

DUNES CITY ZONING ORDINANCE:
PROPOSED SOLAR ACCESS PERMIT PROVISIONS

ORDINANCE NO. 91

An Ordinance of Dunes City amending Ordinance No. 50, Dunes City Zoning Ordinance, providing for the protection of solar access through height limitations for trees.

Dunes City Zoning Ordinance is amended by the addition of the following:

SECTION 13 SOLAR ACCESS PERMIT

I. PURPOSE

The purpose of this section is to allow protection of solar access to a solar collector through the limitation of growth by trees located on neighboring properties.

II. SOLAR ACCESS PERMIT STANDARDS

The decision to approve or deny a permit application will be based upon the following standards:

- A. The solar collector will have at least four hours per day of unobstructed solar access between 9 a.m. and 3 p.m. during the period for which solar access protection is being sought. However, the hours and dates during which the solar collector access is protected shall not exceed that period when the sun is lower than its position at solar noon on January 21 or greater than 55 degrees east or west of true south.
- B. The solar collector will not be shaded by an eight foot fence located on the south lot line or an existing structure at solar noon on December 21.
- C. There is no reasonable alternative location for the solar collector that will result in fewer restrictions on neighboring lots.
- D. Removing or trimming vegetation on the applicant's lot will not permit an alternative location that would result in fewer restrictions on neighboring lots.
- E. The solar collector shall meet the following minimum performance standards according to the end use of energy to which it is applied: 20 percent of the structure's space heating energy needs, 40 percent of the structure's domestic water heating energy needs, and/or 40 percent of the structure's electricity needs for appliances and lighting, excluding domestic water heating. The solar collector's performance shall be certified by a licensed architect or engineer using simulation techniques or calculation procedures that are generally in use. Documentation that a solar collector qualifies for a tax credit, loan or other solar program offered by a utility,

municipal corporation or government agency which employs equivalent standards shall satisfy the requirements of this section.

III. LIMITS ON SOLAR ACCESS PERMITS

A solar access permit shall not affect:

- A. A lot or portion thereof which is located more than 150 feet south of the proposed or existing solar collector.
- B. A lot located on a slope of 15 percent or more and facing within 45 degrees of true north.
- C. An exempted tree.
- D. Any structure or addition located on a neighboring lot.
- E. A lot or portion thereof which lies within an Open Space Overlay Zone.

IV. APPLICATION FOR A SOLAR ACCESS PERMIT

An application for a solar access permit shall include:

- A. A description of how the application satisfies the solar access permit standards.
- B. The hours and months for which solar access is sought.
- C. A scaled drawing of the solar collector, its dimensions, its height above ground level, and its orientation.
- D. A sunchart for the proposed location as seen from the center of the lower edge of the site of the solar collector. If the solar collector is more than 20 feet in length, a sunchart shall also be provided for the southeast and southwest corners of the lower edge of the solar collector.
- E. A site plan showing lot lines and dimensions of the applicant's lot and neighboring lots which will be affected by the solar access permit. The site plan shall include the location of the solar collector, the location of structures and trees on the applicant's lot and affected neighboring lots, and the identification of exempt and non-exempt trees.
- F. Evidence that the solar collector will not be shaded by a eight foot fence located on the applicant's south property line at solar noon on December 21.
- G. Evidence that the solar collector is installed or a written commitment to install the proposed solar collector within one year of the effective date of the permit.

- H. Evidence that there is no reasonable alternative location for the solar collector that would result in fewer restrictions on a neighboring lot including that provided by the trimming or removal of vegetation on the applicant's lot.
- F. A solar envelope for each lot to be affected by the proposed solar access permit.

V. PROCEDURE

- A. Review. The Building Inspector or an agent designated by the governing body shall review the application for completeness and accuracy. If the application is found to be incomplete or inaccurate, the Building Official or designated agent shall advise the applicant of its deficiencies.
- B. Notice. After an application for a solar access permit has been accepted, the City Recorder shall send notice by certified mail to each property owner to be affected by the proposed solar access permit. The notice shall contain the following information:
 - 1. A copy of the solar access permit which has been accepted by the Building Official or designated agent;
 - 2. The standards for and limits on a solar access permit;
 - 3. Procedures for objection by any affected property owner including comment deadline.
- C. Objections. If no written objections are filed by affected parties within 30 days following the date that all certified letters are mailed, the city recorder shall issue the solar access permit. If any affected property owner or representative files a written objection within the specified period, and if the objection is not withdrawn after informal discussions among the objector, City staff, and the applicant, a hearing shall be held before the Planning Commission.
- D. Permit Hearing. The Planning Commission shall hold a hearing on a written objection to the granting of a solar access permit.
 - 1. Notice. The City Recorder shall send notice of the hearing to the applicant, the property owner who objected to the permit, and other property owners who would be affected by the proposed permit.
 - 2. Hearing. The objector shall bear the burden of proof that the application is not accurate, that it does not satisfy the solar access permit standards or limitations, or that the estimated loss of value or cost to preserve the solar right to affected owners of neighboring property is greater than the estimated value of solar access to the applicant. The planning commission shall review the application, compare the provided information with the permit standards and limitations, and consider evidence presented by the objector, city staff, and the applicant.

3. **Decision.** After the close of the hearings, the planning commission shall state their findings and conclusions and based thereon shall approve, approve with conditions, or deny the application.
- E. **Recordation.** Within 30 days after a solar access permit is granted, the City Recorder shall:
1. File with the county clerk, in such form as required by state law, the permit including any exemptions to or limits on the solar access protected, site plan, sunchart, and solar envelopes.
 2. Send a certified letter to each property owner affected by the solar access permit that the permit has been granted and recorded and a copy of a solar envelope for his or her lot.
 3. Note the location of the solar collector and affected properties on the official zoning map.

VI. PERMIT ENFORCEMENT

In the event that a non-exempt tree on a neighboring property is shading a solar collector for which a solar access permit has been granted, then the permittee shall take the following actions to protect his or her solar access.

- A. **Documentation of Solar Permit Violation.** The solar access permittee shall submit the following information to the City Recorder. The Building Official or a designated agent shall review the permittee's complaint for accuracy and completeness.
1. A copy of the solar access permit.
 2. Evidence that the solar collector is still functioning.
 3. A new sunchart documenting that non-exempt or new trees are shading the solar collector during the protected period.
 4. The legal description of the lot on which the non-exempt and new trees are located, the address of the property owner and a scaled plot plan showing the location of the non-exempt and new trees.
 5. Evidence that no vegetation located on the permittee's lot is shading the solar collector during the protected period.
- B. **Notice.** If the permittee's complaint is found to be complete and accurate, the Recorder shall notify by registered mail the owner of the allegedly shading tree. The notice shall include information submitted by the complaining permittee to the City, a description of the rights and responsibilities of the affected property owner under the provisions of the Solar Access Permit, a form to request a Planning Commission hearing, and a description of specific actions the alleged violator shall take to comply with the permit provisions.

- .C **Hearing.** Within 14 days of the date the notice is mailed, the owner of the allegedly shading tree, or his or her representative, may request a hearing before the Planning Commission to review the alleged violation. The City Recorder shall send notice of the hearing to the permittee and the alleged permit violator and his or her representative. The hearing shall be held within 30 days after a request has been received. At the hearing, the Planning Commission shall determine whether the tree which is the subject of the permittee's complaint violates the solar access permit. Within 7 days of the hearing, the Recorder shall mail notice of the Planning Commission's decision to the affected parties. If the Planning Commission finds that a violation exists, the notice shall be sent by registered mail to the owner of the offending tree is located and shall describe the specific actions the violator is required to take.
- D. **Remedy.** Within 30 days after the Recorder mails written notice of the violation or, if a hearing is held, within 30 days after the recorder mails notice of the Planning Commissions's decision, the owner of the offending tree shall trim tree the tree and notify the Recorder of his or her action. If the owner does not trim the tree at that time, then an injunction may be issued, upon complaint of the permittee, by a court of competent jurisdiction. The injunction may order the tree owner to trim that part of the tree which violates the provisions of the solar access permit, to pay court costs, and to pay the permittee reasonable attorney's fees. If personal jurisdiction cannot be obtained over the property owner whose tree violates the permit, then the City or a designated agent may enter upon the property and trim that part of the tree which violates the Solar Access Permit.
- E. **Assignment of Cost.** All costs for trimming a non-exempt tree shall be borne by the permittee. All costs for trimming a new tree shall be borne by the tree owner.

VII. TERMINATION

The City Recorder shall revoke the solar access permit if the solar collector does not function for 12 consecutive months or if requested by the permittee or his or her successor in interest. The City Recorder shall send the permittee, the owners of all properties affected by the permit, and the county clerk a Notice of Termination.

VIII. FEES

The City shall set fees as is appropriate to cover costs for permit processing and enforcement.

Section 11: DEFINITIONS is amended by the addition of the following:

EXEMPT TREE - A tree that has a height greater than 10 feet at the time of application.

NEW TREE - A tree that is planted after the effective date of the solar access permit.

NON-EXEMPT TREE - A tree that has a height of 10 feet or less at the effective date of the permit.

SOLAR COLLECTOR - The south face of a building which is designed to provide solar space heating, or a device which use solar energy for generation of electricity or to reduce energy consumption for space or water heating.

SOLAR ENVELOPE - A drawing or representation with contour lines of a three dimensional space over a lot representing height restrictions for trees that protects solar access for a solar collector.

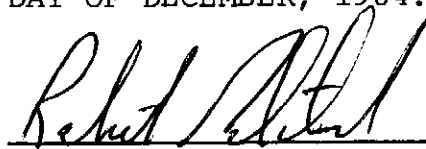
SUNCHART - A photograph showing the positions of the sun during different hours of the day and months of the year, and the southern skyline. The sunchart shall use as coordinates a grid of solar altitude in 10 degree increments and solar azimuth in 15 degree increments.

The Council having declared an emergency does hereby enact this ordinance immediately.

Passed by the City Council of Dunes City, Lane County, Oregon, this 13th day of December, 1984, by the following vote:

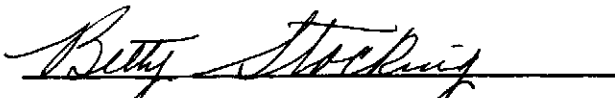
Aye 5 Naye 0 Absent 2

APPROVED BY THE MAYOR THIS 13th
DAY OF DECEMBER, 1984.



ROBERT PETERSDORF, Mayor
Dunes City, Oregon

ATTEST:



BETTY STOCKING, City Recorder