

Solar Energy Permit Process

Background:

- AB 2188 was approved September 21, 2014 by the Governor to promote and encourage solar energy systems by removing process obstacles and minimizing permit costs for small rooftop solar energy systems
- City must comply by Sept 30, 2015 to create an expedited, streamlined permit process—failure to comply means City can't receive state-sponsored solar energy grant/loan funds
- City shall administratively approve applications. Building Official review shall be limited to compliance with health and safety requirements.
- Applicant must be able to appeal decision to deny the permit
- Any conditions imposed must mitigate the specific adverse impact upon the public health and safety at the lowest cost possible.
- Electronic submittals and signatures are required (or City must adopt findings to justify).
- Proposal will regulate solar energy systems as a limited use in all zones.
- City Attorney confidential memo to DSD dated June 23, 2010 addresses solar panels added to existing structures in Coastal Height Limit Overlay Zone.

§141.0418 Solar Energy Systems

- (a) This section regulates the following solar energy system types, which for the purpose of this section are collectively referred to as solar energy systems, except where necessary to explicitly distinguish between the two types:
- (1) Small rooftop solar energy systems: Small rooftop solar energy systems are those devices or structural design features of a building whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating or cooling, electric generation, or water heating, which are not larger than 10 kilowatts alternating current nameplate rating or 30 kilowatts thermal and are installed on a single dwelling unit or duplex development.
- (2) Other solar energy systems: The subcategory “other solar energy systems” applies to any other solar energy system devices or structural design features of a building whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating or cooling, electric generation, or water heating that are not within the scope of a small rooftop solar energy system per Section 141.0418(a)(1).
- (b) Solar energy systems are permitted as a limited use in the zones indicated with an “L” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the regulations in Section 141.0418(b). The regulations are intended to facilitate the use of renewable energy technology to meet environmental and energy goals and meet state law provisions that explicitly apply to small rooftop solar energy systems and require

administrative approvals in a timely manner and a process for an *applicant* to appeal a denial to the Planning Commission.

- (1) Installation of a solar energy system shall require an Electrical Permit, and a Building Permit where applicable in accordance with Section 141.0418(b)(2). The applications shall be submitted in accordance with Sections 112.0102 and 129.0105.
 - (2) In addition to the Electrical Permit, a Building Permit shall be obtained if either of the following apply:
 - (A) Structural modifications to the existing *structure* are necessary to support the solar energy system; or
 - (B) *Development* of a new *structure* will be necessary to support the solar energy system.
 - (3) Solar energy systems are exempt from the regulations requiring undergrounding of utilities and from the screening requirements required by Section 142.0910.
 - (4) Solar energy systems as an *accessory use* are permitted in side *yards* and rear *yards* as standalone equipment or where securely attached to a *structure* that is permitted to project or encroach in the required *setback* in accordance with Section 131.0461.
 - (5) Solar energy systems shall comply with all applicable height limits, except that solar panels may be added to a *previously conforming structure* that does not conform to the existing height limit of the Coastal Height Limit Overlay Zone (Section 132.0505) or the Clairemont Mesa Height Limit Overlay Zone (Section 132.1305), if the proposed solar panels do not exceed the height of the existing *structure*, consistent with the California Solar Rights Act.
 - (6) None of the regulations in Section 141.0418 grant any deviation from the Environmentally Sensitive Lands Regulations (Chapter 14, Article 3, Division 1) or Historic Resource Regulations (Chapter 14 Article 3, Division 2).
- (c) Special Permit Review Requirements for Small Rooftop Solar Energy Systems
- (1) In reviewing the *construction permit* application for a small rooftop solar energy system, the Building Official shall evaluate only whether the small rooftop solar energy system meets applicable health and safety requirements of local, state, and federal law.
 - (2) The Building Official shall administratively approve the small rooftop solar energy system, unless the Building Official determines there is substantial evidence of a specific, adverse impact upon the public health and safety, which

for the purpose of this section means a significant, quantifiable, direct, and unavoidable impact based on objective, identified, and written public health and safety standards, policies, or conditions as they existed on the date the application was deemed complete, and there is no feasible method or alternatives to satisfactorily mitigate or avoid the specific, adverse impact.

(3) If the Building Official determines that the proposed small rooftop solar energy system could have a specific, adverse impact upon the public health and safety, then the Building Official shall issue written *findings* notifying the *applicant* that:

(A) The permit for the small rooftop solar energy system is denied, and the basis for that denial in accordance with Section 141.0418(c)(1);

(B) Pursuant to state law, an *applicant* may appeal a decision of the Building Official in accordance with the appeal procedures in Section 141.0418(c)(4);

(C) To appeal the Building Official decision, the *applicant* shall file an application for a Process Two appeal hearing with the City Manager no later than 12 *business days* after the *decision date* by the Building Official; and

(D) The *applicant* shall be responsible for all administrative costs associated with processing the appeal.

(4) Process for Applicant to Appeal. Notwithstanding Section 112.0504, the Process Two appeal hearing shall be subject to the following:

(A) Persons Who Can Appeal. The decision of the Building Official may be appealed to the Planning Commission by the *applicant*. No other persons can appeal.

(B) Request for a Process Two Appeal hearing. The *applicant* may appeal a decision of the Building Official by filing an application for a Process Two appeal hearing with the City Manager no later than 12 *business days* after the *decision date*. The application shall include the contents for appeal identified in Section 112.0510(a).

(C) Grounds for Appeal. The decision of the Building Official may be appealed on the grounds that the stated finding to deny the permit is not supported by the information provided to the decision maker.

(D) Scheduling an Appeal Hearing. The City Manager shall assign a date for an appeal hearing before the Planning Commission no later than 10 calendar days after the date on which an application for the appeal hearing is filed with the City Manager. The appeal hearing shall generally be held

within 60 calendar days following the filing of the application for the hearing.

(E) Power to Act on the Decision at Appeal Hearing. The Planning Commission may affirm, reverse, or modify the staff decision to deny a small rooftop solar energy system in accordance with the following:

(i) A decision to affirm the staff decision shall require a *finding* based on substantial evidence in the record that the proposed small rooftop solar energy system could have a specific, adverse impact upon the public health and safety.

(ii) If the Planning Commission determines that there is not substantial evidence that the small rooftop solar energy system could have a specific adverse impact upon the public health and safety, then the staff decision shall be reversed and the project shall be approved.

(iii) If the Planning Commission determines that conditions of approval would mitigate the specific adverse impact upon the public health and safety, then the staff decision shall be reversed and the project shall be conditionally approved. Any conditions imposed shall mitigate at the lowest cost possible, which generally means the permit condition shall not cause the project to exceed 10 percent of the cost of the small rooftop solar energy system or decrease the efficiency of the small rooftop solar energy system by an amount exceeding 10 percent.

§112.0502 Process One

An application for a permit, map, or other matter acted upon in accordance with Process One may be approved or denied by a staff person designated by the City Manager pursuant to Section 111.0205. A public hearing will not be held, unless an appeal hearing is otherwise required as set forth in Section 141.0418.

§129.0107 Decision Process for Construction Permits

A decision on an application for a *construction permit* shall be made in accordance with Process One, except where state law requires an appeal hearing. The type of permit, ~~and the~~ decision maker, and appeal rights if any, are described in Chapter 12, Article 9, Divisions 1 through 8.

§129.0308 Decision Process for an Electrical Permit

(a) A decision on an application for an Electrical Permit shall be made by the Building Official in accordance with Process One, except where state law requires an appeal provision as described in Section 129.0308(b). The Electrical Permit shall be approved if the Building Official determines that the work described in the permit application and the

accompanying plans complies with the requirements of the Electrical Regulations, other applicable laws and ordinances, and any applicable *development permit*.

- (b) In accordance with state law, an applicant may appeal a Building Official's denial of a permit application for a small rooftop solar energy system by filing an application for a Process Two appeal hearing as further described in Section 141.0418(c).

§142.0905 When Mechanical and Utility Equipment Screening Regulations Apply

This division applies to all multiple unit residential, commercial, and industrial *development* that proposes mechanical or utility equipment, whether or not a permit or other approval is required for the *development*, except that solar energy systems are exempt where developed in accordance with Section 141.0418.

~~§142.0911 Solar Energy Systems~~

- ~~(a) Solar energy systems as an accessory use are exempt from the requirements of Section 142.0910(a) and from regulations requiring undergrounding of utilities.~~
- ~~(b) Solar energy systems are permitted within rear and side yards.~~

§131.0222 Use Regulations Table for Open Space Zones

The uses allowed in the open space zones are shown in Table 131-02B.

**Table 131-02B
 Use Regulations Table of Open Space Zones**

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones					
	1st & 2nd >>	OP-		OC-	OR ⁽¹⁾ -		OF ⁽¹¹⁾ -
	3rd >>	1-	2-	1-	1-		1-
	4th >>	1	1	1	1	2	1
Open Space through Residential [No change]							
Institutional							
Separately Regulated Institutional Uses							
<u>Solar Energy Systems</u>		<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>

§131.0322 Use Regulations Table for Agricultural Zones

The uses allowed in the agricultural zones are shown in Table 131-03B.

**Table 131-03B
 Use Regulations Table of Agricultural Zones**

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones			
	1st & 2nd >>	AG		AR	
	3rd >>	1-		1-	
	4th >>	1	2	1	2
Open Space through Residential [No change]					
Institutional					
Separately Regulated Institutional Uses					
Solar Energy Systems					
		L		L	

§131.0422 Use Regulations Table for Residential Zones

The uses allowed in the residential zones are shown in the Table 131-04B.

**Table 131-04B
 Use Regulations Table of Residential Zones**

Use Categories/ Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones																						
	1st & 2nd >>	RE-	RS-												RX-		RT-							
	3rd >>	1-	1-												1-		1-							
	4th >>	1	2	3	1	2	3	4	5	6	7	8	9	10	11	12	13	14	1	2	1	2	3	4
Open Space through Residential [No change]																								
Institutional																								
Separately Regulated Institutional Uses																								
Solar Energy Systems																								
		L																	L					

Use Categories/ Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones												
	1st & 2nd >>	RM-												
	3rd >>	1-			2-			3-			4-		5-	
	4th >>	1	2	3	4	5	6	7	8	9	10	11	12	
Open Space through Residential [No change]														
Institutional														
Separately Regulated Institutional Uses														
<u>Solar Energy Systems</u>		L			L			L			L		L	

§131.0522 Use Regulations Table for Commercial Zones

The uses allowed in the commercial zones are shown in Table 131-05B.

**Table 131-05B
 Use Regulations Table for Commercial Zones**

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones										
	1st & 2nd >>	CN ⁽¹⁾ -			CR-		CO-		CV-		CP-	
	3rd >>	1-			1-	2-	1-		1-		1-	
	4th >>	1	2	3	1	1	1	2	1	2	1	
Open Space through Residential [No change]												
Institutional												
Separately Regulated Institutional Uses												
<u>Solar Energy Systems</u>		L		L		L		L		L		

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones																	
	1st & 2nd >>	CC-																	
	3rd >>	1-			2-			3-			4-			5-					
	4th >>	1	2	3	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5
Open Space through Residential [No change]																			
Institutional																			
Separately Regulated Institutional Uses																			
<u>Solar Energy Systems</u>		<u>L</u>			<u>L</u>			<u>L</u>			<u>L</u>			<u>L</u>			<u>L</u>		

§131.0622 Use Regulations Table for Industrial Zones

The uses allowed in the industrial zones are shown in Table 131-06B.

**Table 131-06B
 Use Regulations Table for Industrial Zones**

Use Categories/ Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones									
	1st & 2nd >>	IP-			IL-			IH-		IS-	IBT-
	3rd >>	1-	2-	3-	1-	2-	3-	1-	2-	1-	1-
	4th >>	1	1	1	1	1	1	1	1	1	1
Open Space through Residential [No change]											
Institutional											
Separately Regulated Institutional Uses											
<u>Solar Energy Systems</u>		<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>