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State:	New Mexico
Jurisdiction Type:	Municipal
Jurisdiction:	City of Albuquerque
Year (adopted, written, etc.):	Unknown
Community Type – applicable to:	Urban; Suburban
Title:	City of Albuquerque Solar Permit Ordinance
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Abstract

This ordinance was created to clarify the rights people have in terms of using solar power. Specifically, there are limits to the creation of solar power rights, as well as a permitting and recording requirements.

Resource

§ 14-11-1 SHORT TITLE.

This article may be cited as the "Solar Permit Ordinance."
(‘74 Code, § 7-2-3) (Ord. 80-1981)

§ 14-11-2 AUTHORITY AND JURISDICTION.

(A) This article is created pursuant to the authority set forth in Article I of the Charter of the City of Albuquerque, which was adopted pursuant to Article X, Section 6, of the Constitution of the State of New Mexico.

(B) This article is consistent with the provisions of the Solar Rights Act, Section 47-3-1 et seq. NMSA 1978. The city does not undertake to perform any functions expressly denied by general law.
(‘74 Code, § 7-2-1) (Ord. 80-1981)

§ 14-11-3 INTENT.

(A) This article is intended to help achieve Article IX of the Charter of the City of Albuquerque. It is also a means of conforming solar rights to local plans and laws: the Albuquerque/Bernalillo County Comprehensive Plan, the Zoning Code, and the Subdivision Regulations of this code of ordinances. It is intended to create orderly, harmonious, and economically sound development in order to promote the health, safety, convenience, and general welfare of the citizens of the city.

(B) The city recognizes that economic benefits can be derived for the people of the city from the use of solar energy. The city encourages the use of solar energy. This article is appropriate as a means to settle property rights so that people can build structures and plant vegetation knowing what solar rights restrict their development and so that people can know the extent of the solar rights which attach to a solar collector.
(74 Code, § 7-2-2) (Ord. 80-1981)

§ 14-11-4 INTERPRETATION.

The provisions of this article shall be held to be minimum requirements to meet the intent expressed in § 14-11-2. Where the provisions herein impose greater restrictions than those of any other ordinance or regulation, the provisions of this article shall prevail. Where the provisions of any other ordinance or local regulation impose greater restrictions than those of this article, the provisions of such other ordinance or local regulation shall prevail.
(74 Code, § 7-2-4) (Ord. 80-1981)

§ 14-11-5 DEFINITIONS.

(A) For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

MAYOR. The Mayor or his authorized representative.

OBSTRUCTION. Any personal or real property, including vegetation, which interferes with a solar right, except it does not include either antennas or poles and wires for public utilities.

OWNER or POSSESSOR OF REAL PROPERTY. A person who holds a fee simple interest in real property, a real estate contract purchaser of real property, or a person who is entitled to take immediate possession or has possession of real property.

PERSON. An individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.

SOLAR FRACTION. The annual average proportion of the energy consumed to accomplish a specified task which is derived from solar energy.

(B) Words defined in the Solar Rights Act, Section 47-3-3 NMSA 1978, are to be construed as defined therein.
(74 Code, § 7-2-5) (Ord. 80-1981)

§ 14-11-6 CREATION, LIMITATION OF SOLAR RIGHTS IN CITY.

(A) Within the city no solar rights shall be created or redefined on or after August 1, 1981 except in conjunction with solar collectors which have been issued permits for solar rights under the terms of this article. The spatial and temporal limits of solar rights created or redefined on or after August 1, 1981, shall be defined by the permits for solar rights issued for solar collectors.

(B) Nothing in this article shall be construed to alter, amend, deny, impair, or modify any solar right, lease, easement, or contract right which has vested prior to August 1, 1981.

(C) A solar right is enforceable as an easement appurtenant against any person whose obstruction first infringed or was planned to infringe on such right after that person had knowledge or notice of the solar right.

(D) Transfer.

(1) A permit for solar rights is appurtenant to the real property upon which the related solar collector is situated; neither a solar right nor a permit for solar rights is transferable separately from the real property upon which the related solar collector is located unless the right is acquired for a public purpose by an entity which has power of eminent domain.

(2) Unless the document of conveyance otherwise specifies, when any real property for which an appurtenant solar right is claimed is transferred, the permit for solar rights shall be transferred with the realty, and the solar right shall be enforceable by the transferee in the same manner and to the same extent to which it was enforceable by the transferor.

(E) Termination or diminution of a solar right defined by a permit for solar rights which has been used shall be accomplished only by:

(1) Purchase of the right by the owner of the land burdened by it, i.e., merger of the dominant and servient tenements; or

(2) Voidance of all or part of a permit for solar rights by the City hearing officer, as specified in § 14-11-7, based on:

(a) Request of the owner of the permit and dominant tenement; or

(b) Abandonment; or

(3) Abandonment, as determined by a court of competent jurisdiction.
(‘74 Code, § 7-2-6) (Ord. 80-1981)

§ 14-11-7 PERMITS FOR SOLAR RIGHTS.

(A) Application and Fee.

(1) Request for a permit for solar rights is initiated by application to the Mayor by the owner or possessor of real property on which a related solar collector is located. An application shall be accompanied by two copies of the following items:

(a) Plans for the proposed solar energy system, including the solar collector and any heat storage and distribution facilities; plans shall include calculations and sum total as to collection and beneficial use of heat, expressed in BTUs and solar fraction.

(b) Plans showing the following:

1. The boundaries of all relevant parcels of land which either contain or are proposed to contain a solar collector or are proposed to be burdened by the solar right, i.e., the parcels proposed for the dominant and servient tenements;

2. The owners and the possessors of the real property for which parcel boundaries are shown;

3. Where relevant to the solar right requested, the topography of the land, and the location of structures, fixtures, and vegetation existent or known by the applicant to be planned; the horizontal and vertical dimensions of such structures, fixtures, and vegetation; and

4. A spatial and temporal definition of the solar rights requested.

(2) Request to void in whole or in part a permit for solar rights is initiated by application to the Mayor by the owner or possessor of real property with a dominant or servient tenement defined by the permit. An application shall identify the permit which is requested to be voided.

(3) An application for approving or voiding a permit for solar rights relating to the same solar collector may not be considered within 12 months of the date of final city action on a prior application for the same action.

(4) Fee.

(a) An application fee of \$50 shall accompany each application relating to establishing a solar right.

(b) An application fee of \$40 shall accompany each application to void a solar right.

(c) When an application is withdrawn after it has been advertised for public hearing, the application fee shall not be refunded. When an application is withdrawn before such advertisement all but \$10 of the fee shall be refunded.

(d) If the city is the applicant or agent, the application fee is waived.

(B) Hearing and Decision.

(1) A duly filed application for a permit for solar rights shall be decided, upon the record after a hearing, by a hearing officer appointed by the Mayor.

(2) At least 15 days in advance of a hearing the Mayor shall give notice of the public hearing by certified mail, return receipt requested, to the following persons:

(a) The applicant;

(b) The applicant's agent; and

(c) The owners and possessors of involved real property, as submitted by the applicant per division (A)(1)(b)1. and 2. of this section.

(3) The notice shall contain the following information:

(a) The time and place of hearing;

(b) A statement describing location of the property and the subject matter of the hearing; and

(c) How additional information can be obtained.

(4) Prior to hearing, the Mayor may request city departments and other agencies which he judges would be interested to comment on the application. Comments received shall be part of the hearing record.

(5) A written statement giving the name and address of the person making the appearance, signed by him or by his agent, and filed with the hearing officer, constitutes appearance of record. The parties to a hearing shall be any of the following persons who has entered an appearance of record either prior to commencement of the hearing or when permitted by the hearing officer:

(a) A person entitled to notice under division (2) above; and

(b) Any unit of government which has jurisdiction over the site proposed for a permit.

(6) A party shall be afforded an opportunity to present evidence and argument and to question witnesses on all relevant issues, but the hearing officer may impose reasonable limitations on the number of witnesses heard, and on the nature and length of their testimony and questioning. The hearing officer may call witnesses and introduce papers on his own volition.

(7) The Mayor shall make a full record of the hearing by sound recording; any person shall have the opportunity to listen to, copy, or transcribe the recording at any reasonable time at the office of the Mayor. Summary minutes shall be kept of all hearing officer's hearings, and they shall be kept available for public inspection.

(8) Prior to making a decision, the hearing officer shall neither:

(a) Communicate, directly or indirectly, with any party or his representatives in connection with the merits of any issue involved except upon notice and opportunity for all parties to participate;

(b) Use nor rely upon any communication, reports, staff memoranda, or other materials prepared in connection with the particular case unless made a part of the record; nor

(c) Inspect the site with any party or his representative unless all parties are given an opportunity to be present.

(9) An advertised hearing may be continued to a time and place announced at the hearing without further mailed notice.

(10) The hearing officer shall act on an application within 15 days of the conclusion of the hearing. He shall prepare a written decision which includes the key findings of fact. This report shall be made part of the record. Each material finding shall be supported by substantial evidence or, if it is noted on the record, by a personal knowledge of or inspection of the hearing officer.

(11) The hearing officer shall, when approving a permit for solar rights, limit the solar rights spatially and temporally as necessary to meet the stated criteria for granting such permits.

(12) When any permit for solar rights is approved or denied, as provided in this division (12), written notification of the action, indicating the extent of the solar rights granted, shall be sent within one day of the action to the applicant's agent and all persons who were proposed for dominant and servient tenements by the applicant.

(C) Criteria for deciding requests for permits are as follows:

(1) A permit for solar rights shall be approved if and only if, in the circumstances of the particular case, the solar collector and related solar rights created will be beneficially used, and in addition the solar rights granted:

(a) Will not unreasonably interfere with the enjoyment of other sites, either the enjoyment of present use or prospective use as indicated by zoning or adopted plans; or

(b) Will be of more value to the public welfare than the precluded enjoyment of present use or prospective use of other sites which would be precluded by the permit. For the purpose of this division (b), PUBLIC WELFARE means the conservation of scarce fuels and the allowance of an undertaking which would not otherwise be viable.

(2) The beneficial use of a solar right which would permit radiation from the sun to impinge directly on the solar collector before 9:00 a.m. or after 3:00 p.m., Mountain Standard Time, on a winter solstice day or before 9:00 a.m. or after 5:00 p.m., Mountain Daylight Savings Time, on a summer solstice day is de minimus and shall never be protected by a permit for solar rights. This division (2) shall not be construed to mean that an applicant has a right to a permit for solar rights at any other time of day.

(3) There is a rebuttable presumption that solar rights which do not limit the height of potential buildings more than the normally permissive height regulations of the Zoning Code will not unreasonably interfere with the enjoyment of the other sites. This is true even though the solar rights inhibit the location of objects not limited by those height regulations.

(D) A permit for solar rights which is approved is voidable in whole or in part if and only if:

(1) Two years after the date approval vested, the rights and privileges in question have never been utilized; or

(2) The rights and privileges in question have ceased to be beneficially used for a continuous period of two years or more; or

(3) The owner of the solar right, i.e., the dominant tenement, requests that the permit be voided;

(4) A decision on whether to void a permit for solar rights shall be made by the hearing officer in a process consistent with division (B) of this section;

(5) If a permit for solar rights is voided, the related solar right is destroyed.

(E) The exclusive remedy for parties dissatisfied with the action of the hearing officer shall be filing of a Petition for Writ of Certiorari. The petition for review shall be limited to the record made on the public hearing held pursuant to this article.

('74 Code, § 7-2-7) (Ord. 80-1981)

§ 14-11-8 RECORDING SOLAR RIGHTS.

(A) Recordation of a permit for solar rights with the County Clerk in accordance with Section 14-9-1 NMSA 1978 shall be notice to all the world of the existence of the solar right therein defined.

(B) Notice as to solar rights which were not recorded in accordance with Section 14-9-1 NMSA 1978 prior to August 1, 1981, shall be given only by recording a permit for solar rights, issued as provided by this article.

(C) The Mayor shall record with the County Clerk any permit for solar rights or voidance of any permit for solar rights granted by the city. Filing shall be no sooner than 15 days after the hearing officer's decision; filing shall be no later than 25 days after the hearing officer's decision unless a Writ of Certiorari has been filed and the Mayor has been so informed. The document filed shall be signed by the hearing officer; the document shall be titled "Solar Right Declaration" and shall contain at least the following:

(1) A legal description of the site of the solar collector including the vertical and horizontal location of the solar collector on the site,

(2) A statement that a solar right is established and defining the three-dimensional space or the place and time of day in which obstruction is prohibited or limited,

(3) Legal descriptions of all land parcels burdened with servient tenements by the solar right, and

(4) Reference to any special limitations imposed.

(D) A solar right declaration, as recorded, shall be mailed by the Mayor certified mail, return receipt requested, to all owners of record of real property burdened with servient tenements by the solar right.

(E) The Mayor has no duty to recognize any solar right when issuing building permits. This is without prejudice to the enforcement of the solar right against anyone who infringes or plans to infringe on the solar right.
(74 Code, § 7-2-8) (Ord. 80-1981)

§ 14-11-9 REMEDY.

If any person infringes on or plans to infringe on solar rights which have been defined under the terms of this article, the owner of the relevant solar collector may bring civil action against such person to obtain damages and/or enjoin the offending action or object.
(74 Code, § 7-2-9) (Ord. 80-1981)