

Solar Rights

Contributed by Administrator
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A variety of laws have been enacted in California to help prevent restrictions that may prevent the installation of solar products in your community. There are also laws that address shade control, which can impact system performance. The laws currently in effect are quoted below.

CALIFORNIA CODES

CIVIL CODE 714.

(a)
Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property that effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable.

(b) This section does not apply to provisions that impose reasonable restrictions on solar energy systems. However, it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles thereto. Accordingly, reasonable restrictions on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

(c) (1) A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities.(2) A solar energy system for heating water shall be certified by the Solar Rating Certification Corporation (SRCC) or other nationally recognized certification agencies. SRCC is a nonprofit third party supported by the United States Department of Energy. The certification shall be for the entire solar energy system and installation.(3) A solar energy system for producing electricity shall also meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(d) For the purposes of this section: (1) (A) For solar domestic water heating systems or solar swimming pool heating systems that comply with state and federal law, "significantly" means an amount exceeding 20 percent of the cost of the system or decreasing the efficiency of the solar energy system by an amount exceeding 20 percent, as originally specified and proposed. (B) For photovoltaic systems that comply with state and federal law, "significantly" means an amount not to exceed two thousand dollars (\$2,000) over the system cost as originally specified and proposed, or a decrease in system efficiency of an amount exceeding 20 percent as originally specified and proposed. (2) "Solar energy system" has the same meaning as defined in paragraphs (1) and (2) of subdivision (a) of Section 801.5.

(e) Whenever approval is required for the installation or use of a solar energy system, the application for approval shall be processed and approved by the appropriate approving entity in the same manner as an application for approval of an architectural modification to the property, and shall not be willfully avoided or delayed.

(f) Any entity, other than a public entity, that willfully violates this section shall be liable to the applicant or other party for actual damages occasioned thereby, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars (\$1,000).

(g) In any action to enforce compliance with this section, the prevailing party shall be awarded reasonable attorney's fees.

(h) (1) A public entity that fails to comply with this section may not receive funds from a state-sponsored grant or loan program for solar energy. A public entity shall certify its compliance with the requirements of this section when applying for funds from a state-sponsored grant or loan program. (2) A local public entity may not exempt residents in its jurisdiction from the requirements of this section.

714.1. Notwithstanding Section 714, any association, as defined in Section 1351, may impose reasonable provisions which:

(a) Restrict the installation of solar energy systems installed in common areas, as defined in Section 1351, to those systems approved by the association.

(b) Require the owner of a separate interest, as defined in Section 1351, to obtain the approval of the association for the installation of a solar energy system in a separate interest owned by another.

(c) Provide for the maintenance, repair, or replacement of roofs or other building components.

(d) Require installers of solar energy systems to indemnify or reimburse the association or its members for loss or damage caused by the installation, maintenance, or use of the solar energy system. 714.5. The covenants, conditions, and restrictions or other management documents shall not prohibit the sale, lease, rent, or use of real property on the basis that the structure intended for occupancy on the real property is constructed in an offsite facility or factory, and subsequently moved or transported in sections or modules to the real property. Nothing herein shall preclude the governing instruments from being uniformly applied to all structures subject to the covenants, conditions, and restrictions or other management documents. This section shall apply to covenants, conditions, and restrictions or other management documents adopted on and after the effective date of this section.

801.5.

(a) The right of receiving sunlight as specified in subdivision 18 of Section 801 shall be referred to as a solar easement. "Solar easement" means the right of receiving sunlight across real property of another for any solar energy system. As used in this section, "solar energy system" means either of the following: (1) Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating. (2) Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating.

(b) Any instrument creating a solar easement shall include, at a minimum, all of the following: (1) A description of the dimensions of the easement expressed in measurable terms, such as vertical or horizontal angles measured in degrees, or the hours of the day on specified dates during which direct sunlight to a specified surface of a solar collector, device, or structural design feature may not be obstructed, or a combination of these descriptions. (2) The restrictions placed upon vegetation, structures, and other objects that would impair or obstruct the passage of sunlight through the easement. (3) The terms or conditions, if any, under which the easement may be revised or terminated.

GOVERNMENT
CODE 65850.5.

(a) The implementation of consistent statewide standards to achieve the timely and cost-effective installation of solar energy systems is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern. It is the intent of the Legislature that local agencies not adopt ordinances that create unreasonable barriers to the installation of solar energy systems, including, but not limited to, design review for aesthetic purposes, and not unreasonably restrict the ability of homeowners and agricultural and business concerns to install solar energy systems. It is the policy of the state to promote and encourage the use of solar energy systems and to limit obstacles to their use. It is the intent of the Legislature that local agencies comply not only with the language of this section, but also the legislative intent to encourage the installation of solar energy systems by removing obstacles to, and minimizing costs of, permitting for such systems.

(b) A city or county shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. Review of the application to install a solar energy system shall be limited to the building official's review of whether it meets all health and safety requirements of local, state, and federal law. The requirements of local law shall be limited to those standards and regulations necessary to ensure that the solar energy system will not have a specific, adverse impact upon the public health or safety. However, if the building official of the city or county has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.

(c) A city or county may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. The findings shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.

(d) The decision of the building official pursuant to subdivisions (b) and (c) may be appealed to the planning commission of the city or county. (e) Any conditions imposed on an application to install a solar energy system shall be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible.

(f) (1) A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities. (2) A solar energy system for heating water shall be certified by the Solar Rating Certification Corporation (SRCC) or

other nationally recognized certification agency. SRCC is a nonprofit third party supported by the United States Department of Energy. The certification shall be for the entire solar energy system and installation.(3) A solar energy system for producing electricity shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(g) The following definitions apply to this section:(1) "A feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes, but is not limited to, any cost-effective method, condition, or mitigation imposed by a city or county on another similarly situated application in a prior successful application for a permit. A city or county shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code. (2) "Solar energy system" has the same meaning set forth in paragraphs (1) and (2) of subdivision (a) of Section 801.5 of the Civil Code.(3) A "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.65851. For such purposes the legislative body may divide a county, a city, or portions thereof, into zones of the number, shape and area it deems best suited to carry out the purpose of this chapter. 65852. All such regulations shall be uniform for each class or kind of building or use of land throughout each zone, but the regulation in one type of zone may differ from those in other types of zones. 66475.3. For divisions of land for which a tentative map is required pursuant to Section 66426, the legislative body of a city or county may by ordinance require, as a condition of the approval of a tentative map, the dedication of easements for the purpose of assuring that each parcel or unit in the subdivision for which approval is sought shall have the right to receive sunlight across adjacent parcels or units in the subdivision for which approval is sought for any solar energy system, provided that such ordinance contains all of the following:

(1)
Specifies the standards for determining the exact dimensions and locations of such easements.

(2)
Specifies any restrictions on vegetation, buildings and other objects which would obstruct the passage of sunlight through the easement.

(3)
Specifies the terms or conditions, if any, under which an easement may be revised or terminated.

(4)
Specifies that in establishing such easements consideration shall be given to feasibility, contour, configuration of the parcel to be divided, and cost, and

that such easements shall not result in reducing allowable densities or the percentage of a lot which may be occupied by a building or a structure under applicable planning and zoning in force at the time such tentative map is filed.

(5) Specifies that the ordinance is not applicable to condominium projects which consist of the subdivision of airspace in an existing building where no new structures are added. For the purposes of this section, "solar energy systems" shall be defined as set forth in Section 801.5 of the Civil Code.

For purposes of this section, "feasibility" shall have the same meaning as set forth in Section 66473.1 for the term "feasible";

PUBLIC

RESOURCES CODE 25980. This chapter shall be known and may be cited as the Solar

Shade Control Act. It is the

policy of the state to promote all feasible means of energy conservation and all feasible uses of alternative energy supply sources. In particular, the state encourages the planting and maintenance of trees and shrubs to create shading, moderate outdoor temperatures, and provide various economic and aesthetic benefits. However, there are certain situations in which the need for widespread use of alternative energy devices, such as solar collectors, requires specific and limited controls on trees and shrubs. 25981. As used in this chapter, "solar collector" means a fixed device, structure, or part of a device or structure, which is used primarily to transform solar energy into thermal, chemical, or electrical energy. The solar collector shall be used as part of a system which makes use of solar energy

for any or all of the following purposes:

(1) water heating, (2) space heating or cooling, and (3) power generation. 25982. After January 1, 1979, no person

owning, or in control of a property shall allow a tree or shrub to be placed, or, if placed, to grow on such property, subsequent to the installation of a solar collector on the property of another so as to cast a shadow greater than 10 percent of the collector

absorption area upon that solar collector surface on the property of another at any one

time between the hours of 10 a.m. and 2 p.m., local standard time; provided,

that this section shall not apply to specific trees and shrubs which at the time of installation of a solar collector or during the remainder of that annual solar cycle cast a shadow upon that solar collector. For the purposes of this chapter, the

location of a solar collector is required to comply with the local building and setback

regulations, and to be set back not less than five feet from the property line,

and no less than 10 feet above the ground. A collector may be less than 10 feet in height, only if in

addition to the five feet setback, the collector is set back three times the

amount lowered. 25983. Every person who maintains any tree or

shrub or permits any tree or shrub to be maintained in violation of Section

25982 upon property owned by such person and every person leasing the property

of another who maintains any tree or shrub or permits any tree or shrub to be

maintained in violation of Section 25982 after reasonable notice in writing

from a district attorney or city attorney or prosecuting attorney, to remove or

alter the tree or shrub so that there is no longer a violation of Section

25982, has been served upon such person, is guilty of a public nuisance as

defined in Sections 370 and 371 of the Penal Code and in Section 3480 of the

Civil Code. For the purposes of

this chapter, a violation is hereby deemed an infraction. The complainant shall establish to the

satisfaction of the prosecutor that the violation has occurred prior to the prosecutor's duty to issue the abatement notice. For the purpose of this section, "reasonable notice" means

30 days from receipt of such notice. Upon expiration of the 30-day period, the complainant shall file an affidavit with the prosecutor alleging that the nuisance has not been abated if the complainant wishes to proceed with the action. The existence of such violation for each and every day after the service of such notice shall be deemed a separate and distinct offense, and it is hereby made the duty of the district attorney, or the city attorney of any city the charter of which imposes the duty upon the city attorney to prosecute state infractions, to prosecute all persons guilty of violating this section by continuous prosecutions until the violation is corrected. Each and every violation of this section shall be punishable by a fine not to exceed one thousand dollars (\$1,000). 25984. Nothing in this chapter shall apply to trees planted, grown, or harvested on timberland as defined in Section 4526 or on land devoted to the production of commercial agricultural crops. Nothing in this chapter shall apply to the replacement of a tree or shrub which had been growing prior to the installation of a solar collector and which, subsequent to the installation of such solar collector, dies. 25985. Any city, or for unincorporated areas, any county, may adopt, by majority vote of the governing body, an ordinance exempting their jurisdiction from the provisions of this chapter. The adoption of such an ordinance shall not be subject to the provisions of the California Environmental Quality Act (commencing with Section 21000). 25986. Any person who plans a passive or natural solar heating system or cooling system or heating and cooling system which would impact on an adjacent active solar system may seek equitable relief in a court of competent jurisdiction to exempt such system from the provisions of this chapter. The court may grant such an exemption based on a finding that the passive or natural system would provide a demonstrably greater net energy savings than the active system which would be impacted.

HEALTH AND SAFETY CODE 17959.1.

(a) A city or county shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. However, if the building official of the city or county has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.

(b) A city or county may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. This finding shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.

(c) Any conditions imposed on an application to install a solar energy system must be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible.

(d) (1) A

solar energy

system shall meet applicable health and safety standards and requirements

imposed by state and local permitting authorities.(2) A solar energy system for heating water

shall be certified by the Solar Rating Certification Corporation (SRCC) or

other nationally recognized certification agency. SRCC is a nonprofit third party supported by the United

States Department of Energy. The

certification shall be for the entire solar energy system and installation.(3) A solar energy system for producing

electricity shall meet all applicable safety and performance standards

established by the National Electrical Code, the Institute of Electrical and

Electronics Engineers, and accredited testing laboratories such as Underwriters

Laboratories and, where applicable, rules of the Public Utilities Commission

regarding safety and reliability.(e) The following definitions apply to this section:(1) “A

feasible method to satisfactorily mitigate or avoid the specific, adverse

impact” includes, but is not limited to, any cost effective method, condition,

or mitigation imposed by a city or county on another similarly situated

application in a prior successful application for a permit. A city or county shall use its best

efforts to ensure that the selected method, condition, or mitigation meets the

conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of

Section 714 of the Civil Code. (2) “Solar energy system” has the meaning set

forth in paragraphs (1) and (2) of subdivision (a) of Section 801.5 of the

Civil Code. (3) A “specific,

adverse impact” means a significant, quantifiable, direct, and unavoidable

impact, based on objective, identified, and written public health or safety

standards, policies, or conditions as they existed on the date the application

was deemed complete.

17959.3.

(a) It is the intent of the Legislature

to encourage the use of passive solar energy design.

The Legislature recognizes that building code regulations with regard to

natural light and ventilation standards have to be modified to permit existing

buildings to be retrofitted with passive solar energy.

(b)

Notwithstanding Section 17922, any city or county may by ordinance or

regulation permit windows required for light and ventilation of habitable rooms

in dwellings to open into areas provided with natural light and ventilation

which are designed and built to act as passive solar energy collectors.

(c) On or

before September 1, 1999, the department shall, after consulting with the State

Energy Resources Conservation and Development Commission, prepare, adopt, and

submit building standards to implement the provisions of this section for

approval as part of the California Building Standards Code pursuant to Chapter

4 (commencing with Section 18935) of Part 2.5.

