



# A COMPREHENSIVE REVIEW OF SOLAR ACCESS LAW IN THE UNITED STATES

Suggested Standards for a  
Model Statute and Ordinance

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### *State of Wisconsin*

- Provides local governments with the authority to enact an ordinance to require the trimming of vegetation that blocks solar energy equipment.
- Also, provides that restriction against the use of solar or wind energy are void (Statutory Reference 8).

## RECOMMENDATIONS

Given the fact that many of the current laws that purport to protect solar access are ineffective or too expensive to enforce, every state should examine its practices and consider amending them to conform to the model statute. At the state level, the adoption of the model statute that addresses state and local practices on use of solar energy equipment is recommended. The model statute should include prescriptive measures—such as community design, solar easements, as well as prohibitive measures, such as measures restricting the use of solar energy.

At the local level, it is recommended that the focus be on implementation and enforcement of state law, requirement that site-plan review and approval include an element to address the current and future use of solar energy (such as solar easements, landscaping, building height restriction, and orientation).

The key to the usefulness of a solar access law is enforcement. It is imperative that a specific entity be charged with oversight of the statute. These responsibilities must include responding to consumer and community association inquiries, conflict resolution, and the authority to impose penalties for violation of the statute.

Through strategic partnerships with the League of Cities, Association of Counties, and the Community Association Institute, education and awareness of solar access laws can proactively avoid disputes among neighbors. It is further recommended that partnering with these entities be explored to expand the outreach of this effort.

## COMPONENTS OF SOLAR ACCESS LEGISLATION

### Elements of a Solar Rights and Access Law

1. Preamble
  - a. Public Purpose (needed to assure constitutionality)
  - b. Policy Statement in Support of Solar Energy (needed to allow for retroactive effect and overcome constitutional challenge)
  - c. Legislative Intent (for example
    - i. Energy security
    - ii. Cost of energy
    - iii. Green House Gas reduction strategy
    - iv. Economic development
    - v. Fossil fuel offset
    - vi. Renewable Portfolio Standard
    - vii. Other
2. Definitions
  - a. Solar Energy Device (active and passive)
  - b. Other renewable measures (wind, geothermal, etc)
  - c. Buildings included (residential, commercial, multi-family, condominium)
  - d. Other



3. Application
  - a. CCRs
  - b. Solar contract
  - c. Condominium declarations
  - d. Ordinances
  - e. Enforcement
    - i. Litigation
    - ii. Prevailing party legal fee award
    - iii. Penalties
    - iv. Code enforcement
  
4. Where the law should be codified
  - a. Constitutional amendment
  - b. Municipal law section
  - c. Building code section
  - d. Condominium regulation section
  - e. Homeowner association section



# MODEL STATUTE/ORDINANCE TO ENCOURAGE ACCESS TO SOLAR ENERGY

STATE/CITY/COUNTY \_\_\_\_\_

CHAPTER/SECTION NO. \_\_\_\_\_

A LAW PROVIDING FOR SOLAR EASEMENTS; INVALIDATING PUBLIC AND PRIVATE RESTRICTIONS RESTRICTING THE USE OF SOLAR ENERGY SYSTEMS; ESTABLISHING GUIDELINES FOR THE INSTALLATION OF SOLAR ENERGY SYSTEMS, INCLUDING STANDARDS AND PERMIT REQUIREMENTS; PROVIDING FOR CERTIFICATION OF INSTALLERS OF SOLAR ENERGY SYSTEMS; PROVIDING FOR ENFORCEMENT AND PENALTIES; SUPERSEDING ALL LAWS IN CONFLICT OR INCONSISTENT HEREWITH; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the State/City/County of \_\_\_\_\_ wishes to advance the use of solar energy by all of its citizens, businesses and industries; and,

WHEREAS, the State/City/County of \_\_\_\_\_ has determined that public and private land use and property restrictions can impair the ability of our citizens, businesses and industries to install said systems; and,

WHEREAS, properly designed land use standards can prepare communities for greater access to solar energy; and,

WHEREAS, the installation of solar energy systems according to established guidelines by properly trained and certified personnel is essential to the safe and efficient operation of said systems;

[ADD OTHER STATE SPECIFIC POLICIES THAT MIGHT BE CITED HERE]

NOW, THEREFORE, it is in the interest of the health, welfare and safety of the people of \_\_\_\_\_ to provide the infrastructure to assure the effective deployment of solar technology.

NOW, BE ENACTED BY THE STATE OF \_\_\_\_\_ OR  
NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF CITY/COUNTY  
COMMISSIONERS OF \_\_\_\_\_, that:  
(City/County) (State)

This Section Is Intended to be Interactive among Stakeholders to Explore the Options and Get Feedback from States/Cities with Best Practices as Identified in the Exemplary Law Section.

### *Section 1. Definitions*

“Solar Energy Device” (active and passive): (Florida model) Solar energy device means the equipment and requisite hardware that provide and are used for collecting, transferring, converting, storing, or using incident solar energy for water heating, space heating, cooling, generating electricity, or other applications that would otherwise require the use of a conventional source of energy such as petroleum products, natural gas, manufactured gas, or electricity produced from a nonrenewable resource.

“Other renewable measures” - [Each jurisdiction needs to evaluate their renewable energy resources to determine which technologies to include in the statute.]

## *Section 2. Solar Easements*

(Massachusetts model, others to consider: New Jersey and New Mexico, City of Ashland)

A. An easement of direct sunlight may be acquired over the land of another by express grant or covenant, or by a solar access permit as set forth in section 2. Any instrument creating a solar easement may include, but the contents are not limited to, 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 which would impair or obstruct the passage of sunlight through the easement.
- (3) The amount, if any, of permissible obstruction of the passage of sunlight through the easement, expressed in measurable terms, such as a specific percentage of sunlight that may be obstructed.
- (4) The provisions for trimming vegetation that would impermissibly obstruct the passage of sunlight through the easement including any compensation for trimming expenses.
- (5) Any provisions for compensation of the owner of property benefiting from the easement in the event of impermissible obstruction of the easement.
- (6) The terms or conditions, if any, under which the easement may be revised or terminated.

Any instrument creating a solar easement shall be recorded in the registry of deeds in the county or district or, in the case of registered land, in the registry district of the land court in which the land affected is situated.

B. Zoning ordinances or community association bylaws may provide for special permits to protect access to direct sunlight for solar energy systems. Such ordinances or bylaws may provide that such solar access permits create an easement to sunlight over neighboring property. Such ordinances or bylaws may also specify what constitutes an impermissible interference with the right to direct sunlight granted by a solar access permit and how to regulate growing vegetation that may interfere with such right. Such ordinances or bylaws may further provide standards for the issuance of solar access permits balancing the need of solar energy systems for direct sunlight with the right of neighboring property owners to the reasonable use of their property within other zoning restrictions. Such ordinances or bylaws may also provide a process for issuance of solar access permits including, but not limited to, notification of affected neighboring property owners, opportunity for a hearing, appeal process and recordation of such permits on burdened and benefited property deeds. Such ordinances or bylaws may further provide for establishment of a solar map identifying all local properties burdened or benefited by solar access permits. Such ordinances or bylaws may also require the examination of such solar maps by the appropriate official prior to the issuance of a building permit.



### ***Section 3. Solar Rights***

(Massachusetts model, others to consider: Hawaii and Wisconsin)

Solar energy systems; installation or use; restrictive provisions

Any provision in an instrument relative to the ownership or use of real property which purports to forbid or unreasonably restrict the installation or use of a solar energy system or the building of structures that facilitate the collection of solar energy shall be void.

A community association shall not adopt and shall not enforce any rule related to the installation or maintenance of solar collectors, if compliance with a rule or rules would increase the solar collectors' installation or maintenance costs by an amount which is estimated to be greater than 10 percent of the total cost of the initial installation of the solar collectors, including the costs of labor and equipment. A community association shall not adopt and shall not enforce any rule related to the installation or maintenance of solar collectors, if compliance with such rules inhibits the solar collectors from functioning at their intended maximum efficiency. The [Agency] shall enforce the provisions of this law in accordance with the authority granted under [section x].

### ***Section 4. Local Ordinances***

(Massachusetts model, Florida provision)

- A. Zoning ordinances or bylaws adopted or amended pursuant to section five of this chapter may encourage the use of solar energy systems and protect solar access by regulation of the orientation of streets, lots and buildings, maximum building height limits, minimum building set back requirements, limitations on the type, height and placement of vegetation and other provisions. Zoning ordinances or bylaws may also establish buffer zones and additional districts that protect solar access which overlap existing zoning districts. Zoning ordinances or bylaws may further regulate the planting and trimming of vegetation on public property to protect the solar access of private and public solar energy systems and buildings. Solar energy systems may be exempted from set back, building height, and roof and lot coverage restrictions.
  
- B. Notwithstanding any provision of general or special law, the adoption of an ordinance by a city or county which prohibits or has the effect of prohibiting the installation of solar energy systems [or other device based on renewable resources] is expressly prohibited.