

**REGULAR**

**NUMBER: 65.144**

**TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS  
ADDING CHAPTER 1.5 TO TITLE II OF THE MILPITAS MUNICIPAL CODE  
RELATING TO STREAMLINED PERMITTING PROCESS FOR SMALL  
RESIDENTIAL ROOFTOP SOLAR SYSTEMS**

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by \_\_\_\_\_ and was adopted (second reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by \_\_\_\_\_. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

**RECITALS AND FINDINGS:**

**WHEREAS**, the City Council of the City of Milpitas seeks to implement AB 2188 (Chapter 521, Statutes 2014) through the creation of an expedited, streamlined permitting process for small residential rooftop solar energy systems; and

**WHEREAS**, the City Council wishes to advance the use of solar energy by all of its citizens, businesses and industries; and

**WHEREAS**, the City Council seeks to meet the climate action goals set by the City of Milpitas and the State of California; and

**WHEREAS**, solar energy creates local jobs and economic opportunity; and

**WHEREAS**, the City Council recognizes that rooftop solar energy provides reliable energy and pricing for its residents and businesses; and

**WHEREAS**, it is in the interest of the health, welfare and safety of the people of Milpitas to provide an expedited permitting process to assure the effective deployment of solar technology.

**NOW, THEREFORE**, the City Council of the City of Milpitas does ordain as follows:

**SECTION 1. RECORD AND BASIS FOR ACTION**

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

**SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE**

Title II of the Milpitas Municipal Code is hereby amended to add a new Chapter 1.5 to read as follows:

Chapter 1.5 – STREAMLINED SOLAR PERMITTING

Section 1 – Definitions

II-1.5-1.01 - General

For the purpose of this Chapter, certain terms, phrases, words and their derivatives shall be construed as specified in this Section.

1. A “Solar Energy System” means either of the following:
  - a. Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating.
  - b. Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating.
2. A “small residential rooftop solar energy system” means all of the following:

- a. A solar energy system that is no larger than 10 kilowatts alternating current nameplate rating or 30 kilowatts thermal.
  - b. A solar energy system that conforms to all applicable state fire, structural, electrical, and other building codes as adopted or amended by the City and all State and City health and safety standards.
  - c. A solar energy system that is installed on a single or duplex family dwelling.
  - d. A solar panel or module array that does not exceed the maximum legal building height as defined by the City.
3. “Electronic submittal” means the utilization of one or more of the following:
- a. Email;
  - b. The Internet;
  - c. Facsimile.
4. An “association” means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.
5. A “common interest development” means any of the following:
- a. A community apartment project.
  - b. A condominium project.
  - c. A planned development.
  - d. A stock cooperative.
6. “Specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.
7. “Reasonable restrictions” on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.
8. “Restrictions that do not significantly increase the cost of the system or decrease its efficiency or specified performance” means:
- a. For Water Heater Systems or Solar Swimming Pool Heating Systems: an amount exceeding 10 percent of the cost of the system, but in no case more than one thousand dollars (\$1,000), or decreasing the efficiency of the solar energy system by an amount exceeding 10 percent, as originally specified and proposed.
  - b. For Photovoltaic Systems: an amount not to exceed one thousand dollars (\$1,000) over the system cost as originally specified and proposed, or a decrease in system efficiency of an amount exceeding 10 percent as originally specified and proposed.

Section 2 – Purpose

II-1.5-2.01

The purpose of the Ordinance is to adopt an expedited, streamlined solar permitting process that complies with the Solar Rights Act and AB 2188 (Chapter 521, Statutes 2014) to achieve timely and cost-effective installations of small residential rooftop solar energy systems. The

Ordinance encourages the use of solar systems by removing unreasonable barriers, minimizing costs to property owners and the City, and expanding the ability of property owners to install solar energy systems. The Ordinance allows the City to achieve these goals while protecting the public health and safety.

### Section 3 – Applicability

#### II-1.5-3.01

This Ordinance applies to the permitting of all small residential rooftop solar energy systems in the City.

#### II-1.5-3.02

Small residential rooftop solar energy systems legally established or permitted prior to the effective date of this Ordinance are not subject to the requirements of this Ordinance unless physical modifications or alterations are undertaken that materially change the size, type, or components of a small rooftop energy system in such a way as to require new permitting. Routine operation and maintenance or like-kind replacements shall not require a permit.

### Section 4 – Solar Energy System Requirements

#### II-1.5-4.01

All solar energy systems shall meet applicable health and safety standards and requirements imposed by the State and the City.

#### II-1.5-4.02

Solar energy systems for heating water in single-family residences and for heating water in commercial or swimming pool applications shall be certified by an accredited listing agency as defined by the California Plumbing and Mechanical Code.

#### II-1.5-4.03

Solar energy systems for producing electricity shall meet all applicable safety and performance standards established by the California Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

### Section 5 - Duties of Building Department and Building Official

#### II-1.5-5.01

All documents required for the submission of an expedited solar energy system application shall be made available on the publicly accessible City website.

#### II-1.5-5.02

Electronic submittal of the required permit application and documents by email, the Internet, or facsimile shall be made available to all small residential rooftop solar energy system permit applicants.

#### II-1.5-5.03

An applicant's electronic signature shall be accepted on all forms, applications, and other documents in lieu of a wet signature.

#### II-1.5-5.04

The City Building Department shall adopt a standard plan and checklist of all requirements with which small residential rooftop solar energy systems shall comply to be eligible for expedited review.

#### II-1.5-5.05

The small residential rooftop solar system permit process, standard plan(s), and checklist(s) shall substantially conform to recommendations for expedited permitting, including the checklist and standard plans contained in the most current version of the *California Solar Permitting Guidebook* adopted by the Governor's Office of Planning and Research.

#### II-1.5-5.06

All fees prescribed for the permitting of small residential rooftop solar energy system must comply with Government Code Section 65850.55, Government Code Section 66015, Government Code Section 66016, and State Health and Safety Code Section 17951.

### Section 6 – Permit Review and Inspection Requirements

#### II-1.5-6.01

The City Building Department shall adopt an administrative, nondiscretionary review process to expedite approval of small residential rooftop solar energy systems within 30 days of the adoption on this Ordinance. The Building Department shall issue a building permit or other nondiscretionary permit the same day for over-the-counter applications or within 1-3 business days for electronic applications of receipt of a complete application and meets the requirements of the approved checklist and standard plan. A building official may require an applicant to apply for a use permit if the official finds, based on substantial evidence, that the solar energy system could have a specific, adverse impact upon the public health and safety. Such decisions may be appealed to the City Planning Commission.

#### II-1.5-6.02

Review of the application shall be limited to the building official's review of whether the application meets local, state, and federal health and safety requirements.

#### II-1.5-6.03

If a use permit is required, a building official may deny an application for the use permit if the official makes written findings based upon substantive evidence in the record that the proposed installation would have a specific, adverse impact upon public health or safety and there is no feasible method to satisfactorily mitigate or avoid, as defined, the adverse impact. Such findings shall include the basis for the rejection of the potential feasible alternative for preventing the adverse impact. Such decisions may be appealed to the City Planning Commission.

#### II-1.5-6.04

Any condition imposed on an application shall be designed to mitigate the specific, adverse impact upon health and safety at the lowest possible cost.

#### II-1.5-6.05

"A feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes, but is not limited to, any cost-effective method, condition, or mitigation imposed by the City on another similarly situated application in a prior successful application for a permit. The City shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the

Civil Code defining restrictions that do not significantly increase the cost of the system or decrease its efficiency or specified performance.

II-1.5-6.06

City shall not condition approval of an application on the approval of an association, as defined in Section 4080 of the Civil Code.

II-1.5-6.07

If an application is deemed incomplete, a written correction notice detailing all deficiencies in the application and any additional information or documentation required to be eligible for expedited permit issuance shall be sent to the applicant for resubmission.

II-1.5-6.08

Only one inspection shall be required and performed by the City Building Department for small residential rooftop solar energy systems eligible for expedited review.

II-1.5-6.09

The inspection shall be done in a timely manner and should include consolidated inspections. An inspection will be scheduled within two (2) business days of a request and provide a two (2) hour inspection window.

II-1.5-6.10

If a small residential rooftop solar energy system fails inspection, a subsequent inspection is authorized but need not conform to the requirements of this Ordinance.

**SECTION 3. SEVERABILITY**

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

**SECTION 4. EFFECTIVE DATE AND POSTING**

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.