

ORDINANCE NO. 22124-2

AN ORDINANCE TO AMEND THE TOWNSHIP ZONING ORDINANCE TO ADD REGULATIONS FOR UTILITY-SCALE BATTERY ENERGY STORAGE SYSTEMS; TO AMEND THE ZONING ORDINANCE SECTIONS RELATED TO WIND ENERGY CONVERSION SYSTEMS IN GENERAL; TO AMEND THE ZONING ORDINANCE REGARDING WIND ENERGY CONVERSION SYSTEMS AND SOLAR ENERGY SYSTEMS RELATED TO PA 233 OF 2023; TO ADD A SECTION ON THE REVOCATION PROCESS FOR SPECIAL LAND USE PERMITS; AND TO MAKE FORMATTING UNIFORM FOR SECTION OUTLINES.

Elmwood Township ordains:

Section 1. Add Definitions to Article 21 Section 21.01.

The following definitions are added to Section 21.01 of the Zoning Ordinance, and will be placed in the Zoning Ordinance so that all definitions are in alphabetical order:

- A. *Battery Management System ("BMS")*: An electronic regulator that manages a Utility-Scale Battery Energy Storage System by monitoring individual battery module voltages and temperatures, container temperature and humidity, off-gassing of combustible gas, fire, ground fault and DC surge, and door access and capable of shutting down the system before operating outside safe parameters.
- B. *Utility-Scale Battery Energy Storage Facilities*: One or more devices, assembled together, capable of storing energy in order to supply electrical energy, including battery cells used for absorbing, storing, and discharging electrical energy in a Utility-Scale Battery Energy Storage System (with a battery management system ("BMS")).
- C. *Utility-Scale Battery Energy Storage System ("BESS")*: A physical container providing secondary containment to battery cells that is equipped with cooling, ventilation, fire suppression, and a battery management system.

Section 2. Add New Article 13 Section 13.18, entitled "Utility-Scale Battery Energy Storage Systems."

Section 13.18, entitled "Utility-Scale Battery Energy Storage Systems," is added to Article 13 of the Township's Zoning Ordinance. The section reads in its entirety as follows:

Section 13.18. Utility-Scale Battery Energy Storage Systems.

- A. **General Provisions.** All Utility-Scale Battery Energy Storage Systems are subject to the following requirements:
 - 1. All Utility-Scale Battery Energy Storage Systems must conform to the provisions of this Ordinance and all county, state, and federal regulations and safety requirements, including applicable building codes, applicable industry standards, and NFPA 855 "Standard for the Installation of Stationary Energy Storage Systems."

2. The Township Planning Commission may revoke any approvals for, and require the removal of, any Utility-Scale Battery Energy Storage System that does not comply with this Ordinance, in accordance with Section 17:08 of the Zoning Ordinance.
3. Utility-Scale Battery Energy Storage Systems are permitted in the Township as a special use in the following zoning districts and subject to any specific requirements for BESS in that district:
 - a. Utility-Scale Solar Energy Systems Overlay District
 - b. Industrial

B. Application Requirements. The applicant for a Utility-Scale Battery Energy Storage System must provide the Township with all of the following:

1. Application fee in an amount set by resolution of the Township Board.
2. A list of all parcel numbers that will be used by the Utility-Scale Battery Energy Storage System; documentation establishing ownership of each parcel; and any lease agreements, easements, or purchase agreements for the subject parcels. An operations agreement setting forth the operations parameters, the name and contact information of the operator, the applicant's inspection protocol, emergency procedures, and general safety documentation.
3. Current photographs of the subject property.
4. A site plan that includes all proposed structures and the location of all equipment, as well as all setbacks, the location of property lines, signage, fences, greenbelts, and screening, drain tiles, easements, floodplains, bodies of water, proposed access routes, and road right of ways. The site plan must be drawn to scale and must indicate how the Utility-Scale Battery Energy Storage System will be connected to the power grid.
5. A copy of the applicant's power purchase agreement or other written agreement with an electric utility showing approval of an interconnection with the proposed Utility-Scale Battery Energy Storage System.
6. A written plan for maintaining the subject property, including a plan for maintaining and inspecting drain tiles and addressing stormwater management, which is subject to the Township's review and approval. This plan must include approval from the County Drain Commissioner.
7. A decommissioning and land reclamation plan describing the actions to be taken following the abandonment or discontinuation of the Utility-Scale Battery Energy Storage System, including evidence of proposed commitments with property owners to ensure proper final reclamation, repairs to roads, and other steps necessary to fully remove the Utility-Scale Battery Energy Storage System and restore the subject parcels, which is subject to the Township's review and approval.

8. Financial security that meets the requirements of this Section, which is subject to the Township's review and approval.
9. A plan for resolving complaints from the public or other property owners concerning the construction and operation of the Utility-Scale Battery Energy Storage System, which is subject to the Township's review and approval. All complaints received by the operator, owner or the Township shall be maintained as part of the permanent record even if determined to be invalid following review or if repeat complaints.
10. A plan for managing any hazardous waste, which is subject to the Township's review and approval.
11. A fire protection plan, which identifies the fire risks associated with the Utility-Scale Battery Energy Storage System; describes the fire suppression system that will be implemented; describes what measures will be used to reduce the risk of fires re-igniting (i.e., implementing a "fire watch"); identifies the water sources that will be available for the local fire department to protect adjacent properties; identifies a system for continuous monitoring, early detection sensors, and appropriate venting; and explains all other measures that will be implemented to prevent, detect, control, and suppress fires and explosions.
12. A transportation plan for construction and operation phases, including any applicable agreements with the Tuscola County Road Commission and Michigan Department of Transportation, which is subject to the Township's review and approval.
13. An attestation that the applicant will indemnify and hold the Township harmless from any costs or liability arising from the approval, installation, construction, maintenance, use, repair, or removal of the Utility-Scale Battery Energy Storage System, which is subject to the Township's review and approval.
14. Proof of environmental compliance, including compliance with Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act; (MCL 324.3101 et. seq.; Part 91, Soil Erosion and Sedimentation Control (MCL 324.9101 et. seq.) and any corresponding County ordinances; Part 301, Inland Lakes and Streams, (MCL 324.30101 et. seq.); Part 303, Wetlands (MCL 324.30301 et. seq.); Part 365, Endangered Species Protection (MCL324.36501 et. seq.); and any other applicable laws and rules in force at the time the application is considered by the Township.
15. Any additional information or documentation requested by the Planning Commission, Township Board, or other Township representative.

C. System and Location Requirements.

1. *Setbacks.* Setbacks are the same as for Utility-Scale Solar Energy Systems. An exception can be made for a BESS that is fully enclosed in a building and then only if it is completely located within the Industrial Zoning District. If a BESS meets those conditions, the setbacks shall be the same as for that Industrial District unless greater setbacks are deemed necessary by the Fire Plan approved by the Fire Chief or as determined by the County

Drain Commissioner. If a single Utility-Scale Battery Energy Storage System is located on more than one lot, then the lot-line setbacks of this subsection do not apply to the lot lines shared by those lots.

2. *Screening.* Greenbelt screening is required around any Utility-Scale Battery Energy Storage System and around any equipment associated with the system to obscure, to the greatest extent possible, the Utility-Scale Battery Energy Storage System from any adjacent residences. The greenbelt shall be the same standard as established for Utility-Scale Solar Energy Systems unless the BESS is both fully located within the Industrial Zone and fully enclosed within a structure (walled with a roof) in which case it must meet the standards of that district, or any other restrictions established by the Zoning Ordinance or the Approved fire plan.
3. *Lighting.* Lighting of the Utility-Scale Battery Energy Storage System is limited to the minimum light necessary for safe operation. Illumination from any lighting must not extend beyond the perimeter of the lot(s) used for the Utility-Scale Battery Energy Storage System. The Utility-Scale Battery Energy Storage System must not produce any glare that is visible to neighboring lots or to persons traveling on public or private roads.
4. *Security Fencing.* Security fencing must be installed around all electrical equipment related to the Utility-Scale Battery Energy Storage System. Appropriate warning signs must be posted at safe intervals at the entrance and around the perimeter of the Utility-Scale Battery Energy Storage System.
5. *Noise.* The noise generated by a Commercial Utility-Scale Battery Energy Storage System must not exceed forty (40) dBA Lmax / A-weighted scale, as measured at the property line of any non-participating property line or road right of way if the parcel on the opposite side of the road is nonparticipating.
6. *Underground Transmission.* All power transmission or other lines, wires, or conduits from a Utility-Scale Battery Energy Storage System to any building or other structure must be located underground at a depth that complies with current National Electrical Code standards, except for power switchyards or the area within a substation.
7. *Drain Tile Inspections.* The Utility-Scale Battery Energy Storage System must be maintained in working condition at all times while in operation. The applicant or operator must inspect all drain tile at least once every three (3) years by means of robotic camera, with the first inspection occurring before construction begins on the Utility-Scale Battery Energy Storage System and again prior to operations commencing. The applicant or operator must submit proof of the inspection to the Township. The owner or operator must repair any damage or failure of the drain tile within sixty (60) days after discovery and submit proof of the repair to the Township. The Township is entitled, but not required, to have a representative present at each inspection or to conduct an independent inspection.

8. *Fire Protection.*

- a. Before any construction of the Utility-Scale Battery Energy Storage System begins, the Township's fire department or fire department(s) with which the Township contracts for fire service) will review the fire protection plan submitted with the application. The fire chief(s) will determine whether the fire protection plan adequately protects the Township's residents and property and whether there is sufficient water supply to comply with the fire protection plan and to respond to fire or explosion incidents. If the fire chief(s) determine(s) that the plan is adequate, then the fire chief will notify the Township Supervisor of that determination. If the fire chief determines that the plan is inadequate, then the fire chief may propose modifications to the plan, which the applicant or operator of the Utility-Scale Battery Energy Storage System must implement. The fire chief's decision may be appealed to the Township Board, and the Township Board will hear the appeal at an open meeting. The Township Board may affirm, reverse, or modify the fire chief's determination. The Township Board's decision is final, subject to any appellate rights available under applicable law.
 - b. The applicant or operator may amend the fire protection plan from time-to-time in light of changing technology or other factors. Any proposed amendment must be submitted to the fire department for review and approval under subsection (a).
 - c. The Utility-Scale Battery Energy Storage System must comply with the fire protection plan as approved by the fire chief (or as approved by the Township Board in the event of an appeal).
9. *Insurance.* The applicant or operator will maintain property/casualty insurance and general commercial liability insurance in an amount of at least five (\$5,000,000) million per occurrence.
10. *Permits.* All required county, state, and federal permits must be obtained before the Utility-Scale Battery Energy Storage System begins operating.
11. *Decommissioning.* If a Utility-Scale Battery Energy Storage System is abandoned or otherwise nonoperational for a period of one year, the property owner or the operator must notify the Township and must remove the system within six (6) months after the date of abandonment. Removal requires receipt of a demolition permit from the Building Official and full restoration of the site to the satisfaction of the Zoning Administrator. The site must be filled and covered with topsoil and restored to a state compatible with the surrounding vegetation. The requirements of this subsection also apply to a Utility-Scale Battery Energy Storage System that is never fully completed or operational if construction has been halted for a period of one (1) year.
12. *Financial Security.* To ensure proper decommissioning of a Commercial Utility-Scale Battery Energy Storage System upon abandonment, the applicant must post financial security in the form of a security bond, escrow payment, or irrevocable letter of credit in an amount equal to one hundred twenty five percent 125% of the total estimated cost of decommissioning, code enforcement, and reclamation, which cost estimate must be

approved by the Township. The operator and the Township will review the amount of the financial security every two (2) years to ensure that the amount remains adequate. This financial security must be posted within fifteen (15) business days after approval of the special use application.

13. *Extraordinary Events.* If the Utility-Scale Battery Energy Storage System experiences a failure, fire, leakage of hazardous materials, personal injury, or other extraordinary or catastrophic event, the applicant or operator must notify the Township within twenty-four (24) hours.
14. *Annual Report.* The applicant or operator must submit a report on or before January 1 of each year that includes all of the following:
 - a. Current proof of insurance;
 - b. Verification of financial security; and
 - c. A summary of all complaints, complaint resolutions, and extraordinary events.
15. *Inspections.* The Township may inspect a Utility-Scale Battery Energy Storage System at any time by providing 24 hours advance notice to the applicant or operator.
16. *Transferability.* A special use permit for a Utility-Scale Battery Energy Storage System is transferable to a new owner. The new owner must register its name and business address with the Township and must comply with this Ordinance and all approvals and conditions issued by the Township.
17. *Remedies.* If an applicant or operator fails to comply with this Ordinance, the Township, in addition to any other remedy under this Ordinance, may revoke the special use permit and site plan approval after giving the applicant or operator notice and an opportunity to be heard. Additionally, the Township may pursue any legal or equitable action to abate a violation and recover any and all costs, including the Township's actual attorney fees and costs.

D. Utility-Scale Battery Energy Storage Systems under PA 233

On or after November 29, 2024, once PA 233 of 2023 is in effect, then the following provisions apply to Utility-Scale Battery Energy Storage Systems with a nameplate capacity of 50 megawatts or more and an energy discharge capability of 200 megawatt hours of more. To the extent these provisions conflict with the provisions in Sections A-C above, these provisions control as to such Utility-Scale Battery Energy Storage Systems. This subsection does not apply if PA 233 of 2023 does not take effect, is repealed, enjoined, or otherwise not in effect, and does not apply to Battery Energy Storage Systems with a nameplate capacity of less than 50 megawatts. All provisions in Sections A-C above that do not conflict with this subsection remain in full force and effect.

1. *Setbacks.* Utility-Scale Battery Energy Storage Systems must comply with the following minimum setback requirements, with setback distances measured from the nearest edge of the perimeter fencing of the facility:

Setback Description	Setback Distance
Occupied community buildings and dwellings on nonparticipating properties	300 feet from the nearest point on the outer wall
Public road right-of-way	50 feet measured from the nearest edge of a public road right-of-way
Nonparticipating parties	50 feet measured from the nearest shared property line

2. *Installation.* The Utility-Scale Battery Energy Storage System must comply with the version of NFPA 855 “Standard for the Installation of Stationary Energy Storage Systems” in effect on the effective date of the amendatory act that added this section or any applicable successor standard.
3. *Noise.* The Utility-Scale Battery Energy Storage System must not generate a maximum sound in excess of 55 average hourly decibels as modeled at the nearest outer wall of the nearest dwelling located on an adjacent nonparticipating property. Decibel modeling shall use the A-weighted scale as designed by the American National Standards Institute.
4. *Lighting.* The Utility-Scale Battery Energy Storage System must implement dark sky-friendly lighting solutions.
5. *Environmental Regulations.* The Utility-Scale Battery Energy Storage System must comply with applicable state or federal environmental regulations.
6. *Host community agreement.* The applicant shall enter into a host community agreement with the Township. The host community agreement shall require that, upon commencement of any operation, the Utility-Scale Battery Energy Storage System owner must pay the Township \$2,000.00 per megawatt of nameplate capacity. The payment shall be used as determined by the Township for police, fire, public safety, or other infrastructure, or for other projects as agreed to by the local unit and the applicant.

Section 3. Amend Article 9 Sections 9.02 and 10.05.

Sections 9.02 and 10.05 of the Zoning Ordinance are amended to add the following use permitted by special use permit:

Utility-Scale Battery Energy Storage System

Section 4. Add New Article 17 Section 17.08, entitled "Revocation of Special Land Use Permits."

Section 17.08, entitled "Revocation of Special Land Use Permits," is added to Article 17 of the Township's Zoning Ordinance. The section reads in its entirety as follows:

SECTION 17.08: Revocation of Special Land Use Permits

The privilege of a Special Land Use Permit is subject to all of the conditions that have been attached to it during the application process. The permit remains valid as long as all of those conditions are met. However, the Township Board shall revoke the Special Land Use Permit after it has been proven that any of the permit conditions have been violated.

- A. **FIRST NOTICE** The Township Board shall send written notice of a violation to the holder of the permit by certified mail. The notice shall state that correction must be made within thirty (30) days, or the Township Board will revoke the Special Land Use Permit and order the use to cease.
- B. **TOWNSHIP BOARD ACTION** After the expiration of the thirty (30) days, the Township Board, at their next regular meeting or at a special meeting, shall hold a public hearing to consider revocation of the Special Land Use Permit. The Township shall notify the permit holder by certified mail of the public hearing. If it is determined that the permit holder is not in compliance with the permit conditions, the Township Board shall revoke the Special Land Use Permit.
- C. **SECOND NOTICE** If the Township Board revokes the Special Land Use Permit, the Township shall notify the permit holder by certified mail that the Special Land Use Permit has been revoked, and the use for which the permit was granted must cease within thirty (30) days from the date of this second notice. The Township Board shall also notify the Zoning Administrator that the Special Land Use Permit has been revoked and the date upon which the landowner must cease the use previously granted by the Special Land Use Permit.

D. ENFORCEMENT OF ORDER Failure to comply with the order to cease an activity for which a Special Land Use Permit has been revoked is a violation of this Ordinance, subject to all penalties thereof.

Section 5. Amendment of Article 13 Section 13.12(D), Wind Energy Conversion Systems.

Section 5.02(M) of the Zoning Ordinance, regulating Wind Energy Conversion Systems, is amended to add new subsection 23, which reads as follows:

23. Wind Energy Conversion Systems under PA 233.

On or after November 29, 2024, once PA 233 of 2023 is in effect, then the following provisions apply to Wind Energy Conversion Systems with a nameplate capacity of 100 megawatts or more. To the extent these provisions conflict with the provisions in section 13.12 (D.) of the Zoning Ordinance, these provisions control as to such Wind Energy Conversion Systems. This subsection does not apply if PA 233 of 2023 is repealed, enjoined, or otherwise not in effect and does not apply to Wind Energy Conversion Systems with a nameplate capacity of less than 100 megawatts. All provisions in section 13.12 (D.) of the Zoning Ordinance that do not conflict with this subsection remain in full force and effect.

- a. *Setbacks.* Wind Energy Conversion Systems must comply with the following minimum setback requirements, with setback distances measured from the center of the base of the wind tower:

Setback Description	Setback Distance
Occupied community buildings and dwellings on nonparticipating properties	2.1 times the maximum blade tip height to the nearest point on the outside wall of the structure
Residences and other structures on participating properties	1.1 times the maximum blade tip height to the nearest point on the outside wall of the structure
Nonparticipating property lines	1.1 times the maximum blade tip height
Public road right-of-way	1.1 times the maximum blade tip height to the center line of the public road right-of-way
Overhead communication and electric transmission, not including utility service lines to individual houses or outbuildings	1.1 times the maximum blade tip height to the center line of the easement containing the overhead line

- b. *Shadow Flicker.* Each wind tower must be sited such that any occupied community building or nonparticipating residence will not experience more than 30 hours per year

of shadow flicker under planned operating conditions as indicated by industry standard computer modeling.

- c. *Height.* Each wind tower blade tip must not exceed the height allowed under the Determination of No Hazard to Air Navigation by the Federal Aviation Administration under 14 CFR part 77.
- d. *Noise.* The Wind Energy Conversion System must not generate a maximum sound in excess of 55 average hourly decibels as modeled at the nearest outer wall of the nearest dwelling located on an adjacent nonparticipating property. Decibel modeling shall use the A-weighted scale as designed by the American National Standards Institute.
- e. *Lighting.* The Wind Energy Conversion System must be equipped with a functioning light-mitigating technology. To allow proper conspicuity of a wind turbine at night during construction, a turbine may be lighted with temporary lighting until the permanent lighting configuration, including the light-mitigating technology, is implemented. The Township may grant a temporary exemption from the requirements of this subparagraph if installation of appropriate light-mitigating technology is not feasible. A request for a temporary exemption must be in writing and state all of the following:
 - 1) The purpose of the exemption.
 - 2) The proposed length of the exemption.
 - 3) A description of the light-mitigating technologies submitted to the Federal Aviation Administration.
 - 4) The technical or economic reason a light-mitigating technology is not feasible.
 - 5) Any other relevant information requested by the Township.
- f. *Radar Interference.* The Wind Energy Conversion System must meet any standards concerning radar interference, lighting (subject to subparagraph (v)), or other relevant issues as determined by the Township.
- g. *Environmental Regulations.* The Wind Energy Conversion System must comply with applicable state or federal environmental regulations.
- h. *Host community agreement.* The applicant shall enter into a host community agreement with the Township. The host community agreement shall require that, upon commencement of any operation, the Wind Energy Conversion System owner must pay the Township \$2,000.00 per megawatt of nameplate capacity. The payment shall be used as determined by the Township for police, fire, public safety, or other infrastructure, or for other projects as agreed to by the local unit and the applicant.

Section 6. Amendment of Section 13.17(E), Utility-Scale Solar Energy Systems.

Section 13.17(E) of the Zoning Ordinance, regulating Utility-Scale Solar Energy Systems, is amended to add new subsection 6, which reads as follows:

6. Commercial Solar Energy Systems under PA 233.

On or after November 29, 2024, once PA 233 of 2023 is in effect, then the following provisions apply to Commercial Solar Energy Systems with a nameplate capacity of 50 megawatts or more. To the extent these provisions conflict with the provisions in subsections 1 through 7 above, these provisions control as to such Commercial Solar Energy Systems. This subsection does not apply if PA 233 of 2023 is repealed, enjoined, or other not in effect and does not apply to Commercial Solar Energy Systems with a nameplate capacity of less than 50 megawatts. All provisions in subsections 1 through 5 above that do not conflict with this subsection remain in full force and effect.

- a. *Setbacks.* Commercial Solar Energy Systems must comply with the following minimum setback requirements, with setback distances measured from the nearest edge of the perimeter fencing of the facility:

Setback Description	Setback Distance
Occupied community buildings and dwellings on nonparticipating properties	300 feet from the nearest point on the outer wall
Public road right-of-way	50 feet measured from the nearest edge of a public road right-of-way
Nonparticipating parties	50 feet measured from the nearest shared property line

- b. *Fencing.* Fencing for the Commercial Solar Energy System must comply with the latest version of the National Electric Code as of November 29, 2024, or as subsequently amended.
- c. *Height.* Solar panel components must not exceed a maximum height of twenty-five (25) feet above ground when the arrays are at full tilt.
- d. *Noise.* The Commercial Solar Energy System must not generate a maximum sound in excess of fifty-five (55) average hourly decibels as modeled at the nearest outer wall of the nearest dwelling located on an adjacent nonparticipating property. Decibel modeling shall use the A-weighted scale as designed by the American National Standards Institute.

- e. *Lighting.* The Commercial Solar Energy System must implement dark sky-friendly lighting solutions.
- f. *Environmental Regulations.* The Commercial Solar Energy System must comply with applicable state or federal environmental regulations.
- g. *Host community agreement.* The applicant shall enter into a host community agreement with the Township. The host community agreement shall require that, upon commencement of any operation, the Commercial Solar Energy System owner must pay the Township \$2,000.00 per megawatt of nameplate capacity. The payment shall be used as determined by the Township for police, fire, public safety, or other infrastructure, or for other projects as agreed to by the local unit and the applicant.

Section 7. Section Formatting Uniformity.

Where needed, the sections numbering scheme will be made uniform when appropriate.

Section 8. Validity and Severability.

If any portion of this Ordinance is found invalid for any reason, such holding will not affect the validity of the remaining portions of this Ordinance.

Section 9. Repealer.

All other ordinances inconsistent with the provisions of this Ordinance are hereby repealed to the extent necessary to give this Ordinance full force and effect.