



TOWN OF FAIRFAX

STAFF REPORT

August 26, 2015

TO: Mayor and Town Council

FROM: Jim Moore, Director of Planning and Building Services

SUBJECT: Introduction and first reading by title only of an Ordinance to Streamline Review and Approval of Small Residential Rooftop Solar Energy Systems, as Required by AB 2188

RECOMMENDATION

1. Open/close public hearing
2. Introduce and waive first reading and read by title only Ordinance No. 794, an Ordinance of the Town Council of the Town of Fairfax Adding Article II to Chapter 17.138 of the Town Municipal Code ('Solar and Renewable Energy Systems') to Provide a Permitting Process for Solar Energy Systems.

BACKGROUND

In 2014 Assembly Bill 2188 was signed into law, imposing a new requirement on towns and cities to adopt a solar energy permitting ordinance designed to streamline the approval of small, residential rooftop solar energy systems. The draft ordinance before you tonight represents Fairfax's proposed fulfillment of that requirement, which must be met by the end of September 2015.

On July 16, 2015 after holding a noticed public hearing, the PC adopted Resolution 15-24 recommending the TC adopt the proposed solar permitting ordinance. The Commission sent the draft ordinance forward as proposed, but asked that prior to the Town Council introducing the ordinance, the Town Attorney be consulted to determine if the definition of "public health or safety" could be expanded to include considerations such as threats to other species.

DISCUSSION

At the August 5th Council meeting to consider the ordinance, the Town Attorney stated she did not recommend changing the language of the ordinance due to explicit State preemption of regulation of local permitting of solar energy systems. After a lengthy discussion, the Council continued the public hearing to this meeting and directed the Town Attorney to further consider the matter and to follow-up with Planning Commissioner Newton to discuss her concerns she raised at the Council meeting. Also, at the meeting, the Council suggested that the checklist and standard plans should not be exhibits to the ordinance, but rather the ordinance should state such checklist and standards will be approved by Town resolution to provide more flexibility regarding future revisions to such documents.

After further consideration, the Town Attorney's recommendation has not changed: *The Town should not change the language of the ordinance due to explicit State preemption of regulation of local permitting of solar energy systems.* The intent of the statute is to cover all solar energy systems, not just small residential rooftop systems, and the Legislature has made it clear that a statewide and uniform permitting process is their goal. Per section 65850.5(a):

AGENDA ITEM # 1

“The implementation of consistent statewide standards to achieve the timely and cost-effective installation of solar energy systems is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern. It is the intent of the Legislature that local agencies not adopt ordinances that create unreasonable barriers to the installation of solar energy systems, including, but not limited to, design review for aesthetic purposes, and not unreasonably restrict the ability of homeowners and agricultural and business concerns to install solar energy systems. It is the policy of the state to promote and encourage the use of solar energy systems and to limit obstacles to their use. It is the intent of the Legislature that local agencies comply not only with the language of this section, but also the legislative intent to encourage the installation of solar energy systems by removing obstacles to, and minimizing costs of, permitting for such systems.”

The State has thus been explicit in its mandate to towns and cities to (a) remove obstacles to the installation of solar energy systems and (b) create a standardized process that will be substantially identical in municipalities across the state. The Town’s police power is limited to the extent it conflicts with, duplicates, or enters into a field occupied solely by the state or federal government. (California Constitution, article XI, section 7.) Broadening the scope of “public health or safety” to include considerations not envisioned by the state legislature may be found to conflict with the state’s intention to remove barriers to solar energy approval. Moreover, it would introduce a unique substantive element in Fairfax that may be found to frustrate the goal of a standardized permitting process across the state. For these reasons, the Town Attorney recommends against modifying the ordinance language.

The attached draft ordinance meets the State Law requirements, and also sets forth a review and approval process for solar energy systems that do not meet the narrow definition of “small residential rooftop solar energy system.” The ordinance is the same as the version presented to the Council at its August meeting with the exception of Section 2 which was modified to allow the Council to adopt and amend the standard solar plan(s) and checklist(s) by Council resolution.

The Town currently waives solar energy system building permit fees (the ordinance does not change that policy), and issues building permits for small residential solar energy systems over the counter. The effective impact of the ordinance is that the Town will need to begin to accept electronic applications for such permits.

With regard to solar checklists and standards, staff will bring those documents to the Council for consideration in September. It should be noted the Building Official has reviewed the documents and indicated it basically reflects the current practice of solar installers. For your reference, the documents are included in the “California Solar Permitting Guidebook” developed by the Governor’s Office of Planning and Research. The documents are available on-line at www.opr.ca.gov/docs/California_Solar_Permitting_Guidebook_Spring_2015.pdf starting on page 22.

FISCAL IMPACT

None

ATTACHMENTS

Ordinance No. 794

ORDINANCE NO. 794

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
ADDING ARTICLE II TO CHAPTER 17.138 OF THE TOWN MUNICIPAL CODE
(‘SOLAR AND RENEWABLE ENERGY SYSTEMS’) TO PROVIDE A
PERMITTING PROCESS FOR SOLAR ENERGY SYSTEMS**

WHEREAS, the Town Council of the Town of Fairfax seeks to implement AB 2188 (Chapter 521, Statutes 2014), which requires, by no later than September 30, 2015, that towns and cities adopt local ordinances creating an expedited, streamlined permitting process for review of applications for small residential rooftop solar energy systems; and

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

WHEREAS, the Town Council seeks to support the climate action goals set by the State; and

WHEREAS, the Town Council wishes to implement certain climate action policies set by the Town General Plan, including Conservation Element Objective CON-1.2 (“[r]educe consumption of non-renewable energy resources and reduce GHG emissions by the residents and Town of Fairfax”) and the Town’s Climate Action Plan, Recommended Action EN-10 of which recommends that the Town “adopt policies and incentives to encourage residents and businesses to install solar and renewable energy systems, including solar panels to generate electricity and solar water heating systems, and to construct solar ready buildings”; and

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

WHEREAS, the Town Council recognizes that rooftop solar energy provides reliable energy and pricing for its residents and businesses.

NOW, THEREFORE, the Town Council of the Town of Fairfax does ordain as follows:

SECTION 1: Fairfax Town Code, Title 17 (‘Zoning’), Chapter 17.138 (‘Regulations Applying in Multiple Districts’) is hereby amended to add a new Article II (‘Solar and Renewable Energy Systems’) to read as follows:

“ARTICLE II. SOLAR AND RENEWABLE ENERGY SYSTEMS

§ 17.138.200 PURPOSE

The purpose of this article is to codify the procedures for reviewing applications for solar and renewable energy systems in compliance with California state law and the Town’s governing documents.

§ 17.138.210 DEFINITIONS

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DIRECTOR. The Town’s Director of Planning and Building Services.

ELECTRONIC SUBMITTAL. The submission of materials via electronic mail.

SMALL RESIDENTIAL ROOFTOP SOLAR ENERGY SYSTEM. In accordance with California Government Code § 65850.5, a “small residential rooftop solar energy system” is a solar energy system that meets all of the following:

- (1) Is no larger than 10 kilowatts alternating current nameplate rating or 30 kilowatts thermal;
- (2) Conforms to all applicable state fire, structural, electrical, and other building codes as adopted or amended by the Town, and all state and Town health and safety standards;
- (3) Conforms to 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;
- (4) Is installed on a single or duplex family dwelling; and
- (5) The panel or module array does not exceed the maximum legal building height as defined by the Town.

SOLAR ENERGY SYSTEM. As defined in paragraphs (1) and (2) of subdivision (a) of Section 801.5 of the Civil Code, as such section or subdivision may be amended, renumbered, or redesignated from time to time.

SPECIFIC, ADVERSE IMPACT. 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.

§ 17.138.220 SOLAR ENERGY SYSTEMS

(A) *Applicability and Purpose.* This Section applies to the permitting of solar energy systems in the Town, except those that qualify as small residential rooftop solar energy systems, which shall be governed by Section 17.138.230. The purpose of this Section is to codify the review and permitting of solar energy systems in conformance with California Government Code § 65850.5, as it may be amended from time to time.

(B) *Review Process.* A building permit is required for the installation of any solar energy system within the Town. A use permit may be required in some circumstances, as set forth in Section 17.138.220(D) below.

(C) *Application Review.* The Town shall administratively review applications for solar energy systems. Review shall be limited to whether the proposed system meets all health and safety requirements of the Town, the state, and the federal government. The Town requirements shall be

limited to those standards and regulations necessary to ensure that the solar energy system will not have a specific adverse impact upon the public health or safety. However, if the building official makes a finding, based on substantial evidence, that the solar energy system could have a specific, adverse impact upon the public health or safety, the Town may require the applicant to apply for a use permit.

(D) *Use Permit.*

- (1) Notwithstanding any other provision of the Fairfax Town Code to the contrary, the Building Official is authorized to issue use permits for solar energy systems. A public hearing on the application for the use permit shall be held and notice of the same shall be provided as set forth in Section 17.032.050 of the Town Code.
- (2) If a use permit is required, the Building Official may deny an application for the use permit only if the Building Official makes written findings, based upon substantial 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. Any such decision may be appealed to the Planning Commission.
- (3) Any condition imposed on an application shall be designed to mitigate the specific, adverse impact upon health and safety at the lowest possible cost.
- (4) "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 Town on another similarly situated application in a prior successful application for a permit. The Town shall use its best efforts to ensure that the selected method, condition, or mitigation does not significantly increase the cost of the system or decrease its efficiency or specified performance in excess of the following:
 - (a) For solar domestic water heating 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.

§ 17.138.230 SMALL RESIDENTIAL ROOFTOP SOLAR SYSTEMS

(A) *Applicability and Purpose.* This Section applies to the permitting of all small residential rooftop solar energy systems in the Town. The purpose of this Section is to create an expedited, streamlined solar permitting process that complies with the Solar Rights Act, as amended by AB 2188 (Chapter 521, Statutes 2014), to achieve timely and cost-effective installations of small residential rooftop solar energy systems. This Section encourages the use of small residential rooftop solar energy systems by removing unreasonable barriers, minimizing costs to property owners and the Town, and expanding the ability of property owners to install small rooftop solar energy systems. This Section allows the Town to achieve these goals while protecting the public health and safety.

(B) *Small Residential Rooftop Solar System Requirements.* A solar energy system that qualifies as a small residential rooftop solar energy system, as defined in this Article, shall be processed in accordance with the terms of this Section 17.138.230.

- (1) A small residential rooftop solar energy system must meet applicable health and safety standards and requirements imposed by the state and the Town, local fire department or district.
- (2) The Town shall, prior to September 30, 2015, adopt an administrative, nondiscretionary expedited review process for small residential rooftop solar energy systems, which shall include standard plan(s) and checklist(s). The checklist(s) shall set forth all requirements with which small residential rooftop solar energy systems must comply with to be eligible for expedited review.
- (3) 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.

(C) *Applicant Obligations.* Prior to submitting an application, the applicant shall:

- (1) Verify, to the applicant's reasonable satisfaction, through the use of standard engineering evaluation techniques that the support structure for the small residential rooftop solar energy system is stable and adequate to transfer all wind, seismic, and dead and live loads associated with the system to the building foundation; and
- (2) At the applicant's cost, verify to the applicant's reasonable satisfaction, using standard electrical inspection techniques that the existing electrical system including existing line, load, ground and bonding wiring as well as main panel and subpanel sizes are adequately sized, based on the existing electrical system's current use, to carry all new photovoltaic electrical loads.

(D) *Electronic Processing.*

- (1) All documents required for the submission of an expedited small residential rooftop solar energy system application shall be made available on a publicly accessible Town website.
- (2) Electronic submittal of the required permit application and documents by electronic means shall be made available to all small residential rooftop solar energy system permit applicants. The Town's website must specify the permitted method of electronic document submission.
- (3) An applicant's electronic signature shall be accepted on all forms, applications, and other documents in lieu of a wet signature.

(E) *Application Review.*

- (1) An application that Town staff determines satisfies the information requirements contained in the Town's checklist(s) for expedited small residential rooftop solar system processing, including complete supporting documents, shall be deemed complete.
- (2) 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.

- (3) After Town staff deems an application complete, Town staff shall review the application to determine whether the application meets local, state, and federal health and safety requirements.
- (4) Unless the Building Official determines a use permit is warranted, Town staff shall issue a building permit or other nondiscretionary permit the same day for over-the-counter applications or within one to three business days for electronic applications after receipt of a complete application that meets the requirements of the approved checklist, standard plan and this Article.
- (5) The Building Official may require an applicant to apply for a use permit if the Building Official finds, based on substantial evidence, that the applicant's proposed solar energy system could have a specific, adverse impact upon the public health and safety.
 - (a) If a use permit is deemed necessary, the process set forth in Section 17.138.220(D) shall apply.
 - (b) Any determination that a use permit is required because of a specific, adverse impact upon the public health and safety may be appealed to the Planning Commission.
- (6) The Town shall not condition approval of an application on the approval of an association, as defined in California Civil Code Section 4080.

(F) Inspections.

- (1) Only one inspection shall be required and performed by the Building Department for small residential rooftop solar energy systems eligible for expedited review, unless the system fails such inspection.
- (2) The inspection shall be done in a timely manner.
- (3) If a small residential rooftop solar energy system fails inspection, a subsequent inspection is authorized but need not conform to the requirements of this Article.

SECTION 2: The Town shall adopt by resolution the standard plan(s) and checklist(s) of all requirements with which small residential rooftop solar energy systems shall comply to be eligible for expedited review. The Town Council may amend the standard plan(s) and checklist(s) by resolution.

SECTION 3: Fairfax Town Code, Title 17 ('Zoning'), Chapter 17.060 ("Ridgeline Development"), Section 17.060.050(B)(8)(b) is amended to read as follows:

“Alternative energy sources, not including solar energy systems, may be approved where their impacts are minimized. Solar energy systems shall be subject to the review and approval procedures set forth in Article II of Chapter 17.138 of this Code. This provision supersedes § 17.044.020 of this title relating to public utilities.”

SECTION 4: If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The Town Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that anyone or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 5: This Ordinance is exempt from the requirements of the California Environmental Quality Act (codified at California Public Resources Code §§ 21000, *et seq.*, and as further governed by 14 California Code of Regulations §§ 15000, *et seq.*, collectively, “CEQA”) because it is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Here, the adoption of an Ordinance regulating solar energy system review and application procedures has no potential for causing a significant effect on the environment, and the Ordinance is thus not subject to CEQA. In addition, even if the adoption of this Ordinance were subject to CEQA, it would be exempt per 14 C.C.R. § 15308, as it consists of an action taken by the Town, in its capacity as a regulatory agency, as authorized by the state, to assure the maintenance, restoration, enhancement, or protection of the environment and involves procedures for the protection of the environment in the form of facilitating solar energy system review and approval in conformance with state requirements.

SECTION 6: This Ordinance shall be effective 30 days following its adoption by the Town Council. Copies of this Ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit:

1. Bulletin Board, Town Hall Offices, located at 142 Bolinas Road, Fairfax;
2. Bulletin Board, Fairfax Post Office, located at 773 Center Boulevard, Fairfax; and
3. Bulletin Board, Fairfax Women's Club building, located at 46 Park Road, Fairfax.

The foregoing Ordinance was introduced at a regular meeting of the Town Council on the 26th day of August 2015, and duly adopted at the next regular meeting of the Town Council on the ___ day of _____, 2015, by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

Barbara Coler, Mayor

Attest:

Michele Gardner, Town Clerk

Date