



County of Fresno

DEPARTMENT OF PUBLIC WORKS AND PLANNING
STEVEN E. WHITE, DIRECTOR

Planning Commission Staff Report Agenda Item No. 5 November 14, 2024

SUBJECT: Text Amendment No. 389 and Environmental Review (ER) No. 8627 to modify the text of the Fresno County Zoning Ordinance to amend Article 5, Chapter 842.5 – Conditional Use Permits, Section 842.5.020.B.14 for Power Production and Generation Facilities, and Article 7 – Definitions for Public Utility Facilities to expand and provide additional clarity by including power storage and transmission and specific Government Code references.

APPLICANT: County of Fresno

STAFF CONTACT: Chris Motta, Development Services and Capital Projects Manager

RECOMMENDATION:

- Recommend that the Board of Supervisors approve Amendment to Text No. 389 amending the text of two sections of the Ordinance relating to Power Production and Generation Facilities as listed under allowable uses with an Unclassified Conditional Use Permit, and the amending the definition of Public Utility Facilities; and
- Recommend the Board of Supervisors determine that the recommended actions are exempt from the California Environmental Quality Act; and
- Direct the Secretary to prepare a Resolution forwarding the proposed amendments to the Zoning Ordinance to the Board of Supervisors with a recommendation for approval.

ENVIRONMENTAL ANALYSIS:

The recommended actions are exempt from the California Environmental Quality Act (CEQA) per section 15061(b) (3), as there is no possibility that the recommended actions may cause a significant effect on the environment. The proposed amendments simply provide additional clarity to uses already defined in the Ordinance.

PUBLIC NOTICE:

Notice of the public hearing has been published in the Business Journal, which is a newspaper of general circulation in Fresno County. A separate publication will occur for the anticipated December 17, 2024 hearing before the Board of Supervisors.

PROCEDURAL CONSIDERATIONS:

Adoption of the proposed amendments to the text of the Ordinance is a legislative act requiring final action by the Board of Supervisors (Board). The Planning Commission's action is advisory to the Board. This item is scheduled to be considered by the Board on December 17, 2024. Upon Board approval, the amendments will become effective 30 days thereafter.

BACKGROUND INFORMATION:

On February 20, 2024, the Board of Supervisors adopted amendments to the Fresno County Zoning Ordinance which resulted in a comprehensive update to that document. The Comprehensive Zoning Ordinance Update (Update) amended the County's Zoning Ordinance by modifying, deleting, or adding text and formatting text of the entire Zoning Ordinance Document to bring the Ordinance in compliance with the law and modernize the document to incorporate graphics, tables, address ambiguities. The Update also expanded the Definitions Section of the Ordinance and modified the language of some of the uses permitted by Unclassified Conditional Use Permit.

Prior to adoption of this Update, on June 30, 2022, the State of California adopted Assembly Bill 205 allowing state authorities to bypass local laws in permitting large-scale renewable energy projects. These projects include large-scale clean energy facilities such as photovoltaic solar, onshore wind, and thermal energy facilities not powered by fossil fuels or nuclear fuels, with a generating capacity of at least 50 megawatts (MW). This also includes energy storage systems.

More recently, AB 2661, approved on September 25, 2024, and relating specifically to the Westlands Water District, authorized the District to provide, generate, and deliver solar photovoltaic electricity and to construct, operate, and maintain improvements and property necessary for generating and delivering electricity generated from its facilities. The bill would require the district to use the electricity for the District's own purposes, with the ability to sell surplus electricity to a public or private entity engaged in the distribution or sale of electricity.

In consideration of the State's aggressive goals in achieving more energy generated from renewable sources, and the County's need to insure it retains input on large scale renewable energy projects and their potential impacts to County residents and properties, the Department has sought to provide additional clarity in its definitions of public utilities and in the oversight over certain facilities subject to approval through the Unclassified Conditional Use Permit process.

Currently, the County's Zoning Ordinance defines in-part "Major Public Utility Facility" as: "Fixed-base structures and facilities serving as junction points for transferring utility services from one transmission voltage to another or to local distribution and service voltages." There is no requirement that the utility be provided by a franchise or other private utility. These proposed amendments would add storage to the definition of public utility facilities and provide additional language with reference to Government Code sections 53090 for the definition of local agency and 53091(e) related to local zoning ordinances, energy production, storage and transmission facilities.

For references purposes, the relevant California Government Code sections cited:

53090. As used in this article:

(a) "Local agency" means an agency of the state for the local performance of governmental or proprietary function within limited boundaries. "Local agency" does not include the state, a city, a county, a rapid transit district, or a rail transit district whose board of directors is appointed by public bodies or officers or elected from election districts within the area comprising the district, or a district organized pursuant to Part 3 (commencing with Section 27000) of Division 16 of the Streets and Highways Code.

(b) "Building ordinances" means ordinances of a county or city regulating building and construction and removal of buildings, including ordinances relating to the matters set forth in Section 38660 and similar matters, and including ordinances relating to building permits and building inspection.

53091.

(e) Zoning ordinances of a county or city shall not apply to the location or construction of facilities for the production, generation, storage, treatment, or transmission of water, or for the production or generation of electrical energy, facilities that are subject to Section 12808.5 of the Public Utilities Code, or electrical substations in an electrical transmission system that receives electricity at less than 100,000 volts. Zoning ordinances of a county or city shall apply to the location or construction of facilities for the storage or transmission of electrical energy by a local agency, if the zoning ordinances make provision for those facilities.

PROPOSED AMENDMENTS:

Exhibit "A" attached to the staff report is a draft Ordinance which would amend the Zoning Ordinance. The amended text is also noted below, with no deletions proposed and additional text illustrated in red and underlined:

Amendment to Article 5, Chapter 842.5, Section 842.5.020.B.14, Applicability, Unclassified Conditional Use Permits for specified uses:

14. Power production, storage and generation facilities (includes utility-scale photovoltaic facilities subject to the County's adopted Solar Facility Guidelines, wind farms and hydroelectric facilities subject to County jurisdiction) including without limitation any associated facilities for the storage or transmission of electrical energy;

Amendment to Article 7 – Definitions, Public Utility Facilities:

Public utility facilities. Fixed base structures and facilities for the collection, distribution, maintenance, provision, transmission, or disposal of gas, information, oil, power, storm and sanitary sewage, telecommunication, telephone cable services, and water by public utilities, and includes facilities for the generation or storage of electricity. Does not include "Wireless telecommunication facilities." Notwithstanding the foregoing, "public utility facility" shall include, without limitation, facilities for the storage or transmission of electrical energy, owned or operated by a "local agency," as defined in section 53090 of the Government Code, including such facilities for the storage or transmission of electrical energy which are proposed in connection to a project otherwise permitted under section 53091, subdivision (e) of the Government Code.

CONCLUSION:

The proposed amendments to the Ordinance provide additional clarity to the definition of public utility facilities and those utility facilities subject to an Unclassified Conditional Use Permit. Therefore, staff recommends approval of the proposed amendments to the text of the Ordinance as summarized in this staff report and shown in detail in Exhibit "A".

PLANNING COMMISSION MOTIONS:

Recommended Action

1. Recommend that the Board of Supervisors approve Amendment to Text No. 389 amending the text of two sections of the Ordinance relating to Power Production and Generation Facilities as listed under allowable uses with an Unclassified Conditional Use Permit, and the amending the definition for Public Utility Facilities; and
2. Recommend the Board of Supervisors determine that the recommended actions are exempt from the California Environmental Quality Act; and
3. Direct the Secretary to prepare a Resolution forwarding the proposed amendments to the Zoning Ordinance to the Board of Supervisors with a recommendation for approval.

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EXHIBIT “A”

Article 5, Chapter 842.5, Section 842.5.020.B.14

14. Power production, storage and generation facilities (includes utility-scale photovoltaic facilities subject to the County’s adopted Solar Facility Guidelines, wind farms and hydroelectric facilities subject to County jurisdiction) including without limitation any associated facilities for the storage or transmission of electrical energy;
(Amended by Ord. T- - adopted - -2024)

Article 7 – Definitions

Public utility facilities. Fixed base structures and facilities for the collection, distribution, maintenance, provision, transmission, or disposal of gas, information, oil, power, storm and sanitary sewage, telecommunication, telephone cable services, and water by public utilities, and includes facilities for the generation or storage of electricity. Does not include “Wireless telecommunication facilities.” Notwithstanding the foregoing, “public utility facility” shall include, without limitation, facilities for the storage or transmission of electrical energy, owned or operated by a “local agency,” as defined in section 53090 of the Government Code, including such facilities for the storage or transmission of electrical energy which are proposed in connection to a project otherwise permitted under section 53091, subdivision (e) of the Government Code. (Amended by Ord. T- - adopted - -2024)