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Draft Renewable Energy Systems Ordinance (Abridged)

ORDINANCE TITLE:

AN ORDINANCE OF THE NAPA COUNTY BOARD OF SUPERVISORS, STATE OF CALIFORNIA, REPEALING CHAPTER 18.117 (SMALL WIND ENERGY SYSTEMS) IN ITS ENTIRETY AND REPLACING IT WITH A NEW CHAPTER 18.117 (RENEWABLE ENERGY SYSTEMS); AMENDING SECTIONS 18.24.030 (AV AIRPORT DISTRICT), 18.28.030 (CL COMMERCIAL LIMITED DISTRICT), 18.32.030 (CN COMMERCIAL NEIGHBORHOOD DISTRICT), 18.34.030 (MC MARINE COMMERCIAL DISTRICT), 18.36.030 (I INDUSTRIAL DISTRICT), 18.40.020 (IP INDUSTRIAL PARK DISTRICT, 18.44.020 (GI GENERAL INDUSTRIAL DISTRICT), AND 18.50.030 (PL PUBLIC LANDS DISTRICT) TO ALLOW COMMERCIAL RENEWABLE ENERGY FACILITIES UPON GRANT OF A USE PERMIT; AND AMENDING SECTION 18.120.010 (EXCEPTIONS TO USE LIMITATIONS) OF TITLE 18 OF THE NAPA COUNTY CODE

SECTION 1. Chapter 18.117 (Small Wind Energy Systems) of the Napa County Code is repealed in its entirety and replaced in full to read as follows:

Chapter 18.117 – RENEWABLE ENERGY SYSTEMS

Sections:

- 18.117.010 Purpose**
- 18.117.020 Definitions**
- 18.117.030 Accessory renewable energy systems development standards**
- 18.117.040 Commercial renewable energy production facilities development standards**

18.117.010 - Purpose.

A. The purpose and intent of these regulations is to provide a uniform and comprehensive set of standards for the entitlement and operation of renewable energy systems. The regulations contained herein are designed to promote the development of both accessory and commercial renewable energy systems, advance goals to reduce greenhouse gas emissions, and promote the economic and environmental health of Napa County. These regulations are intended to conserve energy, increase the efficiency of energy use, and produce renewable energy locally, while protecting public health, safety, and community welfare, including by assuring that systems are sited, designed and operated to avoid significant impacts on environmental resources and preserve the visual quality of the natural and built environment.

B. Pursuant to the requirements of Government Code section 65850.5, the provisions of section 18.117.030 establish the standards for administrative approval of accessory renewable energy systems. The permitting of accessory renewable energy systems which comply with these standards are ministerial acts and not subject to CEQA; except that the permitting of such systems are discretionary and subject to CEQA when the system requires an exception to the Conservation Regulations (Chapter 18.108) in the form of a use permit.

18.117.020 - Definitions.

“Accessory renewable energy system” means an on-site renewable energy system where the energy generated offsets energy demands on the property, or on contiguous properties under common

ownership, and provides no more than one hundred twenty-five percent (125%) of the estimated energy demand for all legally established uses. An accessory renewable energy system shall be limited to solar energy systems as defined by Civil Code section 801.5, including ground-mounted systems, roof-mounted systems, floating systems, and systems affixed to shade structures located over required parking areas. Accessory renewable energy systems do not include small residential rooftop solar energy systems subject to Chapter 15.14, Article III – Small Rooftop Solar Energy Systems. Accessory renewable energy systems shall not include energy production for a feed-in tariff or Community Choice Aggregation Program whether in full or in part.

“Bioenergy” means power or fuels produced from any biomass material derived from plants, animals and organic waste streams.

“Commercial renewable energy production facility” means an energy generation facility using renewable fuel sources where the energy generated is used to supply off-site energy needs for a feed-in tariff or Community Choice Aggregation Program, including but not limited to: (1) commercial bioenergy production facilities utilizing bioenergy, including but not limited to ethanol, biodiesel and biogas, and related power generation and cogeneration facilities; and (2) commercial solar energy production facilities utilizing solar photovoltaic cells, panels or arrays designed to collect and convert solar power into energy for onsite use. Commercial renewable energy production facilities do not qualify as a public utility, public use or quasi-public use pursuant to Napa County Code sections 18.120.010(A)(11) and 18.120.010(B)(8).

“Community Choice Aggregator (CCA)” or “Community Choice Aggregation Program” shall have the same definition as California Public Utilities Code Section 331.1, as amended from time to time.

“Photovoltaic (PV)” means a technology that uses a semiconductor to convert sunlight directly into electricity.

18.117.030 – Accessory renewable energy systems development standards.

The following siting criteria and development standards shall apply to accessory renewable energy systems:

- A. Accessory renewable energy systems general development standards.
 1. Accessory renewable energy systems shall comply with all setbacks of the applicable zoning district.
 2. Land clearing activities for accessory renewable energy systems shall comply with and be subject to Chapter 18.108 (Conservation Regulations).
 3. The system shall comply with the latest edition of the Caltrans Highway Design Manual sight distance requirements for safe access to or from the property or other properties in the vicinity.
 4. The system shall not be located over a septic system or leachfield area or established reserve area.
 5. The system shall not be located in a floodway as defined in Chapter 16.04 and complies with floodplain management requirements pursuant to Chapter 16.04.
 6. The system shall not exceed noise standards pursuant to Chapter 8.16.
 7. Ground-mounted systems shall not exceed fifteen feet (15') in height.
 8. Ground-mounted systems shall not cover greater than 10% of the parcel or two (2) acres, whichever is less.
 9. The system shall not be located within Napa County Airport Land Use Compatibility Zones A or B.
 10. Concentrated reflections or glare shall not be directed at occupied structures, recreation areas, roads, highways or airport flight landing or takeoff areas.

18.117.040 – Commercial renewable energy production facilities development standards.

The following siting criteria and development standards shall apply to all commercial renewable energy production facilities:

A. Commercial renewable energy production facilities general development standards.

1. Commercial renewable energy production facilities are permissible upon grant of a use permit on undeveloped properties and/or in conjunction with existing developed land uses, including over parking areas.

2. Facilities shall comply with required yard setbacks and lot coverage limitations of the applicable zoning district and sited to minimize view impacts from public roads and adjacent residential areas. Any lighting shall be fully shielded, downward casting, and not wash out onto structures, other properties, or the night sky. The permittee shall maintain the facility, including all required landscaping, in compliance with the approved use permit.

3. Commercial renewable energy production facilities shall not be located within Napa County Airport Land Use Compatibility Zones A and B, and shall be sited and operated to avoid hazards to air navigation and comply with all applicable Federal Aviation Administration requirements, including Subpart B (commencing with Section 77.11) of Part 77 of Title 14 of the Code of Federal Regulations regarding installations close to airports, and the State Aeronautics Act (Part 1 (commencing with Section 21001) of Division 9 of the Public Utilities Code). Sites located within an Airport Influence Area (as defined in the Napa County Airport Land Use Compatibility Plan) shall provide an analysis documenting compliance with noise, safety, airspace protection, and land use compatibility with airport operations. The owner or permittee of a facility approved within an Airport Influence Area shall record an aviation easement pursuant to Section 15.08.040.A.4 of this code.

4. Commercial renewable energy production facilities shall be sited to avoid or minimize impacts to sensitive biotic habitats including woodlands, wetlands, streams, and habitat connectivity corridors pursuant to the requirements of Chapter 18.108. Projects located within or adjacent to these areas will require all necessary environmental studies at the time of use permit application to demonstrate that the facility avoids sensitive species to the maximum extent feasible and provides adequate mitigation of potential impacts.

5. Commercial renewable energy production facilities shall be sited to avoid or minimize impacts to significant cultural and historic resources, and may require a cultural resources survey at the time of use permit application as determined by the Department.

6. For commercial renewable energy production facilities interconnected to transmission lines greater than 6kV, the location of new transmission lines, poles, and utility sub-stations shall be identified on the site plans. If high voltage (100kV) or private transmission lines are proposed, they shall be considered as part of the use permit process including potential for undergrounding, that the proposed interconnection to transmission lines is acceptable to the utility, and documentation is provided that any new utility-owned transmission lines comply with the requirements of the California Public Utilities Commission.

7. Commercial renewable energy production facilities shall be sited to maintain natural grades and use existing legally established roads for access to the extent feasible, and comply with the requirements of Chapter 18.108. Construction of new roads shall be avoided to the extent feasible. Areas used for temporary access roads, construction staging areas, or field office sites during construction shall be restored and revegetated to preconstruction conditions. The permittee shall maintain an all-weather access road for maintenance and emergency vehicles.

8. Commercial renewable energy production facilities shall comply with the stormwater management standards of Chapter 16.28, including but not limited to, implementation of best management practices to minimize dust and wind erosion during site

preparation, grading, construction, and post construction operation.

9. Commercial renewable energy production facilities shall comply with all requirements of the County Fire Marshal including, but not limited to, emergency vehicle access and turn-around at the facility site(s), addressing, vegetation management, and firebreak zones and maintenance around all structures.

10. Commercial renewable energy production facilities shall be designed and operated in compliance with the noise standards of Chapter 8.16. Projects with the potential to generate noise shall submit a noise analysis at the time of use permit application to demonstrate that the facility will comply with noise standards.

11. The project site for a commercial renewable energy production facility shall be fenced to prevent unauthorized access, including provision of signage addressing site security. Wildlife compatible fencing shall be utilized when warranted based on analysis of biotic resources.

12. The project complies with the latest edition of the Caltrans Highway Design Manual sight distance requirements for safe access to or from the property or other properties in the vicinity.

13. Facilities shall be located so as not to conflict with a septic system or leachfield area or established reserve area.

14. Facilities shall not be located within a floodway, as defined in Chapter 16.04, and shall comply with floodplain management requirements pursuant Chapter 16.04.

15. A decommissioning plan shall be required as part of any use permit application and shall include the following:

a. Removal of all aboveground and underground equipment, structures not identified for re-use, fencing and foundations. Removal of underground equipment, structures and foundations located greater than three feet (3') below grade that do not constitute a hazard or interfere with the reuse of the land may be allowed to remain as determined by the Department as part of the decommissioning plan.

b. Removal of graveled areas and access roads.

c. Restoration of the surface grade and replacement of topsoil after removal of all structures and equipment including grading, revegetation and an erosion control plan to return the site to an appropriate end use consistent with the zoning district.

d. Revegetation of disturbed areas with native seed mixes and plant species suitable to the area. Documentation of a three (3) year maintenance agreement for all revegetated areas shall be submitted prior to the restoration being considered complete.

e. The timeframe for completion of removal and restoration activities.

f. An engineer's cost estimate to implement all aspects of the restoration plan, which will be the basis for financial assurance set forth in Section 18.117.040.A(16).

g. An agreement, in a form approved by County Counsel, signed by the owner and permittee taking full responsibility for decommissioning and reclaiming the site in accordance with the decommissioning plan and use permit approval upon cessation of use.

h. A plan to comply with all state and federal requirements for reuse, recycling or disposal of potentially hazardous waste.

i. The facility permittee shall notify the Department immediately upon termination or cessation of use or abandonment of the operation. The permittee shall remove components of the facility when it becomes functionally obsolete or is no longer in use. The permittee shall begin restoration and removal of all equipment, structures, footings/foundations, signs, fencing, and access roads within ninety (90) days from the

date the facility ceases operation, and complete restoration within one (1) year.

16. At the time of issuance of the permit for the construction of the facility, the permittee shall provide financial assurance in a form and amount acceptable to the Department, in compliance with Section 17.38.030, to secure the expense of decommissioning, dismantling and removing all equipment, structures, fencing, and reclaiming the site and associated access or distribution lines/pipes in compliance with the approved restoration plan.

B. In addition to the requirements of Section 18.117.040.A, the following standards shall apply to commercial bioenergy production facilities:

1. Bioenergy production facilities shall be limited to the Industrial and General Industrial zoning districts.

2. Buildings, facilities, and equipment used in the production and/or storage of bioenergy shall comply with all local, State, and Federal laws. The applicant of the commercial bioenergy production facility shall provide documentation acceptable to the Department prior to granting of a use permit that the project is designed to comply with all required State and Federal permits and approvals.

3. The applicant of a commercial bioenergy production facility shall provide documentation acceptable to the Department prior to granting of a use permit demonstrating that the proposed facility results in a net reduction in carbon output when compared to the carbon output resulting from traditional non-renewable energy production of equivalent size.

C. In addition to the requirements of Section 18.117.040.A, the following standards shall apply to commercial solar energy production facilities:

1. Solar arrays mounted on a legally constructed building structure may exceed the height limit of the zoning district by up to two feet (2'). Ground-mounted facilities shall not exceed fifteen feet (15') in height unless otherwise allowed by use permit.

2. Electrical distribution lines on the project site shall be underground. This provision may be waived by the decision-making body if the undergrounding is determined to be an undue burden.

3. Concentrated reflections or glare shall not be directed at occupied structures, recreation areas, roads, highways or airport flight landing or takeoff areas. A detailed analysis of potential glare effects may be required at the time of application, and the applicant may be required to minimize glare effects by installing vegetative screens or berms, and/or by adjusting solar collector position or operation to minimize glare.

SECTION 2. Section 18.24.030 (Uses permitted upon grant of a use permit) of Chapter 18.24

(AV Airport District) of the Napa County Code is amended to read in full as follows:

18.24.030 - Uses permitted upon grant of a use permit.

The following uses shall be permitted in all AV districts upon grant of a use permit pursuant to Section 18.124.010:

G. Satellite earth stations that cannot, for demonstrated technical reasons acceptable to the director, be located in an Industrial (I), Industrial Park (IP), or General Industrial (GI) zoning district; and

H. Commercial renewable energy facilities.

SECTION 3. Section 18.28.030 (Uses permitted upon grant of a use permit) of Chapter 18.28

(CL Commercial Limited District) of the Napa County Code is amended to read in full as follows:

18.28.030 - Uses permitted upon grant of a use permit.

The following uses may be permitted in all CL districts upon grant of a use permit pursuant to Section 18.124.010:

L. Art studios and galleries; ~~and~~

M. Accessory dwelling units, provided that (i) prior to issuance of a building permit to commence construction of the dwelling units, the permittee shall record a deed restriction, in a form acceptable to county counsel, limiting in perpetuity the use of the dwelling units to occupancy by households with moderate incomes (as defined in Section 18.82.020) and below, (ii) the dwelling units are compatible with neighboring land uses, and, (iii) water, wastewater treatment, and parking is available to support the dwelling units; ~~and~~

N. Commercial renewable energy facilities.

SECTION 4. Section 18.32.030 (Uses permitted upon grant of a use permit) of Chapter 18.32

(CN Commercial Neighborhood District) of the Napa County Code is amended to read in full as follows:

18.32.030 - Uses permitted upon grant of a use permit.

A. The following uses may be permitted in all CN districts upon grant of a use permit pursuant to Section 18.124.010:

12. Small financial services such as branch banks and automatic teller machines, but not including drive-through banking; ~~and~~

13. Professional, administrative, executive, financial, real estate, insurance and other general business offices; ~~and~~

14. Commercial renewable energy facilities.

SECTION 5. Section 18.34.030 (Uses permitted upon grant of a use permit) of Chapter 18.34

(MC Marine Commercial District) of the Napa County Code is amended to read in full as follows:

18.34.030 - Uses permitted upon grant of a use permit.

In the MC district, the following uses are permitted upon grant of a use permit:

P. Satellite earth stations that cannot, for demonstrated technical reasons acceptable to the director, be located in an Industrial (I), Industrial Park (IP), or General Industrial (GI) zoning district; ~~and~~

Q. Commercial renewable energy facilities.

SECTION 6. Section 18.36.030 (Uses permitted upon grant of a use permit) of Chapter 18.36 (I

Industrial District) of the Napa County Code is amended to read in full as follows:

18.36.030 - Uses permitted upon grant of a use permit.

The following uses may be permitted in all I districts, but only upon grant of a use permit pursuant to Section 18.124.010:

- A. Industry;
- B. Livestock feed lots;
- C. Commercial renewable energy facilities; and ~~Noncommercial wind energy and conversion systems;~~
- D. Telecommunication facilities that do not meet one or more of the performance standards specified in Section 18.119.200.

SECTION 7. Section 18.40.020 (Allowed Uses) of Chapter 18.40 (IP Industrial Park District) of the Napa County Code is amended to read in full as follows:

18.40.020 - Allowed uses.

Uses allowed in the IP district are as follows:

- B. Uses Permitted Upon Grant of a Use Permit by the Planning Commission. The following uses shall be permitted providing a use permit has been granted by the planning commission pursuant to Chapter 18.124 (commencing with Section 18.124.010):
 - 7. Ancillary daycare is allowed as follows:
 - a. As a secondary use to an otherwise allowed use (primary use), wherein the parent and/or guardian of every child present at the daycare is an employee of the primary use or the ancillary daycare center, and the daycare does not exceed fifteen children, or
 - b. As a ~~stand-alone~~ standalone business or in association with another allowed use, wherein the parent and/or guardian is not employed at the business location, in which case the size and location of the facility shall be subject to a consistency determination by the Napa County Airport Land Use Commission prior to use permit approval;
 - 8. ~~Other industrial or commercial uses which, in the opinion of the planning commission, are non-nuisance causing and similar in character to the above listed uses~~ Commercial renewable energy facilities;

SECTION 8. Section 18.44.020 (Allowed uses) of Chapter 18.44 (GI General Industrial District) of the Napa County Code is amended to read in full as follows:

18.44.020 - Allowed uses.

In the GI district:

- B. The following industrial uses are permitted, provided that a use permit has been granted pursuant to Chapter 18.124 (commencing with Section 18.124.010):
 - 11. Emergency shelters, providing that all the conditions set forth in Section 18.104.065 are met and that applicable conditions in the Airport Land Use Compatibility Plan and the Napa Valley Business Park County Airport Industrial Area Specific Plan are met.; and

12. Commercial renewable energy facilities.

SECTION 9. Section 18.50.030 (Uses permitted upon grant of a use permit) of Chapter 18.50

(PL Public Lands District) of the Napa County Code is amended to read in full as follows:

18.50.030 - Uses permitted upon grant of use permit.

The following uses may be permitted in all PL districts upon grant of a use permit pursuant to Section 18.124.010:

H. Recreational or other uses requiring no on-site buildings and utilizing an average of not less than two hundred fifty acre-feet of recycled water annually; and

I. Commercial renewable energy facilities.

SECTION 10. Section 18.120.010 (Exceptions to use limitations) of Chapter 18.120

(Exceptions) of the Napa County Code is amended to read in full as follows:

18.120.010 Exceptions to use limitations.

A. The following uses, in addition to those hereinbefore set forth, shall be allowed without a use permit in any zoning district:

11. Public utility facilities subject to the exclusive jurisdiction of the California Public Utilities Commission and public uses exempt from county zoning pursuant to Government Code 53090 and following, as those sections may be amended from time to time.

12. Accessory renewable energy systems which comply with the criteria set forth in Section 18.117.030.

13. Accessory emergency power generators supplying a total of not more than 125% of the calculated energy demand for all legally established onsite uses, and that comply with Chapter 8.16 (Noise), Chapter 18.108 (Conservation Regulations), and Chapter 18.104 (Additional Zoning District Regulations).

B. The following uses may be permitted in any zoning district (or where restricted to certain zoning districts, in accordance with such restrictions) upon the grant of a use permit in each case:

8. ~~(Reserved) Other public utility uses including, without limitation, warehouses, storage yards, gas holders, substations, electric generating plants, reservoirs, storage tanks, pumping stations and communication equipment buildings;~~

9. ~~Other public and q~~Quasi-public uses not included elsewhere in this section other than telecommunication facilities;