

University of Denver

**Digital Commons @ DU**

---

Sturm College of Law: Faculty Scholarship

University of Denver Sturm College of Law

---

10-27-2009

## Guest Commentary—Retain Solar Access In Code

K.K. DuVivier

*University of Denver*, [kkdvvivier@law.du.edu](mailto:kkdvvivier@law.du.edu)

Follow this and additional works at: [https://digitalcommons.du.edu/law\\_facpub](https://digitalcommons.du.edu/law_facpub)



Part of the [Energy and Utilities Law Commons](#), [Environmental Law Commons](#), [Natural Resources Law Commons](#), and the [Property Law and Real Estate Commons](#)

---

### Recommended Citation

K.K. DuVivier, Guest Commentary—Retain Solar Access In Code, *Denver Post* , Oct. 28, 2009, at 11B.

This News Article is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Sturm College of Law: Faculty Scholarship by an authorized administrator of Digital Commons @ DU. For more information, please contact [jennifer.cox@du.edu](mailto:jennifer.cox@du.edu), [dig-commons@du.edu](mailto:dig-commons@du.edu).

---

## Guest Commentary—Retain Solar Access In Code

### Publication Statement

Copyright is held by the author. User is responsible for all copyright compliance.

### Publication Statement

Copyright is held by the author. User is responsible for all copyright compliance.

Retain solar access in code - Denver Post, The (CO) - October 28, 2009 - page B-11 October 28, 2009 | Denver Post, The (CO) | K.K. DuVivier Guest Commentary | OP-ED | Page B-11

Good news: The Denver City Council is poised to enact the first comprehensive update to the Denver zoning code in 53 years. This new code could put Denver in the forefront as a progressive planning city and could serve as a blueprint for communities throughout the nation.

Bad news: While the new code's context- and form-based approach may improve transportation efficiencies in some parts of the city, in other respects it represents a step backward for sustainability, specifically for solar access.

With an average of 300 days of sunshine a year, Denver is an ideal city for promoting solar power as an alternative for fossil fuel- generated power that is causing climate change and destruction of open spaces and wildlife habitat.

Past planners recognized Denver's place in the sun and included protections for solar access explicitly in our zoning code. Yet the "solar bulk plane" protection was removed by a 2003 amendment. At a time when maximum development prevailed over sustainability concerns, protecting passive solar - the right to have sunshine come in your windows for purposes of heating and light - was seen as unreasonably restricting the ability of neighbors to pop-up or build two-story homes on their lots.

But today's active solar is a different animal. The exigencies of climate change and finding secure energy sources have led our nation to invest billions in developing more competitive renewable energy technologies. As prices drop for active solar photovoltaic systems, more people will invest in installing these systems.

Under the current incentive programs, everyone has a stake in keeping these solar panels protected from "shade pollution."

In 2004, Colorado citizens had the foresight to pass Amendment 37, the first voter-approved Renewable Portfolio Standard in the country. Colorado's RPS mandates that 4 percent of Colorado's renewable power be generated by solar-electric panels.

Xcel customers who can prove sufficient solar access at the time panels are installed may qualify for a rebate. Xcel's payment is in return for a contract to sell the excess electricity generated by those solar PV panels into the grid, making these rooftop panels, in effect, an array of mini "distributed power" sources boosting Xcel's generation capacity throughout the city.

Every U.S. citizen has a stake because the federal government has granted generous tax rebates to encourage the propagation of solar PV panels.

A sustainability study in Denver recommended providing "a reasonable level of solar access to sunlight in order to protect the economic value of solar energy systems and provide for the future use of solar energy." Despite this, the current draft of the code contains no specific solar access protections.

A meeting today may be one of the last opportunities for public input on the solar access issue. The proposed code is ambitious and visionary and could move Denver forward in many ways. But we must also move forward, and not back, with solar access. Only then can Denver be proud of its legacy as a model to the nation for sustainability.

The Denver Zoning Code Task Force meeting starts at 4 p.m. in the Wellington Webb building downtown.

K.K. DuVivier is an associate professor and director of the Environmental and Natural Resources Law Program at the University of Denver Sturm College of Law.