PROPOSED ORDINANCE TO ENCOURAGE

ACCESS TO SOLAR ENERGY

East Baton Rouge Parish

Chapter 4 Section 8.4XX

AN ORDINANCE PROVIDING FOR SOLAR EASMENTS; PROVIDING FOR ENFORCEMENT AND PENALTIES; SUPERSEDING ALL LAWS IN CONFLICT OR INCONSISTENT HEREWITH; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Parish of East Baton Rouge wishes to advance the use of solar energy by all of its citizens, businesses, and industries; and,

WHEREAS, the Parish of East Baton Rouge has determined that public and private land use and property restrictions can impair the ability of our citizens, businesses, and industries to install said systems; and,

WHEREAS, properly designed land use standards can prepare communities for greater access to solar energy; and,

WHEREAS, solar rights have been established by the Louisiana Legislature with the: SOLAR RIGHTS ACT OF 2010.

NOW, BE ENACTED BY THE PARISH OF EAST BATON ROUGE, THAT:

1. Findings and declaration

The Council finds that in view of the present energy crisis, all renewable energy sources must be encouraged for the benefit of the parish as a whole. The Council further finds that solar energy is a viable energy source in Louisiana, and as such, its development should be encouraged. Since solar energy may be used in small-scale installations and one of the ways to accomplish such encouragement is by protection of rights necessary for small scale installation, the Council declare such protection to be necessary to the public interest.

1. Method of claiming; effect; limitations

A solar right may be claimed by an owner of real property upon which a solar collector has been placed. Once vested, the right shall be enforceable against any person who constructs or plans to construct any structure, in violation of the terms of the Solar Rights Act of 2010 (Louisiana Legislature) or this Solar Recordation Ordinance. A solar right shall be considered an easement appurtenant, and a suit to enforce a solar right may be brought at law or in equality. The solar right shall be subject to the provisions of the Solar Recordation Ordinance and the Solar Rights Act.

1. Recordation; Effect of failure to record; contest.

Any person claiming a solar right shall be able to prove that right by producing a copy of the approved and closed solar permit in which is located any portion of the properties burdened by solar right or any portion of the properties on which a solar right is claimed.

SOLAR RIGHT DECLARATION

[Name of Person] \_\_\_\_\_\_\_\_\_\_\_\_\_\_ Owner of the real property described below, claims a solar right in favor of the following described real estate in East Baton Rouge Parish, Louisiana;

(Description either by metes and bounds, if in a platted subdivision, by lot and block subdivision name, or other adequate legal description.)

1. The following named persons have each received notification by certified mail evidenced by a return receipt signed by the named person, or if the address of any person was no known and could not be ascertained by reasonable diligence, or if a return receipt signed by the named person could not be obtained, the notification to that person shall be made by publication of a copy of this declaration, with the intended date of filing, at least once a week for two consecutive weeks in a newspaper of general circulation in the country in which the property for which the solar right is being claimed is located, the last publication of which was no less than ten days prior to the filing of this declaration; (A listing of the names of the holders as shown in the records of the parish clerk of any interest in property burdened by a claimed solar right, including owners, mortgagors, mortgagees, lessors, lessees, contract purchasers and contract owners or sellers, and a description, either by metes and bounds if in a platted subdivision, by lot and block and subdivision name, or other adequate legal description, of that burdened property.)

The claimant has placed improvements on the land in the form of a solar collector, as shown by the attached survey or plot plan setting forth distances from lot lines and height from ground level of all solar collectors entitled to be recorded under the provisions fence located at the property lines of the property on which the solar collector is located which will not interfere with the solar easement.

Notice is hereby given that by virtue of the Solar Recordation Act, the holders of any interest in property described above having been mailed notice must record a declaration, with the county clerk in each parish in which solar right recordation has been filed, contesting the claimed solar right within sixty days, or the solar right shall be fully vested. Witness [name of person] set his hand and seal this \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_ [year][document must be notarized].

1. Any person desiring to claim a solar right must record that right and give notice to affected property owners as provided in the Solar Recordation Act as a necessary condition precedent to enforcing a solar right. Failure to so record and give notice shall constitute a jurisdictional defect and deprive any court of subject matter jurisdiction to enforce the solar right. However, nothing in the subsection shall apply to any solar right, lease, easement or contract right which has vested prior to the effective date of this subsection.
2. Any person who receives notice of the recordation may, within sixty days after receiving notice, file a declaration contesting the right, in the same manner and at the same place as the recordation was filed. If a declaration is filed contesting the claimed solar right, then the solar right will not be enforceable against the property covered by the declaration unless agreed to by contract or ordered by a court of competent jurisdiction, and any claim of a solar right shall expire one year from the date of declaration unless the parties agree by contract to settle the solar rights dispute or unless court action has commenced by that date to establish the claim of the solar right.
3. Transfer

Unless the document of conveyance otherwise specifies, upon the transfer of any realty on which a solar right exists or upon the transfer of any realty benefited by a filed declaration contesting a solar right, that solar right or declaration contesting the solar right shall be transferred with the realty and shall be enforceable by the vendee in the same manner and to the same extent to which it was enforceable by the vendor. A solar right is appurtenant to the real property upon which the solar collector is situated. Nothing in this section shall be constructed to prevent a person from agreeing to relinquish a solar right or potential solar right. Nothing in the section shall affect any transfer of solar rights made prior to the effective date of the Solar Recordation Ordinance.

1. Local authority

Notwithstanding any other provisions of the Solar Recordation Ordinance or the Solar Rights Act, the governing body of the parish may by ordinance regulate in whole or in part the claiming of solar rights in accordance with its powers to regulate zoning, planning and platting , and subdivisions; except that any solar right claimed pursuant to such local ordinance shall vest with respect to any property benefitted or burdened by the solar right only after recordation as provided in Section X of the Solar Recordation Ordinance. Such local regulation shall not affect any solar rights transfer, which vested prior to effective date of such ordinance. In the absence of the local regulation or solar rights, the following principles shall apply in addition to those set forth in the Solar Rights Act. If the property burdened by a solar right has or could have improvements constructed to a maximum height of twenty-four feet, then the solar right shall be limited, as to that burdened property, to protecting and unobstructed line-of-sight path from the solar collector to the sin only as to obstructions located on the burdened property, which cast a shadow greater than the shadow cast by a hypothetical fence ten feet in height located on the property line of the property on which the solar collector is located. If the property burdened by a solar right has or could have improvements constructed in excess of twenty four feet in height, but no greater that thirty-six feet in height unless is provided by contract or local ordinance, a person may allow vegetation to grow or construct or plan to construct any improvement which obstructs the protected solar right so long as such obstruction does not block more than ten percent of the collectable solar energy between the hours of 9:00 a.m. and 3:00 p.m. Unless otherwise provided by contract or local ordinance, solar rights shall be protected between 9:00 a.m. and 3:00 p.m.

1. Nothing in the Solar Recordation Act shall be construed to limit any county or municipal ordinances concerning solar rights in effect prior to the effective date of this section.
2. Indexing

A declaration filed pursuant to the Solar Recordation Ordinance shall be indexed by the clerk in the grantees index under the names of the person receiving notice in the declaration and in the grantor index under the name of the person filing the declaration.