

NYE COUNTY AGENDA INFORMATION FORM

1

Action

Presentation

Presentation & Action

| | | |
|--|---------------------|----------------------------|
| Department: Planning | | Agenda Date: |
| Category: Timed Agenda Item – 10:00 a.m. | | October 19, 2021 |
| Contact: Brett Waggoner | Phone: 775-751-4249 | Continued from meeting of: |
| Return to: Brett Waggoner | Location: | Phone: |

Action requested: (Include what, with whom, when, where, why, how much (\$ and terms)

Public Hearing, discussion and deliberation to adopt, amend and adopt, or reject Nye County Bill No. 2021-11: A Bill proposing to amend Nye County Code Title 17, Comprehensive Land Use Planning and Zoning, Chapter 17.10 entitled Special Use Permits by adding a new section titled “definitions” and adding definitions for the terms non-renewable energy generation facility, renewable energy and renewable energy generation facility, providing that all energy generation facilities (non-renewable and renewable) shall require application and approval of a Special Use Permit; requiring the applicant to obtain a letter in support of, or in opposition to, the project prior to submitting an application to the Planning Department, and requiring the applicant to submit such letter to the Planning Department along with the application for a special use permit, and providing for the severability, constitutionality, and effective date thereof; and other matters properly relating thereto.

Complete description of requested action: (Include, if applicable, background, impact, long-term commitment, existing county policy, future goals, obtained by competitive bid, accountability measures)

Staff recommends adoption with an effective date of November 8, 2021.

Any information provided after the agenda is published or during the meeting of the Commissioners will require you to provide 20 copies: one for each Commissioner, one for the Clerk, one for the District Attorney, one for the Public and two for the County Manager. Contracts or documents requiring signature must be submitted with three original copies.

Expenditure Impact by FY(s): (Provide detail on Financial Form)

No financial impact

Routing & Approval (Sign & Date)

| | | | |
|---------|------|--------------------|---|
| 1. Dept | Date | 6. | Date |
| 2. | Date | 7. HR | Date |
| 3. | Date | 8. Legal | Date |
| 4. | Date | 9. Finance | Date |
| 5. | Date | 10. County Manager | <input checked="" type="checkbox"/> Place on Agenda |

Verified by ST
10/13/21
NK

Item #: 10

BILL NO. 2021-11

NYE COUNTY ORDINANCE NO. _____

SUMMARY: A Bill proposing to amend Nye County Code Title 17, Comprehensive Land Use Planning and Zoning, Chapter 17.10 entitled Special Use Permits by adding a new section titled "definitions" and adding definitions for the terms non-renewable energy generation facility, renewable energy and renewable energy generation facility, providing that all energy generation facilities (non-renewable and renewable) shall require application and approval of a Special Use Permit; requiring the applicant to obtain a letter in support of, or in opposition to, the project prior to submitting an application to the Planning Department, and requiring the applicant to submit such letter to the Planning Department along with the application for a special use permit, and providing for the severability, constitutionality, and effective date thereof; and other matters properly relating thereto.

TITLE: A BILL PROPOSING TO AMEND NYE COUNTY CODE TITLE 17, COMPREHENSIVE LAND USE PLANNING AND ZONING, CHAPTER 17.10 ENTITLED SPECIAL USE PERMITS BY ADDING A NEW SECTION TITLED "DEFINITIONS" AND ADDING DEFINITIONS FOR THE TERMS NON-RENEWABLE ENERGY GENERATION FACILITY, RENEWABLE ENERGY AND RENEWABLE ENERGY GENERATION FACILITY, PROVIDING THAT ALL ENERGY GENERATION FACILITIES (NON-RENEWABLE AND RENEWABLE) SHALL REQUIRE APPLICATION AND APPROVAL OF A SPECIAL USE PERMIT; REQUIRING THE APPLICANT TO MAKE A PRESENTATION TO THE APPROPRIATE TOWN BOARD IN ORDER TO OBTAIN A LETTER IN SUPPORT OF, OR IN OPPOSITION TO, THE PROJECT, PRIOR TO SUBMITTING AN APPLICATION TO THE PLANNING DEPARTMENT, AND REQUIRING THE APPLICANT TO SUBMIT SUCH LETTER TO THE PLANNING DEPARTMENT ALONG WITH THE APPLICATION FOR A SPECIAL USE PERMIT, AND PROVIDING FOR THE SEVERABILITY, CONSTITUTIONALITY, AND EFFECTIVE DATE THEREOF; AND OTHER MATTERS PROPERLY RELATING THERETO.

WHEREAS, pursuant to NRS 244.119, the Nye County Board of Commissioners (Board) is authorized to amend the Nye County Code; and

WHEREAS, pursuant to NRS 278.020, for the purpose of promoting the health, safety and the general welfare of the residents of Nye County, the Board is authorized and empowered to regulate and restrict the improvement of land and to control the location and soundness of structures; and

WHEREAS, any such regulation, restriction and control must take into account the potential impairment of natural resources and the total population which the available natural resources will support without unreasonable impairment;

NOW, THEREFORE, the Board of County Commissioners of the County of Nye, State of Nevada, does hereby adopt, promulgate, and order compliance therewith within Nye County, the following amendments, and regulations:

NYE COUNTY CODE TITLE 17 IS HEREBY AMENDED AS FOLLOWS, with **Deletions** shown in strike-through red font, and **additions and modifications** shown in underscored blue font:

Chapter 17.10 SPECIAL USE PERMITS

17.10.010 PURPOSE AND INTENT

The intent of this chapter is to establish the land use and permitting requirements applicable to aboveground utility projects, as authorized by Nevada state law for all areas within Nye County, including those areas within the Pahrump regional planning district. (Ord. 483, 2014)

17.10.020: PERMIT FOR CONSTRUCTION OF AN ABOVEGROUND UTILITY PROJECT LOCATED IN A MASTER PLAN DESIGNATED UTILITY CORRIDOR:

- A. Any aboveground utility project, which is planned to be located in a corridor for the construction of aboveground utility projects as identified in the Nye County comprehensive master plan, shall notify Nye County prior to construction. Upon notification of Nye County, staff shall review the notification to confirm location within the master plan designated utility corridor. This review, once completed, shall constitute approval of the project. (Ord. 483, 2014)

17.10.025: DEFINITIONS

Nonrenewable Energy Generation Facility: Coal, natural gas, oil, propane or any other fossil fuel, or nuclear energy.

Renewable Energy: Means a source of energy that occurs naturally or is regenerated naturally, including, without limitation:

- (a) Biomass;
- (b) Fuel cells;
- (c) Geothermal energy;
- (d) Solar energy;
- (e) Waterpower; and
- (f) Wind.

The term does not include coal, natural gas, oil, propane or any other fossil fuel, or nuclear energy.

Renewable Energy Generation Facility: Means a project involving an electric generating facility or system that uses renewable energy as its primary source of energy to generate electricity. The

term does not include a project involving an electric generating facility or system that uses nuclear energy, in whole or in part, to generate electricity.

TOWN: The area within the territorial limits of any unincorporated town within the county.

TOWN BOARD: The town board form of government established pursuant to Nevada Revised Statutes 269.016 through 269.022.

17.10.030: SPECIAL USE PERMIT FOR TRANSMISSION PROJECTS OUTSIDE OF MASTER PLAN DESIGNATED CORRIDORS, AND ENERGY GENERATION FACILITIES (RENEWABLE AND NONRENEWABLE):

A. Special Use Permit For Construction Of An Aboveground Utility Project, and Energy Generation Facility Not Located In A Master Plan Designated Utility Corridor:

1. A special use permit shall be required for any aboveground utility project and/or energy generation facility that are located outside a designated aboveground utility corridor as designated in the Nye County Comprehensive Master Plan. In addition to the general criteria for approving the special use permit, no special use permit application shall be approved unless the applicant establishes that the proposed aboveground utility project and/or energy generation facility meets the following additional criteria:
 - a. Proposed developments or corridors must not conflict with any existing or planned infrastructure or utility projects;
 - b. Proximity of the proposed developments or corridors to any school, hospital, or urban residential area with a dwelling density greater than two (2) units per gross acre shall be taken into consideration and appropriate setbacks shall be applied.
 - a. Will be harmonious with and in accordance with the general objectives or with any specific objectives of the comprehensive master plan of current adoption, and the zoning map if applicable;
 - b. Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such a use will not change the essential character of the same area;
 - c. Will not be hazardous or disturbing to existing or future neighboring uses;
 - d. Will be a substantial improvement to property in the immediate vicinity and to the community as a whole;
 - e. Will be served adequately by essential public facilities and services, such as highways, streets, police and fire protection, drainage structures, refuse disposal, or schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such service;

- f. Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community; and
- g. Will not involve uses, activities, processes, materials and equipment, and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glares or odors. (Ord. 483, 2014)

17.10.040: APPLICATION PROCESS:

- A. Federally Owned Land: If the aboveground utility project is on federally owned land, prior to submitting the application for the special use permit for construction of an aboveground utility project not located in a master plan designated utility corridor, and at the beginning of the federal review and permit application process, the applicant must have a presubmission meeting with Nye County staff to discuss the project and the application. The applicant then shall submit, as the application, the appropriate documents related to the environmental review by state and federal land management agencies. If the applicant is required to apply for a permit to construct under the utility environmental protection act from the public utilities commission of Nevada, then the applicant's service of the permit to construct application to the county, pursuant to Nevada Revised Statutes 704.870(4), shall constitute the environmental review documents that make up the application.
- B. Application Fee: An application processing fee, as established by the Nye County board of commissioners, shall be collected for any application for a special use permit for construction of an aboveground utility project not located in a master plan designated utility corridor. In addition, if the aboveground utility project is on federally owned land the applicant may be required to pay the cost for an independent contractor or consultant to represent the county as a cooperating agency in the federal environmental review process if the county does not otherwise have the capacity or staff to do so on its own. Prior to hiring an independent contractor, the county and the applicant will meet and reasonably agree to the scope of the services required. Any such fee paid by the applicant to the county for an independent contractor shall reflect only the cost to the county of compensating a consultant to represent them in the federal permitting process. Upon conclusion of the federal permitting process, the applicant may request an audit and accounting from the county on the costs paid to and the services provided by the independent contractor.
- C. Town Boards. If the proposed location of the aboveground utility project and/or energy generation facility is within the boundaries of a Town, the applicant shall contact the applicable elected or advisory Town Board office and request an agenda item be placed on the Town Board's agenda to obtain a written letter from the Town Board in support of, or in opposition to, the proposed aboveground utility project and/or energy generation facility. The applicant shall make a presentation to the Town Board regarding the proposed aboveground utility project and/or energy generation facility. The applicant shall submit a copy of the Town Board's written letter to the Planning Department along with the application for a special use permit.

SEVERABILITY. If any provision of this ordinance or amendments thereto, or the application to any person, thing or circumstance is held to be invalid, such invalidity shall not affect the validity or provisions or applications of the ordinance or amendments thereto which can be given effect without the invalid provisions or applications, and to this end the provisions of this ordinance and amendments thereto are declared to be severable.

CONSTITUTIONALITY. If any section, clause or phrase of this ordinance shall be declared unconstitutional by a court of competent jurisdiction, the remaining provisions of this ordinance shall continue in full force and effect.

EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after passage, approval, and publication as required by law, to wit, from and after the 8th day of November, 2021.

Proposed on the ____ day of _____, 2021

Proposed by: _____.

Adopted on the ____ day of _____, 2021

Vote: Ayes: Commissioners:

Nays: Commissioners:

Absent: Commissioners:

BY:

Debra Strickland, Chairman
Nye County Board of
County Commissioners

ATTEST:

Sandra L. Merlino
Clerk and Ex-Officio
Clerk of the Board

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- a. ~~Corridors~~ Proposed developments or corridors must not conflict with any existing or planned infrastructure or utility projects;
- b. Proximity of the ~~proposed corridor~~proposed developments or corridors to any school, hospital, or urban residential area with a dwelling density greater than two (2) units per gross acre ~~should~~shall be taken into consideration and appropriate setbacks ~~should~~shall be applied.

2. ~~General criteria for approving the special use permit:~~

- a. Will be harmonious with and in accordance with the general objectives or with any specific objectives of the comprehensive master plan of current adoption, and the zoning map if applicable;
- b. Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such a use will not change the essential character of the same area;
- c. Will not be hazardous or disturbing to existing or future neighboring uses;

- d. Will be a substantial improvement to property in the immediate vicinity and to the community as a whole;
- e. Will be served adequately by essential public facilities and services, such as highways, streets, police and fire protection, drainage structures, refuse disposal, or schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such service;
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CONSTITUTIONALITY. If any section, clause or phrase of this ordinance shall be declared unconstitutional by a court of competent jurisdiction, the remaining provisions of this ordinance shall continue in full force and effect.

EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after passage, approval, and publication as required by law, to wit, from and after the 8th day of November, 2021.

Proposed on the _____ day of _____, 2021

Proposed by: Commissioner _____.

Adopted on the _____ day of _____, 2021

Vote: Ayes: Commissioners:

Nays: Commissioners:

Absent: Commissioners:

BY: _____
Debra Strickland, Chairman
Nye County Board of
County Commissioners

ATTEST: _____
Sandra L. Merlino
Clerk and Ex-Officio
Clerk of the Board

Beatty Town Advisory Board
PO Box 837
Beatty, Nevada 89003
775-553-2050



Brett Waggoner
Nye County Planning Director
bwaggoner@co.nye.nv.us
RE: Bill 2021-11

September 14, 2021

Director Waggoner,

On behalf of the residents of Beatty, we ask that you present this letter to the Board of Commissioners in support of Bill 2021-11 which proposes to amend Nye County Code Title 17, Comprehensive Land Use Planning and Zoning Chapter 17.10 entitled Special Use Permits.

The proposed amendment adds definitions for the terms; non-renewable energy generation facility, renewable energy, and renewable energy generation facility and requires applicants to communicate with the local Nye County community where they plan to operate by requiring them to obtain a position letter from the local governing body before beginning the permitting process and applying for a Special Use Permit. This is exactly the type of law making that we need. The physical size, diverse land uses, and individuality of the communities that make up Nye County make it even more important that the people have the opportunity to have their voice heard by those entrusted with decision making for the County as a whole.

Bill 2021-09 a proposal to amend Nye County Code Chapter 17.06 titled Marijuana Establishments; Zoning Requirements was heard and tabled by the Board of County Commissioners on August 17, 2021. While listening to the BoCC's discussion and deliberation we heard concerns about the potential delay the requirement to obtain a position letter from the impacted community may cause the applicant. We believe that was the main issue that prevented the amendment, which we wholeheartedly supported, from being approved and incorporated into Nye County Code.

We want to address that concern here. The Beatty Town Advisory Board has regularly scheduled meetings, twice monthly. We also have the ability to and are capable of holding an off-schedule meeting when necessary. Should an applicant, for whatever reason, be unable to attend a regularly scheduled meeting, we would make every attempt to accommodate their preferred date. The only delay an applicant may experience would be the same they would experience with the BoCC, complying with the open meeting law posting requirements for public meetings. While we do not see delays being a problem for the BTAB, we hope the BoCC would grant the Advisory or Town Boards the same lenience they show to the applicants when they experience delays and request extensions.

Beatty Town Advisory Board
 PO Box 837
 Beatty, Nevada 89003
 775-553-2050



As the governing body closest to the people and your representative advisors, we feel this amendment is in the best interests of Beatty, and the other communities with Town or Advisory Boards and therefore the County as a whole.

We strongly believe that when the people are heard and listened to; when we understand the community's positions and wishes and have tried to move forward in the direction they have given us, we will make better decisions for our community. This is what they elected us for and you appointed us to do. As a representative democracy that is our obligation and duty.

The Beatty Town Advisory Board takes its responsibility to advise the Nye County Board of Commissioners very seriously. The citizens of Beatty count on us, the BTAB, to give you advice and make recommendations based on their positions, concerns, and wishes on the many items that come before you and us. We try to reflect the majority's view in our decisions and to give you the advice that most accurately reflects the wishes of the people with as much documentation as possible. We do this so both the residents and you, Commissioners, can count on us, call on us, respect, and honor the recommendations we make to you.

You may be aware that the BTAB is a very engaged Board. We try to stay informed on the issues affecting our Town, County, State, and Country. We have asked to be heard and we make our opinion known whenever the opportunity presents itself; through comment periods, relationships, or having a seat at the table, when we are asked, and sometimes even when we are not because we believe that the voices here on the ground are what we should be guided by.

The Beatty community has been much more engaged and attendance at our meetings has grown. We have formed a Solar subcommittee to address some of the important issues facing the Town and are finding new ways to engage with the people.

Companies are now learning that Beatty wants an introduction before they start a business here. As it relates to this amendment and energy generation facilities, these introductions are especially important. We have asked, and will continue to ask prospective businesses, "who are you" and "how are you going to conduct business in our Town without ever talking to the residents and leaders of the community or visiting our Town?"

The direction this amendment will give applicants ensures communication between them, the local governing body, and the Townspeople, your constituency. It's difficult to form a productive business relationship when one party doesn't know they should start with the community at the heart of their plans.

Requiring these businesses make a presentation to the community at a Town Board meeting is an easy and inexpensive thing to do. We will give each energy generation facility; renewable and non-renewable, that comes before us a fair hearing, giving our support or opposition based on what and how they present themselves, letting the Townspeople decide, and giving you the best insight we can. This is the right thing to do and is long overdue.

Beatty Town Advisory Board
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775-553-2050



Beatty is experiencing unprecedented interest specifically from renewable energy companies. New businesses coming to a community may be popular but we would still want to know who they are, that the business is in the right location, and that the owners are reputable and a good fit for us. Because of the massive amounts of land that is needed for renewable energy, specifically solar, this type of business can be controversial and should have this layer of community scrutiny. It will be good for them and we will appreciate knowing who is moving forward with an energy generation facility project in and around our Town.

We, and you, are public servants. This amendment gives the people an opportunity, with enforcement consequences backing them up, to make their thoughts, concerns, and desires known. It doesn't happen often that a requirement for doing business is actually knowing, listening to, and taking seriously the concerns of the people where you want to conduct that business. We are heartened that you are considering this amendment. By adopting it you will show the regular citizen, with your action today, whether you care or not about their opinions and whether you listen and hear them.

We commend Director Waggoner for bringing it forward. It is a simple thing, but at the heart of how we should lead. We strongly support the amendment to the NCC for the reasons given above and urge the Commissioners to adopt the amendment so the people will have a say in how we grow and who and what we welcome to our community.

The Beatty Town Advisory Board,

Randy Reed
Randy Reed
Beatty Town Advisory Board Chair

cc: T. Sutton, Nye County Manager; B. Jabbour, Beatty Nye County Commissioner; S. Wehrly, Nye County Sheriff; S. Tackett, Nye County Admin

Samantha Tackett

From: Brett Waggoner
Sent: Saturday, October 9, 2021 10:32 PM
To: Samantha Tackett
Subject: Fwd: Thank you for Nye County Bill No. 2021-11

Follow Up Flag: Follow up
Flag Status: Completed

Hi Sam,

Can you please add this to the backup for this item on the 19th.

Respectfully,

Brett Waggoner
 Planning Director
 775-751-4244

From: K. Emmerich <atomicquailranch@gmail.com>
Sent: Saturday, October 9, 2021 10:42:38 AM
To: Brett Waggoner <bwaggoner@co.nye.nv.us>
Subject: Thank you for Nye County Bill No. 2021-11

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Dear Mr Waggoner,

I wanted to send this quick email to say thank you and express support for Nye County Bill No. 2021-11. The public lands around Beatty are seeing an unprecedented amount of large-scale solar energy applications - many of them are 5 to 10 square miles due to the Green Link West transmission proposal. As a resident of the Beatty area for 20 years, I would hate to see our public lands cut off from access and see these large-scale solar projects destroy the tourism economy of the community. The projects would be right next to Death Valley National Park and the unique ghost town of Rhyolite - one of the most popular ghost towns in the western US. Both the park and ghost town are economic and scenic assets to Beatty. These projects will create unhealthy fugitive dust because they plow up so much land and kill local wildlife. The average large-scale solar project only creates about 5 to 10 full time jobs. I believe developing so much public land, cutting off all the access roads, destroying the view will be a death sentence for the economy of Beatty and I would hate to see the local business owners get hurt by this big solar assault. On a personal level, we moved out here for the open space and rural lifestyle. As a Nye County taxpayer and owner of public lands, we think the plans to convert public lands into solar farms is the wrong direction to go. There are limitless opportunities to place solar on rooftops and over parking lots in urban areas. According to the Bureau of Land Management, most of the energy produced from these projects would go to the Tesla, Google and Amazon facilities in Reno, not really benefiting Nevadans.

Thank you so much!

Kevin Emmerich
 P.O. Box 70, 64 Highway 95

Beatty, Nevada 89003
775-553-2806

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DRAFT