



Agenda Report

23-454

Agenda Date: 4/12/2023

REPORT TO PLANNING COMMISSION

SUBJECT

Public Hearing: Action on Amendment of Zoning Code Section 18.60.050 to Permit Fuel Cells and Photovoltaic Panels as an Allowable Use without Need for a Use Permit, as well as Require Other Electric Power Plants to Adhere to State of California Emissions Requirements in MP - Planned Industrial, ML - Light Industrial, MH - Heavy Industrial, B - Public, Quasi-Public, and Public Park or Recreation, and PD - Planned Development Zoning Districts.

BACKGROUND

Title 18 of the City Code, referred to as the Zoning Code, establishes definitions and regulations for land uses within the City of Santa Clara.

Electric Power Plants are defined in section 18.06.010 of the Zoning Code as: “all equipment, fixtures, and personal property operated or maintained in connection with the production of electricity using any source of thermal, steam, wind, or solar energy with a generating capacity of more than five hundred (500) kilowatts and less than fifty (50) megawatts, including all conduits, ducts, or other devices, materials, apparatus, or property used or to be used for the transmission of the electricity so produced.”

Section 18.60.50 of the Zoning Code identifies electric power plants as a potentially permitted use, subject to the obtainment of a Use Permit, in the following zoning districts MP - Planned Industrial, ML - Light Industrial, MH - Heavy Industrial, and B - Public, Quasi-Public, and Public Park or Recreation.

Photovoltaic panels and fuel cells with a larger capacity for electricity production meet the Zoning Code definition of electric power plant and thus are subject to the requirement of obtaining a Use Permit (CUP) in accordance with Zoning Code Section 18.60.050. A CUP is a discretionary action requiring CEQA clearance. The Planning Commission recently approved a CUP for photovoltaic panels on August 24, 2022 (PLN2022-00189) to allow photovoltaic panels that will generate 1,388kW at Santa Clara University, and the Commission approved the use of a statutory exemption to CEQA for solar energy projects. For fuel cells, the Planning Commission has yet to review any CUP applications, but three applications are currently pending with the City.

Bloom Energy, Inc. is a manufacturer of fuel cells which utilize methane as part of their production process. In 2019, Bloom Energy filed a legal challenge to the imposition of a CUP and the associated CEQA review required for its proposed fuel cell projects at 3 locations in the City. That litigation is still pending, but the parties recently engaged in productive settlement negotiations, and on March 21, 2023, the City Council approved a tentative settlement, pursuant to which Bloom would agree to utilize renewable energy sources and/or offsets, and the City would agree to introduce an ordinance removing the CUP requirement for fuel cells. The language related to fuel cells in the proposed ordinance is in satisfaction of this settlement agreement.

DISCUSSION

The proposed Zoning Code amendment would streamline the process for constructing fuel cell and photovoltaic panels, allowing them to be permitted in the referenced zoning districts without the need to obtain a Use Permit. As a ministerial approval, applications to install fuel cells would no longer need to obtain CEQA clearance prior to installation.

The proposed Zoning Code amendment would align the Code with State legislation recognizing that photovoltaic technology has been documented as a clean energy source. California Senate Bill (SB) 226 (2011) added Section 21080.35 to the Public Resources Code, establishing a statutory exemption to the California Environmental Quality Act (CEQA) for solar projects installed on existing building rooftops and in parking lots. To align with this information about emissions standards being met by both fuel cells and photovoltaics, the proposed Zoning Code Amendment would permit these uses without the need to obtain a Use Permit from the City.

For other power generation technologies that meet the City's definition of an Electric Power Plant, the proposed Zoning Code amendment would maintain the City's current requirement to obtain a Use Permit. However, consistent with City Council priorities, the proposed ordinance would also impose a new renewable energy requirement on such new power plants to adhere to state of California emissions requirements. The ordinance would also expressly authorize power plants to be constructed in Planned Development (PD) zoning districts.

The Zoning Code is proposed to be amended as follows:

18.60.050 Electric power plants and water wells.

- (a) The construction or operation of electric power plants, or the drilling, construction, or operation of water wells, is permitted only in the MP, ML, MH, PD, or B zoning districts. Water wells and electric power plants (excluding fuel cells and photovoltaic panels), and only after shall first secureing a use permit in each case as provided in Chapter 18.110 SCCC.
- (b) All power plants, except fuel cells, shall not exceed state of California emissions requirements. Emissions requirements can be met in whole or in part by purchasing renewable energy credits, or offsets that meet CARB requirements.
- (c) For purposes of this section, "fuel cells" means all equipment, fixtures, and personal property operated or maintained in connection with a direct energy conversion device that converts chemical energy into electrical energy, or vice versa, using an electrochemical reaction.
- (d) For purposes of this section, "state of California emissions requirements" shall mean the requirements applicable to retail sales of electricity to California end-use customers under Public Utilities Code Section 454.53, subdivision (a), and the interim targets established by the California Energy Commission (CEC) under Public Utilities Code Section 399.15, subdivision (b), pursuant to the Renewable Portfolios Standard (RPS) Program, as set forth below. Should these targets be amended by legislation or regulatory changes to be more stringent, the more stringent requirements shall be applicable under this section.
 - 1. 44 percent by December 31, 2024
 - 2. 52 percent by December 31, 2027
 - 3. 60 percent by December 31, 2030
 - 4. 90 percent by December 31, 2035
 - 5. 95 percent by December 31, 2040
 - 6. 100 percent by December 31, 2045

The proposed amendment to the Zoning Code is consistent with the City's Climate Action Plan's interim target to achieve an 80% reduction in emissions by 2035 and net carbon neutrality by 2045 and General Plan policy 5.10.3-P1 "*Promote the use of renewable energy resources, conservation and recycling programs,*" in that the Zoning Code amendment would allow for an expedited City review process to promote these uses by the removal of the need to obtain a Use Permit for photovoltaics, which are renewable energy production technologies. With the commitment to utilize renewable fuel and offsets, Bloom's fuel cells would also be carbon neutral by 2045 and reach interim targets starting in 2025.

As part of the above-mentioned legal settlement agreement, Bloom Energy shall provide ongoing reports to the City of evidence of fuel cells adhering to emissions standards set forth in the agreement.

Note that although they are also referenced in Section 18.60.050, there are no proposed changes regarding water wells and drilling, construction, or operation and these uses will also continue to be subject to a Use Permit.

ENVIRONMENTAL REVIEW

The proposed Zoning Code Amendment is covered by the common sense exemption 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The proposed Zoning Code amendment will not have the potential to cause a significant effect on the environment in that it will streamline the City's review of fuel cells, which per the agreement with Bloom Energy, will include ongoing documentation to the City proving that the installed fuel cells meet certain emission limitations. With those standards in place, the emissions from the Bloom fuel cells will not be significantly different than the emissions generated by Silicon Valley Power. The ordinance would also streamline the review of photovoltaics, which are already deemed to be exempt from CEQA through a statutory exemption, Pub. Res. Code § 21080.35. The amendment will also reduce emissions from other technologies that meet the definition of electric power plant by requiring them to adhere to the state of California emissions requirements.

FISCAL IMPACT

There is no additional cost to the City other than administrative staff time and expense.

COORDINATION

This report was coordinated with the City Attorney's Office and City Manager's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

ALTERNATIVES

1. Recommend that the City Council adopt the proposed Zoning Code Amendment to Section 18.60.50 to permit fuel cells and photovoltaic panels as an allowable use without need for a Use Permit as well as require other electric power plants to adhere to state of California emissions requirements in MP - Planned Industrial, ML - Light Industrial, MH - Heavy Industrial, B - Public, Quasi-Public, and Public Park or Recreation, and PD - Planned Development zoning districts.
2. Other Action taken by the Planning Commission.

RECOMMENDATION

Recommend that the City Council adopt the proposed Zoning Code Amendment to Section 18.60.050 to permit fuel cells and photovoltaic panels as an allowable use without need for a Use Permit as well as require other electric power plants to adhere to state of California emissions requirements in MP - Planned Industrial, ML - Light Industrial, MH - Heavy Industrial, B - Public, Quasi-Public, and Public Park or Recreation, and PD - Planned Development zoning districts.

Reviewed by: Andrew Crabtree, Director, Community Development

Approved by: Office of the City Manager

ATTACHMENT

1. Ordinance

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SANTA CLARA,
CALIFORNIA, AMENDING SECTION 18.60.050
("ELECTRIC POWER PLANTS AND WATER WELLS") OF
CHAPTER 18.60.50 ("SPECIAL USE REGULATIONS
APPLICABLE TO CERTAIN ZONING DISTRICTS"), OF
TITLE 18 ("ZONING") OF "THE CODE OF THE CITY OF
SANTA CLARA, CALIFORNIA," RELATED TO ELECTRIC
POWER PLANTS.**

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

SECTION 1: Section 18.60.050 ("Electric Power Plants and Water Wells") of Chapter 18.60

("Special Use Regulations Applicable To Certain Zoning Districts"), Of Title 18 ("Zoning") of

"The Code Of The City Of Santa Clara, California," is hereby amended to read as follows:

"18.60.050 Electric power plants and water wells.

- (a) The construction or operation of electric power plants, or the drilling, construction, or operation of water wells, is permitted only in the MP, ML, MH, PD, or B zoning districts. Water wells and electric power plants (excluding fuel cells and photovoltaic panels), shall first secure a use permit in each case as provided in Chapter 18.110 SCCC.
- (b) All power plants, except fuel cells, shall not exceed state of California emissions requirements. Emissions requirements can be met in whole or in part by purchasing renewable energy credits, or offsets that meet CARB requirements.
- (c) For purposes of this section, "fuel cells" means all equipment, fixtures, and personal property operated or maintained in connection with a direct energy conversion device that converts chemical energy into electrical energy, or vice versa, using an electrochemical reaction.
- (d) For purposes of this section, "state of California emissions requirements" shall mean the requirements applicable to retail sales of electricity to California end-use customers under

Public Utilities Code Section 454.53, subdivision (a), and the interim targets established by the California Energy Commission (CEC) under Public Utilities Code Section 399.15, subdivision (b), pursuant to the Renewable Portfolios Standard (RPS) Program, as set forth below. Should these targets be amended by legislation or regulatory changes to be more stringent, the more stringent requirements shall be applicable under this section.

- a. 44 percent by December 31, 2024
- b. 52 percent by December 31, 2027
- c. 60 percent by December 31, 2030
- d. 90 percent by December 31, 2035
- e. 95 percent by December 31, 2040
- f. 100 percent by December 31, 2045

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SECTION 2. Effective date. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of “The Charter of the City of Santa Clara, California.”

PASSED FOR THE PURPOSE OF PUBLICATION this ____ day of _____, 2023, by the following vote:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST:

NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None