



Approvals:
City Manager MM
Dept. Head CD
Attorney MK
Finance JV

AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: July 7, 2015

Department: Community Development / Building Division
Prepared By: Mike Jorgensen, Building Official *Mike Jorgensen*

Subject: INTRODUCE ORDINANCE No. _____ ENTITLED AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING SECTION 15.04.030 OF THE MUNICIPAL CODE, EXEMPTING SOLAR ENERGY SYSTEM PERMITS FROM THE CITY'S REQUIREMENT OF HOMEOWNERS' ASSOCIATION APPROVAL AS A PRECONDITION TO RECEIVING CITY PERMIT APPROVAL

Fiscal Impact: There is no anticipated fiscal impact to implement this change in permit processing.

Summary: Staff recommends that Council introduce the Ordinance amending Section 15.04.030 of the municipal code, to exempt solar energy system permits from requiring the City to certify homeowners' association approval as a precondition to receiving City permit approval. The purpose of the Ordinance is to eliminate a conflict with statute requirements contained in the Solar Rights Act, Section 65850.5 (i) of the Government Code.

Background: Solar Rights Act, Section 65850.5 (i) of the Government Code prohibits a city from conditioning approval for any solar energy system permit on the approval of a solar energy system by an association, as the term is defined in Section 4080 of the California Civil Code.

Discussion: Since 1990 the San Clemente Municipal Code has required the City to certify that proposed residential development comply with covenants, conditions, and restrictions (CC&R's) applicable to the property prior to the issuance of a building permit. The original ordinance (Ordinance No. 1012) was adopted on March 21, 1990 (see attachment #2).

The Solar Rights Act, Section 65850.5 (i) of the Government Code prohibits a city from conditioning approval for any solar energy system permit on the approval of a solar energy system by an association, as the term is defined in Section 4080 of the California Civil Code.

The change to the municipal code aligns the city codes with California statutes. The proposed change in no way reduces any obligation that a property may have to comply with any applicable CC&R's to which the property may be subject.

This proposed ordinance does not commit the City to any action that may have a significant effect on the environment. As a result, such action does not constitute a project subject to the requirements of the California Environmental Quality Act.

Recommended

Action: STAFF RECOMMENDS THAT the City Council:

1. Introduce for first reading Ordinance No. _____ entitled, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING SECTION 15.04.030 OF THE MUNICIPAL CODE, EXEMPTING SOLAR ENERGY SYSTEM PERMITS FROM THE CITY'S REQUIREMENT OF HOMEOWNERS' ASSOCIATION APPROVAL AS A PRECONDITION TO RECEIVING CITY PERMIT APPROVAL

Attachments: Attachment #1 - Ordinance No. XXXX
Attachment #2 - Original Ordinance No. 1012 (adopted March 21, 1990)

Notification:

Attachment – 1

Attachment “1”

7-7-15 / 9A-3

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING SECTION 15.04.030 OF THE MUNICIPAL CODE, EXEMPTING SOLAR ENERGY SYSTEM PERMITS FROM THE CITY'S REQUIREMENT OF HOMEOWNERS' ASSOCIATION APPROVAL AS A PRECONDITION TO RECEIVING CITY PERMIT APPROVAL

WHEREAS, The City of San Clemente Municipal Code currently requires the City to certify homeowners' association approval prior to the issuance of a building permit for any residential development; and

WHEREAS, The Solar Rights Act comprises the following California sections of law: California Civil Code Sections 714 and 714.1, California Civil Code Section 801, California Civil Code Section 801.5, California Government Code Section 65850.5, California Health and Safety Code Section 17959.1, California Government Code Section 66475.3 and California Government Code Section 66473.1; and

WHEREAS, The Solar Rights Act specifies that the City shall not condition approval of an application for a solar energy system permit on the approval of an association, as defined in Section 4080 of the California Civil Code.

NOW, THEREFORE, the City Council of the City of San Clemente, California, hereby ordains as follows:

Section 1: The City Council finds and determines there is a need to adopt the amendment to the San Clemente Municipal Code in accordance with The Solar Rights Act.

Section 2: Subsection (A) of Section 15.04.030 of the Code of the City of San Clemente is hereby amended by adding an exception immediately following Subsection (A) that reads as follows:

Exception: The City shall not condition approval of a solar energy system (as defined in Section 801.5(a) of the California Civil Code) permit application on the approval of an association (as defined in Section 4080 of the California Civil Code).

Section 3. This Ordinance does not commit the City to any action that may have a significant effect on the environment. As a result, such action does not constitute a project subject to the requirements of the California Environmental Quality Act.

Section 4. If any provision, clause, sentence or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Ordinance, which can be given effect without the invalid provision or application and, to this end, the provisions of this Ordinance are hereby declared to be severable.

Section 5: The City Clerk shall certify to the passage of this ordinance and cause the same to be published as required by law, and the same shall take effect as provided by law.

APPROVED AND ADOPTED this _____ day of _____, _____.

ATTEST:

City Clerk of the City of
San Clemente, California

Mayor of the City of San
Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF SAN CLEMENTE)

I, **JOANNE BAADE**, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. _____ having been regularly introduced at the meeting of _____, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the ____ day of _____, _____, and said ordinance was adopted by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this ____ day of _____, _____.

CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:

CITY ATTORNEY

Attachment – 2

Attachment “2”

7-7-15 / 9A-7

15.04.030 - Certification of compliance with applicable declarations of covenants, conditions and restrictions (CC&Rs).

- A.Prior to the issuance of a building permit for any residential development, the applicant shall be required to certify, on a form approved by the Building Official, that the proposed development complies with any declaration of covenants, conditions, and restrictions (CC&Rs) applicable to the property. Except as provided in subsection B of this section, when the approval of a homeowners' association, architectural review committee or art jury (collectively "association") is required for such development under the CC&Rs, the applicant shall also provide to the Building Official a document signed by an authorized representative of the association stating that such approval has been obtained and identifying the plans in sufficient detail to enable the Building Official to verify that the plans approved by the association are substantially the same as the plans being reviewed by the City. If the exterior architectural treatment, size, location, or elevations of the plans being reviewed by the City are substantially revised after the date that the applicant submits the required certification and association approval, the Building Official shall require that such certification and, if required, such approval be resubmitted on the basis of revised plans. The Building Official may, but shall have no duty to require the building permit applicant to submit supporting information and to investigate the surrounding facts and circumstances to determine if the applicant's certification is correct and the authorization is valid.
- B.Notwithstanding the provisions of subsection A of this section, no building permit shall be denied on the basis of the applicant's failure to meet any of the requirements in subsection A of this section in any of the following circumstances:
1. The City would be legally prohibited by applicable federal or state law from adopting or enforcing its own ordinances, rules or regulations to prohibit the construction or use proposed;
 2. The applicant certifies that the proposed development does not violate any express provisions in applicable CC&Rs, but the applicant is unable to obtain the approval or signature of an authorized representative of the association because (a) the association is not active at the time approval is being sought, or (b) the association fails or refuses to meet, take final action upon, or report in writing regarding such action within one hundred eighty (180) days after the application for approval is submitted.
- C.It is not the intent of the City Council by the adoption of the ordinance codified in this section to create a mandatory duty to any person to protect against the risk of any particular kind of injury.

(Prior code § 23-3)

ORDINANCE NO. 1012

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, ADDING A NEW SECTION 23-3 TO THE CODE OF THE CITY OF SAN CLEMENTE REQUIRING APPLICANTS FOR RESIDENTIAL BUILDING PERMITS TO CERTIFY COMPLIANCE WITH APPLICABLE DECLARATIONS OF COVENANTS, CONDITIONS, AND RESTRICTIONS (CC&R'S)

THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, HEREBY ORDAINS AS FOLLOWS:

SECTION 1: A new Section 23-3, entitled "Certification of Compliance with Applicable Declarations of Covenants, Conditions, and Restrictions (CC&R's)," is hereby added to the Code of the City of San Clemente and shall read in its entirety as follows:

23-3. Certification of Compliance with Applicable Declarations of Covenants, Conditions, and Restrictions (CC&R's)

(a) Prior to the issuance of a building permit for any residential development, the applicant shall be required to certify, on a form approved by the Building Official, that the proposed development complies with any Declaration of Covenants, Conditions, and Restrictions ("CC&R's") applicable to the property. Except as provided in subdivision (b) herein, when the approval of a homeowners' association, architectural review committee or art jury (collectively "association") is required for such development under the CC&R's, the applicant shall also provide to the Building Official a document signed by an authorized representative of the association stating that such approval has been obtained and identifying the plans in sufficient detail to enable the Building Official to verify that the plans approved by the association are substantially the same as the plans being reviewed by the City. If the exterior architectural treatment, size, location, or elevations of the plans being reviewed by the City are substantially revised after the date that the applicant submits the required certification and association approval, the Building Official shall require that such certification and, if required, such approval be resubmitted on the basis of

revised plans. The Building Official may, but shall have no duty to require the building permit applicant to submit supporting information and to investigate the surrounding facts and circumstances to determine if the applicant's certification is correct and the authorization is valid.

(b) Notwithstanding the provisions of subdivision (a), no building permit shall be denied on the basis of the applicant's failure to meet any of the requirements in subdivision (a) in any of the following circumstances:

(1) The City would be legally prohibited by applicable federal or state law from adopting or enforcing its own ordinances, rules, or regulations to prohibit the construction or use proposed.

(2) The applicant certifies that the proposed development does not violate any express provisions in applicable CC&R's, but the applicant is unable to obtain the approval or signature of an authorized representative of the association because (i) the association is not active at the time approval is being sought, or (ii) the association fails or refuses to meet, take final action upon, or report in writing regarding such action within one hundred eighty (180) days after the application for approval is submitted.

(c) It is not the intent of the City Council by the adoption of this ordinance to create a mandatory duty to any person to protect against the risk of any particular kind of injury.

SECTION 2: The City Clerk shall certify to the passage of this ordinance and cause the same to be published as required by law, and the same shall take effect as provided by law.

APPROVED, ADOPTED and SIGNED this 21st day of March, 1990.

ATTEST:

Myrna Erway
City Clerk of the City of San Clemente, California

Candace Haggard
Mayor of the City of San Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF SAN CLEMENTE)

I, Myrna Erway, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. 1012 having been regularly introduced at the meeting of March 7, 1990, 1990, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the 21st day of March, 1990, and said Ordinance was passed and adopted by the following stated vote, to wit:

- AYES: DIEHL, LORCH, RICE, VEALE, MAYOR HAGGARD
- NOES: NONE
- ABSENT: NONE

and was thereafter on said day signed and approved by the Mayor of said City.

Myrna Erway
City Clerk of the City of San Clemente, California

Approved as to form:

Jeffrey M. Odeman
City Attorney

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