

**ORDINANCE NO. 2213, NEW SERIES**

**AN ORDINANCE OF THE CITY OF MORGAN HILL  
ADDING A NEW CHAPTER 15.36 (SMALL RESIDENTIAL  
ROOFTOP SOLAR SYSTEM PERMITTING) TO TITLE 15  
(BUILDINGS AND CONSTRUCTION) TO PROVIDE AN  
EXPEDITED, STREAMLINED PERMITTING PROCESS  
FOR SMALL RESIDENTIAL ROOFTOP SOLAR SYSTEMS**

WHEREAS, the City Council of Morgan Hill seeks to implement AB 2188 (Expedited Solar Permitting Act), which modified the existing Solar Rights Act, 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 and the State; 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 citizens of Morgan Hill to provide an expedited permitting process to assure the effective deployment of solar technology.

**NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AND ENACT AS FOLLOWS:**

**SECTION 1.** A new Chapter 15.36 (Small Residential Rooftop Solar System Permitting) is hereby added to Title 15 (Buildings and Construction) of the Morgan Hill Municipal Code, which new Chapter shall be numbered and entitled and shall read in its entirety as follows:

**Chapter 15.36 - SMALL RESIDENTIAL ROOFTOP SOLAR SYSTEM PERMITTING**

**15.36.010 - Definitions.**

**15.36.020 - Purpose.**

**15.36.030 - Applicability.**

**15.36.040 - Solar energy system requirements.**

**15.36.050 - Duties of Building Department and Building Official.**

**15.36.060 - Permit review and inspection requirements.**

**15.36.010 - Definitions.**

For the purpose of this Chapter, unless the context indicates otherwise, certain words and phrases used in this Chapter are defined as follows:

- A. “Solar energy system” means either of the following:
  - 1. 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; or
  - 2. 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.
  
- B. “Small residential rooftop solar energy system” means all of the following:
  - 1. A solar energy system that is no larger than ten (10) kilowatts alternating current nameplate rating or thirty (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;
  - 3. A solar energy system that is installed on a single or duplex family dwelling; and
  - 4. A solar panel or module array that does not exceed the maximum legal building height as defined by the City.
  
- C. “Electronic submittal” means the utilization of one or more of the following:
  - 1. Email;
  - 2. The internet; or
  - 3. Facsimile.
  
- D. “Association” means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.
  
- E. “Common interest development” means any of the following:
  - 1. A community apartment project;
  - 2. A condominium project;
  - 3. A planned development; or
  - 4. A stock cooperative.
  
- F. “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.
  
- G. “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.

- H. "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 ten percent (10%) 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 ten percent (10%), 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 ten percent (10%) as originally specified and proposed.

I. "City" means the City of Morgan Hill.

**15.36.020 - Purpose.**

The purpose of the Chapter is to adopt an expedited, streamlined solar permitting process that complies with the Solar Rights Act and AB 2188 to achieve timely and cost-effective installations of small residential rooftop solar energy systems. This Chapter 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. This Chapter allows the City to achieve these goals while protecting the public health and safety.

**15.36.030 - 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.

**15.36.040 - 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's Building and Fire Departments.
- 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.

**15.36.050 - Duties of Building Department and Building Official.**

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

- B. Electronic submittal of the required permit application and documents by email, the Internet, and 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 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. All code requirements in these documents shall conform to the requirements found in the most recently adopted California Solar Permitting Guidebook model Tool Kit documents adopted by the Governor's Office of Planning and Research.
- D. All fees prescribed for the permitting of small residential rooftop solar energy system shall be adopted by resolution of City Council in compliance with Government Code Sections 65850.55, 66015, and 66016 and Health and Safety Code Section 17951.

**15.36.060 - Permit review and inspection requirements.**

- A. The Building Department shall adopt an administrative, nondiscretionary review process to expedite approval of small residential rooftop solar energy systems that substantially conform to recommendations for expedited permitting contained in the most current version of the California Solar Permitting Guidebook within thirty (30) days of the adoption on this Chapter. The Building Department shall issue a building permit or other nondiscretionary permit the same day for over-the-counter applications or within one (1) to three (3) business days for electronic applications upon receipt of a complete application meeting the requirements of the approved Standard Plan and Checklist.
- B. Any condition imposed on an application shall be designed to mitigate the specific, adverse impact upon health and safety at the lowest possible cost.
- C. Review of the application shall be limited to the Building Official's, or his or her designee's, determination of whether the application meets local, state, and federal health and safety requirements. 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.
- D. The Building Official, or his or her designee, may require an applicant to apply for a use permit if the Official, or his or her designee, finds, based on substantial evidence, that the solar energy system could have a specific, adverse impact upon the public health and safety. The Building Official, or his or her designee, shall issue a decision letter to the applicant. Such decisions may be appealed to the Planning Commission utilizing the procedures set forth in Section 15.36.060(G).
- E. If a use permit is required, the Building Official, or his or her designee, may deny an application for the use permit if the Official, or his or her designee, 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. The Building Official, or his or her designee, shall issue a decision letter to the applicant. Such decisions may be appealed to the Planning Commission utilizing the procedures set forth in Section 15.36.060(G).

- F. “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 defining restrictions that do not significantly increase the cost of the system or decrease its efficiency or specified performance.
- G. For appeals to the Planning Commission pursuant to Sections 15.36.060(C) and (D), a written notice of appeal must be filed with the secretary of the Planning Commission within ten (10) days of receipt of the decision letter from the Building Official or his or her designee. The notice of appeal shall set forth the specific grounds of the appeal. At the time of consideration of the appeal, the appellant shall have the burden of establishing cause why the action appealed from should be altered, reversed, or modified. The Planning Commission may continue the matter from time to time and, at the conclusion of its consideration, may affirm, reverse, or modify the decision of the Building Official or his or her designee. The decision of the Planning Commission shall be final.
- H. The City shall not condition approval of an application on the approval of an association, as defined in Civil Code Section 4080.
- I. Only one (1) inspection shall be required and performed by the Building Department for small residential rooftop solar energy systems eligible for expedited review. Such inspection shall be done in a timely manner and should include consolidated inspections. An inspection shall be scheduled within two (2) business days of a request and provide a two (2) hour inspection window.
- J. If a small residential rooftop solar energy system fails inspection, a subsequent inspection is authorized but need not conform to the requirements of this Chapter.
- K. Where adopted California Building Codes conflict with prescribed code requirements found in the most recently adopted California Solar Permitting Guidebook, the code requirements found in the California Solar Permitting Guidebook shall control.

**SECTION 2. Severability.** If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

**SECTION 3. Effective Date; Publication.** This Ordinance shall take effect thirty (30) days after the date of its passage and adoption. The City Clerk is hereby directed to publish in full or summary this Ordinance pursuant to Government Code §36933 in a newspaper of general

circulation in the City of Morgan Hill.

The foregoing Ordinance was introduced and the title thereof read at a regular meeting of the City Council of the City of Morgan Hill held on the 24th day of August, 2016, and was finally adopted at a regular meeting of said Council on the      day of      2016, and said Ordinance was duly passed and adopted in accordance with law.

**THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 24<sup>TH</sup> DAY OF AUGUST 2016 AND WAS FINALLY ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 7<sup>TH</sup> DAY OF SEPTEMBER 2016 AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:**

**AYES:            COUNCIL MEMBERS:**

**NOES:           COUNCIL MEMBERS:**

**ABSTAIN:       COUNCIL MEMBERS:**

**ABSENT:        COUNCIL MEMBERS:**

**APPROVED:**

**DATE:**

\_\_\_\_\_  
**STEVE TATE, Mayor**

**ATTEST:**

**DATE:**

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

Effective Date: October 7, 2016

**☞ CERTIFICATE OF THE CITY CLERK ☛**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2213, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 7<sup>th</sup> day of September 2016.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**