# Office of the City Attorney
# Memorandum

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Principal Planner

**FROM:** REBECCA MOON
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**SUBJECT:** **SOLAR ACCESS**

**DATE:** June 30, 2016

## OVERVIEW OF SOLAR RIGHTS IN CALIFORNIA

Somewhat surprisingly, American law does not recognize any general right to prevent a property owner from blocking a neighbor's access sunlight.[1] Property rights were historically viewed as extending to the limits of the sky, which gave property owners an essentially unrestricted right to build vertically. In addition, economic development of property was favored over neighbors' interests in preserving access to sunlight and air.[2]

In reaction to these legal principles, which sometimes had harsh results, many local governments enacted legislation to ensure that property owners cannot exercise their development rights in ways that have a detrimental impact on neighbors. The primary legislative tools to preserve access to sunlight and air include zoning, setbacks, and building height limitations. These laws are enacted through a city's police power and are constitutional as long as the restrictions are reasonably related to the public interest and do not deprive a property owner of all economic use of their property.[3]

Solar easements are another legal tool sometimes used to ensure that solar energy systems will have access to sunlight. A solar easement gives one property owner the right to prevent another property owner from building a structure or allowing landscaping that causes excess shade. Because solar easements are an agreement between private parties, they can go beyond the development restrictions imposed by the city's zoning code. Once created and recorded, the easement is binding on future owners of the property. A major limitation is that solar easements

[1] "As a general rule, a landowner has no natural right to air, light or an unobstructed view and the law is reluctant to imply such a right." *Pacifica Homeowners' Assn. v. Wesley Palms Retirement Community* (1986) 178 Cal.App.3d 1147, 1152.
[2] In an article about solar access laws over a century ago, the *New York Times,* July 7, 1878, p.6, argued that "encouragement of building is more needed than restrictions upon it".
[3] *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 604.

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have to be privately negotiated and purchased. Also, enforcement options are generally limited to filing a private lawsuit.

Some cities have adopted ordinances that require developers to convey and record solar easements for each parcel at the time a property is subdivided. (Gov. Code Section 66475.3.) These ordinances, however, only apply to future construction. As a result, they tend to have the greatest impact in cities where there are still significant tracts of undeveloped land. In cities that are largely built out, appropriate building height and setback requirements coupled with local solar access ordinances are a more effective way to preserve solar access for most residents.

During the 1970's, the state of California enacted two laws designed to encourage use of solar energy by protecting access to sunlight. The Solar Rights Act requires HOAs and local government agencies to allow the installation of solar energy systems (Civil Code 714). The Act also authorizes (but does not require) the creation of solar easements (Civil Code 801.5) and requires local government agencies to adopt streamlined permitting processes for solar energy systems (Gov. Code 65850.5).

The Solar Shade Control Act (Pub. Res. Code 25980 et seq.) provides limited protection to owners of solar energy systems from shading caused by trees and shrubs on adjacent properties. The law prevents a property owner from allowing trees or shrubs to shade an existing solar energy system installed on a neighboring property, provided the shading trees or shrubs were planted after the solar collecting device was installed. The Solar Shade Control Act only applies to vegetation, not structures.

Sunnyvale is one of only a handful of cities nationwide that have adopted ordinances to prevent shading of solar systems. Ashland, Oregon, and Boulder, Colorado (which are often cited as model ordinances), allow the owner of a solar collection system to apply for a "solar permit" that prevents neighboring property owners from allowing vegetation to shade existing solar collectors. Ashland and Boulder also use the concept of a "solar fence" to limit shading from new construction. If properly drafted, solar access ordinances can have essentially the same impact as privately-negotiated solar easements. A downside, however, is that solar access laws may be perceived as unfairly restricting development, particularly on properties with unusual site characteristics.