

ORDINANCE NUMBER O- 20555 (NEW SERIES)

DATE OF FINAL PASSAGE AUG 07 2015

AN ORDINANCE AMENDING CHAPTER 11, ARTICLE 2, DIVISION 5 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 112.0502; AMENDING CHAPTER 12, ARTICLE 9, DIVISION 1 BY AMENDING SECTION 129.0107; AMENDING CHAPTER 12, ARTICLE 9, DIVISION 3 BY AMENDING SECTION 129.0308; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 2 BY AMENDING SECTION 131.0222; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 3 BY AMENDING SECTION 131.0322; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 4 BY AMENDING SECTION 131.0422; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 5 BY AMENDING SECTION 131.0522; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 6 BY AMENDING SECTION 131.0622; AMENDING CHAPTER 14, ARTICLE 1, DIVISION 4 BY ADDING NEW SECTION 141.0418; AMENDING CHAPTER 14, ARTICLE 2, DIVISION 9 BY AMENDING SECTION 142.0905 AND REPEALING SECTION 142.0911; AMENDING CHAPTER 15, ARTICLE 1, DIVISION 1 BY AMENDING SECTION 151.0103; AMENDING CHAPTER 15, ARTICLE 5, DIVISION 2 BY AMENDING SECTION 155.0238, RELATING TO SOLAR ENERGY SYSTEM PERMIT PROCESSING.

WHEREAS, Assembly Bill 2188 (AB 2188) approved by Governor Brown on September 21, 2014, amended the Solar Rights Act of 1978; and

WHEREAS, AB 2188 was intended to facilitate small-scale solar systems on residential rooftops in order to meet the state’s “Million Solar Roofs” vision; and

WHEREAS, additional objectives of AB 2188 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; and

WHEREAS, 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; and

WHEREAS, the City already provides a streamlined process for approval of solar projects, which results in timely staff level approvals and minimal permit costs for single dwelling unit rooftop solar systems; and

WHEREAS, permit approvals for more complex solar energy systems such as those installed on non-residential and multi-dwelling unit residential development can also be streamlined, but require a full plan review instead of the minimal review for smaller systems; and

WHEREAS, 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 the opportunity for an applicant to appeal the Building Official's decision to the Planning Commission, a new decision process for small rooftop solar systems must be established since the Building Official's decision on a construction permit is typically non-appealable. The proposed code changes will bring the City into compliance with state law; and

WHEREAS, the proposal would create a new separately regulated use category for "solar energy systems," and would allow solar energy systems in all base zones as a limited use when they comply with the limited use regulations; and

WHEREAS, the proposed limited use regulations are 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; and

WHEREAS, the ordinance clarifies that solar panels may be added to a structure that is previously conforming with respect to height if the proposed solar panels do not exceed the applicable height limit; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 11, Article 2, Division 5 of the San Diego Municipal Code is amended by amending section 112.0502, to read as follows:

§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, and a Process One decision may not be appealed except as otherwise set forth in Section 141.0418.

Section 2. That Chapter 12, Article 9, Division 1 of the San Diego Municipal Code is amended by amending section 129.0107, to read as follows:

§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, decision maker, and appeal rights, if any, are described in Chapter 12, Article 9, Divisions 1 through 8.

Section 3. That Chapter 12, Article 9, Division 3 of the San Diego Municipal Code is amended by amending section 129.0308, to read as follows:

§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 that an appeal hearing shall be provided 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) An *applicant* may appeal a Building Official’s denial of an application for an Electrical Permit for a small rooftop solar energy system by filing an application for a Process Two appeal hearing as set forth in Section 141.0418(c).

Section 4. That Chapter 13, Article 1, Division 2 of the San Diego Municipal Code is amended by amending section 131.0222, to read as follows:

§131.0222 Use Regulations Table for Open Space Zones

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

Legend for Table 131-02B

[No change in text.]

**Table 131-02B
Use Regulations Table for 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 ⁽¹⁾ -	
	3rd >>		1- 2-	1-	1-	1-	
	4th >>		1 1	1	1 2	1	
Open Space through Institutional, Separately Regulated Institutional Uses, <i>Social Service Institutions</i> [No change in text.]	[No change in text.]						
Solar Energy Systems	L	L	L	L	L	L	
Institutional, Separately Regulated Institutional Uses, <i>Wireless Communication Facility</i> through <i>Signs</i>, Separately Regulated <i>Signs</i> Uses, <i>Theater Marquees</i> [No change in text.]	[No change in text.]						

Footnotes for Table 131-02B [No change in text.]

Section 5. That Chapter 13, Article 1, Division 3 of the San Diego Municipal Code is amended by amending section 131.0322, to read as follows:

§131.0322 Use Regulations Table for Agricultural Zones

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

Legend for Table 131-03B

[No change in text.]

**Table 131-03B
Use Regulations Table for 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 Institutional, Separately Regulated Institutional Uses, <i>Social Service Institutions</i> [No change in text.]	[No change in text.]				
Solar Energy Systems	L	L			
Institutional, Separately Regulated Institutional Uses, <i>Wireless Communication Facility</i> through <i>Signs</i>, Separately Regulated <i>Signs</i> Uses, <i>Theater Marquees</i> [No change in text.]	[No change in text.]				

Footnotes for Table 131-03B [No change in text.]

Section 6. That Chapter 13, Article 1, Division 4 of the San Diego Municipal Code is amended by amending section 131.0422, to read as follows:

§131.0422 Use Regulations Table for Residential Zones

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

Legend for Table 131-04B

[No change in text.]

**Table 131-04B
Use Regulations Table for 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 Institutional, Separately Regulated Institutional Uses, Social Service Institutions [No change in text.]	[No change in text.]																							
Solar Energy Systems	L	L												L		L								
Institutional, Separately Regulated Institutional Uses, Wireless Communication Facility through Signs, Separately Regulated Signs Uses, Theater Marquees [No change in text.]	[No change in text.]																							

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 Institutional, Separately Regulated Institutional Uses, Social Service Institutions [No change in text.]	[No change in text.]													
Solar Energy Systems	L	L			L			L		L				
Institutional, Separately Regulated Institutional Uses, Wireless Communication Facility through Signs, Separately Regulated Signs Uses, Theater Marquees [No change in text.]	[No change in text.]													

Footnotes for Table 131-04B [No change in text.]

Section 7. That Chapter 13, Article 1, Division 5 of the San Diego Municipal Code is amended by amending section 131.0522, to read as follows:

§131.0522 Use Regulations Table for Commercial Zones

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

Legend for Table 131-05B

[No change in text.]

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-	2-	3-	1-	1-							
	4th >>	1	2	3	4	5	1	1	1	2	1	2	1	2	1	2
Open Space through Institutional, Separately Regulated Institutional Uses, <i>Social Service Institutions</i> [No change in text.]	[No change in text.]															
Solar Energy Systems	L		L	L	L	L	L	L	L	L	L	L	L	L	L	
Institutional, Separately Regulated Institutional Uses, <i>Wireless Communication Facility</i> through <i>Signs</i>, Separately Regulated <i>Signs</i> Uses, <i>Theater Marquees</i> [No change in text.]	[No change in text.]															

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	4	5	6	7	8	9	1	2	3	4	5	6	1	2	3	4	5
Open Space through Institutional, Separately Regulated Institutional Uses, <i>Social Service Institutions</i> [No change in text.]	[No change in text.]																									
Solar Energy Systems	L		L	L			L			L																
Institutional, Separately Regulated Institutional Uses, <i>Wireless Communication Facility</i> through <i>Signs</i>, Separately Regulated <i>Signs</i> Uses, <i>Theater Marquees</i> [No change in text.]	[No change in text.]																									

Footnotes for Table 131-05B [No change in text.]

Section 8. That Chapter 13, Article 1, Division 6 of the San Diego Municipal Code is amended by amending section 131.0622, to read as follows:

§131.0622 Use Regulations Table for Industrial Zones

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

Legend for Table 131-06B

[No change in text.]

**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 Institutional, Separately Regulated Institutional Uses, Social Service Institutions [No change in text.]	[No change in text.]										
Solar Energy Systems	L	L	L	L	L	L	L	L	L	L	L
Institutional, Separately Regulated Institutional Uses, Wireless Communication Facility through Signs, Separately Regulated Signs Uses, Theater Marquees [No change in text.]	[No change in text.]										

Footnotes for Table 131-06B [No change in text.]

Section 9. That Chapter 14, Article 1, Division 4 of the San Diego Municipal Code is amended by adding new section 141.0418, to read as follows:

§141.0418 Solar Energy Systems

- (a) This Section regulates small rooftop solar energy systems and other solar energy systems, which are collectively referred to as solar energy systems, except where specifically distinguished herein. Nothing in this Section grants any deviation from the Environmentally Sensitive Lands

Regulations (Chapter 14, Article 3, Division 1) or Historic Resource Regulations (Chapter 14 Article 3, Division 2).

- (1) Small rooftop solar energy systems are devices or structural design features of a building, the primary purpose of which 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 are any other solar energy system devices or structural design features of a building, the primary purpose of which 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 described in 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 following regulations. The regulations are intended to facilitate the use of renewable energy technology to attain environmental and energy goals and comply with state law related to small rooftop solar energy systems, to provide for timely administrative approvals, and to allow an *applicant* to appeal a denial to the Planning Commission.

- (1) A *construction permit* decided in accordance with Process One shall be required for the installation of a solar energy system, in accordance with the following:
 - (A) An Electrical Permit is required for a solar energy system. A Combination Building Permit and Electrical Permit is required if the scope of work also includes the *development* of a new *structure* or requires structural modifications to an existing *structure* to support the solar energy system.
 - (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 of 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 *previously conforming structure* or other *structure* that is

permitted to project or encroach into the required *setback* or angled *building envelope* plane in accordance with Section 131.0461. Stand alone 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*, in accordance with the California Solar Rights Act.
- (c) Small Rooftop Solar Energy Systems Permit Review
 - (1) In reviewing a *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 small rooftop solar energy system would exceed the height requirements set forth in Section

141.0418(b)(4), or the Building Official determines there is substantial evidence of a specific, adverse impact upon the public health and safety, which for the purpose of Section 141.0418(c) 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 alternative 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 make written *findings* notifying the *applicant* that the permit for the small rooftop solar energy system is denied, the basis for that denial in accordance with Section 141.0418(c)(2), and the appeal rights set forth in Section 141.0418(c)(4). The *applicant* shall be responsible for all administrative costs associated with processing the appeal.
- (4) Applicant Appeal Process. Notwithstanding Section 112.0504, an *applicant* may appeal the denial of an application for a small rooftop solar energy system to the Planning Commission 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).

- (A) Grounds for Appeal. A denial may only be appealed on the grounds that the stated *findings* to deny the *construction permit* are not supported by substantial evidence.
- (B) 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.
- (C) Power to Act on the Decision at Appeal Hearing. The Planning Commission may affirm, reverse, or modify the decision to deny a small rooftop solar energy system in accordance with the following:
 - (i) A decision to affirm the Building Official 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 decision shall be reversed and the *construction permit* 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 decision shall be reversed and the *construction permit* shall be conditionally approved. Any conditions imposed shall mitigate at the lowest cost possible, which generally means the permit conditions shall not cause an increase in the cost of the small rooftop solar energy system by more than 10 percent or decrease the efficiency of the small rooftop solar energy system by more than 10 percent.

Section 10. That Chapter 14, Article 2, Division 9 of the San Diego Municipal Code is amended by amending section 142.0905 and repealing section 142.0911, to read as follows:

§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.

Section 11. That Chapter 15, Article 1, Division 1 of the San Diego Municipal Code is amended by amending section 151.0103, to read as follows:

§151.0103 Applicable Regulations

- (a) [No change in text.]
- (b) The following regulations apply in all planned districts:
 - (1) Land Development Code, Chapter 11 (Land Development Procedures).
 - (2) Land Development Code, Chapter 12 (Land Development Reviews), except Chapter 12, Article 6, Division 6, where specifically excluded in the planned district regulations.
 - (3) Land Development Code, Chapter 13, Article 2 (Overlay Zones).
 - (4) Solar energy systems regulations contained in Land Development Code Section 141.0418.
 - (5) Alcoholic beverage outlets regulations contained in Land Development Code Section 141.0502.
 - (6) Adult entertainment establishments regulations contained in Land Development Code Section 141.0601.
 - (7) Child care facilities regulations contained in Land Development Code Section 141.0606.
 - (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.
 - (9) Medical marijuana consumer cooperative regulations contained in Section 141.0614, when that use is specifically allowed by the Planned District Ordinance.

Section 12. That Chapter 15, Article 5, Division 2 of the San Diego Municipal Code is amended by amending section 155.0238, to read as follows:

§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-									
	3rd >>	1-(1)		2-			3-				
	4th >>	1	2	3	4	5	3 ⁽²⁾⁽¹²⁾	6	7	8	
Open Space through Institutional, Separately Regulated Institutional Uses, Social Service Institutions [No change in text.]	[No change in text.]										
Solar Energy Systems	L		L			L					
Retail Sales 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.]

Section 13. That a full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 14. That prior to becoming effective, this Ordinance shall be submitted to the San Diego County Regional Airport Authority (SDCRAA) for a consistency determination.

That if the SDCRAA finds this Ordinance consistent with the Airport Land Use Compatibility Plans (ALUCP) for San Diego International Airport, Marine Corps Air Station (MCAS) Miramar, Gillespie Field, Montgomery Field, and Brown Field Airports (collectively,

Airports), this Ordinance shall take effect and be in force as of the date of the finding of consistency by SDCRAA, provided that and not until at least 30 days have passed from the final date of passage, except that the provisions of this Ordinance inside the Coastal Overlay Zone, which are subject to California Coastal Commission jurisdiction as a City of San Diego Local Coastal Program amendment shall not take effect until the date the California Coastal Commission unconditionally certifies those provisions as a local coastal program amendment.

That if the SDCRAA determines that this Ordinance is inconsistent or conditionally consistent, subject to proposed modifications, with the ALUCPs for the Airports, the Ordinance shall be submitted to the City Council for reconsideration.

That if the SDCRAA determines that this Ordinance is conditionally consistent with the ALUCPs for the Airports, but that consistency is subject to proposed modifications, the City Council may amend this Ordinance to accept the proposed modifications, and this Ordinance as amended shall take effect and be in force on the thirtieth day from and after its final passage, except that the provisions of this Ordinance as amended inside the Coastal Overlay Zone, which are subject to California Coastal Commission jurisdiction as a City of San Diego Local Coastal Program amendment shall not take effect until the date the California Coastal Commission unconditionally certifies those provisions as a local coastal program amendment.

That a proposed decision by the City Council to overrule a determination of inconsistency or to reject the proposed modifications for a finding of conditional consistency shall include the findings required pursuant to Public Utilities Code section 21670 and require a two-thirds vote; the proposed decision and findings shall be forwarded to the SDCRAA, California Department of Transportation, Division of Aeronautics, and the airport operators for the Airports; and the City Council shall hold a second hearing not less than 45 days from the date the proposed decision and findings were provided, at which hearing any comments submitted by

the public agencies shall be considered and any final decision to overrule a determination of inconsistency shall require a two-thirds vote.

Section 15. That no permits shall be issued for development that is inconsistent with the provisions of this Ordinance unless complete applications for such permits are submitted to the City prior to the date on which the applicable provisions of this Ordinance become effective, which date is determined in accordance with Section 14, above.

APPROVED: JAN I. GOLDSMITH, City Attorney

By Shannon M. Thomas
Shannon M. Thomas
Deputy City Attorney

SMT:als
06/30/2015
Or.Dept:DSD
Doc. No.: 993448_2

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of AUG 04 2015.

ELIZABETH S. MALAND
City Clerk

By Mary Alexander
Deputy City Clerk

Approved: 8/6/15
(date)

Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~
NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 11, ARTICLE 2, DIVISION 5 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 112.0502; AMENDING CHAPTER 12, ARTICLE 9, DIVISION 1 BY AMENDING SECTION 129.0107; AMENDING CHAPTER 12, ARTICLE 9, DIVISION 3 BY AMENDING SECTION 129.0308; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 2 BY AMENDING SECTION 131.0222; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 3 BY AMENDING SECTION 131.0322; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 4 BY AMENDING SECTION 131.0422; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 5 BY AMENDING SECTION 131.0522; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 6 BY AMENDING SECTION 131.0622; AMENDING CHAPTER 14, ARTICLE 1, DIVISION 4 BY ADDING NEW SECTION 141.0418; AMENDING CHAPTER 14, ARTICLE 2, DIVISION 9 BY AMENDING SECTION 142.0905 AND REPEALING SECTION 142.0911; AMENDING CHAPTER 15, ARTICLE 1, DIVISION 1 BY AMENDING SECTION 151.0103; AMENDING CHAPTER 15, ARTICLE 5, DIVISION 2 BY AMENDING SECTION 155.0238, RELATING TO SOLAR ENERGY SYSTEM PERMIT PROCESSING.

§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, and a Process One decision may not be appealed except as otherwise 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 that an appeal hearing shall be provided 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) An applicant may appeal a Building Official's denial of an application for an Electrical Permit for a small rooftop solar energy system by filing an application for a Process Two appeal hearing as set forth 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.

Legend for Table 131-02B

[No change in text.]

Table 131-02B
Use Regulations Table for 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 ⁽¹⁾ -
	3rd >>		1-	2-	1-	1-	1-	
	4th >>		1	1	1	1	2	1
Open Space through Institutional, Separately Regulated Institutional Uses, <i>Social Service Institutions</i> [No change in text.]			[No change in text.]					
<u>Solar Energy Systems</u>			<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	
Institutional, Separately Regulated Institutional Uses, <i>Wireless Communication Facility</i> through <i>Signs</i> , Separately Regulated <i>Signs</i> Uses, <i>Theater Marquees</i> [No change in text.]			[No change in text.]					

Footnotes for Table 131-02B [No change in text.]

§131.0322 Use Regulations Table for Agricultural Zones

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

Legend for Table 131-03B

[No change in text.]

**Table 131-03B
Use Regulations Table for 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 Institutional, Separately Regulated Institutional Uses, <i>Social Service Institutions</i> [No change in text.]	[No change in text.]				
<u>Solar Energy Systems</u>	<u>L</u>	<u>L</u>			
Institutional, Separately Regulated Institutional Uses, <i>Wireless eCommunication Facility</i> through <i>Signs</i>, Separately Regulated <i>Signs</i> Uses, <i>Theater Marquees</i> [No change in text.]	[No change in text.]				

Footnotes for Table 131-03B [No change in text.]

§131.0422 Use Regulations Table for Residential Zones

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

Legend for Table 131-04B

[No change in text.]

Table 131-04B
Use Regulations Table for 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 Institutional, Separately Regulated Institutional Uses, Social Service Institutions [No change in text.]		[No change in text.]																						
<u>Solar Energy Systems</u>	<u>L</u>	<u>L</u>												<u>L</u>		<u>L</u>								
Institutional, Separately Regulated Institutional Uses, Wireless Communication Facility through Signs, Separately Regulated Signs Uses, Theater Marquees [No change in text.]		[No change in text.]																						

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 Institutional, Separately Regulated Institutional Uses, Social Service Institutions [No change in text.]		[No change in text.]												
<u>Solar Energy Systems</u>	<u>L</u>	<u>L</u>			<u>L</u>			<u>L</u>		<u>L</u>		<u>L</u>		
Institutional, Separately Regulated Institutional Uses, Wireless Communication Facility through Signs, Separately Regulated Signs Uses, Theater Marquees [No change in text.]		[No change in text.]												

Footnotes for Table 131-04B [No change in text.]

§131.0522 Use Regulations Table for Commercial Zones

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

Legend for Table 131-05B

[No change in text.]

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-	2-	3-	1-	1-						
	4th >>	1	2	3	4	5	1	1	1	2	1	2	1	2	1	2
Open Space through Institutional, Separately Regulated Institutional Uses, <i>Social Service Institutions</i> [No change in text.]		[No change in text.]														
<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>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>
Institutional, Separately Regulated Institutional Uses, <i>Wireless Communication Facility</i> through <i>Signs</i> , Separately Regulated <i>Signs</i> Uses, <i>Theater Marquees</i> [No change in text.]		[No change in text.]														

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	4	5	6	7	8	9	1	2	3	4	5	6	1	2	3	4	5
Open Space through Institutional, Separately Regulated Institutional Uses, <i>Social Service Institutions</i> [No change in text.]		[No change in text.]																								
<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>	<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>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>
Institutional, Separately Regulated Institutional Uses, <i>Wireless Communication Facility</i> through <i>Signs</i> , Separately Regulated <i>Signs</i> Uses, <i>Theater Marquees</i> [No change in text.]		[No change in text.]																								

Footnotes for Table 131-05B [No change in text.]

§131.0622 Use Regulations Table for Industrial Zones

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

Legend for Table 131-06B

[No change in text.]

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 Institutional, Separately Regulated Institutional Uses, Social Service Institutions [No change in text.]	[No change in text.]										
<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>	<u>L</u>
Institutional, Separately Regulated Institutional Uses, Wireless eCommunication fFacility through Signs, Separately Regulated Signs Uses, Theater Marquees [No change in text.]	[No change in text.]										

Footnotes for Table 131-06B [No change in text.]

§141.0418 Solar Energy Systems

- (a) This Section regulates small rooftop solar energy systems and other solar energy systems, which are collectively referred to as solar energy systems, except where specifically distinguished herein. Nothing in this Section grants any deviation from the Environmentally Sensitive Lands Regulations (Chapter 14, Article 3, Division 1) or Historic Resource Regulations (Chapter 14 Article 3, Division 2).

- (1) Small rooftop solar energy systems are devices or structural design features of a building, the primary purpose of which 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 are any other solar energy system devices or structural design features of a building, the primary purpose of which 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 described in 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 following regulations. The regulations are intended to facilitate the use of renewable energy technology to attain environmental and energy goals and comply with state law related to small rooftop solar energy systems, to provide for timely administrative approvals, and to allow an applicant to appeal a denial to the Planning Commission.

(1) A construction permit decided in accordance with Process One shall be required for the installation of a solar energy system, in accordance with the following:

- (A) An Electrical Permit is required for a solar energy system. A Combination Building Permit and Electrical Permit is required if the scope of work also includes the *development* of a new *structure* or requires structural modifications to an existing *structure* to support the solar energy system.
- (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 of 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 *previously conforming structure* or other *structure* that is permitted to project or encroach into the required *setback* or angled *building envelope* plane in accordance with

Section 131.0461. Stand alone 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, in accordance with the California Solar Rights Act.

(c) Small Rooftop Solar Energy Systems Permit Review

(1) In reviewing a 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 small rooftop solar energy system would exceed the height requirements set forth in Section 141.0418(b)(4), or the Building Official determines there is

substantial evidence of a specific, adverse impact upon the public health and safety, which for the purpose of Section 141.0418(c) 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 alternative 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 make written *findings* notifying the *applicant* that the permit for the small rooftop solar energy system is denied, the basis for that denial in accordance with Section 141.0418(c)(2), and the appeal rights set forth in Section 141.0418(c)(4). The *applicant* shall be responsible for all administrative costs associated with processing the appeal.
- (4) Applicant Appeal Process. Notwithstanding Section 112.0504, an *applicant* may appeal the denial of an application for a small rooftop solar energy system to the Planning Commission 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).

- (A) Grounds for Appeal. A denial may only be appealed on the grounds that the stated *findings* to deny the *construction permit* are not supported by substantial evidence.
- (B) 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.
- (C) Power to Act on the Decision at Appeal Hearing. The Planning Commission may affirm, reverse, or modify the decision to deny a small rooftop solar energy system in accordance with the following:
 - (i) A decision to affirm the Building Official 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 decision shall be reversed and the *construction permit* 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 decision shall be reversed and the *construction permit* shall be conditionally approved. Any conditions imposed shall mitigate at the lowest cost possible, which generally means the permit conditions shall not cause an increase in the cost of the small rooftop solar energy system by more than 10 percent or decrease the efficiency of the small rooftop solar energy system by more than 10 percent.

§142.0905 When Mechanical and Utility Equipment Screening Regulations Apply

This ~~d~~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.~~

§151.0103 Applicable Regulations

- (a) [No change in text.]
- (b) The following regulations apply in all planned districts:
 - (1) Land Development Code, Chapter 11 (Land Development Procedures);₂
 - (2) Land Development Code, Chapter 12 (Land Development Reviews), except Chapter 12, Article 6, Division 6, where specifically excluded in the planned district regulations;₂
 - (3) Land Development Code, Chapter 13, Article 2 (Overlay Zones);₂
 - (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;₂
 - ~~(5)~~(6) Adult entertainment establishments regulations contained in Land Development Code Section 141.0601; ~~and~~₂
 - ~~(6)~~(7) Child care facilities regulations contained in Land Development Code Section 141.0606; ~~and~~₂
 - ~~(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-									
	3rd >>	1 ⁽¹⁾		2-			3-				
	4th >>	1	2	3	4	5	3 ⁽²⁾⁽¹²⁾	6	7	8	
Open Space through Institutional, Separately Regulated Institutional Uses, Social Service Institutions [No change in text.]		[No change in text.]									
<u>Solar Energy Systems</u>		<u>L</u>		<u>L</u>		<u>L</u>					
Retail Sales 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.]

SMT:als
06/30/2015
Or.Dept: DSD
Doc. No.: 993269_2

Passed by the Council of The City of San Diego on AUG 04 2015, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage AUG 07 2015

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Mary Tenard, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

JUL 21 2015, and on AUG 07 2015

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Mary Tenard, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 20555