

# **Broadmoor Huntington Harbour Community Association**

## **Policy on Solar Energy Systems**

### **Introduction**

Broadmoor Huntington Harbour Community Association (“Association”) recognizes the benefits of renewable energy sources, encourages use of a solar energy system(s) (“SES”) within the community, and is committed to working with Owners<sup>1</sup> interested in installing SES.

The Association recognizes that in order to fulfill its responsibilities, it must impose reasonable restrictions on installations of SES. Therefore, the Association has adopted this *Policy on Solar Energy Systems* (“Policy”), which places reasonable restrictions that do not significantly increase the cost of an SES or significantly decrease its efficiency or specified performance. In addition, this Policy ensures that a uniform and reasonably high standard of attractiveness is maintained within the community, and that the Association is able to continue to meet its obligations for the maintenance, repair, and replacement of the common area roofs and other building components.

Since these systems, by nature, must be installed externally, the Association has established this Policy, including the guidelines described below, regarding the installation of SES within the community. This Policy is based on, and designed to comply with, the Solar Rights Act and other related statutory provisions, specifically including California Civil Code §§ 714, 714.1, and 4746, and as they may be amended from time to time. The Policy is designed to aid Owners in developing their solar projects within Association expectations, thereby minimizing the time for review and approval by the Association’s Board of Directors (“Board”). Interpretation, variances, and implementation of the *Declaration of Conditions, Covenants and Restrictions for Broadmoor Huntington Harbour* (“CC&Rs”) and other rules and policies of the Association (collectively “Governing Documents”) are at the sole determination of the Board. This Policy supersedes any and all previous SES policies and guidelines promulgated by the Association, if any.

### **Definition**

An SES is defined as any solar collector or other solar energy device or any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and/or distribution of solar energy for space heating, space cooling, electricity generation, or water heating.

The following common SES are included in the above definition:

- Photovoltaics (solar electric).
- Solar water heating for use within a building.
- Solar heating for space heating.

---

<sup>1</sup> All capitalized terms not defined herein shall have the same meaning given such term in the *Declaration of Conditions, Covenants and Restrictions for Broadmoor Huntington Harbour*.

Other roof mounted fixtures, features, and equipment which are not the purview of this Policy shall include, but not be limited to, skylights, roof windows, light tubes, HVAC equipment, ducts, piping, conduits, water tanks and collectors, and any other items that alter the existing profile, shape, texture, material, color, and/or form of the roof.

## **Guidelines**

1. All installations or alterations of SES must be approved in writing by the Board prior to commencing any construction activities. The Association may require, prior to providing its approval, that the Owner provide evidence that he or she has obtained all necessary governmental permits. Any Owner who seeks to install an SES without prior written permission and approval of the Board, shall be responsible for all costs incurred to remove, relocate, or modify the SES, including attorney's fees and costs.
2. The plans and specifications must include, at a minimum, the following:
  - a. Details on all components of the SES, proposed locations of all components, and description of how the components will be installed.
  - b. Samples of the proposed SES and manufacturer's product literature shall be submitted with the application to the satisfaction of the Board.
  - c. Drawings/plans/renderings/elevations "illustrating" the SES components (including, without limitation, materials, shape, dimensions, color, etc.) and where the SES components will be installed on the building.
  - d. Calculations shall be provided with the initial application verifying the number and/or area of panels required for the proposed SES, including the estimated load per square foot of the SES on the building.
  - e. Confirmation that the installer of the SES is a licensed contractor ("SES Contractor") who agrees to indemnify the Association for any damage caused to Association Property as a result of construction/installation of the SES.
  - f. Any other information the Board may require.
3. The Board shall have the right to disapprove an application for a proposed SES based on aesthetics pertaining to profile, size, mass, color, texture, material, and other criteria considered by the Board pursuant to the Governing Documents, this Policy, and these guidelines.
4. No SES shall be installed unless it meets all applicable standards and requirements imposed by state and local permitting authorities, and all applicable safety and performance standards established by the California Electrical Code and the Institute of Electrical and Electronics Engineers, accredited testing laboratories, such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability. While the Association and the Board are not responsible for verification of such equipment's compliance with any and all applicable governing regulations, requirements, and standards, the Association and Board will require that all Owners install only those systems that meet and satisfy any and all applicable governing regulations, requirements, and standards. Whether specifically stated in

the Board's written approval or not, all approvals are based on the condition that the SES complies with all such governmental regulations, requirements, and standards.

5. Once approved in writing by the Board, but prior to installation, the SES Contractor shall perform an inspection of all roofing components and comply with the following:
  - a. Determine the estimated usable life span of the existing roof;
  - b. Verify that the existing roof has an estimated usable life span to meet or exceed the manufacturer warranty for the SES;
  - c. Verify that the existing roof is compatible with the intended SES;
  - d. Submit an additional and/or revised proposal to the Owner and the Board if any additional roofing, waterproofing, or fireproofing is required beyond the scope of work submitted with the application;
  - e. Provide a written report and photographic record of the condition of the existing roof to comply with this Section 5 and submit the same to the Board.
6. Solar panels must be installed solely on existing roof space on the building in which the Owner resides. Any other such proposals must include justification clearly evidencing that it is not possible to achieve sufficient energy capture (defined as up to 90% of historic electric usage averaged over at least one (1) year in the required location), or the cost of installing the panels in the required location would be higher than \$1,000.00 or more compared to the proposed variance location. In the event that Owners can meet either threshold, all efforts will be made to adhere to all other requirements pursuant to this Policy.
7. Approval of solar energy equipment shall be primarily based on the proposed design and installation that has minimal visual impact on neighboring properties, while conforming to existing state laws concerning safe and efficient placement of collector units. The Association requires that roof-mounted panel designs be intended to conform to existing roofline geometry. A key element of maintaining architectural harmony within the community is to avoid deviations from existing rooflines. Accordingly, all Solar Panels must be parallel with the roofline and must conform to the slope of the roofline and meet all set-back requirements from top and side leading edges of the building. Solar collectors should be flush-mounted and should not extend above the ridge of the roof or beyond the roof footprint. The panel distances above the existing roof surfaces are to be minimized as much as practically possible. Racking elements should not be visible. All plumbing, electrical, and utility lines for the SES shall be concealed from view.
8. All mechanical equipment exposed to the exterior, including exposed piping, support structures (racking), and electrical conduits, shall be located in a manner which minimizes visual impact. The mechanical equipment must be painted to match the adjacent surface, including the roof and building's color scheme. For example, pipes on walls should be painted the color of the walls, while roof plumbing/conduits should be the color of the roof. No exposed wiring is allowed. Wiring shall be housed in conduits painted to match the adjacent surfaces and routed through the attic or walls whenever possible. Aluminum trim, if used and visible, should be anodized and black in color unless color matched to the building surfaces. If colored solar panels are available

in colors other than black, the Owner must seek to color match with the roof. The Association strongly encourages Owners to select colors that best match or compliment the roof color and harmonizes with the exterior color scheme.

9. The Owner of an SES will be responsible for maintaining the system in good condition and repair with regard to function and appearance. Periodic washing of the panels will improve both performance and appearance and will maximize the Owner's investment. Frequency will vary from location to location. Should the SES not be properly installed or maintained resulting in visual and/or aesthetic nuisance, the Association and Board reserve the right to enforce any of the Association's rights under the Governing Documents to ensure compliance that may include, but not be limited to, fines and/or litigation. All persons employed by the Owner to install, maintain, and repair the SES shall be licensed and insured and meet the criteria set forth herein. All repairs and maintenance to an installed SES shall meet all of the aesthetic and other requirements herein.
10. It is recommended that Owner obtain at least a five (5) year SES components warranty from the SES Contractor, with language similar to the following: *"If a defect in workmanship, inclusive of any labor and materials, is discovered within five (5) years from the date of completion of the SES, Contractor warrants and agrees to: (i) remedy the defective conditions and facilitate any and all necessary repairs/replacement all at no charge to the Owner or the Association for the cost of any materials, supplies, labor and/or other costs to facilitate said remedies; (ii) commence such remedies within three (3) business days after being notified of the same and complete the repairs within a reasonable period of time thereafter."*
11. Aside from any color-matched portions, panels should have black anodized frames and black back-sheets to preserve and maximize the aesthetic integrity of the roof and surroundings. Natural aluminum frames are not permitted. Panels must feature anti-reflective, non-glare glass surfaces and must be installed in a manner that reduces glare to the fullest extent possible.
12. No SES shall be installed other than by an installer holding all licenses which may be required by state law and local ordinance. The installer shall be an active business entity with the California Secretary of State, and shall maintain a current policy of public liability, workers compensation, and property damage insurance which does not contain any endorsements or exclusions for work performed at homeowner associations or condominiums. The Association, the Association's managing agent, and the installing Owner(s) shall be named as additional insureds on the installer's policy of insurance.
13. It is strongly recommended that Board approval be obtained *prior* to executing a binding contract with a solar sales/installation company.
14. In the event Owners desire to add to or modify an existing SES that was installed prior to the implementation of this Policy, the following guidelines apply:

- a. If approved based upon the previously stipulated exceptions, all new panels visible from the front or front sides (defined as “drive-by” view), must have a black anodized frame and black back-sheets and meet all other guidelines outlined herein.
  - b. If an existing system is visible from the front or front sides (defined as “drive-by” view) the panels must match the existing panels and represents the only exception in which panels with non-black frames and non-black back-sheets may be installed on surfaces which can be viewed from the front or front sides (defined as “drive-by” view).
15. The execution of a Solar Release and Indemnity Agreement (“Agreement”) regarding the installation of the SES and the ongoing maintenance of the roof, SES, and roof penetration components shall be a condition precedent to the approval of any application to install or use an SES. Such Agreement may be recorded in the county recorder’s office. Owners shall provide the signed and notarized Agreement to the Board and/or management. Any application for the installation of an SES shall be automatically deemed to be denied unless and until such Agreement is executed by the Owner. The cost for the preparation of such an Agreement (plus the cost of recordation) is to be paid by the Owner.
16. In addition to complying with the guidelines described herein, when an Owner requests to install an SES on an Association Property roof that is shared by more than one (1) Owner, the Owner must also comply with the following guidelines:
- a. The Owner is required to notify each Owner of a Unit in the building on which the installation will be located of the application to install an SES, and so indicate in the application that they have complied with Civil Code § 4746 which mandates “an applicant to notify each owner of a unit in the building on which the installation will be located of the application to install a solar energy system.”
  - b. The Owner (and each successive owner) must maintain a homeowner liability coverage insurance policy at all times and provide the Association with the corresponding certificate of insurance within fourteen (14) days of approval of the application to install an SES, and annually thereafter. The homeowner liability coverage insurance policy shall contain an additional insured endorsement naming the Association and its managing agent as additional insureds.
  - c. The Owner-applicant must submit a solar site survey to the Association prepared by a licensed contractor or the contractor’s registered salesperson knowledgeable in the installation of SES, which states the total usable solar roof area on the Owner’s building, the equitable allocation of the total usable solar roof area per unit in the building, and the proposed location of the Owner-applicant’s SES on the survey. The cost of this survey shall not be included in the calculation of whether the restriction significantly increases the cost of the SES, pursuant to Civil Code § 4746, subdivision (b)(1)(A). The document containing the results of said survey shall be provided to all owners of a Unit in the building on which the installation will be located.
  - d. The Owner (and each successive owner) of the SES, shall be responsible for all of the following: (i) costs for damage to Association Property, Exclusive Use Areas, or separate interests resulting from the installation, maintenance, repair, removal, or replacement of

the SES; (ii) costs for the maintenance, repair, and replacement of the SES until it has been removed, and for the restoration of Association Property, Exclusive Use Areas, or separate interests after removal; and (iii) disclosing to prospective buyers the existence of any SES and the related responsibilities of the Owner under this Policy and the Agreement.

17. If required by the Association, Owner shall retain the services of a duly licensed structural engineer (as defined in California Business & Professions Code § 6736) to make a determination that the structural integrity of the roof of the building on which the installation will be located is adequate to support the SES to be installed.
18. Owners shall be solely responsible for the increase in any costs to maintain, repair, and/or replace the roof and any other building components as a result of the installation of the SES. Such maintenance includes, but is not limited to, costs arising out of removal of tree material from and around the SES, prevention of rodent nesting, damage caused by water and/or any foreign object, including balls, tree limbs, wind, weather, or any other cause. The SES may need to be lifted and/or removed to allow for the ongoing maintenance of the roof, and Owners shall be solely liable for such costs. Upon request from the Association, the Owner shall have the SES lifted or removed within fourteen (14) days to accommodate repairs and maintenance to the roof or other building components. If Owners fail to lift or remove the SES within the allotted time, the Association shall be authorized to cause the lifting or removal of the SES and charge the actual cost of the same to Owners as a special assessment. In no event shall the Association be responsible for the costs of lifting, removing, and/or reinstalling the SES, or for any increase in Owners' utilities during times which the SES is inoperable for any reason.
19. All SES roof mounted hardware shall be waterproofed in compliance with the National Roofing Contractors Association specifications and recommendations.
20. Owners who install a SES shall indemnify or reimburse the Association and/or its members for loss or damage caused by the installation, maintenance, or use of the SES.
21. Prior to the sale or transfer of any SES equipped property, either: (i) the SES must be removed, and the roof put back into its original condition, or (ii) the transferee of the property must sign a counterpart addendum to the Agreement, whereby the transferee agrees to assume, abide by, and be bound by all of the terms therein.
22. The Association shall retain the right to inspect the SES and verify that SES installation adheres to all of the provisions of the Policy.
23. In any action resulting from a dispute between Owner(s) and other owners, or Owner(s) and the Association, related to the installation of the SES, or any provisions of this Policy, the prevailing party shall be awarded its reasonable attorney's fees.
24. All parties will cooperate to take any and all actions, and sign all documents reasonably necessary to effectuate the intent, and to carry out the provisions, of this Policy.