

NYE COUNTY ORDINANCE NO. 577

**SUMMARY:** An Ordinance amending 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:** AN ORDINANCE AMENDING 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:

## **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 8<sup>th</sup> day of November, 2021.

Proposed on the 5<sup>th</sup> day of October, 2021


Proposed by: Commissioner Blundo


Adopted on the 19<sup>th</sup> day of October, 2021

Vote: Ayes: Commissioners: STRICKLAND, CARBONE, COX  
BLUNDO, JABOUR

Nays: Commissioners:  $\emptyset$

Absent: Commissioners:  $\emptyset$

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

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