



## ANNE ARUNDEL COUNTY OFFICE OF LAW

### Legislative Summary

**To:** Members, Anne Arundel County Council

**From:** Kelly Phillips Kenney, Supervising County Attorney /s/

**Via:** Gregory J. Swain, County Attorney /s/

**Date:** June 5, 2023

**Subject:** Bill No. 53-23 – Zoning – Solar Energy Generating Facilities

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This summary was prepared by the Anne Arundel County Office of Law for use by members of the Anne Arundel County Council during consideration of Bill No. 53-23.

### Background

Bill No. 89-18 established the conditional use and special exception requirements for both utility scale and community “solar energy generating facilities”. A “solar energy generating facility – community” is generally a smaller-scale facility that provides energy to a fixed group of users, and a “solar energy generating facility –utility scale” is a larger facility that generates energy for sale to a utility and not an end user.

The County is largely preempted from imposing zoning conditions on larger scale solar generating facilities. *Board of County Commissioners of Washington County v. Perennial Solar, LLC*, 464 Md. 610, 623 (2019). Under the *Perennial Solar* case, any generating facility that needs a certificate of public convenience and necessity (“CPCN”) (which is any facility that produces more than 2 megawatts of electricity) falls under the exclusive jurisdiction of the Maryland Public Service Commission (“PSC”).

Most “solar energy generating facility – community” facilities do not generate more than 2 megawatts and, therefore, do not fall under the exclusive jurisdiction of the PSC, and the County is not preempted. For any facilities that need a CPCN, the County does not require the owner to obtain a special exception or conditional use approval because of the preemption.<sup>1</sup> However, the

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<sup>1</sup> This is pursuant to *Perennial Solar*, and will soon also be in accordance with House Bill 692, which was passed during the 2023 General Assembly session and becomes effective October 1, 2023. That Bill specifically states that a County is prohibited from requiring a special exception or conditional use approval, but that a local jurisdiction has the authority to approve or deny any “local permit” required under a CPCN required by the PSC.

**Note: This Legislative Summary provides a synopsis of the bill as introduced. It does not address subsequent amendments to the bill.**

provisions in the County Code are used by the County in providing input and comments to both a property owner seeking to place a solar energy generating facility and the PSC. The County has the opportunity to give input to the PSC on any CPCN application, and the PSC is required to give “due consideration” to the County’s comments. Md. Code Ann., Public Util., § 7-207(e). The PSC is also required, after due consideration, to determine that a generating station is consistent with the comprehensive plan and zoning of a county. *Id.* The County therefore uses the criteria and conditions in the County Code as the basis for its input to the PSC even if the County is preempted from applying the conditions or requiring the special exception.

### **Purpose**

Bill No. 53-23 adds “rooftop-mounted only” solar generating facilities as conditional uses in C1, C2, C3 and W1 zones; exempts solar generating facilities on County-owned or leased property, sanitary landfills, reclamation areas, and rooftops from some of the conditions in the County Code; and removes the distance limitations between solar generating facilities. The Bill also recognizes the preemption discussed above.

### **Bill No. 53-23**

#### **SECTION 1.**

In § 18-1-101(132), the definition of “solar energy generating facility – community” is revised to incorporate State law.<sup>2</sup>

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<sup>2</sup> Md. Code Ann., Pub. Util. § 7-306.2(a)(3) provides:

“Community solar energy generating system” means a solar energy system that:

- (i) is connected to the electric distribution grid serving the State;
- (ii) is located in the same electric service territory as its subscribers;
- (iii) is attached to the electric meter of a subscriber or is a separate facility with its own electric meter;
- (iv) credits its generated electricity, or the value of its generated electricity, to the bills of the subscribers to that system through virtual net energy metering;
- (v) has at least two subscribers but no limit to the maximum number of subscribers;
- (vi) does not have subscriptions larger than 200 kilowatts constituting more than 60% of its subscriptions;
- (vii) has a generating capacity that does not exceed 5 megawatts as measured by the alternating current rating of the system's inverter; and
- (viii) may be owned by any person.”

Further, subsection (c) provides:

“A community solar energy generating system, including a subscriber or subscriber organization associated with the community solar energy generating system, is not:

- (1) an electric company;
- (2) an electricity supplier; or
- (3) a generating station if the generating capacity of the community solar energy generating system does not exceed 2 megawatts.”

The use chart for commercial districts in § **18-5-102** is revised to add rooftop-mounted only solar generating facilities (community and utility scale) as conditional uses in the C1, C2, and C3 zones (it is already allowed as a conditional use in the C4 zone).

The use chart for industrial districts in § **18-6-103** is revised to add rooftop-mounted only solar generating facilities (community and utility scale) as conditional uses the W1 zone. The use is removed from the W1 zone for non-rooftop-mounted facilities.

Subsection **18-10-160(10)** is new and exempts “solar energy generating facilities-community” (the conditional use) on County-owned or leased property, sanitary landfills, or reclamation areas from the lot coverage condition in subsection (6).<sup>3</sup> Subsection **18-10-160(11)** is new and exempts rooftop-mounted only solar energy generating facilities from the requirements of subsections (1) (Landscape Manual), (3) (forest conservation), and (6) (lot coverage), because none of these apply when dealing with rooftop-mounted panels.<sup>4</sup> Existing subsection (10) is renumbered without change to **(12)**. **Subsection (13)** is new and recognizes that a facility that requires a CPCN is not required to comply with the section, but that the conditions may be the basis of the County’s recommendation to the PSC.

Subsection **18-11-158(8)** is revised to remove the distance limitation between solar generating facilities. Subsection **18-11-158(16)** is revised to add exemptions for a “solar energy generating facility – community” on sanitary landfills or reclamation areas from conditions (1) (area limitation) and (12) (lot coverage).<sup>5</sup> These are already exempted from conditions (2) (avoidance of environmentally sensitive areas), (6) (avoidance of prime agricultural soils), and (8)

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<sup>3</sup> Subsection 18-10-160(6) provides:

“Lot coverage may not exceed 80% of the net area of the site. Lot coverage shall be calculated as the total surface area of all solar panels, plus all impervious surfaces of any supporting or associated equipment, including support structures. Surface area of a solar panel shall be calculated based on the drip line around the perimeter of a panel at minimum tilt. Impervious surface shall be calculated as the area of the foundation or base of any component of the solar facility, including individual solar panels.”

<sup>4</sup> Condition (6) is set forth in the above footnote. Section 18-10-160(1) provides: “The developer shall comply with the County Landscape Manual, and the solar facility, including all equipment and solar panels, shall be enclosed by a fence no less than seven feet in height. In the event of a conflict between the Landscape Manual and § 17-6-504 of the Code, the provisions of § 17-6-504 of the Code shall control.”

Subsection 18-10-160(3) provides: “The developer shall comply with the provisions of the County Forest Conservation Act, Article 17, Title 6, Subtitle 3 of this Code, regardless of any state waiver or reduction of State forest conservation requirements for solar energy systems. Mitigation for tree removal shall be at the ratio of 3-to-1.”

<sup>5</sup> Subsections 18-11-158(1) and (12) provide:

(1) The area to be used for the solar facility may not exceed 25% of the net area of the site, or 20 acres, whichever is less.

(12) Lot coverage may not exceed 80% of the area allowed under subsection (1). Lot coverage shall be calculated as the total surface area of all solar panels plus all impervious horizontal surfaces of any supporting or associated equipment, including support structures. Surface area of a solar panel shall be calculated based on the drip line around the perimeter of a panel at minimum tilt. Impervious surface shall be calculated as the area of the foundation or base of any component of the solar facility, including individual solar panels.

(avoidance of agricultural preservation areas).<sup>6</sup> Subsection **(17)** is new and exempts facilities proposed for location on property owned or leased by the County from conditions (1) (area limitation) and (12) (lot coverage). Existing subsection (17) is renumbered to **(18)** without any change. **Subsection (19)** is new and recognizes that a special exception is not required for a facility that requires a CPCN, but that the conditions may be the basis of the County's recommendation to the PSC.

Existing subsection **18-11-159(1)** (the distance limitation between solar generating facilities – utility scale) is removed in the Ordinance. Existing subsections (2) and (3) are renumbered to (1) and (2), respectively, without any changes.

## **SECTION 2.**

This section provides that the Ordinance shall take effect 45 days from the date it becomes law.

The Office of Law is available to answer any additional questions regarding this Bill. Thank you.

cc: Honorable Stuart Pittman, County Executive  
Christine Anderson, Chief Administrative Officer  
Jeff Amoros, Chief of Staff  
Peter Baron, Chief Strategy Officer  
Chris Trumbauer, Budget Officer  
Janssen Evelyn, Deputy Chief Administrative Officer  
Jenny Jarkowski, Planning and Zoning Officer  
Lynn Miller, Assistant Planning and Zoning Officer

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<sup>6</sup> These exemptions presumably currently exist because it would be unlikely a sanitary landfill or reclamation area would be on any property with these features. Subsections 18-10-158(2), (6), and (8) provide:

(1) No development on the site may be located in environmentally sensitive areas or habitat for forest interior dwelling species.

(6) The developer of the solar facility shall, to the degree practicable, avoid disturbing prime agricultural soils, and shall provide an analysis to demonstrate how the developer is avoiding disturbance of prime agricultural soils. The development may not result in more than 50% of prime agricultural soils on the site from being removed from existing or potential agricultural production.

(8) A solar facility may not be located within an agricultural preservation area, a priority preservation area, or a rural legacy area.