



Shedding Light on Solar Compliance Costs

Landlords and tenants will need to consider how expenses related to new energy ordinances are allocated, according to attorney Stephen Toohill.

By [Stephen Toohill](#)

March 4, 2020



A commercial real estate developer evaluating a potential commercial development or negotiating a commercial lease must analyze costs relating to compliance with local and state laws, as well as consider risk allocation in a lease. In the last few decades, different issues have dominated the “legal compliance” landscape, such as sprinkler retrofits/upgrades and the Americans with Disabilities Act requirements.

As the sun rises on the 2020s, an issue to consider is potential new city or local jurisdictional requirements relating to solar energy. For example, the City of Carlsbad, Calif., recently enacted an ordinance (CS-347) requiring the installation of photovoltaic energy systems, as well as water heating systems requirements.

Although the recently imposed requirements apply primarily to new non-residential construction, the ordinance also applies to certain building additions or alterations. For example, alterations with a permit valuation of \$1 million or more or which affect 75 percent or more of the existing floor area of a building are within the scope of Carlsbad’s new ordinance.

The adoption or potential adoption of these solar energy ordinances are important to consider in a commercial lease context. A landlord and tenant will need to consider how such “solar compliance” costs are allocated between the parties. For example, if a landlord is providing a tenant improvement allowance and the tenant improvement project exceeds the ordinance threshold, does the obligation to comply with the

ordinance fall on the tenant as a deduction from the tenant improvement allowance, or on the landlord as a compliance with law obligation?

TENANT IMPROVEMENTS AND SOLAR ENERGY

One way to address this issue from a tenant's standpoint is to indicate that any and all compliance with law obligations not related to tenant's specific improvements and triggered merely by the dollar threshold of the permit or work to be completed would be the obligation of the landlord at the landlord's cost.

Another solar-related issue, in a commercial lease context, relates to potential requirements to install charging facilities for automobiles. The terms of the lease should identify which party bears the costs and risks relating to required compliance.

A landlord also has solar-related issues to consider. For example, does the lease permit the landlord to pass through at least an amortized portion of any capital expenditure to install solar in a building or project?

If this is not an obligation that can be passed through or if perhaps the solar system is installed prior to the negotiation of a lease, should the landlord consider incorporating a provision indicating that the tenant should pay for all electrical power consumed as if the solar system had not been installed as way to recoup some of the capital expenditure incurred? There are methods to compute and determine these amounts.

Obviously, another possibility, in lieu of incorporating this language in the lease, would be to take into consideration the solar improvements the landlord has already made in determining the lease rental structure. This alternative may be more difficult for a landlord to justify to a tenant through an increased rental rate when a tenant is just considering lease market comparable rates.

Finally, in many states, including California, energy-related ordinances are subject to state commission approval to ensure that they meet or exceed statewide standards (often both energy and building code related) and are cost effective.

Parties to a commercial real estate transaction would be wise to carefully consider all solar-related legal compliance issues to avoid potentially expensive surprises in a commercial lease context, as well as in evaluating overall development costs.

*Stephen Toohill is a partner at **Solomon Ward Seidenwurm & Smith LLP**.*

<https://www.cpexecutive.com/post/shedding-light-on-solar-compliance-costs/>