

AB 2188: Implementation of the Solar Rights Act at the Local Level

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Joe Kaatz, Esq.
Scott J. Anders

Prepared for
Center for Sustainable Energy

Prepared by
Energy Policy Initiatives Center, University of San Diego School of Law



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Contents

I. Executive Summary.....	4
II. Introduction	5
III. What has changed with the passage of AB 2188?	5
a. The Solar Rights Act	5
b. How has Civil Cod Section 714 governing a local jurisdiction’s mitigation of specific, adverse impacts and common interest developments changed under AB 2188?.....	6
c. What is required under Government Code Section 65850.5 as amended by AB 2188 and how can a jurisdiction comply and conform to the new requirements?	6
1. The Ordinance.....	7
2. Application Documents: Checklist, Standard Plans, and Bulletins	8
3. Application Review Process	8
4. Additional Changes	11
IV. Conclusion.....	12
AB 2188 Model Ordinance.....	13

I. Executive Summary

[AB 2188](#) modifies specific statutes that compose the Solar Rights Act. The most significant change to the act is a statutory mandate for all local jurisdictions in California to adopt an ordinance that creates a streamlined, expedited permitting process for small residential rooftop solar energy systems (photovoltaic and water heating) on or before September 30, 2015. The amended language of Government Code Section 65850.5 also mandates that each jurisdiction substantially conform its expedited, streamlined permitting process to recommendations contained in the most current version of the California Solar Permitting Guidebook adopted by the Governor’s Office of Planning and Research (OPR) in developing its ordinance. Each jurisdiction must evaluate and implement the statutory requirements and recommendations to ensure substantial conformance.ⁱ

Additionally, AB 2188 makes the following major changes to various requirements and definitions found in Civil Code Section 714 governing common interest developmentsⁱⁱ and Government Code Section 65850.5 governing local jurisdictions:

- Requires adoption of an ordinance that creates a standardized expedited, streamlined permitting process for small photovoltaic or water heater residential rooftop solar energy systems consistent with the goals and intent of Government Code 65850.5(a) on or before September 30, 2015;
- Requires that a jurisdiction substantially conform its expedited, streamlined permitting process with the recommendations for expedited permitting, including the checklist and standard plans adopted by the OPR in the most current California Solar Permitting Guidebook, in developing the ordinance;
- Requires adoption of a checklist of all requirements for a photovoltaic or water heating system to be eligible for expedited review;
- Requires approval of an application where the jurisdiction determines that the application is complete and meets all prescribed requirements;
- Allows for the use of electronic signatures on relevant permitting documents;
- Requires that jurisdictions allow electronic submittal of the expedited permit documents;
- Requires a single inspection, subject to an exception for fire inspections, that must be performed in a timely manner;
- Mandates that a jurisdiction can no longer require approval of an associationⁱⁱⁱ (such as an HOA) before approving a permit application for any solar energy system; and
- Changes the definition of “significantly” in reference to determining whether a reasonable restriction significantly increases a cost or decreases efficiency for solar water heating systems and photovoltaic systems with regards to a jurisdiction’s use of a method, condition, or mitigation to avoid specific, adverse impacts and covenants, conditions, or conditions imposed by a common interest development (i.e. an HOA).

This document is intended to provide guidance for implementing AB 2188 in substantial conformance with the *California Solar Permitting Guidebook*. This document also includes a stand-alone model ordinance that complies with the requirements of the Solar Rights Act, as amended. The sections of this document are organized to provide the reader with the statutory requirements of AB 2188 and the existing requirements of the Solar Rights Act followed by the recommendations from the *California Solar Permitting Guidebook* that a jurisdiction must substantially conform to under AB 2188.

II. Introduction

Test AB 2188 amends two of the several statutes that compose the Solar Rights Act – Civil Code Section 714 and Government Code Section 65850.5 – and applies to all cities, counties, or a city and county that have jurisdiction over permitting. The amended law seeks to standardize statewide requirements at the local jurisdictional level to expedite and streamline the permitting process for small residential rooftop solar energy systems.^{iv} The amendment recognizes that these types of small 10-kilowatt (kW) or less photovoltaic or 30-kilowatt thermal (kWth) or less water heating solar energy systems are standardized in their manufacturing and quality allowing local jurisdictions to use a streamlined process to permit the installation of eligible solar energy systems.

III. What has changed with the passage of AB 2188?

a. The Solar Rights Act

Test The Solar Rights Act is intended to encourage timely and cost-effective installation of solar energy systems, to promote the use of solar energy systems, and to limit obstacles to their use. A comprehensive analysis of the Solar Rights Act can be found on the Energy Policy Initiatives Center [website](#). The Solar Rights Act generally and presently:

- Discourages passage of unreasonable restrictions on solar energy systems, as defined^v;
- Requires the use of a nondiscretionary permitting process^{vi};
- Requires demonstration of compliance when seeking state-sponsored incentives but leaves discretion to the state to withhold funding.^{vii}

The California State Legislature intended that local agencies not adopt ordinances that create unreasonable barriers to the installation of solar energy systems.^{viii} The Legislature further intended that local agencies comply not only with the language of the statute, 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.^{ix} The passage of AB 2188 builds upon this legislative intent by mandating the passage of an ordinance that creates a streamlined, expedited permitting process for small residential rooftop solar energy systems in every jurisdiction that oversees permitting.

The following sections break down the Solar Rights Act requirements. Each section provides a comprehensive explanation that incorporates the statutory requirements with the *California Solar Permitting Guidebook* that all jurisdictions must substantially conform to under AB 2188.

b. How has Civil Code Section 714 governing a local jurisdiction’s mitigation of specific, adverse impacts and common interest developments changed under AB 2188?

Test Government Code Section 65850.5(j)(1) requires a jurisdiction to use its “best efforts” to ensure that a method, condition, or mitigation imposed to avoid a specific, adverse impact meets the reasonable restriction requirement defined by Civil Code Section 714(d)(1)(A)-(B). Civil Code Section 714 further ensures that common interest developments (i.e. HOAs, condominium associations, planned communities, etc.) cannot place unreasonable restrictions on the use of solar energy systems. AB 2188 makes minor changes to Civil Code Section 714 with the most significant being redefining “significantly” in regards to how a reasonable restriction is defined under Civil Code Section 714(b). The following information lists the changes to Civil Code Section 714:

- Solar Water Heating Systems: Changes the definition of “significantly” in reference to determining whether a reasonable restriction significantly increases a cost or decreases efficiency for solar water heating systems. Significantly now means an amount exceeding 10% of the cost of the system, but in no case more than \$1,000 or decreasing efficiency by an amount exceeding 10% (Civil Code Section 714(d)(1)(A));
- Photovoltaic Systems: Changes the definition of “significantly” in reference to determining whether a reasonable restriction significantly increases a cost or decreases efficiency for photovoltaic system. Significantly now means an amount exceeding more than \$1,000 over the original system cost or decreasing efficiency by an amount exceeding 10% (Civil Code Section 714(d)(1)(B));
- Mandates that solar systems meet applicable health and safety standards and requirements imposed by the state and that the local permitting authority should also be consistent with Government Code Section 65850.5 (Civil Code Section 714(c)(1));
- Requires that solar energy systems used for heating water be certified by an accredited listing agency as defined in the Plumbing and Mechanical Code (Civil Code Section 714 (c)(2));
- Changes the applicable health and safety standards governing solar energy systems for producing electricity from the National Electrical Code to the California Electrical Code (Civil Code Section 714(c)(3); and
- Shortens the time period during which an association (such as an HOA)^x must deny an application in writing from 60 days to 45 days (Civil Code Section 714(e)(2)(B)).

c. What is required under Government Code Section 65850.5 as amended by AB 2188 and how can a jurisdiction comply and conform to the new requirements?

Test AB 2188 makes significant changes to Government Code Section 65850.5 concerning streamlining small 10-kW or less photovoltaic or 30-kWth or less solar energy water heating systems. The following sections provide the statutory requirements that local governments must adopt to comply with the statute followed by information from the Governor’s Office of Planning and Research’s most recent

California Solar Permitting Guidebook that a jurisdiction must substantially conform to under the statute. Jurisdictions must pass an ordinance and implement a substantially conforming streamlined permitting process on or before September 30, 2015. Failure to do so opens a jurisdiction to possible lawsuits for noncompliance with the Solar Rights Act.

1. The Ordinance

What is required?

The Solar Rights Act as amended mandates the following:

- Requires every city, county, or city and county to adopt an ordinance that creates an expedited, streamlined permitting process for small residential rooftop solar energy systems consistent with the goals and intent of Government Code 65850.5(a) on or before September 30, 2015 (Government Code Section 65850.5(g)(1)).
 - Requires each city, county, or city and county to consult with the local fire department or district and the utility director, where a city, county, or city and county operate a utility, with regards to the adoption of the ordinance (Government Code Section 65850.5(g)(1)).
 - Requires each city, county, or city and county to substantially conform its expedited, streamlined permitting process to the recommendations for expedited permitting, including the checklist and standard plans, contained in the most current version of the *California Solar Permitting Guidebook* adopted by the Governor's Office of Planning and Research (Government Code Section 65850.5(g)(2)).
- Requires adoption of a checklist of all requirements that an applicant must comply with for a system to be eligible for expedited review (Government Code Section 65850.5(g)(1)).

Each of these requirements must be adopted and implemented by September 30, 2015, to comply with the law.

Making local modifications

A city, county, or city and county may adopt an ordinance that modifies the checklist and standards found in the *California Solar Permitting Guidebook* due to unique climatic, geological, seismological, or topographical conditions (Government Code Section 65850.5(g)(2)). Such modifications must substantially conform to the recommendations for expedited permitting. For example, the Guidebook provides a prescriptive method for expediting structural review on solar energy systems under 10 kW or 30 kWth in Toolkit Document # 5, Structural Criteria. This toolkit document is not applicable in all climatic or topographical conditions. Cities may modify the toolkit documents as needed to account for unique climatic, geological, seismological, or topographical conditions.

Civil code Section 714 (5) Certificaiton and Government Code Section 65850.5 (j)(1) compliance

Failure to comply with Civil Code Section 714 subjects a public entity to the possibility of not receiving funds from a state-sponsored grant or loan program for solar energy (Civil Code Section 714(h)(1)). A public entity also must certify its compliance with Civil Code Section 714 when applying for funds from a state-sponsored grant or loan program (Civil Code Section 714(h)(1)).

Government Code Section 65850.5(j)(1) in the amended language further requires a city, county, or city and county to use its best efforts to ensure that any method, condition, or mitigation imposed on an applicant to avoid an adverse impact complies with the language of Civil Code Section 714(d)(1)(A)-(B) that defines “significantly” to determine what is and is not a reasonable restriction.

A model ordinance incorporating these requirements and the requirements listed below was drafted as a stand-alone document to augment this document.

2. Application Documents: Checklist, Standard Plans, and Bulletins

The Solar Rights Act as amended mandates that local jurisdictions adopt a checklist and that the checklist and standard plans adopted by a jurisdiction substantially conform to the most current version of the *California Solar Permitting Guidebook*. The statute:

- Requires adoption of a checklist of all requirements that must be met by an applicant for a system to be eligible for expedited review and for an application to be considered complete (Government Code Section 65850.5(g)(1)); and
- Requires publication of the checklist and other required permitting documents on a publicly accessible Internet website, if one is available (Government Code Section 65850(g)(2)).

The *California Solar Permitting Guidebook* provides a Submittal Requirement Bulletin, an Eligibility Checklist, Expedited Solar Standard Plan, Memorandum of Understanding, Structural Criteria, and Inspection Quick Reference Sheets as part of its toolkit. A local jurisdiction must substantially conform its checklist and standard plans with the *California Solar Permitting Guidebook’s* documents. These documents serve to standardize requirements, plans, and bulletins in the review process. These documents also provide an applicant with all relevant information and requirements, eliminate human error, decrease application review time, and ensure that all required information and documentation are submitted to a jurisdiction.

3. Application Review Process

The following sections apply the statutory requirements and *California Solar Permitting Guidebook* to the permitting process from submission to inspection.

Submission

Test The Solar Rights Act seeks to advance the ease with which an applicant can submit an application for an eligible small solar energy system including requiring publication of application documents on a publicly accessible Internet website, if a website is available. The statute further:

- Requires that a city, county, or city and county allow electronic submittal, as defined by Government Code Section 65850.5(j)(2), of a permit application and associated documentation (Government Code Section 65850.5(g)(2));
- Defines electronic submittal as the utilization of one or more of the following:
 - Email
 - The Internet
 - Facsimile (Government Code Section 65850.5(j)(2)(A)-(C)); and
- Requires the authorization of electronic signature on all forms, applications, and other documentation in lieu of a wet signature. If a city, county, or city and county cannot authorize an electronic signature, the reason for the inability to accept electronic signatures must be included in the ordinance. This removes the statutory requirement of authorizing electronic signatures (Government Code Section 65850.5(g)(2)).

The *California Solar Permit Guidebook* also recommends that a jurisdiction allow online fee payment where the capability exists. Fees charged by a jurisdiction must comply with Government Code Section 65850.55, Government Code Section 66016, and State and Safety Code Section 17951. Additionally, the amounts for solar photovoltaic permit fees must comply with the specific limits set by Government Code Section 66015.

Application Review, Approval, and Denial

Test The application review, approval, and denial process represents the greatest synthesis between the Solar Rights Act and the new language chaptered under AB 2188. The following list provides a breakdown of all requirements mandated by the amended Solar Rights Act under AB 2188. The statute:

- Requires approval of all necessary permits or authorization for small solar systems by an administrative review process consistent with both Government Code Section 65850.5(b) and the adopted ordinance where the city, county, or city and county confirms that an application is complete and meets the requirements of the checklist (Government Code Section 65850.5(g)(1));
- Requires review of the application be limited to the building official's review of whether the application meets local, state, and federal health and safety requirements (Government Code Section 65850.5(f)(1));
- Requires issuance of a written correction notice detailing all deficiencies in the application and any additional information required to be eligible for the expedited permit issuance if an application is deemed incomplete (Government Code Section 65850.5(g)(1));

- Provides that a building official may require an applicant to apply for a use permit if the official finds, based on substantial evidence, that the solar energy system could have specific, adverse impact upon the public health and safety (Government Code Section 65850.5(b));
- Further provides that if a use permit is required, a building official may deny an application for the use permit if the official makes written findings based upon substantive evidence in the record that the proposed installation would have a specific, adverse impact upon public health or safety and there is no feasible method to satisfactorily mitigate or avoid, as defined, the adverse impact. Such findings shall include the basis for the rejection of the potential feasible alternative for preventing the adverse impact (Government Code Section 65850.5(c));
- Allows such decisions to be appealed to the (city, county, or city and county) Planning Commission (Government Code Section 65850.5(d));
- Requires that any condition imposed on an application be designed to mitigate the specific, adverse impact upon health and safety at the lowest possible cost (Government Code Section 65850.5(e));
- States that “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 the city, county, or city and county on another similarly situated application in a prior successful application for a permit (Government Code Section 65850.5(j)(1));
- Requires that a city, county, or city and 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 defining reasonable restriction (Government Code Section 65850.5(j)(1)); and
- Mandates that a city, county, or city and county cannot require any solar energy system applicant to obtain approval from an association (such as an HOA) as a condition to approving a permit application (Government Code Section 65850.5(i)).

The *California Solar Permitting Guidebook* provides further guidance for streamlining the permitting process. The Guidebook recommends the use of “over-the-counter” or same day plan review and permit issuance or automatic approval through online software. The *California Solar Permitting Guidebook* also provides a maximum 1-3 day timeframe for review and approval or denial where over-the-counter approval is not available. Coordination between local building departments and other agencies, such as local fire departments, is encouraged through memorandum of understandings that consolidate application review and system inspection. Jurisdictions must substantially conform to these Guidebook timelines and recommendations to comply with AB 2188.

System Inspection

The Solar Rights Act as amended limits the number of inspections that small energy systems can be subject to decrease the time and cost required to activate a system. An applicant can now be subject to only one inspection by a building official. Jurisdictions can no longer require pre-inspections or rough inspections for eligible solar energy systems. The statute:

- Mandates that only one inspection shall be required. The inspection must be performed in a timely manner and may include a consolidated inspection (Government Code Section 65850.5(h));
 - A separate fire safety inspection may be performed where an agreement with the local fire authority to conduct a fire safety inspection does not exist (Government Code Section 6585.5(h));
- Authorizes a subsequent inspection if a system fails inspection. The subsequent inspection need not conform to the requirements of this statutory subdivision (Government Code Section 65850.5(h)).

The *California Solar Permitting Guidebook* provides for further streamlining to remove the soft cost associated with the inspection process. The Guidebook recommends:

- A single final inspection coordinated among the various agencies or for inspections by the agencies to occur at the same time. Typically this involves coordination between the building department and the local fire authority.
- Use of a concise inspection checklist that provides permit applicants a clear understanding of what elements of the solar installation will be inspected before final approval of the installation.
- Enable inspection requests to be submitted online or electronically.
- Provide for on-site inspection during the next business day after notification that the solar system has been installed or within five days if an inspection cannot occur on the next business day.
- Provide a scheduling time window for on-site inspection of no more than two hours, and utilize phone and/or email communication to provide information on anticipated inspection time.
- The most streamlined permit process also ensures close coordination between the local enforcing agency and the local utility to coordinate on-site inspections in the most time efficient manner possible.

Jurisdictions must substantially conform to these Guidebook timelines and recommendations to comply with AB 2188.

4. Additional Changes

Additionally, AB 2188 makes the following changes or additions to Government Code Section 65850.5: Defines “small residential rooftop solar energy system” (Government Code Section 65850.5(j)(3)(1)(A)-(D)) to mean:

- A solar energy system that is no larger than 10 kilowatts alternating current nameplate rating or 30 kilowatts thermal.
- A solar energy system that conforms to all applicable state fire, structural, electrical, and other building codes as adopted or amended by the city, county, or city and county and paragraph (3) of subdivision (c) of Section 714 of the Civil Code.

- A solar energy system that is installed on a single or duplex family dwelling.
- A solar panel or module array that does not exceed the maximum legal building height as defined by the authority having jurisdiction;
- Requires that solar energy systems for heating water be certified by an accredited listing agency as defined by the California Plumbing and Mechanical Code (Government Code Section 65850.5(f)(2)); and
- Changes the applicable health and safety standards governing solar energy systems for producing electricity from the National Electrical Code to the California Electrical Code (Government Code Section 65850.5(f)(3)).

IV. Conclusion

In light of these changes, the Solar Rights Act now requires the codification of a streamlined, expedited permitting process for small rooftop solar energy systems by every jurisdiction that has authority over permitting. The permitting process must substantially conform to the recommendations for expedited permitting found in the most current version of the *California Solar Permitting Guidebook*.

AB 2188 Model Ordinance

AN ORDINANCE [AMENDING or ADDING] ORDINANCE NO. _____ TO THE [CITY, COUNTY, OR MUNICIPAL] CODE TO PROVIDE AN EXPEDITED, STREAMLINED PERMITTING PROCESS FOR SMALL RESIDENTIAL ROOFTOP SOLAR SYSTEMS

WHEREAS, the [City Council or Board of Supervisors of the County of _____] seeks to implement AB 2188 (Chapter 521, Statutes 2014) through the creation of an expedited, streamlined permitting process for small residential rooftop solar energy systems; and

WHEREAS, the [City Council or Board of Supervisors] wishes to advance the use of solar energy by all of its citizens, businesses and industries; and

WHEREAS, the [City Council or Board of Supervisors] seeks to meet the climate action goals set by the [City or County] and the State; and

WHEREAS, solar energy creates local jobs and economic opportunity; and

WHEREAS, the [City Council or Board of Supervisors] recognizes that rooftop solar energy provides reliable energy and pricing for its residents and businesses; and

WHEREAS, it is in the interest of the health, welfare and safety of the people of _____ to provide an expedited permitting process to assure the effective deployment of solar technology.

NOW, THEREFORE,

THE PEOPLE OF THE [CITY/COUNTY] OF _____

DO ORDAIN AS FOLLOWS

1. DEFINITIONS

- a.** A “Solar Energy System” means either of the following:
 - i.** 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.
 - ii.** 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.** A “small residential rooftop solar energy system” means all of the following:
 - i.** A solar energy system that is no larger than 10 kilowatts alternating current nameplate rating or 30 kilowatts thermal.
 - ii.** A solar energy system that conforms to all applicable state fire, structural, electrical, and other building codes as adopted or amended by the [City, County, or

City and County] and all state and [City, County, or City and County] health and safety standards.

- iii. A solar energy system that is installed on a single or duplex family dwelling.
 - iv. A solar panel or module array that does not exceed the maximum legal building height as defined by the [City, County, or City and County].
- c. “Electronic submittal” means the utilization of one or more of the following:
- i. Email;
 - ii. The Internet;
 - iii. Facsimile.
- d. An “association” means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.
- e. A “common interest development” means any of the following:
- i. A community apartment project.
 - ii. A condominium project.
 - iii. A planned development.
 - iv. A stock cooperative.
- f. “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.
- g. “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.
- h. “Restrictions that do not significantly increase the cost of the system or decrease its efficiency or specified performance” means:
- i. For Water Heater Systems or Solar Swimming Pool Heating Systems: an amount exceeding 10 percent of the cost of the system, but in no case more than one thousand dollars (\$1,000), or decreasing the efficiency of the solar energy system by an amount exceeding 10 percent, as originally specified and proposed.
 - ii. For Photovoltaic Systems: an amount not to exceed one thousand dollars (\$1,000) over the system cost as originally specified and proposed, or a decrease in system efficiency of an amount exceeding 10 percent as originally specified and proposed.

2. PURPOSE

The purpose of the Ordinance is to adopt an expedited, streamlined solar permitting process that complies with the Solar Rights Act and AB 2188 (Chapter 521, Statutes 2014) to achieve timely and cost-effective installations of small residential rooftop solar energy systems. The Ordinance encourages the use of solar systems by removing unreasonable barriers, minimizing costs to property owners and the [City, County, or City and County], and expanding the ability of property owners to install solar energy systems. The Ordinance allows the [City, County, or City and County] to achieve these goals while protecting the public health and safety.

3. APPLICABILITY

- a. This Ordinance applies to the permitting of all small residential rooftop solar energy systems in the [City, County, or City and County].
- b. Small residential rooftop solar energy systems legally established or permitted prior to the effective date of this Ordinance are not subject to the requirements of this Ordinance unless physical modifications or alterations are undertaken that materially change the size, type, or components of a small rooftop energy system in such a way as to require new permitting. Routine operation and maintenance or like-kind replacements shall not require a permit.

4. SOLAR ENERGY SYSTEM REQUIREMENTS

- a. All solar energy systems shall meet applicable health and safety standards and requirements imposed by the state and the [City, County, or City and County], local fire department or district [and utility director, if applicable].
- b. Solar energy systems for heating water in single-family residences and for heating water in commercial or swimming pool applications shall be certified by an accredited listing agency as defined by the California Plumbing and Mechanical Code.
- c. Solar energy systems for producing electricity shall meet all applicable safety and performance standards established by the California 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.

5. DUTIES OF [BUILDING DEPARTMENT] AND [BUILDING] OFFICIAL

- a. All documents required for the submission of an expedited solar energy system application shall be made available on the publicly accessible [City, County, Or City and County] Website.
- b. Electronic submittal of the required permit application and documents by [email, the Internet, or facsimile] shall be made available to all small residential rooftop solar energy system permit applicants.
- c. An applicant's electronic signature shall be accepted on all forms, applications, and other documents in lieu of a wet signature. [Note: If a city, county, or city and county is unable to authorize electronic signatures, it must specify the reason why in the ordinance.
- d. The [City, County, Or City and County]'s [Building Department] shall adopt a standard plan and checklist of all requirements with which small residential rooftop solar energy systems shall comply to be eligible for expedited review.
- e. The small residential rooftop solar system permit process, standard plan(s), and checklist(s) shall substantially conform to recommendations for expedited permitting, including the checklist and standard plans contained in the most current version of the *California Solar Permitting Guidebook* adopted by the Governor's Office of Planning and Research.

- f. All fees prescribed for the permitting of small residential rooftop solar energy system must comply with Government Code Section 65850.55, Government Code Section 66015, Government Code Section 66016, and State Health and Safety Code Section 17951.

6. PERMIT REVIEW AND INSPECTION REQUIREMENTS

- a. The [City, County, or City and County] [Building Department] shall adopt an administrative, nondiscretionary review process to expedite approval of small residential rooftop solar energy systems within [30 days] of the adoption on this Ordinance. [Note: A jurisdiction must create their permitting process on or before September 30, 2015.] The [Building Department] shall issue a building permit or other nondiscretionary permit [the same day for over-the-counter applications or within [1-3] business days for electronic applications] of receipt of a complete application and meets the requirements of the approved checklist and standard plan. A building official may require an applicant to apply for a use permit if the official finds, based on substantial evidence, that the solar energy system could have a specific, adverse impact upon the public health and safety. Such decisions may be appealed to the [City, County, or City and County] Planning Commission.
- b. Review of the application shall be limited to the building official's review of whether the application meets local, state, and federal health and safety requirements.
- c. If a use permit is required, a building official may deny an application for the use permit if the official makes written findings based upon substantive evidence in the record that the proposed installation would have a specific, adverse impact upon public health or safety and there is no feasible method to satisfactorily mitigate or avoid, as defined, the adverse impact. Such findings shall include the basis for the rejection of the potential feasible alternative for preventing the adverse impact. Such decisions may be appealed to the [City, County, or City and County] Planning Commission.
- d. Any condition imposed on an application shall be designed to mitigate the specific, adverse impact upon health and safety at the lowest possible cost.
- e. "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 the [City, County, or City and County] on another similarly situated application in a prior successful application for a permit. The [City, County, or City and 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 defining restrictions that do not significantly increase the cost of the system or decrease its efficiency or specified performance.
- f. A City, County, or City and County shall not condition approval of an application on the approval of an association, as defined in Section 4080 of the Civil Code.
- g. If an application is deemed incomplete, a written correction notice detailing all deficiencies in the application and any additional information or documentation required to be eligible for expedited permit issuance shall be sent to the applicant for resubmission.
- h. Only one inspection shall be required and performed by the [Building Department] for small residential rooftop solar energy systems eligible for expedited review. [A separate fire

inspection may be performed if an agreement with the local fire authority does not exist to perform safety inspections on behalf of the fire authority.]

- i. The inspection shall be done in a timely manner and should include consolidated inspections. An inspection will be scheduled within two [2] business days of a request and provide a two- [2-] hour inspection window.
- j. If a small residential rooftop solar energy system fails inspection, a subsequent inspection is authorized but need not conform to the requirements of this Ordinance.

ⁱ The materials included in this paper are intended for informational purposes only and not for providing legal advice for any particular case or matter. Use of or reliance on this material does not create an attorney-client relationship between the Energy Policy Initiatives Center and the reader. Individuals or entities should consult their own counsel before taking any action on any particular case or matter.

Please Note: No case law exists interpreting “substantial conformance” under Government Code Section 65850.5. Implementing jurisdictions should consult their legal counsel to understanding their obligations and liability. In determining substantial conformance, a court may evaluate a permitting process on whether it substantially complies with every reasonable objective of the statute (*Downtown Palo Alto Com. For Fair Assessment v. City Council* (1986), 180 Cal.App.3d 384, 394; *Stasher v. Harger-Haldeman* (1962), 58 Cal.2d 23, 29). A jurisdiction must carefully consider its permitting process to ensure that it substantially complies with the statute. A permitting process that substantially conforms to the recommendations of the expedited permitting process from the *California Solar Permitting Guidebook* may be viewed as meeting the statutory objective of the Solar Rights Act (*Hogya v. Superior Court* (1977), 75Cal.App.3d 122, 133-134 (Statutory language should not be read as directory “...if to construe it as directory would render it ineffective and meaningless it should not receive that construction...)).

ⁱⁱ See Civil Code Section 4100: “common interest development” means any of the following: (a) A community apartment project; (b) A condominium project; (c) A planned development;(d) A stock cooperative.

ⁱⁱⁱ “Association” means a nonprofit corporation or unincorporated association created for managing a residential, commercial, or industrial common interest development (Civil Code Section 4080).

^{iv} See Government Code Section 65850.5(a).

^v Government Code Section 65850.5 (a).

^{vi} Government Code Section 65850.5(a)-(b); Health and Safety Code Section 17959.1(a)-(b)).

^{vii} Civil Code Section 714 (h)(1).

^{viii} Government Code Section 65850.5(a).

^{ix} Government Code Section 65850.5(a).

^x “Association” means a nonprofit corporation or unincorporated association created for managing a residential, commercial, or industrial common interest development (See Civil Code Section 4080 and 6528).

^{xixi} “Association” means a nonprofit corporation or unincorporated association created for managing a residential, commercial, or industrial common interest development (Civil Code Section 4080).



As a mission-driven nonprofit organization, CSE works with energy policymakers, regulators, public agencies and businesses as an expert implementation partner and trusted information resource. Together, we are the catalysts for sustainable energy market development and transformation.

HEADQUARTERS

9325 Sky Park Court, Suite 100 - San Diego, CA 92123 - 858.244.1177 - www.energycenter.org

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