zoning Ordinance, or which are new applications filed during the "overlap" period wherein the prior Zoning Ordinance may still be used for new applications until April 1, 2026, pursuant to Section 27-1900 of the Zoning Ordinance. Further, it is recommended to provide clarification to what may happen to an existing legal LED lighting fixture if applicants propose amendments to those fixtures.

In lieu of amendments to the Zoning Ordinance, the Department recommends amendments to Subtitle 4 including, specifically, the International Energy Conservation Code, 2018 Edition ("IECC") adopted and incorporated by the County in Section 4-101 of the County Code. Section C405.1 of the IECC, for example, governs exterior lighting for commercial buildings including allowances and controls for the location and wattage of the types of decorative lighting identified in the Bill. Amendments to the IECC may also be able to address some of the limitations on the retroactive application of such controls that are more limited within the County's zoning authority.

IV. COMPLIANCE WITH EVALUATION CRITERIA

1. Section 27-3501(c)(2)(B) requires the Planning Director to issue a technical staff report on any proposed legislative amendment to the Zoning Ordinance within 14 calendar days of the transmittal of the proposed amendment by the Clerk of the Council. This Section also requires, at minimum, analysis of the extent to which the proposed legislative amendment complies with six criteria.
 - A. This proposed legislative amendment meets the requirements of Section 27-3501(c)(2)(B) as follows:
 - (i) **Is consistent with the goals, policies, and strategies of Plan Prince George's 2035 (or any successor General Plan), area master plans, sector plans, functional master plans, and any other applicable approved plans;**

As part of the consultation process, more coordination is recommended to verify if the intent of LDR-82-2024 would be consistent with the goals of *Plan Prince George's 2035 Approved General Plan* (Plan 2035) and current area master plans and sector plans. These policy documents speak to improving the health of the County's residents and improving the quality of life of residents, in addition to reducing light pollution, which LDR-82-2024 purports to achieve.

In addition, a prohibition of LED lights could negatively impact the economic prosperity goals, strategies, and policies of Plan 2035 by preventing the attraction of high-quality nonresidential development, potentially triggering a negative economic impact on the County.

Furthermore, the purpose of the legislative amendment is to "reduce the harmful effects of light pollution on Prince George's County residents and neighborhoods." Policy 6 of the Natural Environment of Plan 2035 refers to light pollution as it intends to "reduce overall sky glow, minimize the spill-over of light from one property to the next, and reduce glare from light fixtures" through three strategies:

NE6.1 - Amend the County Code to include lighting standards for appropriate development activities.

NE6.2 - Evaluate lighting design standards and practices for public buildings and spaces to ensure that safety, energy conservation, and light spillover are addressed.

NE6.3 - Review and amend the County Code to ensure that new roadway lighting meets the guidelines for minimization of light spill-over and sky glow, and relies on low-energy light sources such as LED or solar-powered street lights.

The current Zoning Ordinance achieved these goals by establishing lighting standards in Section 27-6700, Exterior Lighting. In addition, Policy 6 above **specifically** advocates for the use of low-energy light sources, such as LED.

(ii) Addresses a demonstrated community need;

As discussed extensively above, the current Zoning Ordinance already contains specific standards intended to address the underlying demonstrated community need of reducing the harmful effects of light pollution in the County. LDR-82-2024, as a standalone proposal, does not address demonstrated community needs as proposed under the Zoning Ordinance.

(iii) Is consistent with the purpose and intent of the zones in this Ordinance, or would improve compatibility among uses and ensure efficient development within the County;

The Department was unable to identify any impact that LDR-82-2024 would have on the purpose and intent of the zones in the Ordinance or that it would

improve compatibility among uses and ensure efficient development within the County.

(iv) Is consistent with the implementation of the strategies and priority recommendations of the Prince George's County Climate Action Plan;

As part of the consultation process, more coordination is recommended to verify if the intent of LDR-82-2024 would be consistent with the 2022 Prince George's County Climate Action Plan, which contains 26 priority recommendations intended for rapid implementation with key near-term actions, and numerous strategies focused on the long-term vision to guide the County's climate mitigation and adaptation efforts over time. The strategies are contained in Chapter VI, Taking Action: Strategies to Achieve a Low-Carbon, Resilient Prince George's County, while the recommendations are described with detailed action steps in Chapter VII, Next Steps.

The 26 priority recommendations are divided into 3 action areas:

1. Operational actions to bring about transformational change;
2. Mitigating the cause of climate change by reducing greenhouse gas emissions; and
3. Adapting to coming climate impacts.

(v) Is consistent with other related State and local laws and regulations; and

The Department has not identified any State laws that restrict storefront signage based on the type of lighting, particularly LED lighting fixtures. Lighting regulations are determined at the County and municipal levels. Similarly, these laws do not prohibit LED lighting, nor do they discourage it due to its contribution to light pollution.

Staff understands that the State requires LED lighting fixtures for new lighting, underpass lighting, and sign lighting along State highways and roads except for "high mast" lighting.

(vi) Would avoid creating significantly adverse impacts on the natural environment, including but not limited to water, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.

LDR-82-2024 complies with this criterion.

- B. Pursuant to Section 27-3501(c)(2)(C), this technical staff report **"shall contain an independent, non-substantive assessment of the technical drafting conventions of the proposed legislative amendment, in order to ensure consistency with the legislative style and conventions of the current Zoning Ordinance."**

This analysis was provided above in Section II of this technical staff report.

- C. Finally, Section 27-3501(c)(2)(D) requires the Planning Board to make a recommendation on the proposed amendment in accordance with the Legislative Amendment Decision Standards that guide the District Council's final decision on the approval of a proposed legislative amendment.

Analysis of the Legislative Amendment Decision Standards is contained in a separate subsection of this technical staff report below.

2. Referral Comments

Staff referred LDR-82-2024 to colleagues throughout the Planning Department and received no additional referral comments.

V. PLANNING BOARD PUBLIC HEARING

Section 27-3501(c)(2)(D) requires the Prince George's County Planning Board to hold a public hearing and make comments on the proposed legislative amendment within 30 days of the date of the transmittal of the Clerk of the Council. Said public hearing must be noticed by electronic mail at least 21 days prior to the public hearing, sent to every community organization in the County registered pursuant to Section 27-3407(b)(3) of the Zoning Ordinance, and to any person or organization registered pursuant to Section 27-3402(d) of the Zoning Ordinance.

Notice for the public hearing on LDR-82-2024 was sent on May 30, 2024, as required by the Zoning Ordinance. The Planning Board public hearing will be held on June 20, 2024, thus meeting the notice requirement of the Zoning Ordinance.

Comments offered by the public prior to and during the Planning Board's public hearing will be summarized, along with the Planning Board's comments, in the Board's recommendation to Clerk of the Council.

VI. ANALYSIS OF LEGISLATIVE AMENDMENT DECISION STANDARDS

LDR-82-2024 has been reviewed for consistency with Section 27-3501(d), Legislative Amendment Decision Standards, of the Zoning Ordinance. Staff find the following:

The advisability of amending the text of this Ordinance is a matter committed to the legislative discretion of the County Council sitting as the District Council and is not controlled by any one factor. Within each zone listed in the Classes of Zones (Section 27-4102), the (D)istrict (C)ouncil may regulate the construction, alteration, and uses of buildings and structures and the uses of land, including surface, subsurface, and air rights. The provisions for each zone shall be uniform for each class or kind of development throughout the zone, and no legislative amendment may create different standards for a subset of properties within a zone, unless such standards are necessary to implement development policies within the applicable Area Master Plan, Sector Plan, development policies of the General Plan, or other approved development district; however, any differentiation of a subset of properties within a zone shall be reasonable and based upon the public policy to be served.

The Department finds that LDR-82-2024 meets the criteria that the provisions for each zone shall be uniform for each class or kind of development throughout the zone because the amendment does not create different standards for a subset of properties Countywide, regardless of zoning. The proposed amendments contained in LDR-82-2024 would therefore be consistently applied to each affected zone across the County.

In addition, the Department finds that LDR-82-2024 creates different standards for subsets of properties within all zones in the County by prohibiting LED lighting based on unmeasurable standards, by not determining physical development standards, and more importantly, by generating the risk for the County's permit review and code enforcement teams to make subjective determinations that may not be backed by objective standards.

Based on the above preliminary assessment, the Department finds that LDR-82-2024 is not consistent with the Legislative Amendment Decision Standards specified in Section 27-3501(d) of the Zoning Ordinance.

VII. PROPOSED AMENDMENTS

Following review of LDR-82-2024, the Department has offered the necessary technical drafting convention edits that are necessary for this proposed bill in Section II, above. As to the substantive aspects of the bill, the Department has no amendments at this time and requests to coordinate with the bill's sponsor and respective staff to better understand the underlying concerns and work toward more effective outcomes than LDR-82-2024 would engender, including considering possible amendments to the County's Building Codes, in coordination with DPIE.

VIII. RECOMMENDATION

Based upon the foregoing evaluation and analysis, the Planning Department's legislative team recommends that the Planning Board adopt the findings of this report and recommend the Planning Board **OPPOSE** LDR-82-2024.