

## RESOLUTION NO. 56-14

### RESOLUTION OF THE CITY OF RICHMOND CITY COUNCIL INTERPRETING AND IMPLEMENTING THE RICHMOND GENERAL PLAN 2030 AND STATE OF CALIFORNIA POLICY REGARDING SOLAR ENERGY SYSTEMS

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WHEREAS, The California Solar Rights Act<sup>1</sup> includes Civil Code Sections 714, 714.1, 801 and 801.5; Government Code Sections 65850.5, 66475.3 and 66473.1 and California Health and Safety Code Section 17959.1; and,

WHEREAS, California is a world leader in renewable energy generation. Solar and wind power, as well as emerging technologies such as biomass and fuel cells, are transforming California. Renewable energy is helping to power the state's economy, reducing our state's reliance on imported energy sources, and decreasing air pollution. California's state and local governments have set aggressive goals to expand renewable energy. Small-scale renewable energy benefits California communities. It increases energy reliability for residents and businesses by generating electricity near where it is consumed. This type of energy can also provide stable electricity prices for consumers and creates thousands of jobs across California.

WHEREAS, the State of California has adopted multiple public policy positions that support renewable energy sources, particularly solar energy, including The California Solar Initiative, a 2006 initiative to install 3,000 megawatts (M) of additional solar power by 2016.<sup>2</sup> Included in it is the Million Solar Roof Initiative. In 2011, this goal was expanded to 12,000 MW by 2020;<sup>3</sup> and,

WHEREAS, Richmond General Plan 2030 includes multiple policies, including Energy and Climate Change Policies EC1.1, EC1.2, EC3.1, EC3.A and EC3.B, that encourage the use of solar generated energy in Richmond; and,

WHEREAS, the City of Richmond is a member of Marin Clean Energy (MCE), whose mission includes "local economic and workforce benefits" by encouraging local generation projects as sources of its purchased renewable energy portfolio; and,

WHEREAS, the California Legislature has passed into law numerous provisions that encourage the installation of solar energy generating systems and removal of barriers to the installation of solar energy systems, including:

- Civil Code Section 714(a): "...it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles thereto. Accordingly, reasonable restrictions on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits. :
- Government Code Section 65850.5 (a): The implementation of consistent statewide standards to achieve the timely and cost effective installation of solar energy systems is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern. It is the intent of the Legislature that local agencies not adopt ordinances that create unreasonable barriers to the installation of solar energy systems, including, but not limited to, design review for aesthetic purposes, and not unreasonably restrict the ability of homeowners and agricultural and business concerns to install solar energy systems. It is the policy of the state to promote and encourage the use of solar energy systems and to limit obstacles to their use. It is the intent of the Legislature that local agencies comply not only with the language of this section, but also the legislative intent to encourage the installation of

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<sup>1</sup> [http://solar-rights.com/files/THE\\_CALIFORNIA\\_SOLAR\\_RIGHTS\\_ACT2.pdf](http://solar-rights.com/files/THE_CALIFORNIA_SOLAR_RIGHTS_ACT2.pdf)

<sup>2</sup> <http://www.gosolarcalifornia.ca.gov/about/csi.php>

<sup>3</sup> <http://www.energy.ca.gov/renewables/>

solar energy systems by removing obstacles to, and minimizing costs of, permitting for such systems.

- Health & Safety Code Section 17591.1(a): A city or county shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. However, if the building official of the city or county has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.
- Health & Safety Code Section 17591.1(b) A city or county may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. This finding shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.
- California Health & Safety Code Section 17591.1(c): Any conditions imposed on an application to install a solar energy system must be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible.
- Government Code Section 65850.5 (b): A city or county shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. Review of the application to install a solar energy system shall be limited to the building official's review of whether it meets all health and safety requirements of local, state, and federal law. The requirements of local law shall be limited to those standards and regulations necessary to ensure that the solar energy system will not have a specific, adverse impact upon the public health or safety. However, if the building official of the city or county has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.
- Government Code Section 65850.5 (c): A city or county may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. The findings shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact; and,

WHEREAS, the California Legislature passed into law the following definition of a “solar energy system:

- California Civil Code Section 801.5(a)(1): Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating.
- California Civil Code Section 801.5(a)((2) Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating; and,

WHEREAS, the California Legislature adopted the following definitions:

- California Health and Safety Code Section 17591 (e): The following definitions apply to this section:
  - (1) "A feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes, but is not limited to, any cost effective method, condition, or mitigation imposed by a city or county on another similarly situated application in a prior successful application for a permit. A city or county shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code
  - (3) A "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or

safety standards, policies, or conditions as they existed on the date the application was deemed complete.

WHEREAS the California Legislature has also passed into law provisions to ensure that solar energy systems do not adversely impact health and safety, including:

- California Civil Code Section 714(c)(1): A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities.
- California Civil Code Section 714(c)(3): A solar energy system for producing electricity shall also meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.
- California Government Code Section 65850.5 (d): The decision of the building official pursuant to subdivisions (b) and (c) may be appealed to the planning commission of the city or county.
- California Government Code Section 65850.5 (e): Any conditions imposed on an application to install a solar energy system shall be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible; and,

WHEREAS, CEQA generally applies to discretionary projects, including those undertaken by private parties. A discretionary project is one that requires the exercise of judgment or deliberation by a public agency in determining whether the project will be approved, or if a permit will be issued; and.

- WHEREAS, CEQA does not apply to ministerial projects. A ministerial project is one that requires only conformance with a fixed standard or objective measurement and requires little or no personal judgment by a public official as to the wisdom or manner of carrying out the project.
- CEQA Guidelines 15268.state: “(a) Ministerial projects are exempt from the requirements of CEQA. The determination of what is “ministerial” can most appropriately be made by the particular public agency involved based upon its analysis of its own laws, and each public agency should make such determination either as a part of its implementing regulations or on a case by-case basis. (b) In the absence of any discretionary provision contained in the local ordinance or other law establishing the requirements for the permit, license, or other entitlement for use, the following actions shall be presumed to be ministerial :(1) Issuance of building permits....”
- WHEREAS, Section 21080.35 of the Public Resources Code establishes a statutory exemption from CEQA for certain solar energy systems:

21080.35. (a) Except as provided in subdivision (d), this division does not apply to the installation of a solar energy system on the roof of an existing building or at an existing parking lot.

(b) For the purposes of this section, the following terms mean the following: (1) "Existing parking lot" means an area designated and used for parking of vehicles as of the time of the application for the solar energy system and for at least the previous two years. (2) "Solar energy system" includes all associated equipment. Associated equipment consists of parts and materials that enable the generation and use of solar electricity or solar-heated water, including any monitoring and control, safety, conversion, and emergency responder equipment necessary to connect to the customer's electrical service or plumbing and any equipment, as well as any equipment necessary to connect the energy generated to the electrical grid, whether that connection is onsite or on an adjacent parcel of the building and separated only by an improved right-of-way. "Associated equipment" does not include a substation.

(c) (1) Associated equipment shall be located on the same parcel of the building, except that associated equipment necessary to connect the energy generated to the electrical grid may be located immediately adjacent to the parcel of the building or immediately adjacent to the parcel of the building

and separated only by an improved right-of-way. (2) Associated equipment shall not occupy more than 500 square feet of ground surface and the site of the associated equipment shall not contain plants protected by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

(d) This section does not apply if the associated equipment would otherwise require one of the following: (1) An individual federal permit pursuant to Section 401 or 404 of the federal Clean Water Act (33 U.S.C. Sec. 1341 or 1344) or waste discharge requirements pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code).

(2) An individual take permit for species protected under the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code).

(3) A streambed alteration permit pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code. (e) This section does not apply if the installation of a solar energy system at an existing parking lot involves either of the following:

(1) The removal of a tree required to be planted, maintained, or protected pursuant to local, state, or federal requirements, unless the tree dies and there is no requirement to replace the tree.

(2) The removal of a native tree over 25 years old.

(f) This section does not apply to any transmission or distribution facility or connection.

THEREFORE BE IT RESOLVED that the City Council of the City of Richmond finds that the Department of Planning and Building Services shall implement California State law as strictly defined by the Legislature in the statutes and in the CEQA Guidelines as follows:

- A “solar energy system” shall mean 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 and shall not be limited to residential systems or systems mounted on buildings and may include ground-mount systems.
- A “solar energy system” shall be allowed in any zoning district or General Plan designated area.
- A solar energy system shall be permitted ministerially, and any permit conditions shall be limited to those reasonably protecting the health and safety of the public and persons involved in the construction and operation of the system.
- An application for a solar energy system shall be subject to ministerial review by the City building official. The building official’s review of the solar energy system application shall be limited to whether the solar energy system meets all health and safety requirements of local, state, and federal law. Any permit conditions shall be limited to those reasonably protecting the health and safety of the public and persons involved in the construction and operation of the system in accordance with building and other code requirements.
- The building official shall ministerially approve applications for solar energy systems unless the building official makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety. The building official’s findings are appealable to the Planning Commission pursuant to Government Code Section 65850.5 (d).
- Ministerial application requirements and conditions may include those customarily used for other ministerial permits, including submission of drawings and specifications, structural calculations when appropriate and surveys to confirm property rights and boundaries. Solar Energy systems shall conform to setbacks and height limits otherwise defined in the General Plan and Zoning Ordinance, shall not encroach on BCDC 100-foot jurisdiction without a

BCDC permit and shall not encroach on streams or wetlands<sup>4</sup> or destroy critical habitat of endangered species<sup>5</sup>. For more information, see *California Solar Permitting Guidebook*, Governor's Office of Planning and Research ([http://opr.ca.gov/docs/California\\_Solar\\_Permitting\\_Guidebook.pdf](http://opr.ca.gov/docs/California_Solar_Permitting_Guidebook.pdf)).

- CEQA review shall not be required for any solar energy system application that is subject to ministerial review by the building official.
  - CEQA shall not apply to any solar energy system on an existing roof or parking lot unless one of the conditions in 21080.35(d) applies.
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<sup>4</sup> Requiring an individual federal permit pursuant to Section 401 or 404 of the federal Clean Water Act (33 U.S.C. Sec. 1341 or 1344) or waste discharge requirements pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) streambed alteration permit pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code

<sup>5</sup> Contain plants protected by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code)

I certify that the foregoing resolution was passed and adopted by the Council of the City of Richmond at a regular meeting thereof held on **June 17, 2014**, by the following vote:

AYES: Councilmembers Bates, Boozé, Butt, Myrick, Rogers, Vice Mayor Beckles, and Mayor McLaughlin.

NOES: None.

ABSENT: None.

ABSTENTION: None.

DIANE HOLMES  
CLERK OF THE CITY OF RICHMOND

(SEAL)

Approved:

GAYLE MCLAUGHLIN  
Mayor

Approved as to form:

BRUCE GOODMILLER  
City Attorney

State of California     }  
County of Contra Costa     : ss.  
City of Richmond     }

I certify that the foregoing is a true copy of **Resolution No. 56-14**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on June 17, 2014.