

46 – UTILITY-SCALE POWER GENERATION FACILITIES REGULATIONS

46.1 PURPOSE

The purpose of these regulations governing electrical power generation facilities using non-renewable energy sources and that are interconnected to the transmission grid for the transmission of electricity in intrastate or interstate commerce (“Utility-Scale Power Generation Facility”) is to provide for the construction and operation of Utility-Scale Power Generation Facilities in Sarpy County, subject to reasonable restrictions, which will preserve the environment, public health, safety, welfare, order, prosperity, and convenience of present and future inhabitants of Sarpy County. Sarpy County recognizes that Utility-Scale Power Generation Facilities could have significant impacts to Sarpy County including visual impacts, noise impacts, stormwater management impacts, and other impacts related to the County’s statutory authority to adopt and enforce zoning regulations for purposes of, among other things, developing urban and nonurban areas, protecting the tax base, protecting property against blight and depreciation, and encouraging the most appropriate use of land in the county. These regulations are intended to address these impacts through appropriate location, design, screening, and other regulation of Utility-Scale Power Generation Facilities as provided herein.

46.2 TITLE

This regulation shall be known and cited as the Sarpy County Utility-Scale Power Generation Facilities Regulation.

46.3 DEFINITIONS

For purposes of this regulation, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number, and words in the singular number the plural number. The word “shall” is always mandatory, and not merely directory.

Applicant means any person or entity submitting an Application for a permit for a Utility-Scale Power Generation Facility.

Application means all necessary and appropriate documentation that an Applicant submits in order to receive a permit for a Utility-Scale Power Generation Facility.

Completed Application means an application that contains all information and/or data necessary to enable an informed decision to be made with respect to an application.

County means the local political subdivision described as Sarpy County as set forth in State Statutes. When the term County is used to refer to a geographic area, it shall

denote any areas within the County boundaries excluding areas within the extra-territorial zoning jurisdiction of any City or Village within the County.

County Board means the Sarpy County Board of Commissioners.

Facility Operator means the entity or entities having controlling or majority equity interest in the Utility-Scale Power Generation Facility.

Facility Owner means the entity or entities having controlling or majority equity interest in the Utility-Scale Power Generation Facility, including their respective successors and assigns.

Utility-Scale Power Generation Facility or **Facility** means a facility that (a) has an electrical generating capacity of twenty-five (25) megawatts or more and generates electricity for offsite use using non-renewable sources and that are interconnected to the transmission grid for the transmission of electricity in intrastate or interstate commerce, and including all electrically connected equipment on-site used to produce, collect, transmit, and store the facility output up to and including the transformer that steps up the voltage for transport offsite, including supporting structures, buildings, roads, and other appurtenant structures, facilities and equipment, and (b) is not wholly owned by a public power district, a public power and irrigation district, a municipality, a registered group of municipalities, any other governmental entity, or any combination thereof. Utility-Scale Power Generation Facility does not include Wind Energy Facilities or Solar Energy Facilities, as the regulation of such facilities is covered in other sections of these Regulations.

Planning Commission means the Planning Commission of Sarpy County.

Planning Department means the Department of Planning in Sarpy County, which provides administrative support to the Planning Commission and serves as the office of the Planning Commission.

Planning Official means the person authorized and empowered by Sarpy County to interpret, administer, and enforce the requirements of the Sarpy County Zoning Regulations.

Public Road means a full passage right-of-way.

Regulations means the Zoning Regulations, and subsections thereof, of Sarpy County, Nebraska.

Setback means the minimum distance, measured in feet, between the Utility-Scale Power Generation Facility and the property line or access easement.

Special Use Permit means the official document or permit by which an Applicant is allowed to file for a building permit to construct and use a Utility-Scale Power Generation Facility as granted or issued by the County Board.

State means the State of Nebraska.

46.4 OVERALL POLICY AND DESIRED GOALS FOR PERMITS FOR UTILITY-SCALE POWER GENERATION FACILITIES

In order to ensure that the placement, construction, and modification of Utility-Scale Power Generation Facilities protects the County's health, safety, public welfare, environment features, nature and character of the community and neighborhood, and other aspects of the quality of life specifically listed elsewhere in the Regulations, a Special Use Permit is required for all Utility-Scale Power Generation Facilities. No Utility-Scale Power Generation Facility shall be installed, constructed, or modified until the Application is reviewed and approved by the Planning Commission and the County Board, the Special Use Permit has been issued, and a building permit has been issued in compliance with the County's adopted building codes. Building permits are required for all Utility-Scale Power Generation Facilities. In addition to meeting the requirements of these Regulations for a Special Use Permit, the County will not grant a Special Use Permit for a Utility-Scale Power Generation Facility unless it shall first find and determine:

- (A) The nature of the probable impact on area aesthetics, scenic attributes, and historic and recreational values;
- (B) That the proposed use of such Facility is compatible with uses located in adjacent districts as reflected in the comprehensive plan;
- (C) That the Facility:
 - 1. Is compatible with the public health and safety;
 - 2. Has demonstrated that it has obtained all necessary permits from the Nebraska Department of Environment and Energy;
 - 3. Is in compliance with the criteria and requirements of these Regulations; and
 - 4. Conforms to, and is in compliance with, all zoning laws, ordinances, rules, and regulations of the County.

46.5 PERMIT APPLICATION

The permit application shall comply with Section 40, Special Use Permits and contain the following:

- (A) A narrative describing the proposed Utility-Scale Power Generation Facility, including an overview of the project and proposed total rated generating capacity of the Utility-Scale Power Generation Facility;
- (B) Identification and location of the properties on which the proposed Utility-Scale Power Generation Facility will be located;

- (C) A detailed site plan showing the planned location of all buildings, stacks, power lines, power poles, and all equipment to be constructed, property lines, setback lines, access roads and other site features;
- (D) Other relevant information as may be reasonably requested by Sarpy County to ensure compliance with the requirements of the Regulations;
- (E) Decommissioning plans that describe the anticipated life of the Utility-Scale Power Generation Facility, the estimated decommissioning costs in current dollars, the method for ensuring that funds will be available for decommissioning and restoration, and the anticipated manner in which the Utility-Scale Power Generation Facility will be decommissioned and the site restored;
- (F) Documentation of agreement between participating landowner and the Owner/Operator of the Utility-Scale Power Generation Facility.
- (G) Signature of the Applicant;
- (H) Elevations of the Utility-Scale Power Generation Facility;
- (I) Development Agreement that addresses decommissioning of the Utility-Scale Power Generation Facility and proof of liability insurance.

46. 6 SITING

- (A) Utility-Scale Power Generation Facilities shall be sited only in the General Manufacturing District (IGM), as it is the only district in which permitted uses are compatible with a Utility-Scale Power Generation Facility. Unless otherwise provided in this Section, such facilities shall meet the requirements of the General Manufacturing District (IGM) in Section 23 of these Regulations, including but not limited to the Performance Standards of Section 23.2 and Height and Lot Requirements of Section 23.2 as well as all other applicable sections of these Regulations.
- (B) All Applications for Utility-Scale Power Generation Facilities shall contain a demonstration that the Facility will be sited so as to minimize or mitigate as much as is reasonably possible its visual impact.

46. 7 DESIGN AND LAYOUT

- (A) The installation and design, and all structural, electrical, and mechanical components, of the Utility-Scale Power Generation Facility shall conform to applicable industry standards, all local, state, and federal regulatory requirements, and shall take into consideration local conditions.
- (B) The Applicant shall furnish a visual impact assessment that includes:

1. A computer generated “zone of visibility map” at a minimum of one-mile radius from the proposed structure, with and without foliage shall be provided to illustrate locations from which the proposed Utility-Scale Power Generation Facility may be seen; or
2. Pictorial representations of “before and after” (photo simulations) views from key viewpoints as may be appropriate, including but not limited to State highways and other Public Roads; state and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided, concerning the appropriate key sites at the pre-application meeting. The Applicant shall provide a map showing the locations of where the pictures were taken and distance from the proposed structures of the Facility.

(C) Utility-Scale Power Generation Facilities shall be screened from view of the adjacent street, road, or highway, and from adjacent properties, as fully as practicable and to the extent such does not interfere with industry standards for construction of such facilities, using any combination of the following as approved by the County Board:

1. Landscaping shall consist of a combination of trees and shrubs suitable to screen the Utility-Scale Power Generation Facility from view from adjacent streets, roads, or highways, and from adjacent properties, except that beneath overhead power lines no trees with an expected height greater than 25 feet at maturity shall be planted. Selection of plant material shall coordinate with the vegetation in the surrounding land uses, or expected land uses (i.e., domestic plants shall be used in areas where surrounding development has used domestic plants, and native vegetation shall be used where surrounding terrain or development has used native plantings);
2. All ground within landscaped areas shall be covered with ground covering. If rock is used, rock color and size shall be selected to blend in with the surroundings;
3. Other methods of screening, including but not limited to fences or walls constructed of attractive, permanent- finished materials which blend with surrounding land uses, and fully contain the visual impact of the Facility. Solid masonry walls, or precast concrete walls with suitable architectural finish may be used as approved by the County Board;

46.8 LIGHTING

- (A) Lighting Standard. Lighting from the Facility shall not create greater than 0.50 foot candle of spillover light at a single-family zoned residential property line.
- (B) Redirecting/Screening of Light Sources. All sources of light, including security lighting, illuminated signs, vehicular headlights, and other sources shall be

directed away from single-family zoned residential property or screened so that the light level stated above is not exceeded.

46.9 RETENTION OF EXPERT ASSISTANCE AND REIMBURSEMENT BY THE APPLICANT

- (A) The County Board may hire any consultant and/or expert necessary to assist the Planning and Building Department, Planning Official, Planning Commission, and County Board in reviewing and evaluating the Application, including the construction of the site once permitted, and any site inspections.
- (B) An Applicant shall reimburse and pay the County for all reasonable costs of consultant and expert evaluation and consultation to the County in amounts as set forth in the current Master Fee Schedule in connection with the review of any Application, including where applicable, review for compliance with state and federal regulatory agencies, permits, and approvals, and the construction of the site, once permitted. The County's consultants/experts shall invoice the County for its services related to the Application within sixty (60) days of such services being provided. County shall then invoice the Applicant for such costs, in amounts as set forth in the current Master Fee Schedule, and Applicant shall pay all invoices within thirty (30) days from receipt.
- (C) The total amount of the funds needed as set forth in subsection (B) of this Section may vary with the scope and complexity of the project, the completeness of the Application, and other information as may be needed to complete the necessary review, analysis, and inspection of any construction of the Facility.

46.10 DECOMMISSIONING

- (A) The Facility Owner shall have two (2) years to complete decommissioning of the Facility if no electricity is generated for transmission and distribution for a continuous period of one (1) year.
- (B) Decommissioning shall include removal of all buildings, chimneys, stacks, power lines, power poles, equipment, cabling, electrical components, roads, and any other associated facilities or structures below grade.
- (C) Disturbed earth shall be graded and re-seeded.
- (D) A development agreement, prepared by the County, must include financial surety from the Facility Owner for decommissioning that also binds successors and assigns to the same, and must be signed and part of the Application to address decommissioning responsibilities and filed with the Register of Deeds.
- (E) The Facility Owner shall establish a decommissioning security sufficient for funding the cost of decommissioning of the Facility, as estimated pursuant to Section 46.5(G) above. Such decommissioning security shall be in the form of a performance bond, surety, letter of credit, corporate guarantee, or other form of financial assurance that is acceptable to the County, and shall be established by

posting of an instrument, a copy of which shall be given to the County, prior to commencement of construction of the Facility.