



## COMMUNITY DEVELOPMENT DEPARTMENT

BUILDING — **PLANNING** — OWTS — CODE COMPLIANCE

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### HEARING LEGAL AD

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#### NOTICE OF PUBLIC HEARING

**MESA COUNTY PLANNING COMMISSIONERS: March 21, 2023 @ 6:00 P.M.**

**MESA COUNTY BOARD OF COMMISSIONERS: April 23, 2024 @ 9:00 A.M.**

All hearings are held in the Mesa County Courthouse, Public Hearing Room, 544 Rood Avenue, 2<sup>nd</sup> Floor, Grand Junction.

#### PRO2024-0022 TXT LAND DEVELOPMENT CODE AMENDMENT

Representative: Mesa County Community Development Department

Planner: Sean Norris, 970-254-4183, [sean.norris@mesacounty.us](mailto:sean.norris@mesacounty.us)

Request: The Mesa County Planning Division is proposing amendments to the following Sections and Tables of the Mesa County 2020 Land Development Code (as amended): Section 6.01 Use Table, 6.02 Use Specific Standards Section 12.01 General and Section 12.04 Institutional and Civic Use Categories

Proposed amendments to the Land Development Code (LDC): LDC amendments to create a new category for Utility Production and establish specific use requirements and definitions to manage electrical energy production within the Mesa County for utility scale, private scale and community solar garden energy production facilities.

#### I. PROJECT DESCRIPTION:

Amendments to the Mesa County Land Development Code to codify specific use requirements for Utility Generation/Production Facilities, Private Energy Facilities, and Community Solar Gardens. Prior to the creation of this new text, Utility Production was not well defined within the LDC. In response to the concerns of citizens within the County, on January 9, 2024, the Board of County Commissioners placed a temporary moratorium on applications for energy generation projects, more specifically solar facilities, in order to give the Community Development Department, and the Planning Division, time to prepare new code language to be included in the LDC. The recommended amendments to the LDC include the following tables, sections and definitions:

## SECTION 6.01 | USE REGULATIONS

TABLE 6-1: USE TABLE

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Principal Uses Allowed																													
Use Category (Section)	Specific Use Type	Rural	Urban Residential												Nonresidential						Mack Overlay Districts		Mixed Use Districts			Gateway Overlay District		Site Specific Standards	
			AFT/AF35	RSFR	URR	RSFE	RSF-1	RSF-2	RSF-4	RMF-5	RMF-8	RMF-12	RMF-16	RMF-24	R-O	B-1	B-2	C-1	C-2	I-1	I-2	TIER #1	TIER #2	MU-OTC	MUR	MUC	Area A		Area B
Institutional & Civic ( <a href="#">Section 12.04</a> )																													
Parks and Open Space <a href="#">12.04 E.</a>	Cemetery	A								C	C	C					A	A			A	A			C	A	C		
	Golf Course	A	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A				C			A	A	C	C	
	Golf Driving Ranges	A	C	C	C	C	C	C	C	C	C	C	C			A	A	A	A	A	A	A			C	C	C	C	
	Parks/Lakes/Reservoirs	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	C	C	
	All Other	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	C	C	C	A	C	
Religious Institutions <a href="#">12.04 F.</a>	All	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
Public Safety Facilities <a href="#">12.04 G.</a>	Jails, Honor Camps, Reformatories, Rehabilitation Centers															C		C	C	C		C							
	Police Station & Sub-Station/Fire Station/Ambulance	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
Schools <a href="#">12.04 H.</a>	Boarding School	C	C	C	C	C	C	C	C	C	A	A	A	A	A	A	A	A			A	A	A	A	A	C	C		
	Elementary School	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A				A	A	A	A	A	A	C		
	Secondary School	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A			A	A	A	A	A	A	C		
Utilities ( <a href="#">Section 12.04</a> )																													
Utility, Basic <a href="#">12.04 I.</a>	Utility Service Facilities (underground)	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
	Utility Treatment, Production or Service Facility	C																	C	C		C	C	C	C				
	Minor Basic Utilities	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
	Basic Utilities	C	C	C	C	C	C	C	C	C	C	C	C	C	A	A	A	A	A	A	A	C	C	C	C	A	C	C	
Utility Corridors <a href="#">12.04 J.</a>	Transmission lines (above ground)	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	<a href="#">6.02 F.</a>	
	Transmission lines (underground)	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	A	A	A	C	C	A	A	A	C	C		
	Minor Utility Facility	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
	All Others	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C		
Utility, Production <a href="#">12.04 K.</a>	Community Solar Garden	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	<a href="#">6.02</a>	
	Private Energy System	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	<a href="#">6.02</a>	
	Energy Generation/Production Facility	C																		C								<a href="#">6.02</a>	

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## SECTION 6.02 | USE SPECIFIC STANDARDS

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### CC. Utility, Production

#### 1. Applicability

- a. The following standards shall apply to all new energy production facilities to regulate the development and surface impacts that these facilities may have on the public health, safety, and welfare for any of the following:
  - (1) Private energy facilities
  - (2) Community solar garden as defined by CRS 40-2-127;
  - (3) Energy generation/production facility.
- b. Any facility that exceeds the definition of a private energy facility or community solar garden shall be processed as an energy generation/production facility.

#### 2. Submittal Requirements for Energy Generation/Production Facilities

##### a. Narrative

The applicant will provide a narrative describing the proposed facility including but not limited to; general description of the proposal, the height and location of equipment and ancillary structures, health and safety, decommissioning, traffic analysis, construction schedule, type and location of interconnection, rated capacity,

##### b. Site plan

The site plan map shall be provided in a legible format and shall include but not be limited to the location and arrangement of screening, fencing, existing and proposed structures, equipment, roadways and access points, wildlife corridors, floodplain, easements, existing utilities, and connection to the electrical grid.

##### c. Setbacks

- (1) One quarter (1/4) mile from a designated Scenic By-way.
- (2) A minimum of one hundred fifty (150) feet from the nearest outside wall of residential occupied structure on adjacent properties.

##### d. Fire Prevention and Safety Procedures

- (1) The relevant Fire Protection District's adopted standards, based on current fire code, shall apply.
- (2) A fire break or other facility perimeter design acceptable to the fire district shall be required to reduce or eliminate the interface risk from wildfire.
- (3) If fenced, egress gates should be installed approximately every 300 feet along any perimeter fencing.
- (4) A vegetation management plan shall describe the operator's methods to maintain vegetation inside the facility to address wildfire which may include treatment, mowing, agrivoltaics or other methods of fuel reduction.

##### e. Visual Mitigation

Reasonable efforts to mitigate visual impacts of an energy generation/production facility will be detailed in the project narrative. Visual impact mitigation may include opaque fencing, screening, berming, use of existing or planted vegetation or landscaping either on-site, or off-site.

- (1) Solar System equipment shall be no higher than fifteen (15) feet at the solar panel mounting point. The height of the interconnection equipment may exceed 15 feet. Solar System Facilities within 50 feet of a property line of a residential zoned property should be designed

with some form of visual mitigation, to include but not be limited to, opaque fencing, or landscaping.

(2) Agrivoltaics are exempt from height restrictions.

f. Wildlife, Wetlands, Riparian Areas and Stream Channel Measures

(1) The Operator shall address the recommendations of Colorado Parks & Wildlife (CPW) that address any site-specific site conditions. The Applicant shall avoid constructing in CPW-mapped High Priority Habitats (HPH) to the maximum extent possible.

(2) Operator shall inspect the interior of the facility at least once weekly, to potentially free any trapped animals.

(3) When fencing is necessary, the use of wildlife friendly fencing is encouraged.

g. Decommissioning Plan

At the time of application, Operator shall include a decommissioning plan for the facility which will include detailed plans for management and removal of equipment, mounting systems, above and underground utilities, equipment and facilities as follows:

(1) Within twelve (12) months of ceasing operations, the operator shall complete decommissioning of the facility which may include removal of all aboveground and belowground equipment and structures and removal of any access roads and fire breaks unless previous agreements have been made with the property owner.

(2) Any equipment that cannot be recycled shall be properly disposed in accordance with all State and Federal regulations.

(3) The site shall be revegetated in compliance with the property owner's specifications or to a minimum of 70% of predevelopment vegetative cover whichever is less.

h. Insurance

The owner/operator shall provide proof of general liability insurance with commercially reasonable amounts of coverage for the permitted facility. Facility owners/operators shall maintain such insurance in place through all times the facility is in operation.

3. Approval Criteria

In evaluating the proposal, the request shall consider conditions of approval and all applicable requirements of this LDC, including, but not limited to:

a. The health, safety and welfare of the citizens of this jurisdiction will be protected and served;

b. The facility will not unreasonably impact the physical, economic, or social environment, except as permitted in Chapter 6 Use Regulations as applicable.

c. When an impact is expected to occur, reasonable modifications and programs and other reasonable mitigating actions will be implemented and maintained to minimize the degree of adversity of the impact;

d. There exists a need, or a reasonably foreseeable need, for the facility as proposed.

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## SECTION 12.01 | GENERAL

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**Energy Generation/Production Facility.** A facility designed to generate electricity by the conversion of natural resources such as light, natural gas, nuclear or water which is directly connected to the utility grid supplying electricity serving a wide customer base without being connected to specific end-users.

**Private Energy Facility.** A residential or business-scale energy conversion facility designed to generate electricity by the conversion of natural resources such as light, natural gas, nuclear, biomass or water which produces electricity for on-site uses or to nearby off site facilities under the same ownership, for which the private facility is intended to provide electrical power and is a behind-the-meter installation.

**Community Solar Garden:** A solar power generating facility designed to produce electricity as defined in C.R.S 40-2-127. A community solar garden may include battery storage equipment as accessory equipment.

**Agrivoltaics:** Agrivoltaics, agrophotovoltaics, agrisolar, or dual-use solar is the simultaneous use of areas of land for both solar panels and agriculture.

**Behind-the-meter:** Means an energy resource that is interconnected on the property owner's side of the utility meter providing electric energy primarily to serve the property owner's loads and shall be sized to supply no more than two hundred (200%) percent of the reasonably expected average annual total consumption of electricity at all properties owned or leased by the property owner.

**Fire Protection District:** A Fire Protection District within Mesa County is defined as one which has been recognized by resolution as per C.R.S 32-1-102 (2022) by the BoCC.

**Residential Occupied Structure:** See Building, Principle see also Dwelling Unit.

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## SECTION 12.04 | GENERAL

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### K. Utilities, Production

#### 1. Characteristics

A facility designed and operated for the generation, and distribution of electricity which use fossil fuels, solar energy, hydroelectric energy, geothermal energy, nuclear, biomass energy or wind energy as a resource for the primary purpose of selling electricity generated to the electric power grid.

#### 2. Accessory Uses

Accessory uses may include parking and control, monitoring, data or transmission or battery storage equipment and agrivoltaics.

#### 3. Exceptions

- a. Does not apply to on-site generation equipment when such use is an accessory use as described in Section 6.02 CC of this LCD.
- b. Transmission lines, substations, and pipelines.
- c. Utility production facilities with no occupied structures or full-time on-site employees are exempt from the requirements for potable water required in Section 8.09.

## II. TEXT AMENDMENT APPROVAL CRITERIA:

### Section 1.05 Purpose:

This Land Development Code is adopted for the purpose of preserving and improving the public health, safety, and general welfare of the citizens and businesses of Mesa County. More specifically, it is the purpose of this Land Development Code to:

#### A. Implement the purposes, goals, and policies of the Mesa County Master Plan;

The Master Plan is implemented in part through the development review process. The proposed text amendments do not conflict and are consistent with the purposes, goals and policies of the Master Plan.

*Criterion has been met*

#### B. Promote predictability, consistency, and efficiency in the land development process for residents, neighborhoods, businesses, and agricultural and development interests;

The amendments promote predictability, consistency, and efficiency in the land development process.

*Criterion has been met*

#### C. Provide appropriate opportunities for participation and involvement in the development process by all affected parties;

The proposed amendments do not affect the opportunities for participation and involvement in the development process.

*Criterion has been met*

#### D. Promote development that is consistent and compatible with that of the municipalities within Mesa County within the joint municipal planning areas;

The proposed amendments were provided to all municipalities for review.

*Criterion has been met; and:*

#### E. Be fair to all by giving due consideration to protecting private property rights, the rights of individuals, and the rights of the community as a whole. In instances where an application to develop does not meet all applicable criteria of this Code, and unique or special circumstances exist which would warrant the approval of the application to develop, and provided the proposed development: (a) poses no threat to health or safety; (b) provides for the mitigation of impacts to the maximum extent reasonable; and (c) is generally consistent and compatible with the allowed uses in the applicable Zoning District, the application to develop may be approved.

Protection of private property rights, the rights of individuals and the interests of the community as a whole were considered during the drafting of the proposed text amendments and it is staff's opinion that the proposed amendments do not diminish these rights.

*Criterion has been met*

### **III. REVIEW AGENCY COMMENTS**

No opposition from review agencies were received. A report of agency review comments is attached to the file.

#### **I. PUBLIC COMMENTS:**

Over the course of the project review, many public comments were collected during meetings, open houses and via email. Every effort to filter through the abundant comments was made to add what was codifiable and to respond to that which is of concern to residents but not codifiable. Copies of all public comments are attached to the project file.

#### **II. STAFF RECOMMENDATION**

Recommend approval of the proposed text amendments.

Basis: The amendments meets the purpose statements in Section 1.05 of the Mesa County 2020 Land Development Code (as amended) and do not conflict with other sections in the Land Development Code. The proposed text amendments meet the basic goals of the Mesa County Master Plan and do not conflict with State Statutes regulating County Planning.

#### **Summary**

##### **Purpose**

1.05.A (implement Master Plan purposes, goals, and policies)	is met
1.05.B (promote predictability, consistency and efficiency)	is met
1.05.C (provide opportunities for participation and involvement)	is met
1.05.D (development compatible with the municipalities)	is met
1.05.E (give due consideration to protecting rights)	is met

#### **V. MCPC RECOMMENDATION: March 21, 2024**

#### **VI. BoCC ACTION: April 23, 2024**