



THE CITY OF SAN DIEGO

REPORT TO THE PLANNING COMMISSION

DATE ISSUED: June 1, 2015 **REPORT NO. PC-15-066**

ATTENTION: Planning Commission, Agenda of June 18, 2015

SUBJECT: SOLAR ENERGY SYSTEMS ORDINANCE: LAND DEVELOPMENT CODE/LOCAL COASTAL PROGRAM AMENDMENT (PROCESS 5)

SUMMARY

Issue: Should the Planning Commission recommend approval to the City Council of the Solar Energy Systems ordinance that amends the City's Land Development Code (LDC) and Local Coastal Program?

Staff Recommendation: Recommend approval to the City Council of the proposed code amendments, including LDC Chapter 11, Article 2; Chapter 12, Article 9; Chapter 13, Article 1; Chapter 14, Articles 1 and 2; and Chapter 15, Articles 1 and 5.

Environmental Review: The proposed amendments were reviewed for consistency with the certified Land Development Code (LDC) Environmental Impact Report (EIR) No. 96-0333 and certified General Plan Update Program EIR No. 104495, in accordance with Public Resources Code Section 21166 and California Environmental Quality Act (CEQA) Guidelines Section 15162. Based on this evaluation, Development Services Department staff determined the project would not result in new impacts or changed circumstances that would require a new environmental document and the previous environmental documents adequately cover these modifications to the LDC.

Fiscal Impact Statement: Costs associated with implementation of the regulations in the future will be covered by project applicants.

Code Enforcement Impact: The proposed amendments would improve predictability and consistency in the approval of solar energy systems.

Housing Impact Statement: The proposed amendments would facilitate approval of small rooftop solar energy systems for single dwelling unit and duplex development.

BACKGROUND

The proposed amendments implement state Assembly Bill 2188 (approved by Governor Brown on September 21, 2014), which amended the Solar Rights Act of 1978, as subsequently amended

in 2004. AB 2188 was intended to facilitate small-scale solar systems on residential rooftops in order to meet the state's "Million Solar Roofs" vision. Additional objectives of the state legislation were to increase the overall use of solar technology, generate jobs in the clean energy industry, and make it easier for the average household to install solar and benefit from the various incentives offered by the state's California Solar Initiative program. If the City demonstrates compliance by September 30, 2015, then the City will remain eligible to apply for and receive state-sponsored solar energy grant funds.

Fortunately, the City of San Diego already provides a streamlined process for approval of solar, which results in timely staff level approvals and minimal permit costs for single dwelling unit rooftop solar systems. Currently, hundreds of permits are approved at the staff level each year within a two day turnaround through the existing expedite program per state law intent. Permit approvals for more complex solar energy systems such as those installed on non-residential and multi dwelling residential development can also be streamlined, but require a full plan review instead of the minimal review required for smaller systems. Existing process options for solar energy systems are described in City Information Bulletins 301 (permit process for solar) and 303 (professional self certification and approval without full plan review).

As a result of the state law change, the City must now begin expediting solar approvals for duplex development in addition to single dwelling unit development. Furthermore, because state law provides for an applicant to appeal the Building Official's decision to Planning Commission, a new customized decision process for small rooftop systems must be created in the code since the Building Official decision on a construction permit is typically non-appealable. The proposed code changes will bring the City into compliance with state law.

To date, the amendments have been presented to the Code Monitoring Team, Community Planners Committee, Technical Advisory Committee, and Chamber of Commerce. A request for public input was posted on the City webpage and distributed via e-mail on April 27, 2015, to all planning group members and interested members of the public. The Endangered Habitat League and California Department of Fish and Wildlife expressed support for the City's proposal to facilitate the installation of solar energy systems without impacting habitat lands. As is typical of the code amendment process, the following recommendations were provided:

Code Monitoring Team (CMT): On April 8, 2015, CMT suggested minor revisions, which have since been incorporated. CMT voted unanimously to recommend approval.

Community Planners Committee (CPC): On April 28, 2015, CPC voted 16-0-3 to recommend approval (Golden Hill, La Jolla, and Mission Beach abstained from the vote).

Technical Advisory Committee (TAC): On May 13, 2015, TAC voted 10-0 to recommend approval of the solar energy systems ordinance.

DISCUSSION

The ordinance would create a new separately regulated use category for "solar energy systems".

Solar energy systems would be allowed in all base zones (including new zones adopted with the Community Plan Implementation ordinance) as a limited use where they meet specified criteria. Solar energy systems would be permitted citywide in accordance with a Process One Electrical Permit (or combination Electrical/Building Permit if the proposal involves a new structure or structural modifications). Within planned districts, an additional planned district ordinance (PDO) permit would not be required.

Proposed limited use criteria is based on existing code provisions and would provide design flexibility with respect to screening, setback encroachment, and installation on existing buildings that are previously conforming for height. Solar energy systems would continue to be exempt from regulations that require undergrounding or screening of mechanical and utility equipment. Also, pursuant to existing code provisions, solar energy systems would be permitted within a side or rear yard where attached to a structure that is permitted to encroach into a setback. The ordinance also clarifies that standalone equipment may encroach per existing encroachment provisions for mechanical equipment. The ordinance in no way grants any encroachment into environmentally sensitive lands or historic resources. Solar energy systems must comply with the City's ESL and historic regulations as applicable. In Mission Beach, they would be subject to the existing Mission Beach PDO encroachment allowances.

Solar energy systems must also comply with applicable height limits. The ordinance clarifies that solar panels may be added to a structure that is previously conforming with respect to height if the solar panels do not exceed the height of the existing structure. This includes solar on previously conforming structures in the Coastal and Clairemont Mesa height limit overlay zones.


Conclusion:

Staff recommends approval of the proposed ordinance in order to comply with state law and local environmental goals and policies. The code amendments are consistent with the adopted Land Development Code goals to simplify land development regulations, to make the code more adaptable, to eliminate redundancies and contradictions, to standardize the land development code framework, and to increase predictability in application of the regulations.

Respectfully submitted,



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VACCHI/AJL

Attachment: Draft code language

Solar Energy Systems Ordinance

§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).

§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					
		OP-		OC-	OR ⁽¹⁾ -		OF ⁽¹¹⁾ -
	1st & 2nd >>						
	3rd >>	1-	2-	1-	1-	1-	
	4th >>	1	1	1	1	2	1
Open Space through Residential [No change]							

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⁾ -	
	3rd >>	1-	2-	1-		1-	1-
	4th >>	1	1	1	1	2	1
Institutional							
Separately Regulated Institutional Uses							
<u>Solar Energy Systems</u>		<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>2</u>	<u>1</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					
<u>Solar Energy Systems</u>		<u>1</u>		<u>1</u>	

§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																									
<u>Solar Energy Systems</u>				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 >>	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	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>		<u>L</u>			<u>L</u>		<u>L</u>		<u>L</u>		<u>L</u>

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																					
Solar Energy Systems		L		L		L		L					L								

§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											
Solar Energy Systems		⌞	⌞	⌞	⌞	⌞	⌞	⌞	⌞	⌞	⌞

§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 approval of a Process One *construction permit* in accordance with the following:
 - (A) An Electrical Permit shall be obtained for a proposed solar energy system, or if the scope of work also involves the *development* of a new *structure* or requires structural modifications to an existing *structure* to support the solar energy system, then a Combination Building Permit and Electrical Permit shall be obtained.
 - (B) The *construction permit* application shall be submitted in accordance with Sections 112.0102 and 129.0105.
 - (C) Within a planned district (subject to Land Development Code Chapter 15), a separate Planned District Ordinance Permit shall not be required in addition to the *construction permit* required for a solar energy system pursuant to Section 141.0418 (b)(1).
- (2) Solar energy systems are exempt from the regulations requiring undergrounding of utilities and from the screening requirements required by Section 142.0910.
- (3) Solar energy systems as an *accessory use* are permitted to encroach into required *yards* and the angled *building envelope* plane as follows:
 - (A) Solar energy systems may encroach into required side *yards* and rear *yards* where securely attached to a *structure* or element of a *structure* that is permitted to project or encroach into the required *setback* or angled *building envelope* plane in accordance with Section 131.0461. Standalone solar energy systems may encroach into required side *yards* and rear *yards* in compliance with Section 131.0461.
 - (B) Within the Mission Beach Planned District Ordinance, proposed *encroachment* of a solar energy system shall comply with Section 1513.0304(d).
- (4) 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.

- (5) 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 order to be eligible for the special permit review in Section 141.0418(c), a solar energy system must meet the definition for a small rooftop solar energy system per Section 141.0418(a) and must comply with applicable height requirements per Section 141.0418(b)(4).
- (2) 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.
- (3) 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.
- (4) 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)(2);
- (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)(5);
- (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.
- (5) 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 *findings* to deny the permit pursuant to Section 141.0418(c)(4) are not supported by substantial evidence.
 - (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.

§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 developed in accordance with Section 141.0418 are exempt from the mechanical and utility equipment screening regulations.

§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.~~

§151.0103 Applicable Regulations

- (a) [No change.]
- (b) The following regulations apply in all planned districts:
 - (1) through (3) [No change.]
 - (4) Solar energy systems regulations contained in Land Development Code Section 141.0418.
 - (4) (5) Alcoholic beverage outlets regulations contained in Land Development Code Section 141.0502;
 - (5) (6) Adult entertainment establishments regulations contained in Land Development Code Section 141.0601; and
 - (6) (7) Child care facilities regulations contained in Land Development Code Section 141.0606; and

- (7) (8) Parking Regulations for Reduced Parking Demand Housing in Land Development Code Section 142.0527, except where the Planned District Ordinance provides a lower parking ratio than allowed in Section 142.0527.
- (8) (9) Medical marijuana consumer cooperative regulations contained in Section 141.0614, when that use is specifically allowed by the Planned District Ordinance.

§155.0238 Use Regulations Table of CU Zones

The uses allowed in the CU zones are shown in Table 155-02C:

Legend for Table 155-02C

[No change in text.]

Table 155-02C

Use Regulations Table for CU Zones

Use Categories/Subcategories [See Land Development Code Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones									
	1st & 2nd	CU-									
	>>	1 ⁽¹⁾		2-			3-				
	3rd >> 4th >>	1	2	3	4	5	3 ⁽²⁾⁽¹²⁾	6	7	8	
Open Space through Institutional [No change in text.]	[No change in text.]										
Separately Regulated Institutional Uses											
<u>Solar Energy Systems</u>	<u>L</u>		<u>L</u>					<u>L</u>			
Commercial Services through Signs, Separately Regulated Signs Uses, Theater Marquees [No change in text.]	[No change in text.]										

Footnotes to Table 155-02C [No change in text.]