

INTRODUCED BY: Eric L. Buckson  
DATE INTRODUCED:  
PUBLIC HEARING DATE:  
PUBLIC HEARING TIME: 7:00 p.m.  
ADOPTION DATE:  
EFFECTIVE DATE: Upon Adoption

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**Ordinance LC22-05  
Solar Facilities**

An Ordinance to amend Kent County Code, Vol. II, Chapter 205, Zoning, as amended by revising Article II Definitions, §205-6, Definitions; Article V Agricultural Conservation District, §205-48, Conditional Uses; Article VI Agricultural Residential District §205-64, Conditional Uses; Article XIII BG – General Business District, §205-170, Conditional Uses; Article XXI Conditional Uses; Article XXI Conditional Uses, §205-365 Table of Conditional Uses, and Article XXVIA, Supplementary Regulations in order to establish Community Energy Generating Facility as conditional uses in the AC, AR, and BG, zoning districts; Utility Solar Facility as conditional uses in the AC (inside the Growth Zone Overlay District), AR, and BG, zoning districts; and establish conditions of approval for each use.

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

**Section 1.** That the Kent County Code, Vol. II, Chapter 205, revising Article II Definitions, §205-6, Definitions is hereby amended by adding the following underlined language in alphabetical order:

**COMMUNITY ENERGY GENERATING FACILITY** means a renewable energy generating facility, located in the service area of a utility under the regulation of the Public Service Commission, that serves multiple customers who share the output of the generator, which may be located either as a stand-alone Facility or behind-the-meter of a participating owner or customer. The Facility shall be interconnected to the distribution system and operated in parallel with an electric distribution company's transmission and distribution facilities.

**UTILITY SOLAR FACILITY** means a renewable energy generating facility, located in the service area of a utility under the regulation of the PJM Interconnection LLC Regional Transmission Authority or successor agency, which is stand-alone, and sells energy directly into the power grid.

**Section 2.** That the Kent County Code, Vol. II, Chapter 205, revising Article V Agricultural Conservation District, §205-48, Conditional Uses is hereby amended by adding the following underlined language in alphabetical order:

Community Energy Generating Facility (see §205-397.9)

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

**Section 3.** That the Kent County Code, Vol. II, Chapter 205, revising Article VI Agricultural Residential District, §205-64, Conditional Uses is hereby amended by adding the following underlined language in alphabetical order:

Community Energy Generating Facility (see §205-397.9)

Utility Solar Facility

**Section 4.** That the Kent County Code, Vol. II, Chapter 205, revising Article XIII General Business District, §205-64, Conditional Uses is hereby amended by adding the following underlined language in alphabetical order:

Community Energy Generating Facility(see §205-397.9)

Utility Solar Facility

**Section 5.** That the Kent County Code, Vol. II, Chapter 205, revising Article XXI Conditional Uses, is hereby amended by adding the following underlined language as a new section:

§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, calculated based upon the footprint of the solar array, including aisles contained therein, may be dedicated to Public Utility Solar based on the footprint of the solar array, including aisles contained therein. The percentage is calculated based upon the horizontal extends above grade of the solar array panels, equipment pads. The calculation shall exclude shade management areas, access roads, stormwater management areas, and landscaped areas.
2. No application for a Utility Solar Facility shall be approved within 2000 feet of an existing Utility Solar Facility located outside the boundaries of an incorporated municipality. The distance shall be measured from the limits of each solar array footprint as determined by the outer edge of the solar panels. The provision shall not apply to commercial or industrial zoned properties.

3. Setbacks for the Facility shall be:

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

4. 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.
5. The required buffer may be counted toward planting requirements included in Chapter 187, Subdivision and Land Development.
6. If topsoil is removed for improvements, it shall remain on the site.
7. 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.
8. The required landscape buffer may be eliminated when the solar generating facility is located adjacent to commercial and industrial zoned properties.
9. The required landscape buffer may be eliminated for portions which are adjacent to existing woodlands.
10. The required landscape buffer may be eliminated when the solar generating facility is located more than 500 ft. from adjacent property boundaries.
11. 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 can be extended to every 10 years.
12. 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.
13. 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.

14. 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.

15. 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.

16. The Levy Court may waive any of these provisions.

**Section 6.**

That the Kent County Code, Vol. II, Chapter 205, revising Article XXI Conditional Uses, §205-365 Table of Conditional Uses is hereby amended by adding the following underlined language:

Uses	Not Requiring Site Plan Review	Requiring Site Plan Review
<u>Utility Solar Facility</u>		<u>AC (inside the Growth Zone Overlay District), AR, BG</u>

**Section 7.** That the Kent County Code, Vol. II, Chapter 205, revising Article XXVIA Supplementary Regulations, is hereby amended by adding the following underlined language as a new §205-397.9:

**§205-397.9 Community Energy Generating Facility**

1. The footprint of the solar array, defined as the outer limit of the panels and exclusive of buffers shall be no larger than fifty (50) acres in size.
2. In the AC (Agricultural Conservation) District 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.
3. 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).

4. Setbacks for the Facility shall be:

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

5. The required setback 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.
6. The required buffer may be counted toward planting requirements included in Chapter 187, Subdivision and Land Development.
7. If topsoil is removed for improvements, it shall remain on the site.
8. 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.
9. The required landscape buffer may be eliminated when the solar generating facility is located adjacent to commercial and industrial zoned properties.
10. The required landscape buffer may be eliminated for portions which are adjacent to existing woodlands.

11. The required landscape buffer may be eliminated when the solar generating facility is located more than 500 ft. from adjacent property boundaries.
12. 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 can be extended to every 10 years.
13. 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.
14. 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.
15. Decommissioning plan.
  - a. A decommissioning plan outlining the anticipated means and costs of removing the solar farm 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.

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- c. The owner/operator must provide a present-day decommissioning cost estimate and identify the parties responsible for decommissioning.
1. 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.
2. 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) All required setbacks and buffers
  - (13) 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. The Planning Director, upon receipt of a complete application, and concurrence with this ordinance, can issue an administrative approval.
3. The Levy Court may waive any of these provisions.

**Section 8. Effective Date.**

This Ordinance shall be effective upon the date of adoption by Levy Court and shall only apply to applications filed after the effective date.

ADOPTED BY THE LEVY COURT OF KENT COUNTY, DELAWARE

\_\_\_\_\_  
President, Kent County Levy Court

This \_\_\_\_ day of \_\_\_\_\_, 20\_\_

ATTEST: \_\_\_\_\_  
Clerk of the Peace



**Synopsis:** The ordinance establishes Community Energy Generating Facilities as an administrative approval in the AC, AR, and BG zoning districts, Public Utility Solar Facilities as a conditional use requiring site plan review in the AC (within the Growth Zone Overlay District), AR, and BG zoning districts, and establishes conditions for each use.