

DRAFT

ORDINANCE NO. XX-2015

**AN ORDINANCE OF THE CITY OF FREMONT, ADDING
FREEMONT MUNICIPAL CODE CHAPTER 15.63, PERMIT
PROCESS FOR SMALL RESIDENTIAL ROOFTOP SOLAR
SYSTEMS**

WHEREAS, the City seeks to implement AB 2188 (Chapter 521, Statutes 2014) by modifying its existing expedited, streamlined permitting process for small residential rooftop solar energy systems to meet the specific requirements of AB 2188; and

WHEREAS, the City's previous actions taken to streamline solar permitting, including over-the-counter permits and the availability of electronic permit applications have contributed to explosive growth in the number of small residential rooftop solar energy systems in Fremont; and

WHEREAS, the City has also been a leader in the adoption of solar energy, including contracting for almost 2MW of solar capacity at City facilities as part of the Regional Renewable Energy Project; and

WHEREAS, the City seeks to meet the aggressive climate action goals laid out in the Climate Action Plan adopted by the Council in 2012; and

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

WHEREAS, the City Council of the City of Fremont 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 Fremont to offer an expedited permitting process that provides for the safe and effective deployment of solar technology.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FREMONT ORDAINS AS FOLLOWS:

SECTION 1. FMC CHAPTER 15.63, ADDED

Fremont Municipal Code Chapter 15.63 is added to read as follows:

Chapter 15.63
PERMIT PROCESS FOR SMALL RESIDENTIAL ROOFTOP SOLAR SYSTEMS

Sections:

15.63.010 Purpose

15.63.020	Definitions
15.63.030	Applicability
15.63.040	Solar energy system requirements
15.63.050	Application and documents
15.63.060	Permit review and inspection requirements
15.63.070	Fees

Sec. 15.63.010 Purpose.

The purpose of this chapter is to adopt an expedited, streamlined solar permitting process that complies with the Solar Rights Act and AB 2188 (Chapter 521, Statutes 2014, California Government Code Section 65850.5) to achieve timely and cost-effective installations of small residential rooftop solar energy systems. This chapter allows the city to achieve these goals while protecting the public health and safety.

Sec. 15.63.020 Definitions.

- (a) Solar energy system shall have the same meaning as the term is defined in Section 18.185.030.
- (b) Small residential rooftop solar energy system means all of the following:
 - (1) A solar energy system that is no larger than 10 kilowatts alternating current nameplate rating or 30 kilowatts thermal.
 - (2) A solar energy system that conforms to all applicable state fire, structural, electrical, and other building codes as adopted or amended by the city health and safety standards.
 - (3) A solar energy system that is installed on a single or duplex family dwelling.
 - (4) A solar panel or module array that does not exceed the maximum legal building height as defined by the city.
- (c) 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.
- (d) “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.
- (e) Restrictions that do not significantly increase the cost of the system or decrease its efficiency or specified performance means:
 - (1) 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.

- (2) 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.

Sec. 15.63.030 Applicability.

- (a) This chapter applies to the permitting of all small residential rooftop solar energy systems in the city.
- (b) Small residential rooftop solar energy systems legally established or permitted prior to the effective date of this chapter are not subject to the requirements of this chapter 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.
- (c) Historical architectural review pursuant to Chapters 18.175 and 18.135 shall be required if the small residential rooftop solar energy system is proposed to be located on property containing a registered or potential registered resource.

Sec. 15.63.040 Solar energy system requirements.

- (a) All solar energy systems shall meet applicable health and safety standards and requirements imposed by the state and the city.
- (b) 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.
- (c) 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.

Sec. 15.63.050 Application and Documents.

- (a) All documents required for the submission of an expedited small residential rooftop solar energy system application shall be made available on the city's website.
- (b) Electronic submittal of the required permit application and documents by facsimile shall be made available to all small residential rooftop solar energy system permit applicants. An applicant's electronic signature shall be accepted on all forms, applications, and other documents in lieu of a wet signature.

- (c) The city's building and safety division 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. 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.

Sec. 15.63.060 Permit review and inspection requirements.

- (a) The building official shall implement an administrative, nondiscretionary review process to expedite approval of small residential rooftop solar energy systems. Where the application meets the requirements of the approved checklist and standard plan, the building and safety division shall complete the building permit approval or denial process, the issuance of which is nondiscretionary, on the same day for over-the-counter applications or between one and three days where such over the counter approval is not authorized or feasible. Review of the application for small residential rooftop solar energy systems shall be limited to the building official's review of whether the application meets local, state, and federal health and safety requirements.
- (b) The building official may require an applicant to apply for a "solar use permit" if the building official finds, based on the initial application submittal, that the solar energy system could have a specific, adverse impact upon the public health and safety. The building official's decision may be appealed to the Planning Commission in accordance with Chapter 18.300.
- (c) If a solar use permit is required, the building official may only deny an application for the solar use permit if the 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, 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 Planning Commission in accordance with Chapter 18.300.
- (d) If the building official issues a solar use permit, the permit may include conditions designed to mitigate the specific, adverse impact upon health and safety at the lowest possible cost.
- (e) 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 Civil Code Section 714(d)(1)(A) and (B) defining restrictions that do not significantly increase the cost of the system or decrease its efficiency or specified performance.
- (f) 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.

- (g) Only one inspection shall be required and performed by the building and safety division for small residential rooftop solar energy systems eligible for expedited review. The inspection shall be done in a timely manner and should include consolidated inspections. If a small residential rooftop solar energy system fails inspection, a subsequent inspection is authorized.

Sec. 15.63.070 Fees.

The City Council may establish by resolution the fees that shall be charged for permits issued under this chapter.

SECTION 3. CEQA

The City Council finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment. The Council therefore directs that a Notice of Exemption be filed with the Alameda County Clerk in accordance with the CEQA guidelines.

SECTION 4. SEVERABILITY

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

SECTION 5. EFFECTIVE DATE

This Ordinance shall take effect and will be enforced thirty (30) days after its adoption.

SECTION 6. PUBLICATION AND POSTING

The City Clerk has caused to be published a summary of this ordinance, prepared by the City Attorney under Government Code Section 36933(c), the City Clerk has prepared and caused to be published at least five days before the date of adoption a summary of this ordinance once in a newspaper of general circulation printed and published in Alameda County and circulated in the City of Fremont. A certified copy of the full text of the ordinance was posted in the office of the City Clerk since at least five days before this date of adoption. Within 15 days after adoption of this ordinance, the City Clerk shall cause the summary to be published again with the names of those City Council members voting for and against the ordinance and shall post in the office of the City Clerk a certified copy of the full text of this adopted ordinance with the names of those City Council members voting for and against the ordinance.

* * *

The foregoing ordinance was introduced before the City Council of the City of Fremont at the regular meeting of the City Council, held on the 16th day of June, 2015 and finally adopted at a regular meeting of the City Council held on the ___ day of ___, 2015 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk

Deputy City Attorney