

**FAIRGROVE TOWNSHIP**  
**TUSCOLA COUNTY, MICHIGAN**

**ZONING ORDINANCE AMENDMENT | BATTERY ENERGY STORAGE SYSTEMS**

**ORDINANCE NO. 009-2024**

At a meeting of the Township Board of Fairgrove Township, Tuscola County, Michigan, held at the Fairgrove Township Hall on December 2, 2024, at 7p.m., Township Board Member Amy Grady moved to adopt the following Ordinance, which motion was seconded by Township Board Member Sarah Donovan.

*An Ordinance to amend the Fairgrove Township Zoning Ordinance, as amended, to regulate Battery Energy Storage Systems (BESS).*

**FAIRGROVE TOWNSHIP, TUSCOLA COUNTY, MICHIGAN ORDAINS:**

**SECTION 1. AMENDMENT TO CHAPTER 7:** The Fairgrove Township Zoning Ordinance, Chapter 7 shall be amended to add Section 7.28 as outlined below to govern Battery Energy Storage Systems.

**Section 7.28                      Battery Energy Storage Systems (BESS)**

**Subsection 1 Purpose and Intent**

The purpose and intent of this ordinance is to establish standards for the siting, installation, operation, and repair of Battery Energy Storage Systems in the Township.

**Subsection 2 Special Use Permit Requirement & Application Escrow**

A special use permit is required for any Battery Energy Storage System to be installed and operated within the Township.

An escrow account shall be funded by an applicant when an applicant applies for a special use permit for a BESS. The monetary amount placed by the applicant in escrow with the Township shall be estimated by the Township to cover all reasonable costs and expenses associated with the zoning review and approval process (including site plan review), which costs include, but are not limited to, reasonable fees of a Township attorney, planner, and/or engineer, as well as costs for any other outside consultants or reports or studies that the Township determines are reasonably related to the zoning review process for a particular application. Such escrow amount shall be in addition to any non-refundable application fees determined by the Township. At any point during the zoning review process, the Township may require that the applicant place additional monies in escrow with the Township should the existing escrow amount filed by the applicant be insufficient. If the escrow account needs replenishing and the applicant refuses to do so within 45 days, the zoning review and approval process shall cease until and unless the applicant makes the required escrow deposit. Such application escrow shall be held by the Township Treasurer

in a separate bank account, and upon completion of Township zoning review, all excess escrow funds must be returned to an applicant without interest.

### **Subsection 3 Definitions**

The definitions below shall apply to Section 7.28 of the Fairgrove Township Zoning Ordinance. All other Zoning Ordinance definitions shall further apply to Section 7.28 unless any general definitions conflict with those defined below.

- A. **Battery Energy Storage System (“BESS”)**: Rechargeable electrical system that allows storage and disbursement of energy from on-site or nearby commercial-scale power generating systems (over 10 megawatts) or from the public utility electric grid.
- B. **Nonparticipating Properties**: Properties that have not entered into an agreement such as lease to host or otherwise be associated with a BESS.
- C. **Occupied Community Building / Dwelling**: A building designed for the frequent habitation or use by humans, including, but not limited to, homes, schools, churches, and places of business.
- D. **Safety Hazard**: This term shall mean any condition which could reasonably be expected to create, cause, or compound the substantial likelihood that death, illness, or personal injury may occur to any member of the general public, including but not limited to, trespassers or emergency services personnel. Adherence by the facility owner/operator or occupants to industry standards for safeguarding against such risks shall be taken into consideration in determining whether a condition poses a safety hazard.

### **Subsection 4 System Standard**

BESS shall be designed and constructed in accordance with the NFPA (National Fire Protection Association) 855 standard including as may be periodically updated.

### **Subsection 5 Certified Components**

Components of a BESS shall be approved prior to commencement of operation, as outlined by this section. The system and its components and equipment shall be listed by the nationally recognized testing laboratory, UL (Underwriters Laboratories) 9540 (standard for battery energy storage systems and equipment) or applicable nationally recognized standard with subcomponents meeting each of the following standards as applicable.

- A. UL 1973 (Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power and Light Electric Rail Applications)
- B. UL 1642 (Standard for Lithium Batteries)
- C. UL 1741 or UL 62109 (Inverters and Power converters)

- D. Certified under the applicable electrical, building, and fire prevention codes as required.
- E. Any applicable subcomponent standards as required or industry standard for BESS components.

Alternatively, field evaluation by an approved testing laboratory for compliance with UL 9540 and applicable codes, regulations and safety standards may be used to meet system certification requirements.

#### **Subsection 6 Safety**

- A. All applicants shall include a detailed safety plan in a special use permit application. Such a plan shall include, but not be limited to:
  - 1. Preliminary design with locations and descriptive details regarding components relating to fire prevention and detection and to explosion control.
  - 2. Information regarding equipment designed for providing proper temperature control recommended for safe operation of batteries.
- B. A BESS owner or operator shall provide an emergency operations plan and orientation for the Fairgrove Fire Department and any other applicable emergency responders to the Township before the beginning of commercial operation of the facility. The owner and operator shall coordinate with the entities above for further training and best practices for fighting fires and shall identify and prepare a plan to provide emergency service providers with further requisite training and/or equipment as needed to serve the emergency response needs of a BESS.
- C. BESS owners and operators shall establish a fire department access system for emergency off-hours access by emergency personnel. They shall also maintain access to the BESS by snow-plowing and maintaining all vehicle and pedestrian access pathways in a timely manner.
- D. The BESS shall be adequately signed according to American National Standards Institute (ANSI) Z535, Section 4.7.4 or other applicable national



standard or practice. This shall include providing emergency responders information about the batteries and other hazardous contents and potential risks within the system.

- E. The Township Board may require, as a condition of a special use permit, for the owner of the facility to provide a specific amount of funding to the Fairgrove Fire Department for any special firefighting equipment designed to extinguish the type of fire that may be involved with the type of batteries used in the BESS.
- F. A security fence that meets the requirements of the National Electrical Code shall be placed around the perimeter of the BESS and electrical equipment.

#### **Subsection 7 Setbacks**

A. The following minimum setback requirements, with setback distances measured from the nearest edge of the perimeter fencing of the facility:

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

B. Fencing and other aspects of the landscaping and screening/buffering plan may be situated within the required setback areas. The BESS owner or operator shall maintain grounds located within setbacks of the facility, either through their own maintenance organization or by allowing the property owner to farm the land.

C. Property line setbacks do not apply to contiguous parcels of properties that have a land agreement or lease to host or benefit from a BESS.

#### **Subsection 8 Sound**

A BESS shall not emit sound exceeding 55dBA average hourly decibels as modeled at the nearest outer wall of the nearest dwelling located on a nonparticipating property. Decibel modeling shall use the A-weighted scale as designed by the American National Standards Institute.

- A. Sound testing (e.g., a post-construction sound study), or industry equipment documentation documenting sound emissions shall be required for each application and must be performed by a qualified third-party firm approved by the Township and paid by the applicant.



### **Subsection 9 Landscaping**

- A. Applicants shall submit a detailed landscaping plan which shows all proposed changes to the landscape of the site, including temporary or permanent roads or driveways, grading, vegetation clearing and planting. The landscape plan shall be prepared by a licensed professional in the State of Michigan, and plant material shall meet the American Nursery Standards. This plan shall be reviewed through the special use permit approval process to ensure that the proposed facility is appropriately landscaped in relation to nearby land uses and road rights-of-way
- B. A BESS must have a landscape buffer. The buffer shall be located outside of any perimeter fencing associated with the land use. The buffer shall contain a mix of native deciduous and evergreen plant material and be at least five (5) feet in height at the time of installation. The Planning Commission may also allow the use of existing vegetation to serve as a landscape buffer. These landscaping requirements may be modified at the request of the applicant and at the discretion of the Planning Commission.
- C. Vegetation used by the BESS owner or operator as a buffer shall be maintained with good husbandry techniques such as, but not limited to, proper pruning, fertilizer, and mulching so that the vegetation will reach maturity as soon as practical with the maximum density of foliage. Dead or diseased vegetation shall be removed and must be replanted at the next appropriate planting season. Plants or grasses not part of the required landscaping buffer shall be maintained and may not to exceed twelve (12) inches in height unless approved by the Planning Commission. The applicant must provide a detailed maintenance plan for the proposed BESS, and surrounding area, including maintenance for natural vegetation.

### **Subsection 10 Final Design**

The final design of a BESS shall be submitted prior to the beginning of commercial operation of the facility.

### **Subsection 11 Transfer of Facility Ownership/Operation**

The Township shall be notified of any intent to transfer the ownership of the BESS and reassignment of a special use permit. The current facility owner or operator shall provide written notice to the Planning Commission at least thirty (30) days after the date that an agreement to change the ownership of the facility becomes effective. This notice shall inform the Planning Commission of the intended transfer of control of the BESS. Such an instrument or agreement shall include an express statement that the new owner or operator

of the BESS shall not be permitted to operate that facility until compliance with the terms of this ordinance have been met, including requirements for a decommissioning security.

#### **Subsection 12 Conditions**

The Planning Commission may impose additional reasonable conditions for the approval of a BESS as conditions on a special use permit or site plan.

#### **Subsection 13 Complaint Resolution**

Applicants shall develop a process to resolve complaints from nearby residents and /or property owners concerning the construction and operation of the BESS. This process shall include a time limit for acting on a complaint. This process must be approved as a part of the application process. The process shall not preclude the Township from acting on the complaint. During construction and operation, the applicant shall maintain a telephone number during business hours where the Township residents and/or property owners can reach a project representative.

#### **Subsection 14 Enforcement**

- A. Any person, entity, or corporation violating any of the provisions of this section is responsible for a municipal civil infraction and all other penalties as provided in the Fairgrove Township Zoning Ordinance or under Michigan law.
- B. The Township Zoning Administrator shall have the right to inspect the premises on which a BESS is located upon providing the owner or operator of the BESS 48-hour notice of the planned inspection to the operator of the facility. The Township may hire one or more consultants to assist with any such inspections, at the expense of the facility owner/operator.
- C. False report of official complaint: Any person who intentionally makes a false complaint or intentionally causes a false report of a complaint of a violation of this section to the official in charge of enforcing this ordinance, knowing the report is false, is guilty of a municipal civil infraction.
- D. If the Township Zoning Administrator determines that a BESS fails at any time to meet the requirements of the Zoning Ordinance, special use permit, or site plan approval, or that it poses a potential safety hazard as defined above, the facility owner or operator shall shut down the BESS within forty-eight (48) hours after notice by the Zoning Administrator, and not operate, start, or restart the BESS until an identified issue has been corrected.

### **Subsection 15 Decommissioning**

The project shall be decommissioned if for twelve (12) months the project has not been in operation, or if the Zoning Administrator determines that the project is no longer being maintained in an operable state of good repair. The decommissioning may be postponed by the Planning Commission upon presentation of substantial evidence of the intent to maintain and reinstate operation of the BESS. If decommissioning is triggered by either of these two conditions, the project owner must remove all equipment, conduit, structures, fencing, roads, and foundations within six (6) months of notice to decommission from the Zoning Administrator. The site must be restored to original condition by filling with top soil and restoring to a state compatible with the surrounding vegetation. Original condition will be based upon drain tile mapping or equivalent method of pre-construction drain tile inventory, as reviewed and presented to the Township or as otherwise incorporated by specific findings or conditions in the issuance of a special use permit. A drain tile system which was damaged during construction and not repaired, or during decommissioning, will be restored to its pre-construction condition to support future agricultural production. Roads or access drives may remain in place following decommissioning upon presentation of a signed agreement to that effect by the property owner. If the owner of the project or the underlying property owner fails to remove or repair any defective, abandoned or terminated project, the Township, in addition to any other remedy under this Ordinance, may pursue legal action to abate the violation by seeking to remove the project and recover any and all costs, including attorney fees.

### **Subsection 16 Continuing Security and Escrow Deposit**

If any BESS is approved under the Zoning Ordinance, the applicant shall be required to post continuing security and a continuing escrow deposit prior to commencement of construction, which shall remain in effect until the BESS has been finally decommissioned as provided below.

- A. **Continuing Security:** If a special use permit is approved pursuant to this section, the Planning Commission shall require security in the form of a cash deposit, irrevocable letter of credit, corporate bond, or surety bond in a form, amount, time, duration deemed acceptable to the Township which will be furnished by the applicant to the Township in order to ensure full compliance with this section and any conditions of approval. Such financial security may not credit salvage value of the BESS and its components to lower the amount of the financial security. When estimating the amount of such required security, the Township may also require an annual escalator or increase based on the Consumer Price Index (or the equivalent or its successor). Such financial guarantee shall be deposited or filed with the Township Clerk after a special use permit has been approved but before construction commences upon the BESS. At a minimum, the financial security shall be in an amount determined by the



Township to be reasonably sufficient to have each BESS fully removed (and all components properly disposed of and the land returned to its original state) should such structure or structures become abandoned, dangerous, or obsolete, or not in compliance with this ordinance or the special use permit. Such financial security shall be kept in full force and effect during the entire time while a BESS exists or is in place, and such financial security shall be irrevocable and noncancelable (except by the written consent of both the Township and the then-owner of the BESS).

- B. **Continuing Escrow Deposit:** A continuing escrow deposit to be held by the Township shall be funded in cash by the applicant prior to the commencement of construction of any BESS and shall be maintained by the BESS owner until the BESS has been permanently removed. The monetary amount placed by the applicant in escrow with the Township shall be estimated by the Township to cover all reasonable costs and expenses associated with continuing enforcement of this Ordinance and the terms of the special use permit, which costs can include, but are not limited to, reasonable fees of the Township Attorney, Township Planner, and Township Engineer, as well as costs for any reports or studies which the Township anticipates it may have done that are reasonably related to enforcement of the Ordinance and the special use permit. If the Township is required to expend any portion of the escrow deposit, or if the existing escrow amount paid by the applicant proves to be insufficient to cover the Township's enforcement costs, the Township may require that the BESS owner place additional monies into escrow with the Township. Alternatively, if lawful, applicant will pay permit fees equivalent to estimate of all reasonable costs and expenses associated with continuing enforcement of this Ordinance and the terms of the special use permit, which costs can include, but are not limited to, reasonable fees of the Township Attorney, Township Planner, and Township Engineer, as well as costs for any reports or studies which the Township anticipates it may have done that are reasonably related to enforcement of the Ordinance and the special use permit. As for the escrow requirement, this permit fee will also include a replenishment obligation if the permit fees paid by the applicant prove to be insufficient to cover the Township's enforcement fees, costs, and expenses
- C. **Continuing Obligations:** Failure to keep such financial security and escrow deposit in full force and effect at all times while a BESS exists or is in place shall constitute a violation of the special use permit and this Ordinance and will subject the BESS owner to all remedies available to the Township, including possible enforcement action and revocation of the special use permit or site plan approval.

Applicants for a BESS shall submit a document that identifies impacts of a proposed project on community resources and services, including, but not limited to, roads, fire protection (including any necessary training or equipment), police protection, emergency medical services, and public drainage systems including culverts. Applicants shall demonstrate in an application for a BESS how they will ensure impacts from a proposed project on community resources and services will be addressed by the applicant and not be borne on the Township. All necessary permits from applicable County, State and Federal agencies shall be remitted to the Township to be maintained on file. Any material damages to a public road or drain infrastructure located within the Township resulting from the construction, maintenance or operation of a BESS shall be repaired at the applicant's expense.

### **Subsection 18 Ordinance Requirements**

Requirements imposed by in this section shall be in addition to any further requirements imposed on Battery Energy Storage Systems by other Township ordinances or the Zoning Ordinance, generally. If there is a conflict between any of these provisions with another ordinance, the language of the more restrictive ordinance shall govern.

**SECTION 2. AMENDMENT TO CHAPTER 2, SECTION 2.2:** Section 2.2 of the Fairgrove Township Zoning Ordinance shall be amended to definitions pertinent to Battery Energy Storage Systems, as regulated by Section 7.28 of the Zoning Ordinance.

**SECTION 3. AMENDMENT TO ARTICLE CHAPTER 4, SECTION 4.6(C):** Section 4.6(C) of the Fairgrove Township Zoning Ordinance shall be amended to list Battery Energy Storage Systems (BESS) as a use authorized by special use permit in the A-1, Agricultural Zoning District subject to the requirements of Section 7.28 of the Zoning Ordinance.

**SECTION 4. SEVERABILITY:** The provisions of this Ordinance are declared severable. If any part of this Ordinance is declared invalid for any reason by a court of competent jurisdiction, that declaration does not affect or impair the validity of all other provisions that are not subject to that declaration.

**SECTION 5. REPEAL AND FORM:** All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed. Further, the Township may use the content of this Ordinance and compile/insert it into the existing Fairgrove Township Zoning Ordinance document including making any technical provision numbering or clerical revisions as necessary for the compilation. See MCL 41.186 (ability of Township to codify its ordinances).


**SECTION 6. EFFECTIVE DATE:** This Ordinance shall take effect seven days after publication of a notice of adoption of this Ordinance, unless referendum procedures are initiated under MCL 125.3402. If referendum procedures are initiated, this Ordinance will take effect in accordance with MCL 125.3402.

YEAS: All

NAYS: none

ABSENT: none

ORDINANCE DECLARED ADOPTED.

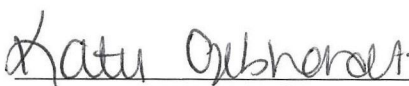
  
~~Keith Aeder~~, Township Supervisor  
Mike Day

#### CERTIFICATION

I hereby certify that:

1. The above is a true copy of an Ordinance adopted by the Fairgrove Township Board at a duly scheduled and noticed meeting of that Township Board held on 12/2, 2024, pursuant to the required statutory procedures.
2. A summary of the above Ordinance was duly published in the Advertiser newspaper, a newspaper that circulates within Fairgrove Township, on 12/7, 2024.
3. Within one week after such publication, I recorded the above Ordinance in a book of ordinances kept by me for that purpose, including the date of passage of the Ordinance, the names of the members of the township board voting, and how each member voted.
4. I filed an attested copy of the above Ordinance with the Tuscola County Clerk on 12/6, 2024.

ATTESTED:

  
Katie Gebhardt, Township Clerk



**FAIRGROVE TOWNSHIP  
TUSCOLA COUNTY, MICHIGAN**

**NOTICE OF ZONING ORDINANCE AMENDMENT**

On December 2 2024, the Fairgrove Township Board adopted Ordinance No. 12-2024 which amends the Fairgrove Township Zoning Ordinance to, among other things, to provide for regulations on Battery Energy Storage Systems (BESS). Copies of the complete text of the Ordinance were and are available at the Fairgrove Township Hall at 5002 Center Street, Fairgrove, MI 48733.

The Ordinance has the following sections and catch lines: Section 1: Amendment to Add Chapter 7, Section 7.28; Section 2: Amendment to Chapter 2, Section 2.2; Section 3: Amendment to Amendment to Chapter 4, Section 4.6(C); Section 4: Severability; Section 5: Repeal and Form; and Section 6: Effective Date, which shall be seven (7) days after publication of a notice of adoption of this Ordinance, or as otherwise provided by MCL 125.3402.

Katie Gebhardt  
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Publication Date: 12/7, 2024

