



# Planning and Zoning

## Best Management Practices

September 2014

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

## GO SOLAR FLORIDA ROOFTOP SOLAR CHALLENGE

### Table of Contents

Acknowledgment .....	3
Disclaimer .....	3
Grant Requirements: Planning and Zoning .....	3
Introduction .....	5
Planning, Zoning and Solar Rights .....	5
Planning and Zoning Special Considerations .....	6
Planning and Zoning Model Ordinances .....	7
Planning and Zoning Best Management Practices .....	8
Committee Formation and Operation .....	8
Literature Search and Other Research .....	9
Examination of Existing Zoning Ordinances/Development of Model Ordinance .....	9
Outreach to the General Public, HOAs, and Commercial Users .....	9
Monitoring and Enforcement .....	9
Continuing/Future Actions .....	9
References .....	10
Exhibit 1: Section 163.04, Florida Statutes .....	11
Exhibit 2: Section 704.07, Florida Statutes .....	12
Exhibit 3: Section 718.113, Florida Statutes .....	13
Exhibit 4: Model Zoning Ordinance .....	14

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## Disclaimer

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## Grant Requirements: Planning and Zoning

In 2011, the Broward County Go SOLAR Broward Rooftop Solar Challenge (RSCI) Statement of Project Objectives (SOPO) included the following objective:

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

Currently, the SOPO for the Rooftop Solar Challenge II (RSCII), also known as Go SOLAR Florida, requires a revision to the original Rooftop Solar Challenge (RSCI) objective and therefore the best management practices. The restated objective is:

**Objective 3: Standardize solar-related zoning regulations.**

**Task 4.0: Revise Go SOLAR-Broward Planning and Zoning Best Management Practices to reflect new partner input.**

### **Subtask 4.1: Review**

Project staff, supported by the Florida Atlantic University School of Urban and Regional Planning, will review planning and zoning ordinances in all new jurisdictions to identify potential barriers to Go SOLAR implementation. Issues such as historic designations will also be addressed.

**Subtask 4.2: Revise**

Go SOLAR – Broward Planning and Zoning Best Management Practices and model zoning ordinance will be updated, if necessary.

This document is presented in fulfillment of Objective 3 and Subtasks 4.1 and 4.2.

## GO SOLAR BROWARD ROOFTOP SOLAR CHALLENGE/GO SOLAR FLORIDA

### Introduction

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

In December 2011, Broward County was awarded a \$646,367 grant from the U.S. Department of Energy Rooftop Solar Challenge I (RSCI) to reduce the cost and permitting time associated with the installation of rooftop photovoltaic (PV) solar systems. Broward County partnered with fourteen (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 included: 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.

In September 2013, Broward County was awarded a second grant of \$1,575,000 from the U.S. Department of Energy Rooftop Solar Challenge II (RSCII). For this grant, Broward County is partnering with nine (9) additional Broward County municipalities (Cooper City, Hollywood, Lauderdale Lakes, Lauderhill, Lighthouse Point, Margate, Pembroke Pines, Plantation, and Wilton Manors), six (6) non-Broward jurisdictions (Alachua County, Miami-Dade County, Monroe County, Orange County, St. Lucie County and the City of Venice), the Florida Solar Energy Center (FSEC), and Florida Atlantic University (FAU).

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. Specific to the purpose of this document, such barriers may include regulations that restrict homeowners and businesses from installing rooftop PV panels. Examples include 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 provided the solar installation is not effectively barred.

In Broward County and elsewhere, many communities are governed by HOAs that assert the authority to restrict changes to the exterior of homes. Pursuant to Section 163.04, Florida Statutes, an HOA may not prohibit the installation of solar collectors. An HOA may determine the location on the roof where solar collectors are installed, if the determination does not restrict the effective operation of the solar collectors.

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

Section 718.113, Florida Statutes, (Exhibit 3) provides that the board of a condominium or a multicondominium association, without approval of the unit owners, may install upon or within the common elements or association property solar collectors, clotheslines, or other energy-efficient devices based on renewable resources for the benefit of the unit owners.

In order to strike a balance between solar rights and barriers to rooftop solar installations imposed by local zoning ordinances and HOA restrictions, the Go SOLAR Broward Rooftop Solar Challenge (RSCI) Planning and Zoning Committee (PZC) was formed. The PZC worked with staff representatives from the fourteen (14) municipal partners and other interested parties to examine zoning ordinances and potential issues related to HOAs. Broward County and partner municipalities developed a model zoning ordinance, adopted solar-friendly amendments to their respective zoning codes, as needed, and prepared a best management practices document.

Under Go SOLAR Florida (RSCII), a Planning and Zoning Team has been formed to review and revise the model zoning ordinance (Exhibit 4) and the Planning and Zoning Best Management Practices document, if required. This revised document identifies planning and zoning best management practices based on lessons learned through the previous Go SOLAR Broward Rooftop Solar Challenge (RSCI) grant, standards developed by other jurisdictions nationwide and other guidance documents. The revised best management practices are intended to promote rooftop solar installations, locally, regionally and statewide.

### **Planning and Zoning Special Considerations**

While the legislation cited relates to the Florida Statutes, many states throughout the country have legislation that impacts solar installations with respect to solar rights, solar easements and solar access. Most notable are: Hawaii, Massachusetts, New Jersey and New Mexico. Additionally, some local jurisdictions in states such as Michigan, Oregon, Colorado, California, and Wisconsin have addressed these issues through ordinances. (See REFERENCES on Page 10)

In addition to solar rights, easements and homeowner associations, there are numerous other planning and zoning issues that impact solar installations. For example, tree protection and historic preservation ordinances may limit a property owner's ability to install a solar energy system. While overall solar rights are often established at the state level, tree preservation

ordinances and historic designations are generally imposed at the municipal level. This results in few, if any, standards fostering rooftop solar installations.

With respect to tree protection, best management practices suggest that jurisdictions: 1) review tree protection/removal regulations and 2) establish standards to eliminate or minimize potential conflicts with solar installations.

With respect to historic designations, best management practices suggest that jurisdictions: 1) review historic designation regulations; 2) identify barriers to solar installations that are specific to historic designations; and, 3) establish standards specific to solar installations on historic buildings. Jurisdictions in Maryland, Virginia, Oregon, and Texas have amended their respective codes to address solar installations within historic districts. (See REFERENCES on Page 10)

### **Planning and Zoning Model Ordinances**

While most local zoning codes do not explicitly restrict rooftop solar installations, certain provisions such as restrictions on height and accessory uses may create barriers to solar installations. In all cases, best management practices suggest a thorough review of local zoning ordinances to eliminate potential barriers and add solar-friendly provisions.

Solar-friendly model ordinances generally include provisions that:

- Define a rooftop photovoltaic (PV) solar system;
- Define a rooftop PV solar system as a permitted accessory use in all zoning categories;
- Define height of a rooftop PV solar system separately from other height requirements;
- Address design standards (including historic designation and special zoning districts); and,
- Address removal/relocation of trees.

Additional provisions may:

- Acknowledge that issuance of a permit by the jurisdiction does not eliminate additional regulations or requirements related to a homeowner or condominium association or other restrictive covenants that may be placed on the property;
- Acknowledge that issuance of a permit by the jurisdiction does not create a right to remain free of shadows and/or obstructions caused by development on adjoining property or growth of trees; and,
- Require proper maintenance of the rooftop PV solar system.

The model zoning ordinance developed by the Go SOLAR Florida Planning and Zoning Team is shown in Exhibit 4.

## Go SOLAR BROWARD ROOFTOP SOLAR CHALLENGE/GO SOLAR FLORIDA

### Planning and Zoning Best Management Practices

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

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

The SOPO for Go SOLAR Florida (RSCII), requires a revision to the best management practices document. The restated objective is:

**Objective 3: Standardize solar-related zoning requirements.**

**Task 4.0 Revise Go SOLAR-Broward Planning and Zoning Best Management Practices to reflect new partner input.**

Broward County and Go SOLAR Florida partners have implemented the following Planning and Zoning Best Management Practices by applying a planning process that is collaborative, cooperative, and comprehensive. In general, this means that participation from a broad array of stakeholders was sought to collectively and systematically work together to achieve a common end result. For this initiative, a committee/team comprised of planners representing partner jurisdictions, FSEC and FAU, as well as other interested parties, met regularly to:

- ◆ Review literature and previous research studies.
- ◆ Assess how well existing zoning ordinances accommodate and encourage the incorporation of solar technology into existing construction and building plans.
- ◆ Raise public awareness of solar technologies and rooftop photovoltaic systems.
- ◆ Develop methods to promote solar rights and raise awareness of the penalties for breaching solar rights.
- ◆ Identify ways to re-assess how well existing zoning ordinances accommodate and encourage improvements to solar technology that may be developed in the future.

#### **Planning and Zoning Best Management Practices**

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

- 1.1 Establish and convene a Planning and Zoning Committee/Team.
- 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/Team 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/team 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 Identify issues that may conflict with solar installations such as tree protection and historic designations.
- 3.3 Develop/revise the model zoning ordinance that promotes rooftop solar installations, removes potential barriers and incorporates more favorable provisions; thereby contributing to a streamlined permitting process.
- 3.4 Incorporate the model zoning ordinance that removes rooftop solar installation barriers and provides for a streamlined permitting process into the applicable county and 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 amendments to statutes to remove restrictions or prohibitions 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/Team, as needed.
- 6.2 Identify improvements in solar technology that may need to be addressed in zoning codes.

## REFERENCES

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18. Oakridge (Oregon), City of. 2011. *Zoning Code*. Article 15, Subdistricts; Section 15.04(8), Planned Unit Development Subdistrict.
19. San Luis Obispo (California), City of. 2011. *Municipal Code*. Title 16. Subdivisions; Chapter 16.18, General Subdivision Design Standards; Section 16.18.160, Energy Conservation. Seattle, Wash.: Code Publishing Company, Inc.
20. Santa Clara (California), County of. 2011. *County Code*. Division C12, Subdivisions and Land Development; Article IV, Requirements; Part 9, Solar Access for Subdivision Development.

**EXHIBIT 1**

**2014 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**

**2014 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.

**EXHIBIT 3**

**2014 Florida Statutes**

718.113 Maintenance; limitation upon improvement; display of flag; hurricane shutters and protection; display of religious decorations.

(1) Maintenance of the common elements is the responsibility of the association. The declaration may provide that certain limited common elements shall be maintained by those entitled to use the limited common elements or that the association shall provide the maintenance, either as a common expense or with the cost shared only by those entitled to use the limited common elements. If the maintenance is to be by the association at the expense of only those entitled to use the limited common elements, the declaration shall describe in detail the method of apportioning such costs among those entitled to use the limited common elements, and the association may use the provisions of s. 718.116 to enforce payment of the shares of such costs by the unit owners entitled to use the limited common elements.

...

(7) Notwithstanding the provisions of this section or the governing documents of a condominium or a multicondominium association, the board of administration may, without any requirement for approval of the unit owners, install upon or within the common elements or association property solar collectors, clotheslines, or other energy-efficient devices based on renewable resources for the benefit of the unit owners.

History.—s. 1, ch. 76-222; s. 1, ch. 89-161; s. 8, ch. 90-151; s. 6, ch. 91-103; s. 5, ch. 91-426; s. 4, ch. 92-49; s. 8, ch. 94-350; s. 43, ch. 95-274; s. 855, ch. 97-102; s. 54, ch. 2000-302; s. 10, ch. 2002-27; s. 1, ch. 2003-28; s. 9, ch. 2008-28; s. 26, ch. 2008-191; s. 89, ch. 2009-21; s. 59, ch. 2010-176; s. 4, ch. 2011-196; s. 4, ch. 2013-188; s. 2, ch. 2014-74.

**EXHIBIT 4**

**Model Zoning Ordinance**

ORDINANCE NO. 2014-

AN ORDINANCE OF THE *JURISDICTION* 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 *JURISDICTION* OF \_\_\_\_\_, FLORIDA:

Section 1. Chapter \_\_\_\_\_ of the Code of Ordinances of the *JURISDICTION* 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-EE0006309 ("Go SOLAR - Florida Rooftop Solar Challenge II") 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-Florida online 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 JURISDICTION; 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 JURISDICTION 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 *JURISDICTION* Commissioners that the provisions of this Ordinance shall become and be made a part of the *JURISDICTION* 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.