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Title: A substitute ordinance relating to solar access protection.

Sponsors: ALD. ZIELINSKI

Indexes: BUILDING CODE, ENERGY CONSERVATION

Attachments: 1. , 2. City Attorney's Opinion, 3. Department of City Development Letter to Ald. Zielinski, 4. Fiscal Note

Date	Ver.	Action By	Action	Result	Tally
9/6/2006	0	COMMON COUNCIL	ASSIGNED TO		
9/20/2006	1	CITY CLERK	DRAFT SUBMITTED		
10/30/2006	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
10/30/2006	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
10/30/2006	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
11/8/2006	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	SUBSTITUTED	Pass	5:0
11/8/2006	2	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HELD TO CALL OF THE CHAIR	Pass	5:0
11/9/2006	2	CITY CLERK	DRAFT SUBMITTED		
9/18/2007	2	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	RECOMMENDED FOR PLACING ON FILE	Pass	4:0
9/25/2007	2	COMMON COUNCIL	PLACED ON FILE	Pass	13:0

060635
SUBSTITUTE 2

ALD. ZIELINSKI

A substitute ordinance relating to solar access protection.

- 200-33-3 rc
- 200-33-51.2 cr
- 239-13 cr

Section 66.0403, Wis. Stats., enables municipalities to pass ordinances with any provision they deem necessary for granting a permit for protecting access to solar energy. This ordinance establishes the permitting procedure, in compliance with statutory procedures, for solar access protection permits, which shall be granted to persons who have installed or plan on installing solar collectors on their properties. The department of city development shall determine if an application is satisfactorily completed and shall notify the applicant of its determination.

The department of city development shall grant a permit if it determines that the granting of a permit will not unreasonably interfere with the orderly land use and development plans of the city, pursuant to code provisions relating to height and setbacks of adjacent properties, and if no person has demonstrated that he or she has present plans to build a structure that would create an impermissible interference to solar access. The benefits to the applicant and the public must exceed any burdens. The department may grant a permit subject to any condition or exemption it deems necessary to minimize the possibility that the future development of nearby property will create an impermissible interference or to minimize any other burden on any person affected by granting the permit.

It is the responsibility of applicants to provide notice of the permit to owners of any properties that might be affected by the permit. Within 30 days after receipt of the notice, any person who has received a notice may file a request for a hearing on the granting of a permit, or the city plan commission may determine that a hearing is necessary even if no such request is filed. If the city plan commission determines that a hearing is necessary, the city plan commission shall conduct a hearing on the application within 90 days. The hearing fee required to appeal a decision to the commission shall be \$90.

Any right protected by a permit under this section shall terminate if the department of city development determines that the solar collector which is the subject of the permit is permanently removed, is not used for 2 consecutive years or is not installed and functioning within 2 years after the date of issuance of the permit. The department shall give the permit holder written notice and an opportunity for a hearing on a proposed termination.

A permit holder by written agreement may waive all or part of any right protected by the permit. The transfer of title to any property shall not change the rights and duties under this section. Any person aggrieved by a determination of this section may appeal the determination to the circuit court for review.

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 200-33-3 of the code is repealed and created to read:

200-33. Fees.

- 33. APPEALS.** a.The fee required to appeal a decision of the commissioner of neighborhood services or commissioner of city development to the standards and appeals commission shall be \$90.
b.The fee required to appeal a decision of the commissioner of city development to the city plan commission shall be \$90.
c.The fee required to appeal a decision of the commissioner of neighborhood services or commissioner of city development under s. 218-4 shall be \$300.

Part 2. Section 200-33-51.2 of the code is created to read:

200-33. Fees.

- 51.2. SOLAR ACCESS PROTECTION.** a.The permit fee for a solar access permit shall be \$50.
b.There shall be a processing fee of \$3 for each solar access permit issued.
c.The plan examination fee for solar access permit applications shall be \$100.

Part 3. Section 239-13 of the code is created to read:

239-13. Solar Collectors. 1.DECLARATION OF POLICY. Pursuant to s. 66.0403, Wis. Stats., the

city may enact provisions for granting a permit for protecting access to solar energy. As solar energy is a renewable energy source that has economical and environmental advantages over non-renewable sources, it is the desired goal of the city to encourage and foster reliance on solar energy sources and move the city towards greater energy efficiency. The city acknowledges that while those persons who invest in solar energy do so at costs that are self-imposed, substantial benefits are realized with respect to the public health, ecology and economy of the city. The city will help to protect private investments in solar collectors, and thus encourage the implementation of alternative, renewable energy sources, with the issuance of solar access protection permits. In turn, the city will enable itself to realize the benefits of solar energy as a renewable energy source.

2.DEFINITIONS. In this section:

a."Collector surface" means any part of a solar collector that absorbs solar energy for use in the collector's energy transformation process. "Collector surface" does not include frames, supports and mounting hardware.

b."Collector use period" means 9 a.m. to 3 p.m. standard time daily.

c."Department" means the department of city development.

d."Impermissible interference" means the blockage of solar energy from a collector surface or a proposed collector surface for which a permit has been granted under this section during a collector use period if such blockage is by any structure or vegetation on property, an owner of which was notified under sub. 3-b. "Impermissible interference" does not include:

d-1.Blockage by a narrow protrusion, including but not limited to a pole or wire, which does not substantially interfere with absorption of solar energy by a solar collector.

d-2.Blockage by any structure constructed, under construction or for which a building permit has been applied for before the date the last notice is mailed or delivered under sub. 3-b.

e."Owner" means the holder of record of an estate in possession in fee simple, or for life, in land or real property, or a vendee of record under a land contract for the sale of an estate in possession in fee simple or for life but does not include the vendor under a land contract. A tenant in common or joint tenant is an owner to the extent of his or her interest.

f."Solar collector" means a device, structure or a part of a device or structure a substantial purpose of which is to transform solar energy into thermal, mechanical, chemical or electrical energy.

3.PERMIT APPLICATIONS. a.An owner who has installed or intends to install a solar collector may apply to the department for a permit.

b.Applicants shall provide information regarding the placement of the proposed solar collector. Information shall include, but is not limited to:

b-1.A site plan indicating the location and a description of the proposed solar collector.

b-2.Installation plans.

b-3.Sun charts.

c.The department shall determine if an application is satisfactorily completed and shall notify the applicant of its determination. If an applicant receives notice that an application has been satisfactorily completed, the applicant shall deliver by certified mail or by hand a notice to the owner of any property which the applicant proposes to be restricted by the permit under sub. 7. The applicant shall submit to the department a copy of a signed receipt for every notice delivered under this paragraph. The department shall supply the notice form. The information on the form may include, without limitation because of enumeration:

c-1.The name and address of the applicant, and the address of the land upon which the solar collector is or will be located.

c-2.That the application has been filed by the applicant.

c-3.That the permit, if granted, may affect the rights of the notified owner to develop his or her property and to plant vegetation.

c-4.The telephone number, address and office hours of the department.

c-5.That any person may request a hearing under sub. 4 within 30 days after receipt of the notice,

and the address and procedure for filing the request.

4. HEARING. a. Within 30 days after receipt of the notice under sub. 3-c, any person who has received a notice may file a request for a hearing on the granting of a permit, or the city plan commission may determine that a hearing is necessary even if no such request is filed. If a request is filed or if the city plan commission determines that a hearing is necessary, the commission shall conduct a hearing on the application within 90 days after the last notice is delivered. At least 30 days prior to the hearing date, the department shall notify the applicant, all owners notified under sub. 3-c and any other person filing a request of the time and place of the hearing.

b. The hearing fee required to appeal a decision to the city plan commission shall be that specified in s. 200-33-3-b.

5. PERMIT GRANT. a. The department shall grant a permit if it determines that:

a-1. The granting of a permit will not unreasonably interfere with the orderly land use and development plans of the city, pursuant to code provisions relating to height and setbacks of adjacent properties.

a-2. No person has demonstrated that he or she has present plans to build a structure that would create an impermissible interference by showing that he or she has applied for a building permit or submitted plans, including planned development or plans to be considered by the board of zoning appeals, prior to receipt of a notice under sub. 3-c, has expended at least \$500 on planning or designing such a structure, or by submitting any other credible evidence that he or she has made substantial progress toward planning or constructing a structure that would create an impermissible interference.

a-3. The benefits to the applicant and the public will exceed any burdens.

b. The department may grant a permit subject to any condition or exemption it deems necessary to minimize the possibility that the future development of nearby property will create an impermissible interference or to minimize any other burden on any person affected by granting the permit. Such conditions or exemptions may include, but are not limited to, restrictions on the location of the solar collector and requirements for the compensation of persons affected by the granting of the permit.

6. RECORD OF PERMIT. If the department grants a permit:

a. The department shall specify the property restricted by the permit under sub. 7 and shall prepare notice of the granting of the permit. The notice shall include the identification required under s. 706.05 (2)(c), Wis. Stats., as amended, for the owner and the property upon which the solar collector is or will be located and for any owner and property restricted by the permit under sub. 7, and shall indicate that the property may not be developed and vegetation may not be planted on the property so as to create an impermissible interference with the solar collector which is the subject of the permit unless the permit affecting the property is terminated under sub. 9 or unless an agreement affecting the property is filed under sub. 10.

b. The applicant shall record with the register of deeds of Milwaukee county the notice under par. a for each property specified under par. a and for the property upon which the solar collector is or will be located.

7. REMEDIES FOR IMPERMISSIBLE INTERFERENCE. a. Any person who uses property for which he or she owns or permits any other person to use the property in a way which creates an impermissible interference under a permit which has been granted or which is the subject of an application shall be liable to the permit holder or applicant for damages, except as provided under par. b, for any loss due to the impermissible interference, court costs and reasonable attorney fees unless:

a-1. The building permit was applied for prior to receipt of a notice under sub. 3-b or the department determines not to grant a permit after a hearing under sub. 4.

a-2. A permit affecting the property is terminated under sub. 9.

a-3. An agreement affecting the property is filed under sub. 10.

b. A permit holder is entitled to an injunction to require the trimming of any vegetation which creates or

would create an impermissible interference. If the court finds on behalf of the permit holder, the permit holder shall be entitled to a permanent injunction, damages, court costs and reasonable attorney fees.

8.APPEALS. Any person aggrieved by a determination of this section may appeal the determination to the circuit court for review.

9.TERMINATION OF SOLAR ACCESS RIGHTS. a.Any right protected by a permit under this section shall terminate if the department determines that the solar collector which is the subject of the permit is:

a-1. Permanently removed or is not used for 2 consecutive years, excluding time spent on repairs or improvements.

a-2. Not installed and functioning within 2 years after the date of issuance of the permit.

b. The department shall give the permit holder written notice and an opportunity for a hearing on a proposed termination under par. a.

c. If the department terminates a permit, the department will charge the permit holder for the cost of recording and record a notice of termination with the register of deeds, who shall record the notice with the notice recorded under sub. 6-b or indicate on any notice recorded under sub. 6-b that the permit has been terminated.

10.WAIVER. A permit holder by written agreement may waive all or part of any right protected by the permit. A copy of such agreement shall be recorded with the register of deeds, which shall record such copy with the notice recorded under sub. 6-b.

11.PRESERVATION OF RIGHTS. The transfer of title to any property shall not change the rights and duties under this section.

12.CONSTRUCTION. a.This section may not be construed to require that an owner obtain a permit prior to installing a solar collector.

b.This section may not be construed to mean that acquisition of a renewable resource easement under s. 700.35, Wis. Stats., as amended, is in any way contingent upon the granting of a permit under this section.

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

LRB06449-3

LCS

11/8/06

Technical correction made 11/13/06 - LME

