

MEMORANDUM

TO: District of Columbia Zoning Commission
FROM: ^{JLS} Jennifer Steingasser, AICP
Deputy Director, Development Review & Historic Preservation
DATE: February 7, 2019
SUBJECT: Preliminary and Pre-hearing Report, Request for a Text Amendment to the Zoning Regulations, 11 DCMR, Subtitles B, C, H, K, and U and an Expedited Public Hearing

I. RECOMMENDATION

The Office of Planning (OP) requests the following actions:

1. Waiver of the rules to accept the late filing of this report;
2. Adoption of the text on an emergency basis;
3. Set down of the proposed text amendment for a public hearing; and
4. Authorize the immediate publication of a Notice of Proposed Rulemaking for the text.

The amendment would define a Community Renewable Energy Facility (CREF), also known as a Community Solar Energy System, and permit a CREF use as a matter-of-right in all zones.

This report also serves as the prehearing report required by Subtitle Z § 501.

II. BACKGROUND

The Mayor, through the Clean Energy DC Omnibus Act of 2018, set a mandate of 100% renewable energy by the year 2032. The Clean Energy DC plan includes 57 actions that chart the course for how the District will meet its target of 100% renewable energy. Growing local solar is one of the targeted action areas that is key to making the District's energy system more sustainable, resilient, and equitable.

The District Department of Energy and Environment's (DOEE) Solar for All program aims to reduce by at least 50% the electric bills of at least 100,000 of the District's low-income households with high energy burdens by December 31, 2032. DOEE is partnering with organizations across the District to install solar on single-family homes and develop community solar projects to benefit renters and residents in multi-family buildings.

III. PROPOSED TEXT AMENDMENT

The Office of Planning ("OP") requests the Zoning Commission set down for public hearing text amendments to the following sections of the Zoning Regulations (text to be deleted is marked with ~~striketrough~~ and new text is shown in **bold and underlined**):

a. Amend Subtitle B §§ 100.2 and 200.2 as follows:

CHAPTER 1 DEFINITIONS

100 DEFINITIONS

...

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

...

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

Community Renewable Energy Facility: A facility used for the generation and subsequent assignment, through community net-metering, of renewable energy generated by a community solar energy system. Community solar energy systems commonly take the form of shared electricity output, which is credited 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.

...

CHAPTER 2 USE CATEGORIES

200 INTRODUCTION

200.1 Use permissions for each zone are identified in the Land Use subtitles.

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 **other than a community renewable energy facility**, or utility pumping station; and
- (4) Exceptions: This use category does not include **a community renewable energy facility use or** uses which would typically fall within the antennas or waste-related services use categories;

...

b. Amend Subtitle C § 1500.5 as follows:

1500 PENTHOUSE GENERAL REGULATIONS

...

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.

...

c. Amend Subtitle H § 1103.1 as follows:

1103 MATTER-OF-RIGHT USES (NC-USE GROUPS A, B, AND C)

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

...

(q) Community renewable energy facility.

d. Amend Subtitle K §§ 410.3, 612.1, and 911.1

...

410 USE PERMISSIONS (HE)

...

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.

...

612 USE PERMISSIONS (STE)

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.

...

911 USE PERMISSIONS (WR)

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.**

...

e. Amend Subtitle U §§ 201.1, 250.1, 600.1, and 801.1 as follows:

201 MATTER-OF-RIGHT USES – R-USE GROUPS A, B, C, AND D

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

...

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

...

250 ACCESSORY USES (R)

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.**

...

600 MATTER-OF-RIGHT USES ON ALLEY LOTS (R, RF, AND RA)

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:

...

- (f) Community renewable energy facility.**

...

801 MATTER-OF-RIGHT USES (PDR)

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

...

- (bb) Wholesale or storage establishment, including open storage, except a junk yard; ~~and~~
- (cc) Community renewable energy facility.**

IV. ANALYSIS

The proposed text amendment would apply city-wide and would facilitate implementation of community solar projects, and specifically DOEE’s Solar for All Program. A community solar project provides the benefits of solar to residents who cannot install solar systems on their homes, including renters and homeowners whose rooftops are shaded or need repairs. A community solar project is not located on the home of the benefiting household (subscriber), but off-site, with the benefiting household receiving a credit on their Pepco electricity bill each month.

The Zoning Regulations do not specifically regulate solar arrays; however, roof-mounted solar systems must comply with the Penthouse regulations found in Subtitle C, Chapter 15 and ground-mounted solar arrays that are permanently affixed to the ground and greater than four feet in height would be considered structures and would have to comply with any applicable development standards.

The Zoning Regulations contemplate a “Basic Utility” use and define it as the commercial or governmental generation, transmission, distribution, or storage of energy, water, stormwater, cable, or telecommunication-related information. The Basic Utility use commonly takes the form of infrastructure services, which are provided city-wide and would include methods and facilities for renewable energy generation. Basic Utility uses are generally permitted by special exception. Solar panels installed on and supplying power to a building are considered an accessory use and are generally permitted as a matter-of-right provided they meet applicable development standards.

DOEE has expressed concern that community renewable energy facilities, i.e., solar arrays located at offsite locations generating power for low- and middle-income District residents, have been deemed a Basic Utility use that would require special exception. The special exception requirement adds delay and expense to community solar projects, including those funded under the Solar for All program. This would adversely impact the District’s ability to comply with the Clean Energy DC Omnibus Amendment Act of 2018 and the Sustainable DC Plan, and also adversely impact the ability of DOEE to meet the legislative mandate under Solar for All. Requiring a special exception for community renewable energy facilities could jeopardize the pipeline of 22 megawatts (MW) of planned community solar projects funded by the Solar for All program through 2021, and potentially another 6 MW of community solar that Pepco anticipates in future development.

DOEE has made available \$13 million in funding for eligible entities to install additional solar capacity throughout DC and provide benefits to low-income residents under the Phase I Solar for All Innovation and Expansion grant program. DOEE has made additional funding available through a Solar for All Phase 2 grant program administered by the DC Sustainable Energy Utility (DCSEU) on behalf of DOEE. Both the Phase 1 and Phase 2 grantees are required to complete all work associated with the grant prior to the end of the fiscal year on September 30, 2019. Therefore, DOEE has requested the proposed text amendment to be adopted on an emergency basis to permit community solar energy systems or CREFs as a matter-of-right.

V. PLANNING CONTEXT

A. COMPREHENSIVE PLAN WRITTEN ELEMENTS

Citywide Elements:

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

The Citywide Environmental Protection Element includes the above 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.

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 need to increase and the proposed text amendment would be a step towards addressing that goal. Although the solar power generated by community renewable energy facilities 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 energy systems would be subject to applicable development standards. The proposed text amendment would further the District's long-term sustainability goals.

VI. ATTACHMENTS

1. DOEE Letter

JS/emv

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Energy and Environment

February 6, 2019

Anthony J. Hood
Chairman
DC Zoning Commission
441 4th Street, NW, Suite 200S
Washington, DC 20001

RE: Emergency Zoning Regulation Text Amendment for Community Renewable Energy Facilities

Dear Chairman Hood:

On behalf of the Department of Energy and Environment (DOEE), I am writing in support of the Office of Planning's request for an emergency text amendment to the Zoning Regulations regarding community solar installations.

A fundamental goal of the Sustainable DC Plan is to increase the use of renewable energy to make up 50% of the District's energy use. This goal is an essential piece of the Mayor's commitment to achieve a 100% reduction in greenhouse gas emissions by 2050 to combat global climate change. Pursuant to these goals, on Friday, January 19th, Mayor Bowser signed into law the Clean Energy DC Omnibus Amendment Act of 2018. This bill built upon previous legislation to increase the District's Renewable Portfolio Standard to 100% by 2032, and increased to 10% the amount of the District's energy supply required to come from solar installed within the District.

An important part of attaining the District's energy goals is generation of renewable energy through community solar projects. Community solar is an arrangement by which solar panels are installed on one site, and the monetary value of the energy benefits are attributed to residents (subscribers) off-site but within the District, which was the Council's intent in enacting the Community Renewable Energy Amendment Act of 2013. The community solar installation is known as Community Renewable Energy Facility (CREF). Subscribers receive the benefit of solar through Community Net Metering (CNM) credits produced by the energy generated by the solar panels, and these CNM credits are used to offset a subscriber's electric utility bill. CREFs look identical to solar installations for on-site consumption, but the benefits are made available

to residents who are not able to have solar installed on their own property, such as renters and condominium owners.

As part of the District's clean energy legislation, the Solar for All (SfA) program was created to "provide the long-term financial benefits of solar energy production to at least 100,000 District low-income households in an amount equivalent to at least 50% of the District's average residential electric bills for calendar year 2016 by December 31, 2032." (D.C. Official Code § 8-1774.16(a)(2)). In exchange for publicly funded financial support, DOEE's SfA grantees dedicate 100% of the value of the electricity generated by their solar installations to low-income households, most often through a community solar model. The District's Sustainable Energy Utility (DCSEU) also provides funding for community solar projects.

DOEE anticipates 50-70 community solar projects, supported by \$10-13 million in public funding, to be permitted and built this year. This significant public support comes with a requirement that the projects be completed by the close of the current fiscal year on September 30th. Many projects also include private investment, which may be put at risk by the added uncertainty and extended timeframe imposed by the requirement for a special exception. The projects planned for this year total approximately 10 megawatts (MW) of community solar projects funded by the SfA program, and they are part of an even larger pipeline of a total of 22MW through 2021. In addition, PEPCO anticipates an additional 6 MW of community solar in future privately funded development.

The majority of the fiscal year 2019 Solar for All CREF projects have not yet begun the permitting process. These projects will be under significant pressure to achieve substantial completion before September, 30, 2019, in order to receive full funding from DOEE and the DCSEU.

The current interpretation of the Zoning Regulations under which CREFs are categorized as commercial utilities jeopardizes the entire SfA program and has an adverse impact on the District as a whole. This determination adds significant uncertainty, delay, and expense to the permitting process for all solar projects participating in the community solar and SfA programs. It has a significant chilling effect on the solar market, adversely impacts the District's ability to meet its legislative mandates, including the Clean Energy DC Omnibus Amendment Act of 2018 and the SfA program, and minimizes benefits of solar for low- and middle-income District residents.

Mayor Bowser and DOEE are committed to bringing more solar energy to the District in order to achieve our vital climate change mitigation and economic development goals. I strongly support the Office of Planning's position that CREFs should be defined in the Zoning Regulations and their installation allowed by-right in all zones. This critical change will clarify and ease the community solar energy permitting process in anticipation of the increased installation of such projects throughout the city.

I am confident community solar, if developed in a timely manner, will play a significant role in the District's long-term sustainability goals, specifically the requirement that 10% of the District's energy supply come from solar installed within the District, and position the city as a national leader in sustainable development. I appreciate the Zoning Commission's willingness to

consider this critical change. My staff and I are available for any questions or support necessary as we work collectively to meet the District's Clean Energy and Sustainable DC goals and bring resilience, energy independence, job creation, and economic benefits to our residents.

Sincerely,

for Adriana A. Hansen
Tommy Wells
Director, DOEE