Part 14-16-3 Overlay Zones

3-1 OVERLAY ZONES ESTABLISHED

3-1(A) The Overlay zones listed in Sections 14-16-3-2 through 14-16-3-6 are hereby created. These Overlay zones shall have the boundaries shown on the Official Zoning Map maintained in electronic form by the City Planning Department and available on the City of Albuquerque website.

3-1(B) These Overlay zones supplement, but do not replace, the underlying zone districts listed in Part 14-16-2 (Zone Districts). In the case of a conflict between the provisions of a zone district and the provisions of an Overlay zone, the provisions of the Overlay zone shall prevail. Where multiple Overlay zones apply to a property, development must comply with all relevant provisions. Where an Overlay zone is silent, IDO requirements apply.

3-1(C) Building height bonuses in Table 5-1-1: Residential Zone District Dimensional Standards or Table 5-1-2: Mixed-use Zone District Dimensional Standards do not apply in any Overlay zone.

3-1(D) Deviations from Overlay zone standards are not allowed pursuant to Subsection 14-16-6-4(O)(3)(e).

3-2 OVERLAY ZONE SUMMARY TABLE

Table 3-2-1 shows the City of Albuquerque's previous overlays in relation to IDO Overlay zones.

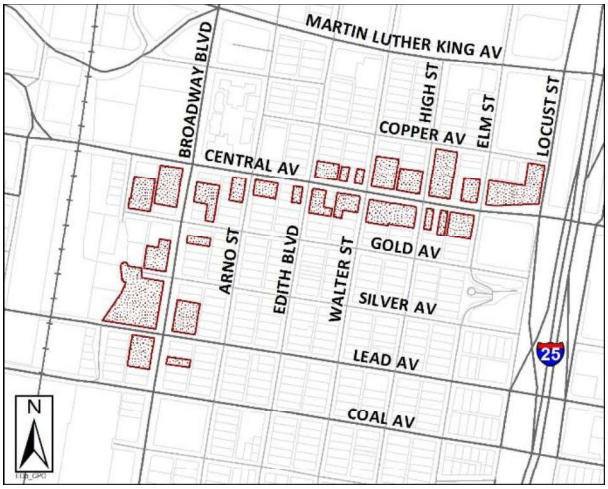
Table 3-2-1: Summary Table of Overlay Zones

Previous Zone or Overlay		IDO Overlay Zone	
Airport Protection		**Airport Protection Overlay Zones**	
AP-1	Airport Protection	APO	Airport Protection Overlay
AP-2	Airport Protection		
Design and Urban Conservation Overlay Zones		**Character Protection Overlay Zones**	
DOZ	Design Overlay Zone	CPO-1	Barelas
		CPO-2	Coors Boulevard
		CPO-3	Downtown Neighborhood Area
		CPO-4	East Downtown
		CPO-5	High Desert
		CPO-6	Los Duranes
SDP	Sector Development Plan	CPO-7	Martineztown/Santa Barbara
		CPO-8	Nob Hill/Highland
UCOZ	Urban Conservation Overlay Zone	CPO-9	North 4th
		CPO-10	North I-25
		CPO-11	Rio Grande Boulevard
		CPO-12	Sawmill/Wells Park
		CPO-13	Volcano Mesa
Historic Zones and Overlays		**Historic Protection Overlay Zones**	
H-1	Historic Old Town Zone	HPO-6	Old Town
HOZ	Historic Overlay Zones	HPO-1	East Downtown
		HPO-3	Eighth and Forrester
		HPO-4	Fourth Ward

3-4(E) EAST DOWNTOWN – CPO-4

3-4(E)(1) Applicability

The CPO-4 standards apply to the specific lots in the following mapped area. Where the CPO-4 boundary crosses a lot line, the entire lot is subject to these standards. The CPO-4 standards apply to construction of new structures within the East Downtown - HPO-1.



3-4(E)(2) Site Standards

Lot size, width, and usable open space shall be provided according to the applicable standards listed in Section 14-16-5-1 (Dimensional Standards).

3-4(E)(3) Setback Standards

3-4(E)(3)(a) **Front**

1. Minimum: 0 feet.
2. Maximum: 1 foot.

3-4(E)(3)(b) **Side, Minimum**

1. Interior: 0 feet.
2. Street side of corner lots: 5 feet.

3-4(E)(3)(c) **Rear, Minimum**

5 foot.

3-4(E)(4) Building Height Bonuses

Building height bonuses do not apply pursuant to Subsection 14-16-3-1(C).

3-4(E)(5) Building Height Stepdown

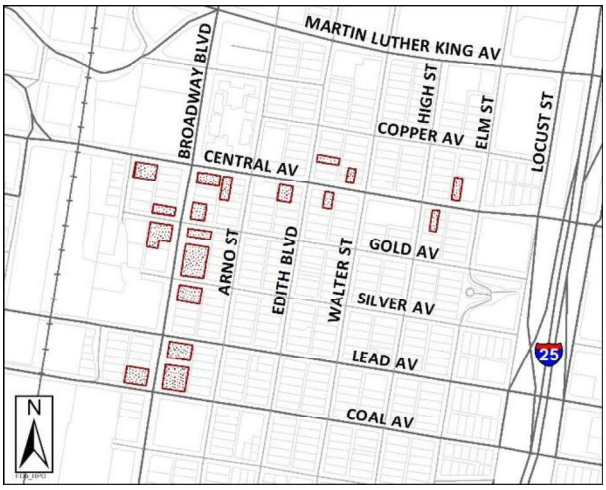
3-4(E)(5)(a) Any portion of a building within 35 feet in any direction of an R-1 or R-T zone district shall be limited to 30 feet, in which case Neighborhood Edge provisions for building height in Subsection 14-16-5-9(C) do not apply.

3-4(E)(5)(b) The height limit of any portion of a structure within 15 feet in any direction of a significant or contributing building or City landmark in the HPO-1 or HPO-5 zone shall be no more than 3 stories higher

3-5(G) EAST DOWNTOWN – HPO-1

3-5(G)(1) Applicability

The HPO-1 standards and guidelines apply to all buildings that have been identified as significant and contributing to the relevant historic era and City landmarks listed in the Huning Highland National District on the National Register of Historic Places within the following mapped area. For City landmarks, the Landmark Guidelines shall prevail over these standards and guidelines. Construction of new structures within the HPO-1 shall comply with the standards in Subsection 14-16-3-4(E) (East Downtown – CPO-4).



3-5(G)(2) Setback Standards

Setbacks shall be maintained as is to preserve the pattern of building fronts and setbacks from the street.

3-5(G)(3) Building Height

3-5(G)(3)(a) Building height shall be maintained as-is, and in the case of additions, alterations, or new construction, not exceed neighboring building heights.

3-5(G)(3)(b) Building height bonuses do not apply pursuant to Subsection 14-16-3-1(C).

3-5(G)(4) Other Development Standards

3-5(G)(4)(a) **Walls and Fences**

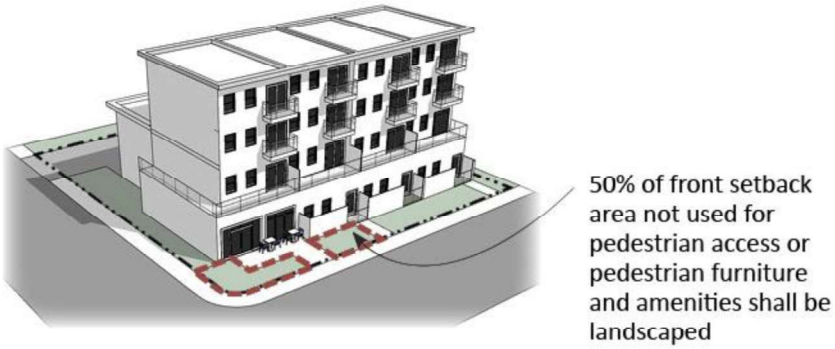
1. New walls and fences shall be wood, stone, brick, adobe, or wrought iron. Chain link is prohibited.
2. Exposed materials and features shall comply with the standards in Subsection 14-16-3-4(E)(5)(c) (Street Walls in East Downtown – CPO-4).

3-5(G)(4)(b) **Building Design**

1. Mass and scale shall be maintained as is or proportional to other buildings on the block in the case of additions or alterations.

shrubs shall be planted every 30 feet along the length of any façade facing a City park or trail, Major Public Open Space, or major arroyo.

5-6(D)(2)(b) **Downtown, Urban Centers, and Main Street and Premium Transit areas**
Fifty (50) percent of any front setback area not used for pedestrian access to the building or improved with pedestrian furniture and amenities shall be landscaped, and no part of the front setback area surface shall be asphalt. (See figure below.)



5-6(E) EDGE BUFFER LANDSCAPING

5-6(E)(1) General Requirements

5-6(E)(1)(a) Landscaped edge buffers and/or edge buffer walls are required between properties to mitigate the impacts of significant differences in property use, size, or scale through standards specified in Subsections (2) through (5) below.

5-6(E)(1)(b) If a landscaped edge buffer is required and a wall is required or will be provided, the wall shall be provided on the property line between the two properties unless specified otherwise in this IDO.

5-6(E)(1)(c) Required edge buffering is not required to be installed along any portion of the lot line covered by an access easement between adjacent lots, but an equivalent amount of landscaping shall be installed on remaining portions of the side or rear lot line, as applicable.

5-6(E)(1)(d) For the purposes of this Subsection 14-16-5-6(E), "industrial development" refers to the zone districts and uses indicated in Subsection 14-16-5-6(E)(4)(a) (Industrial Development Adjacent to Non-industrial Development).

5-6(E)(1)(e) Additional buffering may be required for specific uses, pursuant to any Use-specific Standards for those uses in Section 14-16-4-3 or Neighborhood Edge standards in Section 14-16-5-9.

Table 5-6-4: Edge Buffer – Development Type Summary[1]

Development Type	Development Next to	Specific Standards	General Buffering	Buffering in DT-UC-MS-PT
Industrial	Non-industrial development	14-16-5-6(E)(4)	Landscaped buffer area ≥25 ft.	Wall, fence, or vegetative screen ≥6 ft.
Multi-family	Industrial development	14-16-5-6(E)(4)		
Mixed-use or other non-residential	R-ML or R-MH	14-16-5-6(E)(3)	Landscaped buffer area ≥20 ft.	
Multi-family, mixed-use, or other non-residential	R-A, R-1, R-MC, R-T, or R-ML	14-16-5-6(E)(2)	Landscaped buffer area ≥15 ft.	

[1] See Subsections 14-16-5-6(E)(2), 14-16-5-6(E)(3), and 14-16-5-6(E)(4) for complete edge buffer standards.

5-6(E)(2) Development Next to Low-density Residential Zone Districts

Where multi-family, mixed-use, or non-residential development other than industrial development occurs on a lot abutting or across an alley from a lot containing low-density residential development in an R-A, R-1, R-MC, R-T , or R-ML zone district, a buffer shall be provided along the lot line, as specified in Table 5-6-4 and for the relevant area below.

5-6(E)(2)(a) General

A landscaped edge buffer area shall be provided on the subject property along the property line between the two properties.

1. If a wall at least 3 feet in height is provided or exists along the property line between the 2 properties, 1 tree at least 8 feet high at the time of planting shall be provided every for 15 feet along the wall, with spacing designed to minimize sound and light impacts of the proposed development on the adjacent property.
2. If no wall is provided or exists, 1 tree at least 6 feet tall at the time of planting and at least 25 feet tall at maturity and 3 shrubs shall be provided for every 25 feet along the lot line, with spacing designed to minimize sound, light, and noise impacts.

5-6(E)(2)(b) Downtown, Urban Centers, and Main Street and Premium Transit Areas

1. A landscaped edge buffer area at least 6 feet wide shall be provided. For buildings over 30 feet in height, the edge buffer area shall be at least 10 feet wide.
2. An opaque wall, fence, or vegetative screen at least 6 feet tall shall be provided at the property line between the two properties, and all of the following requirements shall be met.
   a. One (1) tree at least 8 feet high at the time of planting shall be provided every for 15 feet along the wall, with

spacing designed to minimize sound and light impacts of the proposed development on the adjacent property.

b. The side facing the low-density residential development shall be at least as finished in appearance as the side facing the multi-family, mixed-use, or non-residential development.

c. If there is an existing wall between the two properties, it may count toward satisfying the requirements of Subsection 14-16-5-6(E)(2)(b)2 if it meets, or is improved to meet, the height and design standards above.

5-6(E)(3) Development Next to a Multi-family Residential Zone District

Where mixed-use or non-residential development other than industrial development occurs on any lot abutting or across an alley from a lot in the R-ML or R-MH zone districts with townhouse development or multi-family residential development, a buffer shall be provided along the lot line, as specified in Table 5-6-4 and for the relevant area below.

5-6(E)(3)(a) **General**

An edge buffer area shall be provided on the subject property along the property line between the two properties.

1. If a wall at least 3 feet in height is provided or exists along the property line between the two properties, 1 tree at least 8 feet high at the time of planting shall be provided every for 15 feet along the wall, with spacing designed to minimize sound and light impacts of the proposed development on the adjacent property.
2. If no wall is provided or exists, 1 tree at least 6 feet tall at the time of planting and at least 25 feet tall at maturity and 3 shrubs shall be provided for every 25 feet along the lot line, with spacing designed to minimize sound, light, and noise impacts.

5-6(E)(3)(b) **Downtown, Urban Centers, and Main Street and Premium Transit Areas**

1. An opaque wall, fence, or vegetative screen at least 6 feet tall shall be provided at the property line between the two properties, and both of the following requirements shall be met.
   a. One (1) tree at least 8 feet high at the time of planting shall be provided every for 15 feet along the wall, with spacing designed to minimize sound and light impacts of the proposed development on the adjacent property.
   b. The side facing the multi-family development shall be at least as finished in appearance as the side facing the mixed-use, or non-residential development.
2. If there is an existing wall between the two properties, it may count toward satisfying the requirements of Subsection 14-16-

5-6(E)(3)(b)1 if it meets, or is improved to meet, the height and design standards above.

5-6(E)(4) Industrial Development Adjacent to Non-industrial Development

5-6(E)(4)(a) **Applicability**

An edge buffer shall be provided as specified in Table 5-6-4 and for the relevant areas in Subsections (b) and (c) below in all of the following locations:

1. Where a lot with industrial zoning or development is adjacent to a lot with non-industrial zoning or development, including, but not limited to both of the following locations:
    a. Where any development in an NR-LM or NR-GM zone district is adjacent to any lot that is not in an NR-LM or NR-GM zone district.
    b. Where light manufacturing; heavy manufacturing; special manufacturing; natural resource extraction; non-linear portions of an electric utility, drainage facility, or other major utility; or any primary use in the Waste and Recycling category in Table 4-2-1 is developed on a lot abutting a vacant lot or a lot with a use other than one of these specified uses.
2. Where multi-family residential development is adjacent to a lot with industrial development.

5-6(E)(4)(b) **General**

A landscaped edge buffer area shall be provided on the subject property along the property line between the two adjacent properties. For drainage facilities, a landscaped edge buffer area at least 15 feet wide shall be provided on the subject property along the property line between the two adjacent properties, unless a smaller edge buffer area is approved by the City Engineer as necessary on a particular lot.

1. If a wall at least 3 feet in height is provided or exists along the landscaped edge buffer area, 1 of the following requirements shall be met.
    a. If the wall is located on the property line, 1 tree at least 8 feet high at the time of planting shall be provided every for 15 feet along the wall, with spacing designed to minimize sound and light impacts of the proposed development on the adjacent property.
    b. Where the edge buffer area is across the street from the lot with non-industrial zoning or development, the wall may be set back from the property line if both of the following requirements are met.
        i. Landscaping that meets the requirements in Subsection 2. below shall be provided between the wall and the street.

ii. The landscaping shall be maintained by the owner of the subject property.

2. If no wall is provided or exists, 1 tree at least 8 feet high at the time of planting and 5 shrubs shall be provided for every 20 feet along the lot line, with spacing designed to minimize sound and light impacts of the proposed development on the adjacent property.

5-6(E)(4)(c) **Downtown, Urban Centers, and Main Street and Premium Transit Areas**

An opaque wall or fence at least 6 feet tall shall be provided on the subject property along any lot line abutting or across an alley from the non-industrial development.

1. One (1) tree at least 8 feet high at the time of planting shall be provided every for 15 feet along the wall, with spacing designed to minimize sound and light impacts of the proposed development on the adjacent property.
2. The side of the wall facing the non-industrial development shall be at least as finished in appearance as the side facing the industrial use.
3. If there is an existing wall between the two properties, it may count toward satisfying the requirements of Subsection 14-16-5-6(E)(4)(c) if it meets, or is improved to meet, the height and design standards above.

5-6(E)(5) Area of Change Next to Area of Consistency

Where a premises partially or completely in an Area of Change is abutting or across an alley from a premises partially or completely in an Area of Consistency (per City Development Areas in the ABC Comp Plan, as amended), the following standards shall apply on the lot(s) adjacent to the premises partially or completely in the Area of Consistency, regardless of the proposed land use on that lot or premises, unless specified otherwise in this IDO.

Table 5-6-5: Edge Buffer – Development Area Summary[1]

Lot in Area of Change Next to	Specific Standards	General Buffering	Buffering in DT-UC-MS-PT
Area of Consistency in R-A, R-1, R-MC, or R-T	14-16-5-6(E)(2)	Landscaped buffer area ≥15 ft.	Wall, fence, or vegetative screen ≥6 ft.
Area of Consistency in R-ML or R-MH	14-16-5-6(E)(3)		
Area of Consistency in Mixed-use, NR-C, or NR-PO	14-16-5-6(E)(4)		

[1] See subsections 14-16-5-6(E)(5)(a), 14-16-5-6(E)(5)(b), and 14-16-5-6(E)(5)(c) for the complete buffer standards for Development Areas.

5-6(E)(5)(a) If the lot in the Area of Consistency is in an R-A, R-1, R-MC, or R-T zone district, the requirements of Subsections 14-16-5-6(E)(1) and 14-16-5-6(E)(2) shall apply.

5-6(E)(5)(b) If the lot in the Area of Consistency is in an R-ML or R-MH zone district, the requirements of Subsections 14-16-5-6(E)(1) and 14-16-5-6(E)(3) shall apply.

5-6(E)(5)(c) If the lot in the Area of Consistency is in any Mixed-use, NR-C, or NR-PO zone district, the requirements of Subsections 14-16-5-6(E)(1) and 14-16-5-6(E)(4) shall apply.

5-6(F) PARKING LOT LANDSCAPING

5-6(F)(1) Parking Lot Edges

5-6(F)(1)(a) Landscape buffer areas are required to separate off-street parking and circulation areas from front, side, and rear boundaries of premises.

5-6(F)(1)(b) Where a parking lot is abutting an R-A, R-1, R-MC, or R-T zone district, provisions related to parking area in Subsection 14-16-5-9(D) (Parking, Drive-through Or Drive-up Facilities, and Loading) shall apply.

5-6(F)(1)(c) Where development is coordinated on 2 or more abutting sites, or where multiple parking areas are located on a single lot, or on planned development areas controlled by Site Plans, these requirements shall be based on the entire development area unless otherwise approved by the decision-making body.

5-6(F)(1)(d) Landscape buffers may be crossed by drive aisles connecting to abutting land.

5-6(F)(1)(e) No parking is allowed within a required landscape buffer area.

5-6(F)(1)(f) Landscape approved within the abutting public right-of-way or private way may be counted toward this requirement if there is no existing or planned public sidewalk between such landscape and the premises, but in no case shall the width of the on-site landscape buffer be less than 5 feet.

5-6(F)(1)(g) The landscape area may be reduced by up to 25 percent if the surface of the parking or vehicle circulation area is of a permeable material with approval from the Planning Director.

5-6(F)(1)(h) Where walls are required, they shall integrate with building materials and colors.

5-6(F)(1)(i) Landscape buffers are required in the following locations, with minimum widths and design requirements as specified below.

1. Front Lot Edge

   a. General

   Any parking lot located within 30 feet of the front lot line shall be screened from the street either by a masonry wall constructed of a material similar in texture, appearance, and color to the street-facing façade of the primary building (but excluding exposed CMU block) at least 3 but not more than 4 feet in height, or by a landscape buffer at least 10 feet in width with a continuous line of evergreen

5-9 NEIGHBORHOOD EDGES

5-9(A) PURPOSE

This Section 14-16-5-9 is intended to preserve the residential neighborhood character of established low-density residential development in any Residential zone district on lots adjacent to any Mixed-use or Non-residential zone district.

5-9(B) APPLICABILITY

5-9(B)(1) Protected Lots

The Neighborhood Edges provisions in this Section 14-16-5-9 are intended to protect lots in any R-A, R-1, R-MC, or R-T zone district that contains low-density residential development.

5-9(B)(2) Regulated Lots

Lots regulated by this Section 14-16-5-9 include all those in any R-ML, R-MH, Mixed-use, or Non-residential zone district that are adjacent to a Protected Lot.

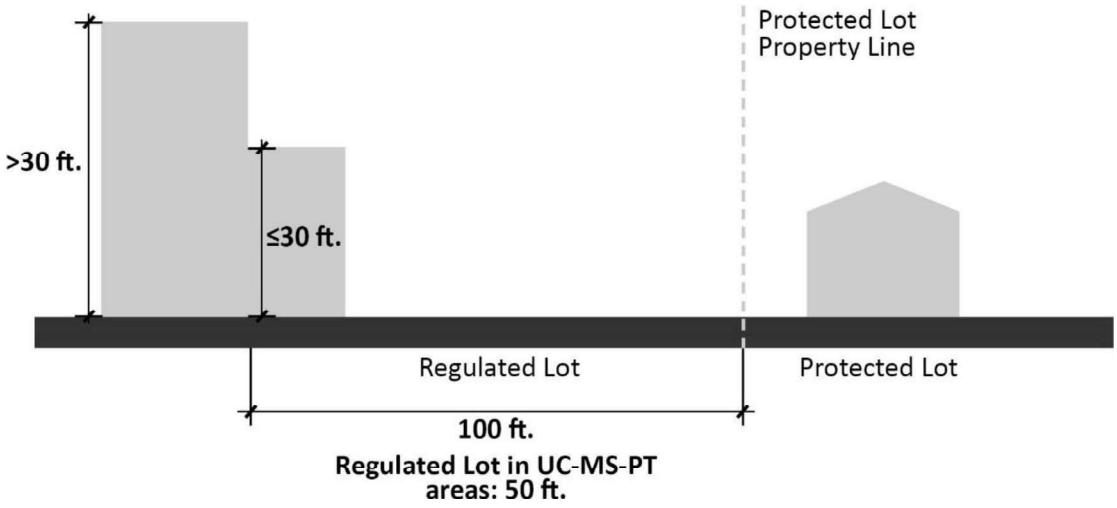
5-9(C) BUILDING HEIGHT STEPDOWN

5-9(C)(1) General Requirement

On Regulated Lots, any portion of a primary or accessory building within 100 feet of the nearest Protected Lot property line shall step down to a maximum height of 30 feet. (See figure below.)

5-9(C)(2) Urban Centers and Main Street and Premium Transit Areas

On Regulated Lots in UC-MS-PT areas, any portion of a primary or accessory building within 50 feet in any direction of any lot line of a Protected Lot shall step down to a maximum height of 30 feet. (See figure below.)



5-9(D) PARKING, DRIVE-THROUGH OR DRIVE-UP FACILITIES, AND LOADING

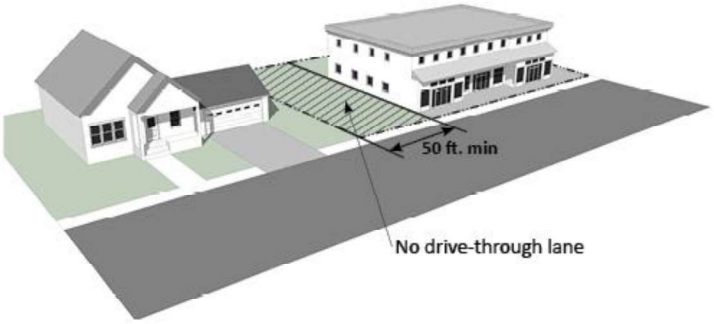
5-9(D)(1) Parking and Drive-through or Drive-up Facilities

5-9(D)(1)(a) Where parking or vehicle circulation areas on a Regulated Lot abut a Protected Lot, a minimum 6 foot high opaque wall or fence shall

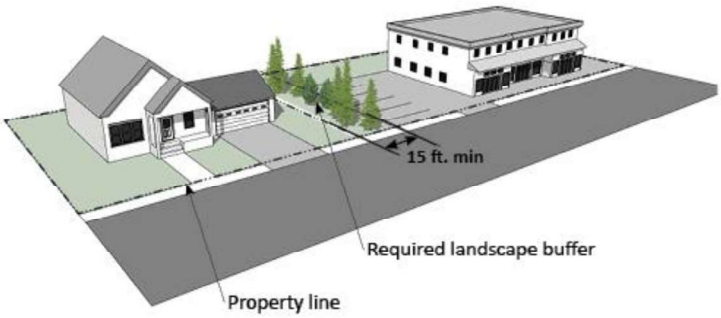
be required to visually screen the parking or circulation area. Chain link fence with slats shall not constitute acceptable screening.

5-9(D)(1)(b) For Regulated Lots 10,000 square feet or larger, the following requirements apply.

1. Lanes associated with a drive-through use shall be separated from any abutting Protected Lot by a minimum of 50 feet. (See figure below.) For drive-throughs, requirements in Subsection 14-16-5-5(I) apply.



2. Parking areas shall be separated from any abutting Protected Lot by a minimum of 15 feet, and edge buffer requirements in Subsection 14-16-5-6(E) apply. (See figure below.)



5-9(D)(2) Truck Loading Areas

No truck loading area shall be located between a primary or accessory structure on a Regulated Lot and any side or rear lot line abutting a Protected Lot.

5-10 SOLAR ACCESS

5-10(A) PURPOSE

This Section 14-16-5-10 is intended to allow for development while ensuring continued access to solar energy.

5-10(B) APPLICABILITY

The standards in this Section 14-16-5-10 apply to development in any zone district unless specified otherwise in this IDO.

5-10(C) BUILDING HEIGHT

All development in the R-A, R-1, R-MC, R-T, and R-ML zone districts shall comply with the standards in this Subsection 14-16-5-10(C).

5-10(C)(1) The building height shall not exceed the relevant heights shown in Table 5-10-1 or the maximum building height allowed by the zone district, whichever is less. The building heights in the table were determined based on the distance cardinally south from the northern property line and an angle plane of 32 degrees angle that allows 1 hour of Winter Solstice sunlight to hit at least 2 feet up on a southern-facing wall located 10 feet from the property line. Distances from the northern property line that were not whole numbers were rounded down, unless the decimal was .9 or more, in which case they were rounded up.

Table 5-10-1: Solar Rights Maximum Building Heights

Distance from Northern Lot Line, ft.	Maximum Building Height, ft.	Distance from Northern Lot Line, ft.	Maximum Building Height, ft.
0	8	26	24
1	8	27	25
2	9	28	25
3	10	29	26
4	10	30	27
5	11	31	27
6	12	32	28
7	12	33	28
8	13	34	29
9	13	35	30
10	14	36	30
11	15	37	31
12	15	38	32
13	16	39	32
14	17	40	33
15	17	41	33
16	18	42	34
17	18	43	35
18	19	44	35
19	20	45	36
20	20	46	37
21	21	47	37
22	22	48	38

Table 5-10-1: Solar Rights Maximum Building Heights			
Distance from Northern Lot Line, ft.	Maximum Building Height, ft.	Distance from Northern Lot Line, ft.	Maximum Building Height, ft.
23	22	49	38
24	23	50	39
25	23		

5-10(C)(2) The ZEO shall waive or adjust the provisions of Subsection (1) above if the ZEO finds that beneficial solar access can be protected for a lot to the north without compliance with the provisions of Subsection (1) because:

5-10(C)(2)(a) The lot(s) to the north are large enough or higher in elevation than the lot to the south, so that there are many good locations for passive or active solar collector that would not be blocked by proposed construction that does not comply with the height restrictions of Subsection (1) above.

5-10(C)(2)(b) The development on the lot(s) to the north is already served by as much solar collector area as is likely to ever be needed for that lot, and solar access to those collector surfaces will not be impaired by the proposed construction.

5-10(C)(2)(c) In the R-A, R-1, R-MC, or R-T zone districts, the owner or builder proposing the height limit waiver has demonstrated that there will clearly not be a primary building on the lot to the north within 35 feet north of the proposed building.

5-10(C)(2)(d) In the R-ML zone district, the owner or builder proposing the height limit waiver has demonstrated that there will clearly not be a primary building on the lot to the north within 45 feet north of the proposed building.

5-10(C)(2)(e) The owner or builder proposing the height limit waiver is also the owner of the lot to the north and has indicated that no solar rights are necessary.

5-10(C)(2)(f) In the R-A, R-1, R-MC, or R-T zone districts, the owner or building proposing the height limit waiver has demonstrated that there is public right-of-way over 35 feet in width north of the proposed building.

5-10(C)(2)(g) In the R-ML zone district, the owner or building proposing the height limit waiver has demonstrated that there is public right-of-way over 45 feet in width north of the proposed building.

5-10(D) PERMITS FOR SOLAR RIGHTS

Permits to protect solar rights may be requested pursuant to Part 14-11-7 of ROA 1994 (Permits for Solar Rights) and any relevant standards in the DPM.

6-4(O)(3)(e) The requested deviation is not for an Overlay zone standard, and the approval of any requested deviation will not result in a violation of any Overlay zone standard.

6-4(O)(4) In the case of a request for "reasonable accommodation" or "reasonable modification" under the federal Fair Housing Act Amendments of 1998 (or as amended), the criteria in Subsections (a), (b), (c), (d), and (e) above do not need to be met, and the relevant decision-making body shall approve any deviation necessary to comply with the requirements of the federal Fair Housing Act Amendments.

6-4(O)(5) Any deviations granted that are associated with a Site Plan or Subdivision Plat shall be noted on the approved Site Plan or Subdivision Plat.

6-4(P) CONDITIONS ON APPROVALS

6-4(P)(1) If Table 6-1-1 or IDO Subsections 14-16-6-4(Y) (Amendments of Approvals) or 14-16-6-4(Z) (Amendments of Pre-IDO Approvals) authorize City staff to make a decision on an application, City staff may impose conditions necessary to bring the application into compliance with the requirements of this IDO or other adopted City regulations.

6-4(P)(2) If Table 6-1-1 or IDO Subsections 14-16-6-4(Y) (Amendments of Approvals) or 14-16-6-4(Z) (Amendments of Pre-IDO Approvals) authorizes the ZHE, EPC, DHO, LC, or City Council to make a decision on an application, the decision-making body may impose conditions on the approval necessary to bring the application into compliance with the requirements of this IDO, other adopted City regulations, or the specific review criteria for that type of application, provided that both of the following criteria are met.

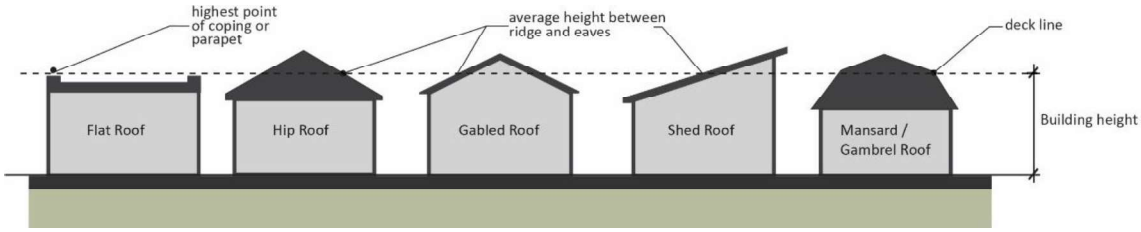
6-4(P)(2)(a) All conditions are reasonably related to the purposes of this IDO or mitigating the negative impacts of the proposed development or land use as determined by the reviewing entity.

6-4(P)(2)(b) Where mitigation of the impacts of a proposed plan or development requires an applicant to dedicate land or pay money to a public entity in an amount that is not calculated according to a formula applicable to a broad class of applicants, any conditions imposed are roughly proportional both in nature and extent to the anticipated impacts of the proposed development, as shown through an individualized determination of impacts.

6-4(P)(3) Any conditions shall be listed in or attached to the permit or approval document, and violation of any condition on a permit or approval shall be a violation of this IDO.

6-4(P)(4) Any conditions shall be met within 1 year of the approval, unless stated otherwise in the approval. If any conditions are not met within that time, the approval is void. The Planning Director may extend the time limit up to an additional 1 year.

Building Height
The vertical distance above the average finished grade, unless specified otherwise in this IDO, at each façade of the building, considered separately, to the top of the coping or parapet on a flat roof, whichever is higher; to the deck line of a mansard roof; or to the average height between the plate and the ridge of a hip, gable, shed, or gambrel roof. On a stepped or sloped project site, the maximum height is to be measured above average finished grade of any distinct segment of the building that constitutes at least 10 percent of the gross floor area of the building, unless specified otherwise in this IDO. See also *Building, Building Height Bonus, Finished Grade*, and *Measurement Definitions* for *Grade* and *Ground Floor Clear Height*.



Building Stepback
For the purposes of measuring a building stepback where required, each plane of the façade should be independently considered to determine the relevant stepback for that portion of the building. See also *Front Façade* and *Street-facing Façade*.

Corridor Area
Where the specified distance crosses a lot line, the entire lot is included in the Corridor Area. See also *Centers and Corridors Definitions*.

Main Street (MS) Area
Lots within 660 feet in any direction of the centerline of a Main Street Corridor as designated by the ABC Comp Plan, as amended.

Major Transit (MT) Area
Lots within 660 feet in any direction of the centerline of a Major Transit Corridor as designated by the ABC Comp Plan, as amended.

Premium Transit (PT) Area
Lots within 660 feet in any direction of a transit station with transit service of 15 minute or greater frequency on a Premium Transit Corridor as designated by the ABC Comp Plan, as amended. Development standards associated with the Premium Transit designation apply once the station locations have been identified and funding for the transit service and any associated streetscape improvements has been secured.

Days
See *Business Days* and *Calendar Days*.

Distance for Notice or Appeals
Includes public rights-of-way unless specified otherwise in this IDO.

Distance from a Linear Feature
When this IDO refers to a distance from any linear feature, including but not limited to a street, lot line, or façade, the measurement shall be made perpendicular to the linear feature along the length of that linear feature.

Distance Separations
See Measurements for *Separation of Uses*.

On-premises Sign
See *Sign Definitions*.

Open Air Market
Open air sales of new retail goods, produce, and/or handcrafts; incidental sales of food and beverages is allowed. See also *Farmers' Market* and *Seasonal Outdoor Sales*.

Open Space Definitions

Common Open Space
The area of undeveloped land and/or existing site features within a cluster development that is set aside for the preservation, use, and enjoyment by the owners and occupants of the dwellings in the development and includes historic buildings or structures, sensitive lands, agriculture, landscaping, or outdoor recreation uses. The common open space is a separate lot or easement on the subdivision plat of the cluster development. For the purposes of the common open space calculation in cluster development, parks and concrete or reinforced arroyos do not count as common open space. See also *Dwelling Definitions* for *Dwelling, Cluster Development*.

Extraordinary Facility
Facility within Major Public Open Space, not including trails, fencing, signs, incidental parking lots, access roads, or infrastructure not visible on the surface, that is primarily for facilitating recreation, relaxation, and enjoyment of the outdoors and that requires additional review by the Open Space Advisory Board and EPC pursuant to the Rank 2 Major Public Open Space Facility Plan. Extraordinary Facilities may include utility structures, WTFs, or buildings. See also *Open Space Definitions* for *Major Public Open Space*.

Major Public Open Space
City-owned or managed property that is zoned NR-PO-B or City-managed property that is zoned NR-PO-C, including the Rio Grande State Park (i.e. the Bosque), Petroglyph National Monument, and Sandia foothills. These are typically greater than 5 acres and may include natural and cultural resources, preserves, low-impact recreational facilities, dedicated lands, arroyos, or trail corridors. The Rank 2 Major Public Open Space Facility Plan guides the management of these areas. For the purposes of this IDO, Major Public Open Space located outside the city municipal boundary that is mapped as Open Space in the ABC Comp Plan still triggers Major Public Open Space Edge requirements for properties within the city adjacent to or within the specified distance of Major Public Open Space.

Open Space
In lowercase letters, a generic term for any outdoor space or amenity intended to retain access to open air and sunlight, regardless of location, ownership, or management responsibility. Open space is required through various means in order to provide a psychological and physical respite from development densities. Open space is intended to create healthy places that balance density vs. openness and urban vs. natural environments. For City-owned open space, see *Open Space Definitions* for *Major Public Open Space*.

Usable Open Space
Outdoor space to be preserved on-site and managed privately to help ensure livable conditions on each site by providing light and air and meeting visual, psychological, and recreational needs. These areas can be used for a variety of purposes and are not required to be at ground level. Usable open space may include, but is not limited to, lawns; community gardens; decorative and native plantings; open balconies; rooftop decks; plazas; courtyards;

covered patios open on at least 2 sides; pedestrian walkways; landscaped medians, buffers, or setbacks; active and passive recreational areas; fountains; swimming pools; wooded areas; and water courses. Such space shall be available for entry and use by users of the development. Required drainage facilities or land within an easement for overhead utilities that are not landscaped shall not count toward required usable open space. Usable open space does not include public right-of-way, private ways, parking lots, off-street parking, driveways, drive aisles other private vehicular surfaces, or buildings other than swimming pool rooms.

Operating Hours
The hours during which employees are scheduled to be working in an establishment, which may extend beyond the business hours of the establishment. See also *Business Hours*.

Other Indoor Entertainment
A facility providing entertainment or recreation activities where all activities take place within enclosed structures, but not including a theater, auditorium, or any other use listed separately in Table 4-2-1. Examples include, but are not limited to, baseball batting cages, bowling alleys, climbing walls, game arcades, laser tag centers, miniature golf courses, paintball, skating rinks, shooting ranges, swimming pools, tennis clubs, trampoline centers, and velodromes.

Other Outdoor Entertainment
An outdoor facility whose main purpose is to provide entertainment or recreation, with or without charge, but not including auto or horse race tracks, drive-in theaters, or any similar outdoor use not listed separately in Table 4-2-1. Examples include, but are not limited to, amusement parks, batting cages, go-cart tracks, golf courses and driving ranges, miniature golf, skateboard parks, skating rinks, sports courts, swimming pools, target sport ranges, and water parks.

Other Pet Services
A facility providing care and services for household pets, such as animal grooming, training, or day care but which is not listed separately in Table 4-2-1.

Other Use Accessory to a Non-residential Primary Use
A land use that is subordinate in use, area, or purpose to a primary non-residential land use on the same lot, serving a purpose naturally and normally incidental to such primary land use, and that is not listed separately in Table 4-2-1. Examples include, but are not limited to, an employee exercise room, employee café/cafeteria, outdoor exercise area/track, employee nursery/child care, small display/sales room for goods produced on the premises, and storage of maintenance equipment used on the premises (e.g. lawn mowers).

Other Use Accessory to a Residential Primary Use
A land use that is subordinate in use, area, or purpose to a primary residential land use on the same lot and serving a purpose naturally and normally incidental to such primary land use and that is not listed separately in Table 4-2-1. For residential uses other than multi-family dwellings, this use includes, but is not limited to, tennis courts, game rooms, patios, outdoor kitchens, swimming pools, and accessory buildings for storage, recreation, hobbies, and gardening for the use of the residents living in the dwellings on the same lot as this use. For multi-family residential development, this use includes, but is not limited to, sales of convenience items, personal service shop, rental/management office, concierge/doorman services, and similar activities provided for residents of the multi-family or group living uses. See also *Residential Community Amenity*.

ARTICLE 3
Solar Rights

47-3-1. Short title.

Sections 47-3-1 through 47-3-5 NMSA 1978 may be cited as the "Solar Rights Act".

History: 1953 Comp., § 70-8-1, enacted by Laws 1977, ch. 169, § 1; 2007, ch. 232, § 2.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, changed the statutory reference to the act.

Law reviews. — For note, "Access to Sunlight: New Mexico's Solar Rights Act," see 19 Nat. Res. J. 957 (1979); 10 N.M.L. Rev. 169 (1979-80).

For article, "Access to Solar Energy: The Problem and Its Current Status," see 22 Nat. Res. J. 21 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Solar energy: landowner's rights against interference with sunlight desired for purposes of solar energy, 29 A.L.R.4th 349.

47-3-2. Declaration and findings.

The legislature declares that the state of New Mexico recognizes that economic benefits can be derived for the people of the state from the use of solar energy. Operations, research, experimentation and development in the field of solar energy use shall therefore be encouraged. While recognizing the value of research and development of solar energy use techniques and devices by governmental agencies, the legislature finds and declares that the actual construction and use of solar devices, whether at public or private expense, is properly a commercial activity which the law should encourage to be carried out, whenever practicable, by private enterprise.

History: 1953 Comp., § 70-8-2, enacted by Laws 1977, ch. 169, § 2.

47-3-3. Definitions.

As used in the Solar Rights Act:

A. "solar collector" means a device, substance or element, or a combination of devices, substances or elements, that relies upon sunshine as an energy source and that is capable of collecting not less than twenty-five thousand British thermal units on a clear winter solstice day or that is used for the conveyance of light to the interior of a building. The term also includes any device, substance or element that collects solar energy for use in:

(1) the heating or cooling of a structure or building;

(2) the heating or pumping of water;

(3) industrial, commercial or agricultural processes; or

(4) the generation of electricity. A solar collector may be used for purposes in addition to the collection of solar energy. These uses include, but are not limited to, serving as a structural member or part of a roof of a building or structure and serving as a window or wall; and

B. "solar right" means a right to an unobstructed line-of-sight path from a solar collector to the sun, which permits radiation from the sun to impinge directly on the solar collector.

History: 1953 Comp., § 70-8-3, enacted by Laws 1977, ch. 169, § 3; 2007, ch. 232, § 3.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, expanded the definition of "solar collector" to include devices that convey light to the interior of a building.

Law reviews. — For note, "Access to Sunlight: New Mexico's Solar Rights Act," see 19 Nat. Res. J. 957 (1979); 10 N.M.L. Rev. 169 (1979-80).

47-3-4. Declaration of solar rights.

A. The legislature declares that the right to use the natural resource of solar energy is a property right, the exercise of which is to be encouraged and regulated by the laws of this state. Such property right shall be known as a solar right.

B. The following concepts shall be applicable to the regulation of disputes over the use of solar energy where practicable:

(1) "beneficial use." Beneficial use shall be the basis, the measure and the limit of the solar right, except as otherwise provided by written contract. If the amount of solar energy which a solar collector user can beneficially use varies with the season of the year, then the extent of the solar right shall vary likewise;

(2) "prior appropriation." In disputes involving solar rights, priority in time shall have the better right except that the state and its political subdivisions may legislate, or ordain that a solar collector user has a solar right even though a structure or building located on neighborhood property blocks the sunshine from the proposed solar collector site. Nothing in this paragraph shall be construed to diminish in any way the right of eminent domain of the state or any of its political subdivisions or any other entity that currently has such a right; and

(3) "transferability." Solar rights shall be freely transferable within the bounds of such regulation as the legislature may impose. The transfer of a solar right shall be recorded in accordance with Chapter 14, Article 9 NMSA 1978.

C. Unless a singular overriding state concerns occur which significantly affect the health and welfare of the citizens of this state, permit systems for the use and application of solar energy shall reside with county and municipal zoning authorities.

History: 1953 Comp., § 70-8-4, enacted by Laws 1977, ch. 169, § 4.

ANNOTATIONS

Law reviews. — For note, "Rate Structure and Energy Conservation in the 1977 New Mexico Legislative Session," see 8 N.M.L. Rev. 99 (1978).

For note, "Access to Sunlight: New Mexico's Solar Rights Act," see 19 Nat. Res. J. 957 (1979); 10 N.M.L. Rev. 169 (1979-80).

For article, "Access to Solar Energy: The Problem and Its Current Status," see 22 Nat. Res. J. 21 (1982).

47-3-5. Prior rights unaffected.

Nothing in the Solar Rights Act shall be construed to alter, amend, deny, impair or modify any solar right, lease, easement or contract right which has vested prior to the effective date of the Solar Rights Act.

History: 1953 Comp., § 70-8-5, enacted by Laws 1977, ch. 169, § 5.

47-3-6. Short title.

This act [47-3-6 to 47-3-12 NMSA 1978] may be cited as the "Solar Recordation Act".

History: Laws 1983, ch. 233, § 1.

47-3-7. Legislative findings and declaration.

The legislature finds that in view of the present energy crisis, all renewable energy sources must be encouraged for the benefit of the state as a whole. The legislature further finds that solar energy is a viable energy source in New Mexico, 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 installations, the legislature declares such protection to be the purpose of the Solar Recordation Act and necessary to the public interest.

History: Laws 1983, ch. 233, § 2.

47-3-8. Method of claiming; effect; limitations.

A solar right may be claimed by an owner of real property upon which a solar collector, as defined in Subsection A of Section 47-3-3 NMSA 1978, 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 [47-3-1 to 47-3-5 NMSA 1978] or the Solar Recordation Act [47-3-6 to 47-3-12 NMSA 1978]. A solar right shall be considered an easement appurtenant, and a suit to enforce a solar right may be brought at law or in equity. The solar right shall be subject to the provisions of the Solar Recordation Act and the Solar Rights Act.

History: Laws 1983, ch. 233, § 3.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Solar energy: landowner's rights against interference with sunlight desired for purposes of solar energy, 29 A.L.R.4th 349.

47-3-9. Recordation; effect of failure to record; contest.

A. Any person claiming a solar right shall record that right by filing a declaration in substantially the following form with the county clerk of each county in which is located any portion of the properties burdened by a solar right or any portion of the properties on which a solar right is claimed:

SOLAR RIGHT DECLARATION

..., owner of the real property described below, claims a solar right in favor of the following described real estate in ..... county, New Mexico:

(Description either by metes and bounds, if in a platted subdivision, by lot and block subdivision name, by middle Rio Grande conservancy district tract number or other adequate legal description.)

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 not known and could not be ascertained by reasonable diligence, or if a return receipt signed by the named person could not be obtained, then 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 county 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 county 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, by middle Rio Grande conservancy district tract number 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 of the Solar Recordation Act, Chapter ..., Article .. NMSA 1978 and setting forth the maximum height of a theoretical 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, Chapter ..., Article ... NMSA 1978, the holders of any interest in property described above as having been mailed notice must record a declaration, with the county clerk in each county 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 ..... hand and seal this ... day of ....., 19 ...

.....

(here add acknowledgment).

B. 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 this subsection shall apply to any solar right, lease, easement or contract right which has vested prior to the effective date of this subsection.

C. 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 shall 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.

History: Laws 1983, ch. 233, § 4.

47-3-10. 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 construed to prevent a person from agreeing to relinquish a solar right or a potential solar right. Nothing in this section shall affect any transfer of solar rights made prior to the effective date of the Solar Recordation Act pursuant to Paragraph (3) of Subsection B of Section 47-3-4 NMSA 1978 or any local solar rights ordinance.

History: Laws 1983, ch. 233, § 5.

47-3-11. Local authority.

A. Notwithstanding any other provisions of the Solar Recordation Act [47-3-6 to 47-3-12 NMSA 1978] or the Solar Rights Act [47-3-1 to 47-3-5 NMSA 1978], the governing body of a county or municipality 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 benefited or burdened by the solar right only after recordation as provided in Section 4 [47-3-9 NMSA 1978] of the Solar Recordation Act. Such local regulation shall not affect any solar right vested before the effective date of such ordinance, nor shall the local regulation affect any solar rights transfer which vested prior to the effective date of such ordinance. In the absence of the local regulation of 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 an unobstructed line-of-sight path from the solar collector to the sun 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 than thirty-six feet, then the solar right shall be limited, as to that burdened property, to protecting an unobstructed line-of-sight path from the solar collector to the sun only as to obstructions located on the burdened property which cast a shadow greater than the shadow cast by a hypothetical fence fifteen feet in height located on the property line of the property on which the solar collector is located. No solar right shall be obtained against property which has or could have improvements constructed in excess of thirty-six feet in height unless so provided in a local ordinance or agreed to by contract. Unless otherwise 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 collectible 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.

B. 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.

History: Laws 1983, ch. 233, § 6.

47-3-12. Indexing.

A declaration filed pursuant to Section 4 [47-3-9 NMSA 1978] of the Solar Recordation Act shall be indexed by the county clerk in the grantees index under the names of the persons receiving notice in the declaration and in the grantors index under the name of the person filing the declaration.

History: Laws 1983, ch. 233, § 7.