

ORDINANCE NO. _____

**AN ORDINANCE OF THE CUPERTINO CITY COUNCIL
SETTING FORTH PROCEDURES FOR
EXPEDITING PERMITTING PROCESSING FOR
ELECTRIC VEHICLE CHARGING SYSTEMS**

WHEREAS, the State of California and the City of Cupertino has consistently promoted and encouraged the use of fuel-efficient electric vehicles; and,

WHEREAS, the State of California recent adopted Assembly Bill 1236, which requires local agencies to adopt an ordinance that creates an expedited and streamlined permitting process for electric vehicle charging systems; and,

WHEREAS, in September 2018, the Governor of the State of California issued Executive Order B-55-18, establishing a statewide goal to achieve carbon neutrality as soon as possible, and no later than 2045, and achieve and maintain net negative emissions thereafter; and,

WHEREAS, on September 18, 2018, the Cupertino City Council adopted a climate emergency declaration, calling for a mobilization effort to end citywide greenhouse gas emissions as quickly as possible, and recognizes the need for an organized and equitable transition away from fossil fuels used in buildings and transportation; and,

WHEREAS, creation of an expedited, streamlined permitting process for electric vehicle charging stations would facilitate convenient charging of electric vehicles and help reduce the City of Cupertino's reliance on environmentally damaging fossil fuels.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CUPERTINO DOES ORDAIN AS FOLLOWS:

SECTION 1. TITLE, WORDS, AND PHRASES

This Ordinance shall be known as the City Cupertino Electric Vehicle Charging Station Permit Expediting Ordinance. The terms, phrases, and words used in this Ordinance shall be construed in compliance with the definitions set forth by California Government Code Section 65850.7.

SECTION 2.

Chapter 16.28 of the Cupertino Municipal Code is hereby amended as set forth in Attachment A.

SECTION 3. SEVERABILITY AND CONTINUITY

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this ordinance is held invalid, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of such portion, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated. To the extent the provisions of this Ordinance are substantially the same as previous provisions of the Cupertino Municipal Code, these provisions shall be construed as continuations of those provisions and not as an amendment to or readoption of the earlier provisions.

SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT

This Ordinance is not a project under the requirements of the California Environmental Quality Act, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility that the action approved may have a significant effect on the environment. CEQA applies only to actions which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the proposed action would have no or only a de minimis effect on the environment. The Ordinance is also exempt from CEQA under CEQA Guidelines section 15308, because it is a regulatory action for the protection of the environment. The foregoing determination is made by the City Council in its independent judgment.

SECTION 5. EFFECTIVE DATE

This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937.

SECTION 6. PUBLICATION

The City Clerk shall give notice of adoption of this Ordinance as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be prepared by the City Clerk and published in lieu of publication of the entire text. The City Clerk shall post in the office of the City Clerk a certified copy of the full text of the Ordinance listing the names of the City Council members voting for and against the ordinance.

INTRODUCED at a regular meeting of the Cupertino City Council this 4th day of October, 2022; and

ENACTED at a regular meeting of the Cupertino City Council this 18th day of October, 2022, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Darcy Paul, Mayor City of Cupertino	_____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	_____ Date

ATTACHMENT A

CHAPTER 16.28: EXPEDITED PERMIT PROCESS FOR SMALL ROOFTOP SOLAR SYSTEMS AND ELECTRIC VEHICLE CHARGING SYSTEMS

Section

- 16.28.010 Purpose and intent.
- 16.28.020 Definitions.
- 16.28.030 Applicability.
- 16.28.040 ~~Solar energy system requirements.~~ Requirements.
- 16.28.050 Application and documents.
- 16.28.060 Permit review and inspection requirements.

16.28.010 Purpose and Intent.

The purpose of this Ordinance Chapter is:

- 1) To adopt an expedited, streamlined solar permitting process that complies with the Solar Rights Act and AB 2188 (Chapter 521, Statutes 2014) to achieve timely and cost-effective installations of small residential rooftop solar energy systems. The Ordinance expands AB2188 to provide for timely and cost-effective installations of solar panels on small multi-family and commercial buildings. The Ordinance encourages the use of solar systems by removing unreasonable barriers, minimizing costs to property owners and the City, and expanding the ability of property owners to install solar energy systems. The Ordinance allows the City to achieve these goals while protecting the public health and safety. (Ord. 15-2133, part, 2015)
- 2) To promote and encourage the use of electric vehicles by creating an expedited, streamlined permitting process for electric vehicle charging stations while promoting public health and safety and preventing specific adverse impacts in the installation and use of such charging stations.

16.28.020 Definitions.

For the purposes of this Chapter, the following words and phrases shall have the meanings as defined in this section.

~~a.~~ A. A “Solar Energy System” means either of the following:

~~i.~~ 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.

~~ii.~~ 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.~~ B. A “small residential rooftop solar energy system” means all of the following:

~~i.~~ 1. A solar energy system that is a simple photovoltaic system no larger than 10 kilowatts or a solar thermal system no larger than 30 kilowatts thermal.

~~ii.~~ 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 and all state and local health and safety standards.

~~iii.~~ 3. A solar energy system that is installed on a single or duplex family dwelling.

~~iv.~~ 4. A solar panel or module array that does not exceed the maximum legal building height as defined by the city.

~~c.~~ C. A “small multi-family or commercial rooftop solar energy system” means all of the following:

—~~i.~~ 1. A solar energy system that is a simple photovoltaic system no larger than 10 kilowatts or 30 a solar thermal system no larger than kilowatts thermal.

—~~ii.~~ 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 and all state and local health and safety standards.

—~~iii.~~ 3. A solar energy system that is installed on a triplex, four-plex family dwelling or on a commercial building no more than 10,000 square feet in size.

—~~iv.~~ 4. A solar panel or module array that does not exceed the maximum legal building height as defined by the City.

~~d.~~ D. A “small rooftop solar energy system” either a “small residential rooftop solar energy system” or a “small multi-family or commercial rooftop solar energy system”.

~~e.~~ E. “Electronic submittal” means the utilization of one or more of the following:

—~~i.~~ 1. Email;

~~ii.~~ 2. The Internet;

—~~iii.~~ 3. Facsimile.

~~f.~~ F. An “association” means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.

~~g.~~ G. A “common interest development” means any of the following:

~~i.~~ 1. A community apartment project.

—~~ii.~~ 2. A condominium project.

~~iii.~~ 3. A planned development.

~~iv.~~ 4. A stock cooperative.

~~h.~~ H. “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.

~~i.~~ I. “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.

~~j. J.~~ “Restrictions that do not significantly increase the cost of the system or decrease its efficiency or specified performance” means:

~~i. 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.

~~ii. 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. (Ord. 15-2133, part, 2015)

K. ELECTRIC VEHICLE CHARGING STATION OR EVCS. Any level of electric vehicle supply equipment station that is designed and built-in compliance with article 625 of the California Electrical Code and delivers electricity from a source outside an electric vehicle into a plug-in vehicle.

L. “A feasible method to satisfactorily mitigate or avoid the specific, adverse impact” includes, but is not limited to, any cost-effective method, condition, or mitigation imposed by the City on another similarly situated application in a prior successful application for a permit. The City shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code defining restrictions that do not significantly increase the cost of the system or decrease its efficiency or specified performance.

16.28.030 Applicability.

~~a. A.~~ This ~~Ordinance Chapter~~ applies to the permitting of all Small Rooftop Solar Energy Systems and Electric Vehicle Charging Systems in the City.

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

16.28.040 ~~Solar Energy System~~ Requirements.

~~a. A.~~ All solar energy systems and Electric Vehicle Charging Stations shall meet applicable health and safety standards and requirements imposed by the State, the City, and Santa Clara County Fire Department.

~~b.~~ 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.

~~e.~~ 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. (Ord. 15-2133, part, 2015)

D. Electric Vehicle Charging Stations shall meet all applicable safety and performance standards established by the California Electric Code, the Society of Automotive Engineers, the National Electrical Manufacturers Association, and the accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

16.28.050 Application and Documents.

~~a.~~ A. All documents required for the submission of an expedited solar energy system application and for an EVCS permit application shall be made available on the City's website.

~~b.~~ B. Electronic submittal of the required permit application and documents shall be made available to all small rooftop solar energy system permit applicants.

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

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

E. The Building Official shall provide a permit checklist for EVCS permit applications.

~~e.~~ F. 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.

~~f.~~ G. The small multi-family or commercial rooftop solar energy system permit process, standard plan(s), and checklist(s) shall be developed by the ~~City's Building Department~~ Building Official.

~~g.~~ H. All fees prescribed for the permitting of small rooftop solar energy system must comply with Government Code Section 65850.55, Government Code Section 66015,

Government Code Section 66016, and State Health and Safety Code Section 17951.
(Ord. 15-2133, part, 2015)

16.28.60 Permit Review and Inspection Requirements.

~~a. A.~~ The City shall adopt an administrative, nondiscretionary review process to expedite approval of small rooftop solar energy systems and EVCS application of one to 25 stations at a single site. Upon receipt of a complete application which meets the requirements of the approved checklist and standard plan, the City shall issue a building permit or other nondiscretionary permit ~~on the same day for over the counter applications or~~ within 3 five business days for electronic applications. For complete EVCS applications including 26 or more EVCS stations at a single site, a permit shall be issued after ten business days for electronic applications. ~~The building official may require an applicant to apply for a use permit if the official finds, based on substantial evidence, that the solar energy system could have a specific, adverse impact upon the public health and safety.~~

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

~~c. C.~~ ~~If a use permit is required, a building official~~ The Building Official may deny an application for ~~the use a~~ permit for a small rooftop solar energy system or EVCS if the ~~e~~Official makes written findings based upon substantive evidence in the record that:

1. The proposed installation would have a specific, adverse impact upon public health or safety; and
2. 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.

~~a. Decisions to require a use permit or to deny a use permit may be appealed by filing a request for appeal, in writing, with a description of the grounds for appeal. The request for appeal must be made within ten (10) business days of the serving or mailing of the building official's determination. A hearing shall be scheduled within thirty (30) days before the Board of Appeals as defined in Cupertino Municipal Code Section 16.02.270. If the appeal is not filed within the time specified above, the applicant shall be deemed to waive the right to appeal.~~

~~b. D.~~ 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. "A feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes, but is not limited to, any cost-effective method, condition, or~~

~~mitigation imposed by the City on another similarly situated application in a prior successful application for a permit. The City shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code defining restrictions that do not significantly increase the cost of the system or decrease its efficiency or specified performance.~~

~~d. Approval of an application shall not be conditioned upon the approval of an association, as defined in Section 4080 of the Civil Code.~~

~~e. 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.~~

f. E. The City shall require only one inspection for small residential rooftop solar energy systems eligible for expedited review. The City may require two inspections for small multi-family or commercial rooftop solar energy systems if deemed necessary. A separate fire inspection may be performed if the City does not have an agreement with ~~the local fire authority~~ County of Santa Clara Fire Department to perform safety inspections on behalf of the ~~local fire authority~~ County of Santa Clara Fire Department.

~~g.~~ F. The inspection(s) shall be done in a timely manner and should include consolidated inspections. An inspection will be scheduled within two (2) business days of a request and provide a two-hour inspection window on the day of the inspection.

~~h.~~ G. If a small rooftop solar energy system fails inspection a subsequent inspection is authorized but need not conform to the requirements of this Ordinance. (Ord. 15-2133, part, 2015)

16.28.070 Appeals.

Any final decision of the Building Official made pursuant to this Chapter may be appealed by filing a request for appeal, in writing, with a description of the grounds for appeal. The request for appeal must be made within ten (10) business days of the serving or mailing of the building official's determination. A hearing shall be scheduled within thirty (30) days before the Planning Commission. If the appeal is not filed within the time specified above, the applicant shall be deemed to waive the right to appeal.