

MEMORANDUM

TO: District of Columbia Zoning Commission
FROM: ^{JLS} Jennifer Steingasser, Deputy Director, Development Review & Historic Preservation
DATE: March 22, 2019
SUBJECT: ZC Case 19-04 – Public Hearing Report for a Proposed Text Amendment to Subtitles B, C, H, K, and U

I. BACKGROUND

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.

II. RECOMMENDATION

OP recommends that the Zoning Commission **approve** the proposed text amendments, as provided in draft form in Section IV of this report. The proposal would not be inconsistent with the Comprehensive Plan.

III. COMMISSION COMMENTS FROM SET-DOWN MEETING

The following summarizes Zoning Commission comments and requests for additional information relating to the proposed text amendment from the setdown meeting:

Comment	Response	OP Analysis
What would these ground-mounted arrays look like?	See attachment 1 for illustrative examples.	Ground-mounted arrays would have to meet the yard and height regulations for the zone.

IV. CHANGES SINCE SET-DOWN

OP has worked closely with the Department of Energy and the Environment (DOEE) to refine the proposed text. OP recommends a narrower definition for **Community Solar Facility (CSF)** rather than the original proposal to define **Community Renewable Energy Facility (CREF)**. The District’s Renewable Energy Portfolio Standard Act of 2004 (D.C. Law 15-340; D.C. Official Code § 34-1431 *et seq.*) defines a CREF to include *all* Tier One Renewable Sources, which could include solar, wind, biomass, methane, geothermal, ocean, fuel cells, and raw or treated wastewater. OP’s intent was to define and permit solar energy systems and not all Tier One renewable sources; therefore, a new definition is proposed to narrow the facility to solar only. The use permissions remain the same as originally proposed.

V. PROPOSED TEXT AMENDMENTS

The proposed text amendments are as follows. Text in **bold underline** is new proposed text; the text in ~~**bold strikethrough**~~ is a proposed deletion. New text since setdown is shown in **blue bold underline**.

Should the Commission take proposed action, OP requests the flexibility to work with the Office of Attorney General to clarify the language to be included in the notice of proposed rulemaking

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.

Community Solar Renewable Energy Facility: A solar energy facility that is directly interconnected with the Electric Company's distribution system and that does not exceed five (5) megawatts in capacity, where the monetary value of the electricity generated by the facility is credited to the subscribers, which must number at least two (2). 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 Community solar facilities are characterized by the sharing of 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:

...

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.

- (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 solar 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 solar 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 solar 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 solar 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 solar 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 solar 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 solar 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 solar 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 solar renewable energy facility subject only to the yard and height development standards of the zone.**

VI. ANALYSIS

Although the Zoning Regulations do not specifically regulate solar arrays as a use, current practice permits roof-mounted solar panels that meet the penthouse height and setback requirements, if all the electricity generated by the solar panels is used by the building tenant, as a matter-of-right. Similarly, roof-mounted solar panels that meet the penthouse regulations are permitted as a matter-of-right, provided the building tenant uses 51% or more of the electricity generated by the panels.

Ground-mounted solar arrays follow similar permissions, with the percentage of energy generated being used on-site determining whether the solar array is a principal use or an accessory use. As with roof-mounted arrays, any ground-mounted array must meet the height and yard regulations for the zone to be permitted as a matter-of-right.

Community solar installations, roof- or ground-mounted arrays where most of the energy generated by the array would be used off-site, 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 its ambitious solar and renewable energy targets of the Clean Energy DC plan. OP is bringing forward this text amendment to address these concerns and to ensure that the District can meet its renewable energy goals.

The proposed text amendment to the zoning regulations would define Community Solar Facilities and would permit them, as a matter-of-right, subject to the height and yard requirements of the zone.

		<i>Current Regulations</i>		<i>ZC Case 19-04</i>	
		<i>Principal Use</i>	<i>Accessory Use</i>	<i>Principal Use</i>	<i>Accessory Use</i>
<i>Building-mounted*</i>	100% use on-site	N/A	Matter-of-Right	N/A	Matter-of-Right
	51% or more use on-site	N/A	Matter-of-Right	N/A	Matter-of-Right
	50% or less use on-site	N/A	Special Exception for Basic Utility	N/A	Matter-of-Right for CSF (<5 mw)
	50% or less use on-site	N/A	Special Exception for Basic Utility	N/A	Special Exception for Basic Utility (>5 mw)
<i>Ground-mounted**</i>	100% use on-site	Special Exception for Basic Utility	Matter-of-Right	Matter-of-Right	Matter-of-Right
	51% or more use on-site	Special Exception for Basic Utility	Matter-of-Right	Matter-of-Right	Matter-of-Right
	50% or less use on-site	Special Exception for Basic Utility	Special Exception for Basic Utility	Matter-of-Right for CSF (<5 mw)	Matter-of-Right for CSF (<5 mw)
	50% or less use on-site	Special Exception for Basic Utility	Special Exception for Basic Utility	Special Exception for Basic Utility (>5 mw)	Special Exception for Basic Utility (>5 mw)

* Subject to the penthouse regulations in C § 1500.

** Subject to the height and yard regulations of the zone.

While community renewable energy facilities have not been defined or regulated in zoning, the Renewable Energy Portfolio Standard Act of 2004 and the Public Service Commission (PSC) define and regulate CREFs.

Renewable Energy Portfolio Standard Act of 2004 (DC Law 15-340, § 34-1501(9B))

“Community renewable energy facility” or “CREF” means an energy facility using renewable resources defined as tier one renewable sources in § 34-1431(15) that is located within the District of Columbia and where the monetary value of electricity generated by the facility is credited to the subscribers of the facility.

District of Columbia Municipal Regulations, Public Utilities and Cable Television, Definitions (15 DCMR § 999)

999 DEFINITIONS

“Community Renewable Energy Facility” or “CREF” means an energy facility with a capacity no greater than five (5) megawatts that:

- (a) uses renewable resources defined as a Tier One Renewable Source in accordance with Section 3(15) of the Renewable Energy Portfolio Standard Act of 2004, effective April 12, 2005, (D.C. Law 15-340; D.C. Official Code § 34-1431(15) as amended);
- (b) is located within the District of Columbia;
- (c) has at least two (2) Subscribers; and
- (d) has executed an Interconnection Agreement and a CREF Rider with the Electric Company.

The existing definitions include a requirement for an executed Interconnection Agreement and a CREF Rider with the Electric Company. This documentation could be beneficial for DCRA as it reviews permit applications. DCRA could require the submittal of the Interconnection Agreement and CREF Rider at the time of building permit application to facilitate its review.

VII. PLANNING CONTEXT

a. COMPREHENSIVE PLAN

The Citywide Environmental Protection Element includes the following policies that relate directly to use of renewable energy technologies with an eye towards providing financial assistance to lower income customers while encouraging the use of green power.

Environmental Protection Element

Policy E-2.2.1: Energy Efficiency Promote the efficient use of energy, additional use of renewable energy, and a reduction of unnecessary energy expenses. The overarching objective should be to achieve reductions in per capita energy consumption by DC residents and employees. ^{610.3}

Policy E-2.2.2: Energy Availability Improve energy availability and buffer District consumers from fluctuations in energy supply and prices. This should be achieved through the District’s energy purchasing policies, financial assistance programs for lower income customers, incentives for “green” power, and regulatory changes that ensure that local energy markets are operating efficiently. ^{610.4}

Policy E-2.2.4: Alternative Energy Sources Support the development and application of renewable energy technologies such as active, passive, and photovoltaic solar energy, fuel cells, and other sustainable sources. Such technology should be used to reduce the dependence on imported energy, provide opportunities for economic and community development, and benefit environmental quality. A key goal is the continued availability and access to unobstructed, direct sunlight for distributed-energy generators and passive-solar homes relying on the sun as a primary energy source. ^{610.6}

Policy E-2.2.5: Energy Efficient Building and Site Planning Include provisions for energy efficiency and for the use of alternative energy sources in the District’s planning, zoning, and building standards. The planning and design of new development should contribute to energy efficiency goals.

610.7

b. OTHER PLANNING DOCUMENTS

Sustainable DC, February 20, 2013: The Sustainable DC plan has the goal of making the District the healthiest, greenest, most livable city in the nation. The plan outlines a comprehensive approach to creating sustainability across sectors. Through strategies and solutions in the built environment, energy, food, nature, transportation, waste, and water sectors, the plan addresses current and future challenges to create jobs and grow the local economy; improve public health through clean air and water and access to healthy food and lifestyles; provide equal access to services and assistance for those who need it most; and protect the local environment and global climate.

Clean Energy DC, August 27, 2018: The Clean Energy DC plan lays out a thoughtful set of actions that the District Government, local businesses, and residents can take over the next 15 years to dramatically reduce the District’s role in climate change. The plan identifies innovative strategies to reduce emissions from buildings, energy supply, and transportation, and sets forth roadmaps with timelines to implement these strategies.

These other planning documents establish the importance of an equitable and prosperous clean energy future for the District and call for actions that: improve the efficiency of energy use to reduce overall consumption; increase the proportion of energy sourced from clean and renewable supplies; and modernize energy infrastructure for improved efficiency and reliability.

c. SUMMARY OF PLANNING CONTEXT ANALYSIS

The District’s small geographic size and competing priorities for rooftop space present unique challenges to bringing the benefits of solar to residents. To achieve the District’s ambitious climate change mitigation goals, the number of solar installations throughout the city needs to increase and the proposed text amendment would be a step towards addressing that goal. Although the solar power generated by CSFs would not be solely used by the owner of the property where the solar panels are installed, the solar system would be indistinguishable from a solar system generating power for on-site consumption. Furthermore, any community solar facility would be subject to applicable development standards. The proposed text amendment would further the District’s long-term sustainability goals.

VIII. AGENCY COMMENTS

Since set-down, OP has continued to coordinate with DOEE, the Department of Consumer and Regulatory Affairs, and the Office of the Zoning Administrator.

IX. COMMUNITY COMMENTS

New Columbia Solar filed a letter in support of the proposed text amendment on February 8, 2019 (Exhibit 2).

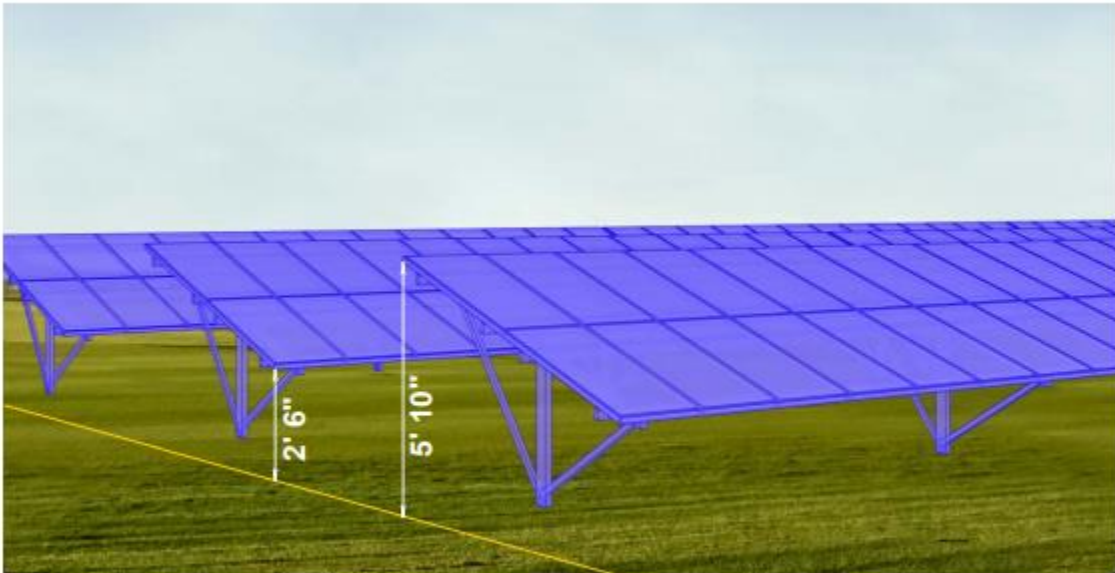
Comments from the National Capital Planning Commission were filed March 11, 2019, indicating that the proposed text amendment will not be inconsistent with the Comprehensive Plan or any other federal interest (Exhibit 7).

X. ATTACHMENTS

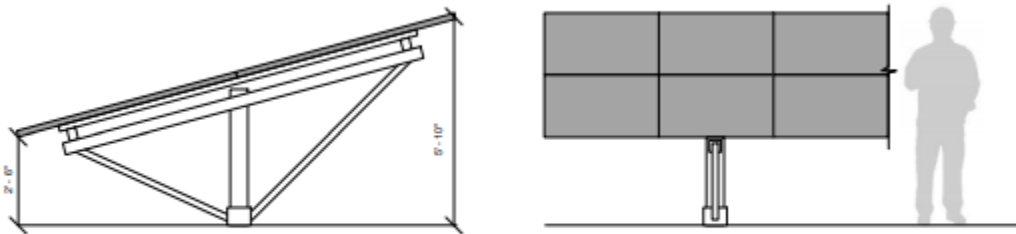
1. Illustrative example of ground-mounted array.

JS/emv

ATTACHMENT 1



Solar Array



Solar Array Elevation