

DRAFT

ORDINANCE NO. XX-2012

AN ORDINANCE OF THE CITY OF FREMONT, ADDING ARTICLE 20.5 TO FREMONT MUNICIPAL CODE TITLE VIII (PLANNING AND ZONING), CHAPTER 2 (ZONING) AND AMENDING AND REPEALING VARIOUS SECTIONS REGARDING RENEWABLE ENERGY SYSTEMS

WHEREAS, Goal 7-9 (Energy Conservation) of the Conservation Element of the General Plan is stated as follows: “Highly efficient building and site design standards that provide cost-effective methods to conserve energy, reduce the City’s carbon footprint, and promote the use of renewable energy sources”; and

WHEREAS, Policy 7-9.3 (Renewable Energy Sources) of the Conservation Element states, “Encourage renewable energy sources for new and existing buildings and infrastructure”; and

WHEREAS, the Conservation Element also includes Implementation measures 7-9.3.A (Solar Energy), which states, “Promote the integration of solar energy sources into all types of development”, and 7-9.3.B (Onsite Wind Turbines), which states, “Develop regulations encouraging rooftop or onsite wind turbines that encourage their use while minimizing noise and aesthetic impacts”; and

WHEREAS, existing regulations pertaining to the development of wind turbines set forth in the Fremont Municipal Code are outdated as they relate to the size of wind turbines allowed and the prescribed review procedure; and

WHEREAS, the City desires to enact this ordinance in order to comply with General Plan goal, policy and implementation measures described above.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FREMONT DOES ORDAIN AS FOLLOWS:

SECTION 1. FMC TITLE VIII, CHAPTER 2, ARTICLE 20.5 ADDED

Fremont Municipal Code Title VIII, Chapter 2, Article 20.5 is added to read as follows:

ARTICLE 20.5. RENEWABLE ENERGY SYSTEMS

- § 8-22050 Purpose.
- § 8-22051 Applicability.
- § 8-22052 Definitions.
- § 8-22053 Solar and Wind Energy Systems: Permitting Table.
- § 8-22054 Solar Energy Systems.
- § 8-22055 Wind Energy Systems.

- § 8-22056 Historic Resources.
- § 8-22057 Wind and Solar Farms.
- § 8-22058 Emerging Technologies.
- § 8-22059 Conflict.
- § 8-22060 Indemnity.

Sec. 8-22050. Purpose.

The purpose of this article is to establish zoning regulations for the development and operation of renewable energy systems for electricity generation and consumption. It also includes standards for the placement and design of such systems that address public health and safety, and, for wind energy systems or wind farms, aesthetic quality of the City as set forth within the goals and policies of the General Plan. The City recognizes that the efficient use of renewable energy systems reduces on-site consumption of utility supplied electricity, reduces dependence on nonrenewable energy sources and results in an overall reduction of greenhouse gas emissions.

Sec. 8-22051. Applicability.

No renewable energy system shall be installed or operated except in compliance with this Article.

Sec. 8-22052. Definitions.

“Renewable energy system” means a solar energy system, wind energy system, solar farm, or wind farm.

“Solar energy system” means a private, noncommercial energy producing system designed to reduce onsite consumption of utility power consisting of photovoltaic panels that are roof mounted or ground mounted on a support structure for the purpose of collection, storage and distribution of solar energy for space heating or cooling, water heating or electricity generation.

“Solar farm” means a collection of photovoltaic solar panels arrayed on a ground mounted support structure for the sole purpose of generating electricity for off-site consumption distributed through the electrical grid.

“Toe of the Hill” or “TOH” is defined in Section 8-2199.8 of this code.

“Wind energy system” means a private, noncommercial wind energy conversion system designed to reduce onsite consumption of utility power consisting of a wind turbine, a tower, and associated controls with a rated capacity of 20 kilowatts (kW) or less. A wind energy conversion system may be installed onto the roof of a structure (Roof Mount) or onto a ground mounted structure (Ground Mount). The height of such structure shall be measured to the highest point of the tower or support structure.

“Wind farm” means one or more wind turbines each with a rated capacity of 20 kilowatts

(kW) or more developed for the sole purpose of generating electricity for off-site consumption distributed through the electrical grid.

Sec. 8-22053. Solar and Wind Energy Systems: Permitting Table.

This table provides a general overview; refer to the text for specific requirements. In the event of any conflict between the text and this matrix, the text will govern.

General Plan Land Use or Location	Solar Panels (Roof Mounted)	Solar Arrays (Ground Mounted)	Wind Turbines (Roof Mounted)	Wind Turbines (Ground Mounted)
Areas above the Toe of the Hill (TOH) (Subject to the Hill Area Initiative of 2002)	Permitted Use	Permitted Use	Zoning Administrator Permit	Conditional Use Permit for non-residential parcels
Residential	Permitted Use	Permitted Use	Permitted Use*	Not Permitted
Commercial and Industrial	Permitted Use	Permitted Use	Permitted Use*	Permitted Use**
Open Space below the TOH	Permitted Use	Permitted Use	Not Permitted except in City parks	Not Permitted except in City parks
All Other Areas	Permitted Use	Permitted Use	Zoning Administrator Permit	Zoning Administrator Permit

*Permitted accessory use to a residential, commercial or industrial use when the system is not more than 10 feet above the highest roof line of the structure and the turbine diameter is 60 inches or less. Otherwise, a Zoning Administrator Permit is required.

** Permitted accessory use to General or Regional commercial and industrial land uses when the system is not more than 60 feet tall, or to City Center, Town Center or Mixed Use designated parcels when the system is not more than 40 feet tall. Otherwise, a Zoning Administrator Permit is required.

Sec. 8-22054. Solar Energy Systems.

(a) Permitted Accessory Use. Solar Energy Systems (roof or ground mount) are permitted accessory uses in all zoning districts subject to the regulations in this article, the provisions of the Hill Area Initiative of 2002 and accessory use standards. Ground mounted solar energy systems are also subject to Article 27, Site Plan and Architectural Approval.

(b) Siting and Locational Standards. Solar energy systems shall be located and constructed as follows:

<i>Standards</i>	Roof Mounted Solar Panels	Ground Mounted Solar Arrays
Maximum Height of System	n/a	12 feet on residential designated parcels and

		parcels used for residential, 24 feet in all other districts.
Location on Parcel	n/a	Rear yard on residential designated parcels and parcels used for residential; and front, side or rear yard in all other zoning districts.
Maximum Parcel Coverage	n/a	Residential parcels subject to detached accessory structure provisions under Article 22. Fifty percent of entire parcel in all other designations.
Separation Requirements to Buildings and Property Lines	n/a	Subject to detached accessory structure provisions under Article 22.

(c) Other Requirements.

- (1) Security. Ground mounted solar arrays located on commercial or industrial designated lands and visible from the public right-of-way are encouraged to be secured with fencing that is decorative in nature.
- (2) Feeder lines. Feeder lines and any other appurtenant equipment serving the solar energy system are encouraged to be screened to the maximum extent possible or placed underground where screening is not feasible.
- (3) Abandonment of Use. If a ground mounted solar energy system remains nonfunctional or inoperative for a period of one year it shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the property owner.

(d) Demonstration Systems. Nothing in this article is meant to restrict or discourage the use of solar energy systems for the purposes of demonstrating their operational characteristics by commercial or industrial businesses involved in the sale or manufacturing of such systems. However, such demonstration systems are permitted only as an accessory use to a principally permitted use. Demonstration systems may be located on a separate parcel only if that parcel is adjacent to the parcel on which the principal use is located and where both parcels contain the same General Plan land use designation.

(e) Solar Arrays in Parking Lots. Where solar arrays are installed over parking lots, the portion of the parking lot covered by the array is exempt from the tree planting requirements of Section 8-22009(e)(4)(b). The applicability of this exemption shall be reviewed through the Site Plan and Architectural Review process of Article 27. All other landscape requirements shall apply. Any removal of trees shall be governed by the Tree Preservation Ordinance as set forth in Title 4, Chapter 5 of this code.

Sec. 8-22055. Wind Energy Systems.

- (a) Permitting Process.
 - (1) Roof-mounted wind energy systems are a permitted accessory use provided that they are located below the Toe of the Hill, no more than 10 feet above the highest roofline, have a blade diameter of five feet or less and not located on a Register Resource or Potential Register Resource.
 - (2) All other roof-mounted wind energy systems require a Zoning Administrator Permit except where prohibited as set forth in subsection (7) below.
 - (3) Ground-mounted wind energy systems are not permitted on residential parcels.
 - (4) Ground-mounted wind energy systems on non-residential parcels located above the Toe of the Hill require a Conditional Use Permit, and are subject to applicable provisions of the Hill Area Initiative of 2002 (Measure T), including those related to visual safeguards.
 - (5) Ground-mounted wind energy systems located on General Commercial, Regional Commercial or any Industrial designated parcels and no more than 60 feet tall are a permitted accessory use. Otherwise, a Zoning Administrator Permit is required.
 - (6) Ground-mounted wind energy systems located on any City Center, Town Center or Mixed Use designated parcels and no more than 40 feet tall are a permitted accessory use. Otherwise, a Zoning Administrator Permit is required.
 - (7) Wind energy systems are not permitted in any Open Space Land Use designations below the Toe of the Hill except the City Park designation.
- (b) Number of Systems. The number of wind energy systems is limited as follows:
 - (1) One roof-mounted wind energy system shall be allowed per residential parcel.
 - (2) One wind energy system shall be allowed per parcel above the Toe of the Hill and per commercial parcel located in the City Center or Town Center land use designation subject to siting and location standards.
 - (3) Two wind energy systems shall be allowed per commercial parcel designated as Mixed Use, General Commercial or Regional Commercial subject to siting and location standards.
 - (4) There is no limit on the number of wind energy systems for parcels designated as Public Facility or any parcels designated as Industrial subject to siting and location standards.
 - (5) Except as set forth in subsection (1) above, the Planning Commission may permit additional wind energy systems on a parcel subject to siting and location standards and

a Conditional Use Permit.

(c) Siting and Location Standards. Wind energy systems shall be located and constructed as follows:

<i>Standards</i>	Roof Mounted Wind Energy Systems	Ground Mounted Wind Energy Systems
Location on Parcel	n/a	Front, side, or rear yard.
Separation Requirements to Property Lines and Other Wind Turbines	5 feet or total turbine diameter, whichever is greater	15 feet or total turbine diameter, whichever is greater.
Maximum Height of System (Top of Tower)	15 feet above highest roof line	60 feet on parcels less than 20,000 square feet; 80 feet on parcels between 20,000 square feet and one acre; 120 feet on parcels greater than one acre.
Rotor Blade Diameter	10 feet	25 feet

(d) Other Requirements.

- (1) Braking Systems. All wind energy systems shall be designed with braking mechanisms or overspeed control to prevent uncontrolled rotation, excessive speed and pressure on the support structure, rotor blades and system components.
- (2) Lighting. No lighting shall be allowed on any wind turbine tower except that which is required by the Federal Aviation Administration.
- (3) Noise. Wind energy systems shall comply with the noise requirements of the General Plan.
- (4) Electromagnetic Interference. Wind energy systems shall be operated so as to avoid disruptive electromagnetic interference to off-site telecommunications, surveillance, or other similar systems. Where such interference occurs, the system operator shall promptly eliminate the interference or cease operation of the system.
- (5) Feeder lines. To the maximum extent possible, feeder lines and any other appurtenant equipment serving the wind energy system shall be screened, or placed underground where screening is not possible.
- (6) Guy wires. Anchor points for any guy wires for the support structure shall be located within property lines and not on or across any aboveground electric transmission distribution line. Written permission of the easement holder must be obtained prior to extending guy wires across underground easements.
- (7) Access. Where a support structure is a lattice tower, one of the following methods shall be used to restrict access:

- (A) The climbing apparatus shall be elevated at least twelve feet from the ground;
- (B) A locked anti-climbing device shall be installed on the tower; or
- (C) The tower shall be enclosed by a locked six-foot fence.

(8) Deviations. Any deviations from the required standards of this article regarding wind energy systems may be considered through a Conditional Use Permit process in accordance with Article 25. For deviations to height standards, the applicant shall provide the following:

- (A) Proof of substantial wind obstruction preventing maximum efficiency of the wind energy systems at the maximum allowable height; and
- (B) A visual impact analysis of the proposed wind energy system as installed including photo simulations and any visual screening incorporated to lessen the system's visual prominence.

(e) Abandonment of Use. If the wind energy system remains nonfunctional or inoperative for a period of one year, it shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the property owner.

Sec. 8-22056. Historic Resources.

Notwithstanding anything to the contrary in this article, where a renewable energy system is proposed to be located on a property containing a Register Resource or Potential Register Resource as defined in Article 19.1 (Historic Resources Ordinance) or within a Historical Overlay District under Article 18.4, review shall be conducted in accordance with the applicable article.

Sec. 8-22057. Wind and Solar Farms.

Wind farms or solar farms for commercial electricity production may be permitted subject to Conditional Use Permit review and approval by the Planning Commission, provided it is located on a lot designated as Public Facility or General Industrial on the General Plan Land Use Diagram, the lot size is greater than 10 acres and is located below the Toe of the Hill. Such systems are subject to the regulations of this article and any other regulations deemed necessary for the public health and safety by the Community Development Director and/or Chief Building Official.

Sec. 8-22058. Emerging Technologies.

Nothing in this article is meant to restrict or prevent other renewable energy technologies from being constructed, operated or implemented. Implementation of such technologies shall be subject to the same requirements and follow the same general procedure as other renewable energy systems to the extent practicable. They shall also be subject to all provisions of the Fremont Municipal Code, California Building Code and other development related policies subject to review by the Community Development Director.

Sec. 8-22059. Conflict.

This article is not intended to interfere with or annul any other ordinance, regulation, statute or other provision of law except as provided herein. If any provision of this article imposes restrictions different from any other ordinance, regulation, statute or other provision of law, the provision that is more restrictive shall control.

Sec. 8-22060. Indemnity.

Any property owner that installs a renewable energy system shall defend, indemnify and hold harmless the City and any of its boards, commissions, officers, agents and employees from any claim, action, or proceeding against the City, its boards, commissions, officers, agents and employees to attack, set aside, void or annul the approval of the project.

SECTION 2. FMC §6-3104 AMENDED

Fremont Municipal Code Title 6, Chapter 3, Section 6-3104 (Utility Underground Districts) is amended to read as follows:

Sec. 6-3104 Certain Facilities Excepted.

(a)-(e) [text unchanged]

(f) Renewable energy systems. Renewable energy systems as that term is defined in Section 8-22052 of this code.

SECTION 3. FMC §8-2823 AMENDED

Fremont Municipal Code Title 8, Chapter 2, Article 8.2 (P-F Public Facilities District) Section 8-2823 (Conditional uses: Planning Commission as reviewing agency) is amended to read as follows:

Sec. 8-2823. Conditional uses: Planning Commission as reviewing agency.

The following uses may be permitted with a conditional use permit, provided all other requirements of this chapter are met. The procedure for a conditional use permit shall be as set forth in article 25 of this chapter.

(a)-(b) [text unchanged]

(c) Wind farms and solar farms, as defined in Section 8-22052, on lots designated as Public Facility or General Industrial on the General Plan Land Use Diagram, where such lots are greater than 10 acres and located below the Toe of the Hill, and ground-mounted wind energy systems located above the Toe of the Hill.

SECTION 4. FMC §8-21508 AMENDED

Fremont Municipal Code Title 8, Chapter 2, Article 15 (Industrial Districts) Section 8-21508

(Uses in the industrial districts) is amended to read as follows:

Sec. 8-21508. Uses in the industrial districts.

(a)-(b) [text unchanged]

TABLE 8-21508

Uses in Industrial Districts

In the Table 8-21508, the letters and symbols are defined as follows:

[text regarding meaning of letters and symbols unchanged]

[footnotes 1-5 unchanged]

⁶This term is defined in article 20.5.

[all tables unchanged except for “Communication and Utility Service Uses” table as set forth below]

Communication and Utility Service Uses	I-L	I-R	G-I
Communications ² and telecommunications (e.g., telephone, radio, cable, wireless, satellite);	Z ⁵	Z ⁵	P ⁵
Electric, gas, and sanitary services, ² as follows:			
- Combination electric and gas, and other utility services; ²	C ⁵	Z ⁵	Z ⁵
- Electric services; ²	C ⁵	Z ⁵	Z ⁵
- Natural gas transmission and distribution; ²	C ⁵	Z ⁵	Z ⁵
- Natural gas transmission and distribution; ²	C ⁵	Z ⁵	Z ⁵
- Sanitary services; ²	C ⁵	Z ⁵	Z ⁵
- Sewerage systems; ²	C ⁵	Z ⁵	Z ⁵
- Water supply; ²	C ⁵	Z ⁵	Z ⁵
Renewable energy systems ⁶ for off-site consumption, as follows:			
- Wind farms ⁶ on lots 10 acres or larger;	--	--	<u>C</u>
- Solar farms ⁶ on lots 10 acres or larger;	--	--	<u>C</u>

SECTION 5. FMC §8-2199.24 REPEALED

Fremont Municipal Code Title 8, Chapter 2, Article 1, Section 8-2199.24 (Wind Energy Conversion System (WECS)) is repealed.

SECTION 6. FMC §8-2199.24.1 REPEALED

Fremont Municipal Code Title 8, Chapter 2, Article 1, Section 8-2199.24.1 (WECS overspeed control) is repealed.

SECTION 7. FMC §8-2199.24.2 REPEALED

Fremont Municipal Code Title 8, Chapter 2, Article 1, Section 8-2199.24.2 (WECS swept area) is repealed.

SECTION 8. FMC §8-2199.24.3 REPEALED

Fremont Municipal Code Title 8, Chapter 2, Article 1, Section 8-2199.24.3 (Wind Farm) is repealed.

SECTION 9. FMC §8-22165 REPEALED

Fremont Municipal Code Title 8, Chapter 2, Article 21.3, Section 8-22165 (Wind Energy Conversion Systems) is repealed.

SECTION 10. CEQA

Negative declaration. The City Council hereby determines that the Negative Declaration prepared for this ordinance has been completed in compliance with the requirements of the California Environmental Quality Act (CEQA) and reflects the independent judgment of the City, and finds that adoption of the ordinance will have no significant negative impact on the area's resources, cumulative or otherwise. The Director of Community Development shall file a Notice of Determination with the County Clerk in accordance with CEQA guidelines.

SECTION 11. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Fremont hereby declares that it would have passed this ordinance and each section or subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 12. EFFECTIVE DATE

This ordinance shall take effect and will be enforced thirty (30) days after its adoption.

SECTION 13. PUBLICATION AND POSTING

The City Clerk has caused to be published a summary of this ordinance, prepared by the City

Attorney under Government Code Section 36933(c), once in a newspaper of general circulation printed and published in Alameda County and circulated in the City of Fremont, at least five days before the date of adoption. A certified copy of the full text of the ordinance was posted in the office of the City Clerk since at least five days before this date of adoption. Within 15 days after adoption of this ordinance, the City Clerk shall cause to be again published in a newspaper of general circulation the summary of this ordinance with the names of those City Council members voting for and against the ordinance; and the City Clerk shall post in the office of the City Clerk a certified copy of the full text of this adopted ordinance with the names of those City Council members voting for and against the ordinance.

* * *

The foregoing ordinance was introduced before the City Council of the City of Fremont at the regular meeting of the City Council, held on the 10th day of April, 2012 and finally adopted at a regular meeting of the City Council held on the th day of , 2012 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk

Deputy City Attorney