

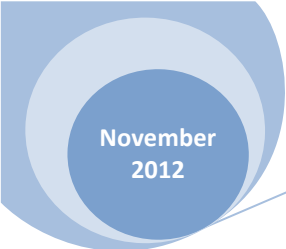


## Planning & Zoning

### Best Practices

November 2012

*Research for best practices regarding planning and zoning listing a summary of findings with links to reports, documents, and references*



## GO SOLAR BROWARD ROOFTOP SOLAR CHALLENGE

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### **Disclaimer**

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### **Go SOLAR Grant Requirements**

The Broward County Go SOLAR Broward Rooftop Solar Challenge Statement of Project Objectives (SOPO) included the following objective:

Objective 4: Identify restrictive zoning ordinances develop best practices regarding more favorable provisions.

This document is presented in fulfillment of Sub-Task 3.3: Zoning Ordinances. Develop and make available best practices regarding solar-friendly planning and zoning.

## GO SOLAR BROWARD ROOFTOP SOLAR CHALLENGE

### Introduction

#### **Planning, Zoning, and Solar Rights**

In December 2011, Broward County was awarded a \$646,367 grant from the U.S. Department of Energy to reduce the cost and wait time associated with the installation of rooftop photovoltaic (PV) solar systems. Broward County is partnering with 14 municipalities (Coconut Creek, Dania Beach, Davie, Deerfield Beach, Fort Lauderdale, Hallandale Beach, Hillsboro Beach, Lauderdale-by-the-Sea, Miramar, North Lauderdale, Oakland Park, Pompano Beach, Sunrise, Tamarac), Unincorporated Broward County, School Board of Broward County, Florida Solar Energy Center, Florida Power and Light, Broward County Board of Rules and Appeals, Building Officials Association of Florida, and Broward League of Cities. The grant's objectives include developing a streamlined, online permitting process; identifying and eliminating zoning barriers; exploring financing options; and, educating the community about the economic and environmental benefits of solar power.

This document focuses on planning and zoning initiatives that promote solar technology, while recognizing barriers may exist that prevent or limit residential and commercial property owners from installing solar energy devices. Homeowners and businesses may not be allowed to install rooftop PV panels due to zoning regulations (e.g., height limitations) or private restrictions such as those improperly administered by condominium or homeowners' associations (HOAs).

Section 163.04, Florida Statutes, (Exhibit 1) prohibits any local governing body or community association from adopting ordinances, deed restrictions, covenants, or similar binding agreements that prevent the installation of rooftop solar equipment. Under this law, a homeowner may not be denied permission to install a solar PV system or other renewable energy device. However, certain restrictions may be imposed.

In Broward County and elsewhere, many communities are governed by HOAs that assert the authority to restrict changes to the exterior of homes. According to Section 163.04, F.S., any limitations imposed under HOA bylaws must be reasonable, uniformly imposed on all homeowners, and may not prohibit the effective installation of the solar energy system. For example, an HOA may determine the location on the roof where the solar panels are installed, but is not allowed to impose requirements that would effectively restrict the system's operating efficiency. Additionally, HOAs may not be aware that they cannot restrict renewable energy projects based on aesthetics. Nevertheless, HOA approval is still required if stipulated by the governing documents.

Section 704.07, Florida Statutes, (Exhibit 2) describes solar easements. The purpose of a solar easement is to maintain the exposure of the solar energy device.

In order to strike a balance between solar rights and barriers to installation of rooftop solar installations imposed by local zoning ordinances and HOA restrictions, the Go SOLAR Broward Rooftop Solar Challenge Planning and Zoning Committee (PZC) was formed. The PZC worked with staff representatives from the 14 municipal partners and other interested parties to examine zoning ordinances and potential issues related to HOAs. Broward County and the partner municipalities have adopted solar-friendly amendments to their respective zoning codes. (Exhibit 3 contains the Model Zoning Ordinance.)

This document identifies Planning and Zoning Best Practices based on lessons learned through the Go SOLAR Challenge, standards developed by other jurisdictions nationwide and other guidance documents. The best practices are intended to promote rooftop solar installations, first locally, then regionally and statewide.

## GO SOLAR BROWARD ROOFTOP SOLAR CHALLENGE

### Planning and Zoning Best Practices

The Broward County Go SOLAR Broward Rooftop Solar Challenge Statement of Project Objectives (SOPO) includes the following objective which addresses the development of solar planning and zoning best practices:

**Objective 4.** “Identify restrictive zoning ordinances and develop best practices regarding more favorable provisions.”

Three basic principles of planning and zoning processes are that they are *continuous, comprehensive, and collaborative*. These may be considered as overall “best practices” for planning and zoning issues. More specifically, Broward County and its partners have identified and implemented the following Planning and Zoning Best Practices.

#### Planning and Zoning Best Practices:

##### **1.0 Committee Formation and Operation**

- 1.1 Establish and convene a Planning and Zoning Committee.
- 1.2 Encourage participation of partners and other interested parties through the provision of:
  - 1.2.1 Public meeting notices through Sunshine Meeting Notices, websites, electronic mail notification, and display signage.
  - 1.2.2 Opportunities to attend Planning and Zoning Committee meetings via telephone conference call and in-person.

##### **2.0 Literature Search and Other Research**

- 2.1 Conduct a literature search regarding solar regulations, including the review of solar regulations in other jurisdictions nationwide.
- 2.2 Review materials on photovoltaic systems design, installation and operation.
- 2.3 Share materials among committee members, educating members regarding solar installations and associated planning and zoning challenges.

##### **3.0 Examination of Existing Zoning Ordinances/Development of Model Ordinance**

- 3.1 Review applicable zoning ordinances and permitting processes to identify barriers to rooftop solar installations.

- 3.2 Develop a model zoning ordinance that promotes rooftop solar installations, removes potential barriers and incorporates more favorable provisions; thereby contributing to a streamlined permitting process.
- 3.3 Incorporate the model zoning ordinance that removes rooftop solar installation barriers and provides for a streamlined permitting process into the applicable municipal codes.

#### **4.0 Outreach to the General Public, HOAs, and Commercial Users**

- 4.1 Develop and implement a community-wide outreach campaign to raise awareness of the benefits of renewable energy, address recent advances in solar technology (e.g., more aesthetic, less expensive systems), and promote the installation of rooftop PV systems among residents and local businesses.
  - 4.1.1 Inform the public about solar rights laws, including a workshop to educate the homeowners and small businesses about their legal right to install rooftop solar systems and instruct HOAs about their obligations under applicable solar rights laws.
  - 4.1.2 Design videos, brochures, public service announcements, bus placards, etc. to build public awareness regarding rooftop solar PV systems.

#### **5.0 Monitoring and Enforcement**

- 5.1 Advocate for the effective monitoring and enforcement of statutes that prohibit restrictions on rooftop PV installations; and, establish penalties for non-compliance.
  - 5.1.1 Prepare and disseminate brochures describing solar rights and penalties for violations.

#### **6.0 Continuing/Future Actions**

- 6.1 Convene the Planning and Zoning Committee, as needed.
- 6.2 Identify improvements in solar technology that may need to be addressed in zoning codes.

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**EXHIBIT 1**

**2012 Florida Statutes**

163.04 Energy devices based on renewable resources.

(1) Notwithstanding any provision of this chapter or other provision of general or special law, the adoption of an ordinance by a governing body, as those terms are defined in this chapter, which prohibits or has the effect of prohibiting the installation of solar collectors, clotheslines, or other energy devices based on renewable resources is expressly prohibited.

(2) A deed restriction, covenant, declaration, or similar binding agreement may not prohibit or have the effect of prohibiting solar collectors, clotheslines, or other energy devices based on renewable resources from being installed on buildings erected on the lots or parcels covered by the deed restriction, covenant, declaration, or binding agreement. A property owner may not be denied permission to install solar collectors or other energy devices by any entity granted the power or right in any deed restriction, covenant, declaration, or similar binding agreement to approve, forbid, control, or direct alteration of property with respect to residential dwellings and within the boundaries of a condominium unit. Such entity may determine the specific location where solar collectors may be installed on the roof within an orientation to the south or within 45° east or west of due south if such determination does not impair the effective operation of the solar collectors.

(3) In any litigation arising under the provisions of this section, the prevailing party shall be entitled to costs and reasonable attorney's fees.

(4) The legislative intent in enacting these provisions is to protect the public health, safety, and welfare by encouraging the development and use of renewable resources in order to conserve and protect the value of land, buildings, and resources by preventing the adoption of measures which will have the ultimate effect, however unintended, of driving the costs of owning and operating commercial or residential property beyond the capacity of private owners to maintain. This section shall not apply to patio railings in condominiums, cooperatives, or apartments.

History.—s. 8, ch. 80-163; s. 1, ch. 92-89; s. 14, ch. 93-249; s. 1, ch. 2008-191; s. 3, ch. 2008-227.

**EXHIBIT 2**

**2012 Florida Statutes**

704.07 Solar easements; creation; remedies.

(1) Easements obtained for the purpose of maintaining exposure of a solar energy device shall be created in writing and shall be subject to being recorded and indexed in the same manner as any other instrument affecting the title to real property. Solar easements may be preserved and protected from extinguishment by the filing of a notice in the form and in accordance with the provisions set forth in ss. 712.05 and 712.06.

(2) In addition to fulfilling the requirements of law relating to conveyance of interests in land, the instrument creating the solar easement shall include:

(a) A description of the properties, servient and dominant.

(b) The vertical and horizontal angles, expressed in degrees, at which the solar easement extends over the real property subject to the solar easement.

(c) A description of where the easement falls across the servient property in relation to existing boundaries and various setbacks established by the local zoning authority.

(d) The point on the dominant property from where the angles describing the solar easement are to be measured.

(e) Terms or conditions under which the solar easement is granted or will terminate.

(f) Any provisions for compensation of the owner of the property benefiting from the solar easement in the event of interference with the enjoyment of the solar easement or compensation of the owner of the property subject to the solar easement for maintaining the solar easement.

(3) No structure under construction on October 1, 1978, shall be subject to any solar easement recorded pursuant to this section.

History.—ss. 2, 3, ch. 78-309.

**Model Zoning Ordinance**

ORDINANCE NO. 2012-

AN ORDINANCE OF THE CITY OF \_\_\_\_\_, FLORIDA, PERTAINING TO THE ZONING CODE; AMENDING CHAPTER \_\_\_\_\_, "ZONING CODE," TO CREATE A SECTION ENTITLED "ROOFTOP PHOTOVOLTAIC SOLAR SYSTEMS," PROVIDING FOR ROOFTOP PHOTOVOLTAIC SOLAR SYSTEMS AS PERMITTED ACCESSORY EQUIPMENT; PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY OF \_\_\_\_\_, FLORIDA:

Section 1. Chapter \_\_\_\_\_ of the Code of Ordinances of the City of \_\_\_\_\_, Florida, entitled "Zoning Code," is hereby amended to create a new Section \_\_\_\_\_ entitled "Rooftop Photovoltaic Solar Systems," to read as follows:

**Sec. \_\_\_\_\_ Rooftop Photovoltaic Solar Systems.**

(1) Intent. The provisions contained herein are intended to promote the health, safety, and general welfare of the citizens by removing barriers to the installation of alternative energy systems and encourage the installation of rooftop photovoltaic solar systems [pursuant to the U.S. Department of Energy Rooftop Solar Challenge Agreement Number DE-EE0005701 ("Go SOLAR- Broward Rooftop Solar Challenge") on buildings and structures within municipal limits. The provisions and exceptions contained herein are limited to web based applications for pre-approved rooftop photovoltaic solar system installations that utilize the Go SOLAR-Broward Rooftop Solar Challenge permitting process.]

(2) Definitions. For purposes of this section, the following terms shall have the meaning prescribed herein:

(a) Roof Line: The top edge of the roof which forms the top line of the building silhouette or, for flat roofs with or without a parapet, the top of the roof.

(b) Rooftop photovoltaic solar system: A system which uses one (1) or more photovoltaic panels installed on the surface of a roof, parallel to a sloped roof or surface- or rack-mounted on a flat roof, to convert sunlight into electricity.

(3) Permitted accessory equipment. Rooftop photovoltaic solar systems shall be deemed permitted accessory equipment to [residential and commercial] conforming and nonconforming buildings and structures in all zoning categories. Nothing contained in this chapter, including design standards or guidelines included or referenced herein, shall be deemed to prohibit the installation of rooftop photovoltaic solar systems as accessory equipment to conforming and nonconforming buildings, including buildings containing nonconforming uses.

(4) Height. In order to be deemed permitted accessory equipment, the height of rooftop photovoltaic solar systems shall not exceed the Roof Line, as defined herein. For flat roofs with or without a parapet, in order to be deemed accessory equipment, the rooftop photovoltaic solar system shall not be greater than five (5) feet above the roof.

(5) Permits. Prior to the issuance of a permit, the property owner(s) must acknowledge, as part of the permit application, that: (a) if the property is located in a homeowners' association, condominium association, or otherwise subject to restrictive covenants, the property may be subject to additional regulations or requirements despite the issuance of a permit by the City; and (b) the issuing of said permit for a rooftop photovoltaic solar system does not create in the property owner(s), its, his, her, or their successors and assigns in title, or create in the property itself a right to remain free of shadows and/or obstructions to solar energy caused by development adjoining on other property or the growth of any trees or vegetation on other property or the right to prohibit the development on or growth of any trees or vegetation on another property.

(6) Tree Maintenance and removal. To the extent that the City has discretion regarding the removal or relocation of trees, solar access shall be a factor taken into consideration when determining whether and where trees may be removed or relocated.

(7) Maintenance. The rooftop photovoltaic solar system shall be properly maintained and be kept free from hazards, including but not limited to, faulty wiring, loose fastenings, being in an unsafe condition or detrimental to public health, safety, or general welfare.

Section 2. SEVERABILITY.

If any portion of this Ordinance is determined by any Court to be invalid, the invalid portion shall be stricken, and such striking shall not affect the validity of the remainder of this Ordinance. If any Court determines that this Ordinance, or any portion hereof, cannot be legally applied to any individual(s), group(s), entity(ies), property(ies), or circumstance(s), such determination shall not affect the applicability hereof to any other individual, group, entity, property, or circumstance.

Section 3. INCLUSION IN CODE.

It is the intention of the Board of City Commissioners that the provisions of this Ordinance shall become and be made a part of the City Code; and that the sections of this Ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

Section 4. EFFECTIVE DATE.

This Ordinance shall become effective as provided by law.

ENACTED

FILED WITH THE DEPARTMENT OF STATE

EFFECTIVE

Coding: Words in ~~struck-through~~ type are deletions from existing text. Words in underscored type are additions.