

**WHITE RIVER TOWNSHIP
TOWNSHIP BOARD**

RESOLUTION NO. 75 - 2024

**RESOLUTION TO ADOPT ZONING ORDINANCE AMENDMENTS
REGARDING BATTERY ENERGY STORAGE SYSTEMS**

At a meeting of the Township Board for White River Township, Muskegon County, Michigan, held on September 10, 2024, at 7:00 p.m. at Nellie B. Chisholm Middle School, 4700 Stanton Boulevard, Montague, MI 49437.

PRESENT: Ron Bailey, Deb Harris, Patti Sargent, George Dufresne, Laura Anderson

ABSENT: None

The following preamble and resolution were offered by Sargent and seconded by Anderson.

WHEREAS, the Michigan Zoning Enabling Act, Public Act 110 of 2006, MCL 125.3101 *et seq.*, as amended, authorizes townships to adopt and amend zoning ordinances to regulate the use of land and structures within their zoning jurisdictions; and

WHEREAS, White River Township (“Township”) has adopted such a zoning ordinance (“Zoning Ordinance”); and

WHEREAS, the Township Board desires to amend the zoning regulations to regulate utility-scale battery storage energy systems in the Township and to comply with Public Act 233 of 2023 in order to retain local control over the zoning regulations for utility-scale battery storage energy systems; and

WHEREAS, the Township Planning Commission held a duly noticed public hearing at a meeting on August 12, 2024 to consider amendments to the Zoning Ordinance regarding utility-scale battery storage energy systems (“Proposed Amendments”); and

WHEREAS, the Township Planning Commission recommended adoption of the Proposed Amendments, as described in Ordinance No. 63-2024, An Ordinance to Amend the Zoning Ordinance to Regulate Utility-Scale Battery Energy Storage Systems (the “Ordinance”); and

WHEREAS, the Township Board finds that undeveloped brownfield properties are especially conducive sites for battery energy storage because they provide an opportunity for renewable energy storage while making use of otherwise vacant land; and

WHEREAS, the Township Board finds that certain brownfield properties in the Township are located near substations and existing transmission infrastructure necessary for storing and using battery energy; and

WHEREAS, the Township Board finds that amending the Zoning Ordinance to regulate utility-scale battery energy storage systems and making those regulations compatible with PA 233 is necessary to ensure continued local control over the siting of utility-scale battery energy storage systems; and

WHEREAS, the Township Board finds that the adopting the Ordinance is in the best interest of the health, safety, and welfare of the Township’s residents and the general public.

NOW, THEREFORE, the Township Board of the Township of White River resolves as follows:

1. Ordinance No. 63-2024, An Ordinance to Amend the Zoning Ordinance to Regulate Utility-Scale Battery Energy Storage Systems, attached as **Exhibit A**, is hereby adopted.
2. The Ordinance shall be filed with the Township Clerk.
3. The Township Clerk is directed to publish a notice of adoption within 15 days after adoption of the Ordinance.
4. A copy of the Ordinance shall be available for examination at the office of the

Township Clerk, and copies may be provided for a reasonable charge.

5. Any resolutions that conflict with this Resolution are repealed to the extent necessary to give this Resolution full force and effect.

A vote on the above Resolution was taken and was as follows:

YEAS: Dufresne, Anderson, Harris, Sargent, Bailey

NAYS: None

ABSENT: None

ABSTAINING: None

RESOLUTION DECLARED ADOPTED.

STATE OF MICHIGAN)
)
COUNTY OF MUSKEGON)

I, the undersigned, the duly qualified and acting Clerk for the Township of White River, Muskegon County, Michigan, DO HEREBY CERTIFY that the foregoing is a true and complete copy of certain proceedings taken by the Township Board of said Township at a meeting held pursuant to the Open Meetings Act on September 10, 2024.

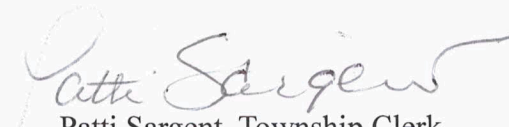

Patti Sargent, Township Clerk

EXHIBIT A

**WHITE RIVER TOWNSHIP
MUSKEGON COUNTY
MICHIGAN**

ORDINANCE NO. 63-2024

**AN ORDINANCE TO AMEND THE ZONING ORDINANCE TO REGULATE UTILITY-
SCALE BATTERY ENERGY STORAGE SYSTEMS**

The Township of White River ordains:

Section 1. New Section 16.06(NN)

A new Section 16.06(NN) is added to the White River Township Zoning Ordinance and reads in its entirety as follows:

NN. Utility-Scale Battery Energy Storage Systems

1. Definitions.
 - a. Battery management system. An electronic regulator that manages a UBESS 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 UBESS with a battery management system.
 - c. Utility-scale battery energy storage system (“UBESS”). A physical container providing secondary containment to battery cells that is equipped with cooling, ventilation, fire suppression, and a battery management system.
2. General Provisions. All UBESS are subject to the following requirements:
 - a. All UBESS 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.”
 - b. The Township may enforce any remedy or enforcement, including but not limited to the removal of any UBESS pursuant to the White River Township Zoning Ordinance or as otherwise authorized by law if the UBESS does not comply with this Section.
 - c. UBESS are permitted in the Township only as a special land use in the Renewable Energy Overlay District.

3. Application Requirements. UBESS are permitted as a special land use and require a special land use permit under Chapter 16. In addition to the requirements of Chapter 16, applicants shall provide the Township with all of the following:
 - a. Application fee in an amount set by resolution of the Township Board.
 - b. A deposit for an escrow account in an amount set by resolution or fee schedule approved by the Township Board. The escrow account is used to cover all costs and expenses associated with the special land use review and/or approval process, which costs can include, but are not limited to, review fees of the Township Attorney, Township Planner, and Township Engineer, as well as any reports or studies which the Township anticipates will be required during the review and/or approval process for the application. At any point during the review process, the Township may require that the applicant place additional monies into escrow with the Township if the existing escrowed funds on account with the Township will be insufficient, in the determination of the Township, to cover any remaining costs or expenses with the review and/or approval process. If additional funds are required by the Township to be placed in escrow and the applicant refuses to do so within 14 days after receiving notice, the Township will cease the zoning review and/or approval process until and unless the applicant makes the required escrow deposit. Any escrow amounts in excess of actual cost will be returned to the applicant. An itemized billing of all expenses will be provided to the applicant upon request.
 - c. A list of all parcel numbers that will be used by the UBESS; documentation establishing ownership of each parcel; and any lease agreements, easements, or purchase agreements for the subject parcels.
 - d. 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.
 - e. Current photographs, videos, and topography maps of the subject property.
 - f. A conceptual plan that consists of a graphical computer-generated depiction of how the UBESS will appear from all directions.
 - g. 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 UBESS will be connected to the power grid.
 - h. 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 UBESS.
 - i. 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.

- j. A decommissioning and land reclamation plan describing the actions to be taken following the abandonment or discontinuation of the UBESS, including evidence of proposed commitments with property owners to ensure proper final reclamation, repairs to roads, and other steps necessary to fully remove the UBESS and restore the subject parcels, which is subject to the Township's review and approval.
- k. Financial security that meets the requirements of this Section, which is subject to the Township's review and approval.
- l. A plan for resolving complaints from the public or other property owners concerning the construction and operation of the UBESS, which is subject to the Township's review and approval.
- m. A plan for managing any hazardous waste, which is subject to the Township's review and approval.
- n. A written emergency response plan detailing the applicant's plan for responding to emergencies, including fire emergencies, and analyzing whether adequate resources exist to respond to fires and other emergencies. If adequate resources do not exist, the applicant shall identify its plan for providing those resources. The emergency plan shall include identification of potential hazards to adjacent properties, public roadways, and to the community in general that may be created, as well as plans for immediate cleanup, long-term monitoring, and continued mitigation efforts following an emergency.
- o. A fire protection plan, which identifies the fire risks associated with the UBESS; describes the fire suppression system that will be implemented, including the manufacturer of the fire suppression system, its operations, and its capacity to extinguish fires; 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.
- p. A written description of specialized training and/or equipment necessary for handling fires and/or other emergencies at the UBESS site. The training plan must include, at a minimum, annual emergency response training for local firefighters and other local emergency personnel at the site of the UBESS.
- q. A transportation plan for construction and operation phases, including any applicable agreements with the County Road Commission and Michigan Department of Transportation, which is subject to the Township's review and approval.
- r. 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 UBESS, which is subject to the Township's review and approval.

- s. 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.
 - t. A ground cover vegetation establishment and management plan.
 - u. Proof of the owner/operator's insurance as required by this ordinance.
 - v. Compliance with the Michigan Uniform Building Code and National Electric Safety Code. Construction of Utility-Scale Battery Energy Storage Facilities shall comply with the most current version of the Michigan Uniform Building Code and National Electrical Code adopted by the enforcing agencies as a condition of any special land use permit under this section.
 - w. Any additional information or documentation requested by the Planning Commission, Township Board, or other Township representative.
4. Site Plan Requirements. UBESS are permitted as a special land use and require site plan approval under Chapter 15. In addition to the requirements of Chapter 15, applicants site plans shall include all of the following:
- a. Location of all proposed structures and buildings, including equipment, transformers, and substations.
 - b. Location of all existing structures or buildings on the subject parcel and location of all existing structures or buildings on adjacent parcels within 1,000 feet of the property lines of the subject parcel.
 - c. Depiction of all setbacks, property lines, fences, signs, greenbelts, screening, drain tiles, easements, flood plains, bodies of water, proposed access routes, and road rights of way.
 - d. Indication of how and where the system will be connected to the power grid.
 - e. Plan for any land clearing and grading required for the installation and operation of the system.
 - f. Plan for any ground cover establishment and management.
 - g. Anticipated construction schedule and completion date. As a condition of any special land use or site plan approval, hours of construction shall be limited to Monday through Friday from 7:00 a.m. to 5:00 p.m. with no construction on Saturday, Sunday, or any federally recognized holiday.
 - h. Sound modeling study including sound isolines extending from the sound sources to the property lines.

- i. Any additional studies requested by the Planning Commission, including but not limited to the following:
 - (1) Visual Impact Assessment. A technical analysis by a third party qualified professional of the visual impacts of the proposed project, including a description of the project, the existing visual landscape, and important scenic resources, plus visual simulations that show what the project will look like (including proposed landscaping and other screening measures), a description of potential project impacts, and mitigation measures that would help to reduce the visual impacts created by the project.
 - (2) Environmental Analysis. An analysis by a third-party qualified professional to identify and assess any potential impacts on the natural environment including, but not limited to, removal of trees, wetlands and other fragile ecosystems, wildlife, endangered and threatened species. If required, the analysis will identify all appropriate measures to minimize, eliminate or mitigate adverse impacts identified and show those measures on the site plan, where applicable.
 - (3) Stormwater Study. An analysis by a third-party qualified professional studying the proposed layout of the UBESS and how the spacing, row separation, and slope affects stormwater infiltration, including calculations for a 100-year rain event. Percolation tests or site-specific soil information shall be provided to demonstrate infiltration on-site without the use of engineered solutions.
 - (4) Glare Study. If the UBESS includes solar panels, then an analysis by a third-party qualified professional to determine if glare from the solar panels will be visible from nearby airports, air strips, residences, and roadways may be required. The analysis will consider the changing position of the sun throughout the day and year and its influences on the solar panels.
- j. Conceptual Layout Plan. Applicants shall submit a conceptual layout plan for review prior to submission of a formal site plan. The conceptual site plan shall consist of a map and summary of the proposed development or land use, indicating the lands to be included, a brief description of the proposed project, a timeline for the proposed project, and any other information applicant deems necessary to provide the Planning Commission with a general overview and layout of the proposed project. The conceptual layout plan shall be reviewed by the Planning Commission to allow for discussion and feedback to the applicant.
- k. Approvals from Other Agencies. Final site plan approval may be granted only after the applicant receives all required federal, state, and local approvals, including any applicable approval by the state historic preservation office. Applicant shall provide copies of all review letters, final approved plans, and reports issued by any other governing agencies to the Township.
- l. The site plan must show the existing topographical grades in two-foot intervals and conditions of all Participating Property at the time of application.

- m. A baseline soil test including Cation Exchange Capacity (CEC) shall be provided to the Township prior to any construction.
 - n. A written description of how the applicant will address dust control during construction. Such plan shall, at a minimum, consist of water applications at least three times per day unless it has rained in the preceding three hours of the planned application.
5. System and Location Requirements. The site development requirements shall meet or exceed all of the requirements in the underlying zoning district, the Renewable Energy Overlay District, and all of the following:
- a. Lighting. Lighting of the UBESS 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 UBESS. The UBESS must not produce any glare that is visible to neighboring lots or to persons traveling on public or private roads. Flashing or intermittent lights are prohibited.
 - b. Security Fencing. Security fencing must be installed around all electrical equipment related to the UBESS. Appropriate warning signs must be posted at safe intervals at the entrance and around the perimeter of the UBESS.
 - c. Screening. Greenbelt screening is required around any UBESS and around any equipment associated with the system to obscure, to the greatest extent possible, the UBESS from all sides.
 - (1) Screening shall be installed to obscure the UBESS and shall contain two rows of staggered evergreen trees planted not greater than twelve (12) feet apart trunk to trunk, and the two rows shall be no greater than ten (10) feet apart. Any substitution shall be approved in advance by the Planning Commission. No species of any Arborvitae shall be permitted.
 - (2) Planting shall be at least eight (8) feet tall at time of planting, measured from the top of the root ball to the base of the leader (not including the height of the leader) and reasonably expected to reach a height of ten (10) feet within three (3) growing seasons.
 - (3) The trees may be trimmed but shall maintain a height of at least eighteen (18) feet.
 - (4) Evergreen trees shall be Norway Spruce.
 - (5) Good arboricultural techniques shall be followed with respect to vegetation, including but not limited to, proper pruning, proper fertilizing, and proper mulching, so that the vegetation will reach maturity as soon as practical and will have maximum density in foliage. Dead or diseased vegetation shall be removed and shall be replanted in a manner consistent with this Section at the next appropriate planting time. Each dead or diseased vegetation shall be completely replaced at 50% as determined by the Zoning Administrator. Annual review by a Professional Arborist, paid for by the owner/operator,

shall be performed to determine any plant/vegetation replacement necessary to remain in compliance with the ordinance.

- (6) UBESS also shall comply with the landscaping standards in Sections 3.14 and 3.15.
 - (7) Front, side, and rear yard screening is required if the UBESS is adjacent to a non-participating property.
- d. Noise. All noise measurements are to be instantaneous and shall not be averaged. The noise generated by a UBESS must not exceed the following limits, as measured at the property line of any adjacent parcel:
- (1) 40 dBA Lmax between the hours of 7:00 a.m. and 9:00 p.m.
 - (2) 35 dBA Lmax between the hours of 9:00 p.m. and 7:00 a.m.
 - (3) The owner/operator of the UBESS shall annually provide for a sound analysis or modeling, conducted by an auditory expert chosen by the Township, at the expense of the applicant.
- e. Underground Transmission. All power transmission or other lines, wires, or conduits from a UBESS 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.
- f. Drain Tile Inspections. The UBESS 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 two years by means of robotic camera, with the first inspection occurring before the UBESS is in operation. 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.
- g. Fire Protection.
- (1) Before any construction of the UBESS begins, the Township's fire department (or fire department with which the Township contracts for fire service) will review the fire protection plan submitted with the application. The fire chief 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 determines 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 UBESS 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.

- (2) 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).
 - (3) The UBESS 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).
- h. Insurance. The applicant or operator will maintain property/casualty insurance and general commercial liability insurance in an amount of at least \$5 million per occurrence. The Township shall be listed as an additional insured on each policy.
 - i. Permits. All required county, state, and federal permits must be obtained before the UBESS begins operating. A building permit is required for construction of a UBESS, regardless of whether the applicant or operator is otherwise exempt under state law.
 - j. Decommissioning. If a UBESS 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 top soil and restored to a state compatible with the surrounding vegetation. The requirements of this subsection also apply to a UBESS that is never fully completed or operational if construction has been halted for a period of one (1) year.
 - k. Financial Security. To ensure proper decommissioning of a UBESS 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 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.
 - l. Extraordinary Events. If the UBESS 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 24 hours.
 - m. Annual Report. The applicant or operator must submit a report on or before January 1 of each year that includes all of the following
 - (1) Current proof of insurance;
 - (2) Verification of financial security; and

- (3) A summary of all complaints, complaint resolutions, and extraordinary events.
- n. Inspections. The Township may inspect a UBESS at any time by providing 24 hours advance notice to the applicant or operator.
 - o. Transferability. A special use permit for a UBESS 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.
 - p. Remedies. If an applicant or operator fails to comply with this Ordinance, the Township, may pursue any remedy or enforcement, including but not limited to the removal of any UBESS pursuant to this Ordinance or as otherwise authorized by law. 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
6. Utility-Scale Battery Energy Storage Systems under PA 233. On or after November 29, 2024, once PA 233 of 2023 is in effect, the following provisions apply to UBESS with a nameplate capacity of 50 megawatts or more and an energy discharge capability of 200 megawatt hours of more. UBESS with a nameplate capacity of 50 megawatts or more and an energy discharge capability of 200 megawatt hours of more shall only be permitted as a special land use in the Renewable Energy Overlay District.

To the extent these provisions conflict with the provisions in subsection 1 through 5 above, these provisions control as to such UBESS. This subsection does not apply if PA 233 of 2023 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 subsection 1 through 5 above that do not conflict with this subsection remain in full force and effect.

- a. Setbacks. UBESS 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. Installation. The UBESS 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.

- c. Noise. The UBESS 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.
- d. Lighting. The UBESS must implement dark sky-friendly lighting solutions.
- e. Environmental Regulations. The UBESS must comply with applicable state or federal environmental regulations.
- f. 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 UBESS 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 2. 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 3. 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.

Section 4. Effective Date.

This Ordinance/ordinance amendment shall become effective seven (7) days after the adoption of this Ordinance/ordinance amendment (or summary thereof) appears in the newspaper as provided by law.

The vote to adopt this ordinance/ordinance amendment was as follows:

YEAS: Dufresne, Anderson, Harris, Sargent, Bailey

NAYS: None

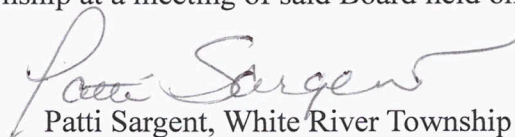
ABSTAIN/ABSENT: None

THIS ORDINANCE/ ORDINANCE AMENDMENT IS HEREBY DECLARED ADOPTED.

CERTIFICATION

I hereby certify that the above is a true copy of an Ordinance/ordinance amendment adopted by the Township Board for White River Township at a meeting of said Board held on September 10, 2024.

Dated: September 10, 2024


Patti Sargent, White River Township Clerk