

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF EMERGENCY and PROPOSED RULEMAKING
Z.C. Case No. 19-04

**(Text Amendments – 11 DCMR – Defining Community Renewable Energy Facility (CREF)
and Locating Zones in which a CREF is a Permitted Use)**

The Zoning Commission for the District of Columbia (Commission) pursuant to the authority set forth in § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01 (2018 Repl.)), and the authority set forth in § 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of amendments to §§ 100.2 and 200.2 of Subtitle B; § 1500.5 of Subtitle C; § 1103.1 of Subtitle H; §§ 410.3, 612.1, and 911.1 of Subtitle K; and §§ 201.1, 250.1, 600.1 and 801.1 of Subtitle U of Title 11 (Zoning), of the District of Columbia Municipal Regulations (DCMR).

On February 7, 2019, the Office of Planning (OP) filed a report with the Office of Zoning that served as a petition proposing text amendments to Subtitles B, C, H, K, and U of Title 11 DCMR (Zoning Regulations of 2016). The text amendments would define a Community Renewable Energy Facility (CREF) distinct from the facilities classified in the “Basic Utility” use category and would permit a CREF as a matter-of-right use in all zones except the MU-11 and SEFC-4 zones, with the size of the CREF subject to the yard and height development standards of each zone.

The proposed text amendments would apply city-wide and facilitate implementation of community solar installations that provide the benefits of solar energy to residents who can’t install systems on their residences, including renters, homeowners whose rooftops are shaded or need repairs, and residents in multi-family buildings, by allowing members to receive a credit on their electricity bill each month for their share of a solar installation not located on their residence. Community solar installations are a key component of efforts to meet the target of 100% renewable energy by 2032 included in the Clean Energy DC plan to implement the Clean Energy DC Omnibus Act of 2018. As part of these efforts the District Department of Energy and the Environment (DOEE) launched its Solar for All program to reduce the electric bills of at least 100,000 District low-income households with high energy burdens by at least 50% prior to December 31, 2032. DOEE has issued \$13 million in grants under the Solar for All program for community solar installations which must be completed prior to the end of this fiscal year on September 30, 2019.

Although the Zoning Regulations do not specifically regulate solar arrays as a use, community solar installations have been deemed to fall within the “Basic Utility” use category requiring a special exception to operate. DOEE is concerned that requiring community solar installations to obtain a special exception adds delay and expense and would adversely impact DOEE and the District’s achievement of the solar and renewable energy targets of the Clean Energy DC plan by potentially jeopardizing the 22 megawatts of planned community solar projects funded by DOEE’s Solar for All program.

The Zoning Regulations also do not specifically regulate the location of solar arrays; however, roof-mounted solar systems must comply with the Penthouse regulations found in Subtitle C, Chapter 15 and permanent ground-mounted solar arrays that are greater than four feet in height must comply with the development standards applicable to structures in each zone.

The Commission considered whether to propose the amendments at its public meeting held February 11, 2019, at which meeting OP and DOEE testified about the effect of the text amendments and the need to take emergency action. DOEE testified that the need to obtain special exceptions for community solar installations would imperil the funding available for the Solar for All program for this fiscal year. The Commission concluded that any delay to the community solar installations funded by DOEE's Solar for All program in this fiscal year would result in immediate and significant harm to these installations, which must be completed by September 30, 2019 to fulfill the grant requirements. Such delay would also cause immediate and significant harm to the lower-income households who are the beneficiaries of the reduced energy costs from these community solar installations. This would prove detrimental to the District's goals of increasing the sustainability, resilience, and equitability of the District's built environment and energy systems. For these reasons, the Commission, found that the emergency adoption of these amendments is necessary for the "immediate preservation of the public ... welfare." D.C. Official Code § 2-505(c) (2012 Repl.).

The Commission also gives notice of its intent to adopt the following amendments to the Zoning Regulations in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The emergency rule will expire June 11, 2019, which is the one hundred-twentieth (120th) day after the adoption of this rule, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

TITLE 11 DCMR, ZONING, is amended as follows (deleted text marked in ~~**bold and strikethrough**~~; new text shown in **bold and underline**):

Subsection 100.2 of § 100, DEFINITIONS, of Chapter 1, DEFINITIONS of Subtitle B, DEFINITIONS, RULES OF MEASUREMENT, AND USE CATEGORIES, is amended as follows:

100.2 When used in this title, the following terms and phrases shall have the meanings ascribed:

...¹

Community Centers, Private: A building, park, playground, swimming pool, or athletic field operated by a local community organization or association.

¹ The uses of this and other ellipses indicate that other provisions exist in the subsection being amended and that the omission of the provisions does not signify an intent to repeal.

Community Renewable Energy Facility: The generation and subsequent sharing, through virtual net-metering, of renewable energy generated by a community solar energy system financially funded in whole or in part by the Department of Energy and Environment. Community solar energy systems commonly take the form of shared electricity output, which is provided to subscribers. Examples include but are not limited to roof-mounted solar arrays, ground-mounted solar arrays, or solar canopies, but would not include basic utility uses.

Community Service Use: A not-for-profit use established primarily to benefit and serve the population of the community in which it is located.

...

Subparagraph (4) of paragraph (f) of § 200.2 of § 100, DEFINITIONS, of Chapter 2, USE CATEGORIES of Subtitle B, DEFINITIONS, RULES OF MEASUREMENT, AND USE CATEGORIES, is amended as follows:

200.2 When used in this title, the following use categories shall have the following meanings:

...

(f) Basic Utilities:

- (1) The commercial or governmental generation, transmission, distribution, or storage of energy, water, stormwater, cable, or telecommunication-related information;
- (2) This use commonly takes the form of infrastructure services which are provided city-wide;
- (3) Examples include, but are not limited to: electrical sub-station, telephone exchange, optical transmission node, electronic equipment facility, sewer plant, water treatment plant, methods and facilities for renewable energy generation, or utility pumping station; and
- (4) Exceptions: This use category does not include uses which would typically fall within the antennas, **community renewable energy facility**, or waste-related services use categories;

...

Subsection 1500.5 of § 1500, PENTHOUSE GENERAL REGULATIONS, of Chapter 15 PENTHOUSES of Subtitle C, GENERAL RULES, is amended as follows:

1500.5 For the administration of this section, mechanical equipment shall not include telephone equipment, radio, television, ~~or~~ electronic equipment of a type not necessary to the operation of the building or structure, or solar canopies on top of a parking garage. Antenna equipment cabinets and antenna equipment shelters shall be regulated by Subtitle C, Chapter 13.

Subsection 1103.1 of § 1103, MATTER-OF-RIGHT USES (NC-USE GROUPS A, B, AND C), of Chapter 11, USE PERMISSIONS FOR NC ZONES of Subtitle H, NEIGHBORHOOD MIXED USE (NC) ZONES, is amended by adding a new paragraph (r) as follows:

1103.1 The following uses in this section shall be permitted as a matter of right:

...

(p) Transportation infrastructure; **and**

(q) Daytime care; **and**

(r) Community renewable energy facility subject only to the yard and height development standards of the zone.

Subsection 410.3 of Section 410, USE PERMISSIONS (HE), of Chapter 4, HILL EAST ZONES – HE-1 THROUGH HE-4 of Subtitle K, SPECIAL PURPOSE ZONES, is amended by adding a new paragraph (o) as follows:

410.3 The following uses are permitted in the HE zones:

...

(m) Retail; **and**

(n) Service, general and financial; **and**

(o) Community renewable energy facility, subject only to the yard and height development standards of the zone.

Subsection 612.1 of Section 612, USE PERMISSIONS (STE), of Chapter 6, SAINT ELIZABETHS EAST CAMPUS ZONES – STE-1 THROUGH STE-19 of Subtitle K, SPECIAL PURPOSE ZONES, is amended by adding a new paragraph (y) as follows:

612.1 The following uses categories shall be permitted as a matter of right in all of the StE zones, except as limited in Subtitle K §§ 613 and 614, or if specifically prohibited by Subtitle K § 615:

...

(w) Service, general and financial; **and**

(x) Transportation infrastructure; **and**

(y) Community renewable energy facility subject only to the yard and height development standards of the zone.

Subsection 911.1 of Section 911, USE PERMISSIONS (WR), of Chapter 9, WALTER REED ZONES – WR-1 THROUGH WR-8 of Subtitle K, SPECIAL PURPOSE ZONES, is amended by adding a new paragraph (n) as follows:

911.1 The uses in this section shall be permitted as a matter of right in the WR-1 zone, subject to any applicable conditions.

...

(l) Retail subject to the conditions of Subtitle K § 912.10; **and**

(m) Transportation infrastructure; **and**

(n) Community renewable energy facility subject only to the yard and height development standards of the zone.

Subsection 201.1 of Section 201, MATTER-OF-RIGHT USES – R-USE GROUPS A, B, C, AND D, of Chapter 2, USE PERMISSIONS RESIDENTIAL HOUSE (R) ZONES of Subtitle U, USE PERMISSIONS, is amended by adding a new paragraph (c) as follows:

201.1 The following uses in this section shall be permitted as a matter of right subject to any applicable conditions:

...

(a) A principal dwelling unit shall be permitted as follows:

...

(3) In the R-Use Group C, the principal dwelling unit may be in either a detached, semi-detached, or an attached building; **and**

(b) Clerical and religious group residences for no more than fifteen (15) persons; **and**

(c) Community renewable energy facility subject only to the yard and height development standards of the zone.

Subsection 250.1 of Section 250, ACCESSORY USES (R), of Chapter 2, USE PERMISSIONS RESIDENTIAL HOUSE (R) ZONES of Subtitle U, USE PERMISSIONS, is amended by adding a new paragraph (g) as follows:

250.1 The following accessory uses shall be permitted as a matter of right in all R zones subject to the associated conditions:

...

(e) An accessory apartment subject to the conditions of Subtitle U § 253; **and**

(f) Other accessory uses, buildings or structures customarily incidental to the uses permitted in R zones under the provisions of this section shall be permitted; including one (1) sale in the nature of a yard sale, garage sale, or home sales party may be held at a dwelling unit during a twelve (12) month period; **and**

(g) Community renewable energy facility subject only to the yard and height development standards of the zone.

Subsection 600.1 of Section 600, MATTER-OF-RIGHT USES ON ALLEY LOTS (R, RF, AND RA), of Chapter 6, USE PERMISSIONS FOR ALLEY LOT of Subtitle U, USE PERMISSIONS, is amended by adding a new paragraph (f) as follows:

600.1 The following uses shall be permitted as a matter-of- right on an alley lot in the R, RF, and RA zones subject to any applicable conditions:

...

(d) Parking subject to the following conditions:

...

(3) Parking garage on a lot not containing another use shall meet the following conditions:

...

(C) The building shall open directly onto an alley; **and**

(e) Residential dwelling, provided that the use shall be limited to one (1) dwelling unit on an alley lot, subject to the following limitations:

...

(5) If the Zoning Administrator or other authorized building official determines that the access from a proposed dwelling on an alley lot is insufficient to provide the intended public safety, hygiene or other building code requirement, the application for the residential dwelling shall be referred to the Board of Zoning Adjustment; **and**

(f) Community renewable energy facility subject only to the yard and height development standards of the zone.

Subsection 801.1 of Section 801, MATTER-OF-RIGHT USES (PDR), of Chapter 8, MATTER-OF-RIGHT USES (PDR) of Subtitle U, USE PERMISSIONS, is amended by adding a new paragraph (cc) as follows:

801.1 The following uses shall be permitted in a PDR zone as a matter of right, subject to any applicable conditions:

...

(aa) Waste incineration, including for conversion to energy subjects to the Standards of External Effects in Subtitle U §804, and the use shall not be permitted on any lot located in in whole or in part within one hundred feet 100 ft.) of a residential zone; ~~and~~

(bb) Wholesale or storage establishment, including open storage, except a junk yard; and

(cc) Community renewable energy facility subject only to the yard and height development standards of the zone.

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001, or signed electronic submissions may be submitted in PDF format to zcsubmissions@dc.gov. Ms. Schellin may also be contacted by telephone at (202) 727-6311 or by email: at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.