

INTRODUCED BY: Joanne Masten
Allan F. Angel

DATE INTRODUCED:

PUBLIC HEARING DATE: September 27, 2022

PUBLIC HEARING TIME: 7:00 p.m.

ADOPTION DATE:

EFFECTIVE DATE: Upon Adoption

Ordinance LC22-12
Solar Facilities

An Ordinance to amend Kent County Code, Vol. II, Chapter 205, Zoning, as amended by revising Article V Agricultural Conservation District, §205-48, Conditional Uses; Article VI Agricultural Residential District §205-64, Conditional Uses; Article XXI Conditional Uses, §205-363.1 Utility Solar Facility; Article XXI Conditional Uses, §205-365 Table of Conditional Uses, and Article XXVIA, Supplementary Regulations §205-397.9 Community Energy Generating Facility in order to eliminate Utility Solar Facility as a conditional use in the Agricultural Conservation and Agricultural Residential zoning districts, establish a limit of one Community Energy Generating Facility per parcel, and establish an expiration date for approved Community Energy Generating Facility projects.

THE LEVY COURT OF KENT COUNTY, DELAWARE, HEREBY ORDAINS:

Section 1. That the Kent County Code, Vol. II, Chapter 205, Article V Agricultural Conservation District, §205-48, Conditional Uses is hereby amended by deleting the following bracketed language shown with strike-through marks:

Community Energy Generating Facility (see §205-397.9)

~~[Utility Solar Facility (inside the Growth Zone Overlay District only)]~~

Section 2. That the Kent County Code, Vol. II, Chapter 205, Article VI Agricultural Residential District, §205-64, Conditional Uses is hereby amended by deleting the following bracketed language shown with strike-through marks:

Community Energy Generating Facility (see §205-397.9)

~~[Utility Solar Facility]~~

Section 3. That the Kent County Code, Vol. II, Chapter 205, Article XXI Conditional Uses, §205-363.1 Utility Solar Facility is hereby amended by deleting the following bracketed language shown with strike through-marks:

§205-363.1 Utility Solar Facility

Conditions of this use shall be as follows:

1. No more than eighty-five (85) percent of the total site acreage may be dedicated to Public Utility Solar, including aisles contained therein. The percentage is calculated based upon the horizontal extends above grade of the solar array panels, equipment pads and fencing. The calculation shall exclude shade

management areas, access roads, stormwater management areas, and landscaped areas.

2. Setbacks for the Facility shall be:

	[AC (Inside the Growth Zone), AR, and] BG
Front	100
Side	75
Rear	75
Distance from any off-site dwelling unit	100
Distance from any State recognized Scenic Byway	150
Distance from wetlands (excludes farm and tax ditches)	100
Distance from a State or Federal Wildlife Refuge	300

3. The required setback shall be planted to achieve a minimum six (6) foot high four-season visual barrier in accordance with the following guidelines:
 - (1) Include a variety of native evergreen trees. Existing native vegetation may be used to achieve the required planted buffer.
 - (2) A minimum of two (2) rows shall be installed and trees shall be planted in staggered rows. Plantings shall be placed at maximum 20 feet apart within the same row and 10 feet apart from the adjacent, staggered row.
 - (3) Include groundcover to minimize growth of invasive species or provide a mowing schedule until the area is fully established in a natural condition.
 - (4) The buffer shall be maintained to prevent disease from spreading and any trees that don't survive shall be replaced.
 - (5) A raised berm with a 1:4 side slope and flat top may be used to achieve minimum height at planting.
4. The required buffer may be counted toward planting requirements included in Chapter 187, Subdivision and Land Development.
5. If topsoil is removed for improvements, it shall remain on the site.
6. Noninvasive, perennial vegetative ground cover must be maintained or established in all areas containing solar arrays and in required setbacks to prevent erosion and manage run-off. A seed mix will be used to promote the growth of a ground cover that is favorable to future use of the land by animals. The height of the vegetation growth shall be maintained as to reduce the possibility of the airborne spreading of weeds and seeds transmitted to other adjacent lands.
7. A soils study establishing the presence of any contaminants shall be completed prior to construction and every five (5) years thereafter. Surface Soil samples shall be collected from the first six inches of soil. One composite sample shall be collected every 5 acres of SEF footprint. The composite sample should be a maximum of 10 aliquots collected from evenly spaced locations throughout the 5-acre footprint. A baseline sample shall be collected prior to the start of the SEF construction. The composite sample should be analyzed for the primary

component of the installed solar panel via the prevailing EPA method for Inorganic Compounds. A letter report of findings shall be submitted within 45 days from receipt of the laboratory results to the County and shall include a summary table showing current and past results and the original certified laboratory results. A sketch showing the sample locations should be provided with the letter report. The full report shall be kept on file by the applicant and available for review by the County. If contaminate levels appear to exceed the baseline, the County will forward the report to DNREC to determine appropriate mitigation measures. If the 5 year and 10 year tests do not show material increase in the metal constituents tested, then testing interval may be extended to every 10 years.

8. Signage, not to exceed six (6) square feet, identifying the operator, its contact numbers, and emergency contact information shall be posted at each entrance or exit of the property.
9. Abandonment. A Utility Solar Facility that does not produce energy for a continuous period of one year or more shall be presumed to have been abandoned. The Applicant may request a Good Cause Exemption that may not be unreasonably withheld so long as all Real Estate and Personal Property Taxes are in Good Standing. Any Utility Solar Facility that has been abandoned without attaining a Good Cause Exemption must be decommissioned and removed within 180 days. Decommissioning must consist of:
 - (1) Physical removal of all solar photovoltaic Facilities, structures, equipment, security barriers and transmission lines from the site.
 - (2) Recycling or disposal of all solid and hazardous waste in accordance with local, state, and federal regulations.
 - (3) Stabilization or re-vegetation of the site as necessary to minimize erosion. The Planning Director is authorized to allow the owner or operator to leave landscaping or designated below-grade foundations in place in order to minimize erosion and disruption to vegetation.
10. Decommissioning plan.
 - a. A decommissioning plan outlining the anticipated means and costs of removing the Utility Solar Facility must be submitted, with the application.
 - b. The decommissioning plan should ensure that the owner or operator properly removes the equipment and facilities upon the end of project life or after their useful life. The plan must include provisions for the removal of all structures and foundations, the removal of all electrical transmission components and the restoration of soil and vegetation and/or agriculture.
 - c. The owner/operator must provide a present-day decommissioning cost estimate and identify the parties responsible for decommissioning.
11. Financial Assurance.

Prior to final plan approval, the operator or property owner shall provide a bond, surety, letter of credit, or other financial assurance in a form and amount acceptable to the Department to secure payment of one-hundred (100) percent of the anticipated cost of removal of all associated site improvements and restoration of the site to its pre-development condition. The financial assurance shall remain in full force and effect as long as the solar Facility remains in place.

The financial assurance shall be reviewed and renewed every five (5) years to ensure the amount reflects the current market.

Section 5. That the Kent County Code, Vol. II, Chapter 205, Article XXI Conditional Uses, §205-365 Table of Conditional Uses is hereby amended by adding the following underlined language and deleting the following bracketed language shown with strike-through marks:

Uses	Not Requiring Site Plan Review	Requiring Site Plan Review
Utility Solar Facility		[AC (inside the Growth Zone Overlay District), AR,] BG

Section 6. That the Kent County Code, Vol. II, Chapter 205, Article XXVIA Supplementary Regulations, §205-397.9, Community Energy Generating Facility is hereby amended by adding the following underlined language and deleting the following bracketed language shown with strike-through marks:

§205-397.9 Community Energy Generating Facility

1. The footprint of the solar array, as defined as the by the outer limit of the panels and exclusive of buffers [~~shall site area~~] shall be no larger than fifty (50) acres in size.
2. No more than one Community Solar Energy Facility shall be permitted on a parcel. All separate parcels in existence on September 27, 2022, shall be considered original parcels. Future subdivision of an original parcel shall not enable the development of additional Community Solar Energy Facilities.
- ~~3. No more than 1,600 aggregate acres shall be dedicated to Community Solar Energy Generating Facilities in the AC (Agricultural Conservation) and AR (Agricultural Residential) Districts combined. This provision shall apply to all Community Solar Energy Generating Facilities submitted for review after the effective date of this ordinance, outside of the Growth Zone Overlay District, the total number of aggregate acres dedicated to Community Solar Energy Generating Facility (area in panels) shall not exceed eight hundred acres (800) acres.~~
- 2.4. Facility location and siting shall be in accordance with the requirements of Title 26 Public Utilities of the Delaware Administrative Code, 3001 (Rules for Certification and Regulation of Electric Suppliers) as amended.

3-5. Setbacks for the Facility shall be:

	AC [Outside the Growth Zone Overlay District]	[AC (Inside the Growth Zone Overlay District)], AR, BG
Front	100	75
Side	50	50
Rear	50	50
Distance from any off-site dwelling unit	150	100
Distance from any State recognized Scenic Byway	300	150
Distance from wetlands (excludes farm and tax ditches)	100	100
Distance from State or Federal Wildlife Refuge	200	200

4-6. The [~~required setback~~] site area shall be planted to achieve a minimum six (6) foot high four season visual barrier in accordance with the following guidelines:

- a. Include a variety of native evergreen trees. Existing native vegetation may be used to achieve the required planted buffer.
- b. A minimum of two (2) rows shall be installed and trees shall be planted in staggered rows. Plantings shall be placed at maximum 20 feet apart within the same row and 10 feet apart from the adjacent, staggered row.
- c. Include groundcover to minimize growth of invasive species or provide a mowing schedule until the area is fully established in a natural condition.
- d. The buffer shall be maintained to prevent disease from spreading and any trees that don't survive shall be replaced.
- e. A raised berm with a 1:4 side slope and flat top may be used to achieve minimum height at planting.

5-7. The required buffer may be counted toward planting requirements included in Chapter 187, Subdivision and Land Development.

6-8. If topsoil is removed for improvements, it shall remain on the site.

7-9. Noninvasive, perennial vegetative ground cover must be maintained or established in all areas containing solar arrays and in required setbacks to prevent erosion and manage run-off. A seed mix will be used to promote the growth of a ground cover that is favorable to future use of the land by animals. The height of the vegetation growth shall be maintained as to reduce the possibility of the airborne spreading of weeds and seeds transmitted to other adjacent lands.

8-10. A soils study establishing the presence of any contaminants shall be completed prior to construction and every five (5) years thereafter. Surface Soil samples shall be collected from the first six inches of soil. One composite sample shall be collected every 5 acres of SEF footprint. The composite sample should be a maximum of 10 aliquots collected from evenly spaced locations throughout the 5-acre footprint. A baseline sample shall be collected prior to the start of the SEF construction. The composite sample should be analyzed for the primary component of the installed solar panel via the prevailing EPA method for Inorganic Compounds.

A letter report of findings shall be submitted within 45 days from receipt of the laboratory results to the County and shall include a summary table showing current and past results and the original certified laboratory results. A sketch showing the sample locations should be provided with the letter report. The full report shall be kept on file by the applicant and available for review by the County. If contaminate levels appear to exceed the baseline, the County will forward the report to DNREC to determine appropriate mitigation measures. If the 5 year and 10 year tests do not show material increase in the metal constituents tested, then testing interval may be extended to every 10 years.

~~9-11.~~ 9-11. Signage, not to exceed six (6) square feet, identifying the operator, its contact numbers, and emergency contact information shall be posted at each entrance or exit of the property.

~~10-12.~~ 10-12. Abandonment. A Community Energy Generating Facility that does not produce energy for a continuous period of one year or more shall be presumed to have been abandoned. The Applicant may request a Good Cause Exemption that may not be unreasonably withheld so long as all Real Estate and Personal Property Taxes are in Good Standing. Any Facility that has been abandoned without attaining a Good Cause Exemption must be decommissioned and removed within 180 days. Decommissioning must consist of:

- a. Physical removal of all solar photovoltaic facilities, structures, equipment, security barriers and transmission lines from the site.
- b. Recycling or disposal of all solid and hazardous waste in accordance with local, state, and federal regulations.
- c. Stabilization or re-vegetation of the site as necessary to minimize erosion. The Planning Director is authorized to allow the owner or operator to leave landscaping or designated below-grade foundations in place in order to minimize erosion and disruption to vegetation and/or agriculture.

~~11-13.~~ 11-13. Decommissioning plan.

- a. A decommissioning plan outlining the anticipated means and costs of removing the solar ~~[farm]~~ facility must be submitted, with the application.
- b. The decommissioning plan should ensure that the owner or operator properly removes the equipment and facilities upon the end of project life or after their useful life. The plan must include provisions for the removal of all structures and foundations, the removal of all electrical transmission components and the restoration of soil and vegetation.
- c. The owner/operator must provide a present-day decommissioning cost estimate and identify the parties responsible for decommissioning.

~~12-14.~~ 12-14. Financial Assurance. The operator or property owner shall provide a bond, surety, letter of credit, or other financial assurance in a form and amount acceptable to the Department to secure payment of one-hundred (100) percent of the anticipated cost of removal of all associated site improvements and restoration of the site to its pre-development condition. The financial assurance shall remain in full force and effect as long as the solar Facility remains in place. The financial assurance shall be reviewed and renewed every five (5) years to ensure the amount reflects the current market.

~~13-15.~~ 13-15. Approval process.

- a. Any request for a community solar energy generating facility shall include a plot/site plan showing the following:
 1. Lot boundaries and dimensions.
 2. Zoning district.
 3. Date of plan.
 4. Property owner with deed reference.
 5. Lot area.
 6. Location and setback of all structures.
 7. Rights-of-way, public and private.
 8. All easements.
 9. Street names.
 10. Water and sewerage facilities.
 - ~~11. [Off street parking spaces.]~~
 - ~~12-11.~~ All required setbacks and buffers
 - ~~13-12.~~ Any other information that may be required to be shown on the site plan by the Director of Planning Services or designee to determine that the application is in compliance with the codes and ordinances of the County.
- b. Any request for a community solar energy generating facility shall comply with the following:
 1. The applicant shall notify all property owners within 200 feet of the limits of the subject property of the proposal to establish/construct a community solar energy generating facility on the premises by certified mail.
 2. A mailing list of all property owners within 200 feet of the subject property shall be supplied to the applicant by the Department based upon the most current Board of Assessment records.
 3. The written notice shall be provided by certified mail to all property owners within 200 feet of the subject property on a standardized form letter provided by the Department to the applicant for this purpose.
 4. If a letter of objection is received by the Department, the application will then be processed as a conditional use application (not requiring formal site plan review), requiring approval from the Kent County Levy Court and meeting all applicable conditions of this chapter.
 5. If no letters of objection are received within 30 days, it shall be presumed that no adjacent property owner has an objection to the application.
 6. Within 30 working days after application for a community solar energy generating facility is submitted and accepted, the Director or designee shall approve, conditionally approve, or deny such application. The Department shall inform the applicant in writing of the conditions, if any, for approval or the reasons for disapproval. Such written notice shall also describe the process of appeals. A copy of the written notice shall be kept in the permanent records of the Department.
 7. Should the Director or designee deny an application for a community solar energy generating facility, the applicant may file an application for conditional use (not requiring formal site plan review), requiring approval from the Kent County Levy Court and meeting all applicable conditions of this chapter.
 8. The filing fee for administration review shall be as set from time to time by ordinance of the Levy Court.
- c. Application for building permits must be made within twenty-four (24) months of project approval. If no applications for building permits are received by the Department within twenty-four (24) months, the plan shall be considered invalid. However, the applicant may apply to the Department for reapproval of

the project for an additional twenty-four (24) month period in accordance with the following procedures:

e-1. The Commission's staff shall review the original approved plan for consistency with all current provisions of this chapter. Such review may involve coordination with and review by applicable Development Advisory Committee (DAC) agencies. Based upon that review, the Director or designee will determine if the original plan meets current standards, or if the original recorded plan requires minor revisions in order to comply with current standards, or if the original recorded plan must be resubmitted as a new application subject to all appropriate review procedures, regulations, and fees.

e-2. In the event that the Director of Planning Services or designee determines that the original approved plan is consistent with current policies and regulations, he/she shall reapprove the plan and provide written notice to the owner of reapproval. Such approval shall allow the issuance of building permits in accordance with all conditions of approval. The owner shall then have twenty-four (24) months from the date of such notice of reapproval to obtain building permits and commence construction.

Section 7. Effective Date.

This Ordinance shall be effective upon the date of adoption. Valid applications for which a pre-application meeting has been conducted and formal preliminary plan submission has been paid for and accepted by the Department of Planning Services prior to the effective date shall be exempt from this ordinance.

ADOPTED BY THE LEVY COURT OF KENT COUNTY, DELAWARE

President, Kent County Levy Court

This ____ day of ____, 2022

ATTEST: _____
Clerk of the Peace

Synopsis: The ordinance eliminates Utility Solar Facility as a conditional use in the Agricultural Conservation and Agricultural Residential zoning districts, establishes a limit of one Community Energy Generating Facility per parcel, and establishes an expiration date for approved Community Energy Generating Facility projects.