

CHARTER TOWNSHIP OF COMSTOCK

ORDINANCE _____

ADOPTED: _____

EFFECTIVE: EIGHT DAYS AFTER PUBLICATION AFTER ADOPTION

An Ordinance to amend the Township Zoning Ordinance to authorize battery energy storage systems (BESS); to provide regulations and standards for battery energy storage systems; to repeal all ordinances or parts of ordinances in conflict herewith, and to provide an effective date.

**CHARTER TOWNSHIP OF COMSTOCK
KALAMAZOO COUNTY, MICHIGAN**

ORDAINS:

**BATTERY ENERGY STORAGE SYSTEM ORDINANCE
AMENDMENT TO TOWNSHIP ZONING ORDINANCE**

**SECTION I
AMENDMENT TO ARTICLE 4 SECTION 4.61 USE
STANDARDS**

Article 4 Section 4.61 entitled Battery Energy Storage Systems (BESS), is amended to read as follows:

- A. Purpose and Intent: The purpose of this Ordinance is to establish minimum requirements and regulations for the construction, erection, placement, location, maintenance, modification, operation, and decommissioning of Battery Energy Storage Systems in the Township in a manner that promotes economic development and ensures the protection of health, safety, and welfare while also avoiding adverse impacts to important areas such as agricultural lands, residential areas, endangered species habitats, conservation lands, and other sensitive lands.
- B. Definitions:
 - I. *Battery Energy Storage System*: One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include a stand-alone 12-volt car battery, an electric motor vehicle, or small store-bought batteries designed and used purely for household electronic items.
 - 2. *Battery Energy Storage System, On-Site*: a Battery Energy Storage System that is an accessory use that is intended to primarily serve the needs of the

consumer on-site.

3. *Battery Energy Storage System, Small Off-Site:* A Battery Energy Storage System that is a principal use (or co-located with a second principal use) and that is designed and built to connect into the distribution or transmission grid with a nameplate capacity less than 50 megawatts.
 4. *Battery Energy Storage System, Large Off-Site:* A Battery Energy Storage System (BESS) that is a principal use (or co-located with a second principal use) and that is designed and built to connect to the transmission grid with a nameplate capacity of 50 megawatts or more.
 5. *Non-Participating Property:* Any property that is adjacent to a participating property.
 6. *Participating Property:* A battery energy storage system host property or any real property that is the subject of an agreement that provides for the payment of monetary compensation to the landowner from the system owner (or affiliate) regardless of whether any part of a system is constructed on the property.
 7. *Sensitive Land Uses:* A land use with a high volume of people and/or a vulnerable population. These uses include: Assisted Living Facilities, Commercial Child Care Facilities, Educational Facilities (Pre-K through 12), and Hospitals.
- C. Off-Site Battery Storage Systems: The following requirements shall apply to all off-site battery energy storage systems:
1. Battery Energy Storage Systems, Small Off-Site shall be allowed as a special exception land use in the following zoning districts:
 - a. LM, Light Manufacturing District
 - b. M, Manufacturing District
 2. Battery Energy Storage Systems, Large Off-Site shall be allowed as a special land use in the following zoning districts:
 - a. Battery Energy Storage System Large Off-Site Overlay District
 - b. LM, Light Manufacturing District
 - c. M, Manufacturing District
 3. The following minimum setbacks shall be required for Light Manufacturing, Manufacturing, and Battery Energy Storage System Large Off-Site Overlay Zoning Districts. Setbacks are measured from the nearest edge of the perimeter fencing of the facility to the nearest point on the associated item

Occupied community buildings and dwellings on nonparticipating properties.	300 feet from occupied community buildings and dwellings on non-participating properties.
Public road right-of-way.	100 feet measured from the nearest edge of a public road right-of-way.
Property Line	50 feet

4. A minimum setback of 2000 feet is required from Sensitive Land Uses as defined in this ordinance. For purposes of this Section, the setback shall be measured from the outer fence of the project to the outer wall of the nearest occupied dwelling/structure.
5. Height. The height of battery energy storage system structures, except for electric distribution and transmission poles, shall not exceed a height of fifteen (15) feet as measured from the natural grade of the property beneath the structure.
6. Fencing. The system shall be completely enclosed with fencing in compliance with the latest version of the National Electrical Safety Code or any applicable successor standard approved by the Michigan Public Service Commission.
7. Sound. The system may not generate a maximum sound in excess of 55 average hourly decibels measured at the property line of an adjacent non-participating property . Decibel modeling shall use the A- weighted scale designed by the American National Standards Institute.
8. Lighting. The system must implement dark sky-friendly lighting solutions.
9. The following requirements shall apply to the entire system, or to designated components of the system, as indicated:
 - a. Safety Signage. The system shall post signs in compliance with NFPA 70/70E or any applicable successor code in place at the time of application for approval. Additionally, signage shall be provided per NFPA 855 7.4.4, or any applicable successor code in place at the time of application for approval, including information on the system type and technology, special hazards, fire suppression system and 24-hour emergency contact information, including reach-back phone number. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.
 - b. Other Signage: Additional signage may be permitted or required by the Planning Commission as is necessary to ensure the safe operation of the system.
 - c. The facility shall comply with NFPA 855 "Standard for the

Installation of Stationary Energy Storage Systems" or any current standard adopted by the Michigan Public Service Commission at time of application submission.

11. The Planning Commission may require reasonable measures to minimize visual impacts by preserving existing natural vegetation, requiring new vegetative screening or other appropriate measures. The Planning Commission shall determine such visual screening measures as may be required, if any, on a site-specific basis pursuant to the standards for special land use approval as specified in Section 6.2 the landscaping standards of Section 5.4, and/or the standards for site plan approval as specified in Section 6.1 of this Ordinance, as well as all other applicable sections of this Ordinance. In making this determination the Planning Commission is specifically authorized to consider whether additional visual screening measures are appropriate where a system is proposed to be located on property adjoining any residential zoning district classification or residential use.
12. If the system includes an access drive(s) for maintenance purposes, the surface of the access drive(s) shall be permeable (unless on brownfield land or on an already paved surface at the time of application for approval, such as a parking lot or former building foundation.)
13. Except as otherwise depicted on and subject to approval of the Planning Commission, the area within which the system is located shall not be paved with asphalt/concrete or any other surface material that is impermeable to water other than for slab foundations for structures and equipment. This shall not apply to a system located on brownfield land or on an existing paved area such as a former building slab or in an unused parking area when adequate parking remains for all other uses on the site.
14. All surface water runoff shall be effectively managed on-site.
15. Installation and Operational Safety. The system shall comply with all of the following requirements:
 - a. The system shall be designed and constructed for interconnection to a Michigan Public Service Commission or Midcontinent Independent System Operator regulated utility electrical power grid and shall be operated with such interconnection.
 - b. The system and all foundation elements shall comply with all applicable building and electrical code requirements, and any applicable federal/state regulations. The manufacturer's engineer or another qualified engineer shall provide written certification that the design, installation (including foundations), and interconnection is compliant with the manufacturer and industry standards, all applicable local construction and electrical codes, and any applicable federal/state regulations.

- c. Other than transmission or distribution lines for interconnection to the electric power grid, all electrical wiring shall be buried underground; except where the manufacturer's engineer or a qualified engineer employed by the utility that owns/operates the electrical power grid to which the system shall be interconnected certifies an underground wiring installation is not permitted by an applicable code and/or applicable federal/state regulation, with attached complete documentation supporting any such certification.
 - d. The system shall be designed, located, and maintained so as to comply with all applicable codes and regulations.
- 16. Repair and Augmentation. In addition to repairing or replacing facility components to maintain the system, the facility may at any time be augmented without the need to submit a new site plan so long as the augmentation is within the same footprint (e.g., same dedicated use building or on footings/foundations in the same location) as the original permit. If there is a change in the battery chemistry, an updated Hazard Mitigation Analysis, Fire Response Plan, and Emergency Response Plan shall be provided. When a facility is anticipated to be augmented over its lifetime by adding additional components, the applicant shall apply for the final/augmented site arrangement. A proposal to increase the size of the project footprint may be considered a new application, subject to the ordinance standards at the time of the request.
- 17. Public Safety. The Emergency Response Plan and Fire Response Plan shall provide reasonable protection of the public health, welfare and safety including but not limited to an emergency shutdown procedure in place and shall provide the local fire department site safety plans to include electrical, fire, smoke, and hazardous materials release, emergency response protocols and identification of typical hazards related to, electrical, fire, smoke and hazardous materials pertinent to the facility. Upon request, all systems shall provide first responder training at the site.
- 18. Environmental. An applicant shall submit an environmental impact analysis that identifies potential impacts of the proposed system on the environment and natural resources and how the applicant intends to address and mitigate these impacts.
- 19. Decommissioning and Removal. The system shall comply with all of the following requirements:
 - a. A Decommissioning Plan, including a Decommissioning Agreement in a form recordable at the Kalamazoo County Register of Deeds, shall be provided and shall address the following:
 - i. State the anticipated life of the project;

- ii. Describe estimated decommissioning costs in current dollars and provide that this figure will be updated every third (3rd) year after commercial operation of the system; Township zoning administrator may administratively review and accept estimated decommissioning costs for periodic review;
 - iii. Be signed by the party responsible for decommissioning, and shall bind all successors, heirs and assigns;
 - iv. Define the conditions upon which decommissioning will be initiated (e.g.; end of land lease, no power storage for 12 months, etc.);
 - v. State that all equipment, conduit, structures, fencing, roads, and foundations will be removed to a depth of four (4) feet by the end of the decommissioning period;
 - vi. Require property to be restored as near as reasonably possible to the condition it was in prior to the development of the system;
 - vii. Describe the timeframe for completion of decommissioning activities;
 - viii. Describe any agreement (e.g., lease) with the landowner regarding decommissioning;
 - ix. State the party currently responsible for decommissioning; and
 - x. Describe any plans or circumstances requiring an update of the decommissioning plan.
- b. A recorded copy of the Decommissioning Agreement shall be executed and recorded upon issuance of a building permit or if a building permit is not required, within 7 days prior to commencement of construction. A proposed draft of the proposed Decommissioning Agreement shall be provided to the Township within 30 days after special land use approval.
- c. Decommissioning shall be completed within 12 months of determination by the Township Board that the system is no longer being maintained in an operable state of good repair, unless the current responsible party provides substantial evidence to the Planning Commission of the intent to maintain and reinstate operation of the system.
- d. The Decommissioning Plan shall include financial assurance in the form of a trust fund, a bond, or an irrevocable letter of credit as required by the Planning Commission. The amount of the financial assurance shall not be less than the estimated cost of decommissioning the system. Salvage value shall not be included in the estimated cost of decommissioning. The financial assurance must be posted in full (125%) before the start of commercial operation and continuously maintained for the period of the life of the system. The Township must be notified in writing at least 60 days before the bond or other financial surety is set to expire. Failure to provide proper notification and updated bond information is a violation of this ordinance. Notification under this Section must be made to the

following Township officials/employees: (1) Supervisor; (2) Clerk; (3) Chair of the Planning Commission; and (4) Superintendent. Notwithstanding anything to the contrary, at all times during construction and prior to commercial operation, financial assurance must be provided in an amount to assure proper decommissioning of the site.

20. Special Land Use Permit and Site Plan Application Requirements. Applications for special land use permit approval shall comply with Section 6.2 of this Ordinance. A formal application for site plan approval for this land use shall comply with Section 6.1 of this Ordinance. An incomplete application will not be accepted. Each such application shall also be subject to the following additional submission requirements:
- a. The site plan shall be submitted with the special land use permit application.
 - b. The submission shall include content responsive to all the following, to the extent not otherwise provided pursuant to the above referenced sections:
 - i. All information and supporting materials relied upon by the applicant to demonstrate compliance with all special land use permit approval standards and site plan approval standards as specified in this Ordinance.
 - ii. A Fire Response Plan and an Emergency Response Plan.
 - a). The Fire Response Plan (FRP) shall include:
 - 1. Evidence of consultation or a good faith effort to consult with local fire department representatives to ensure that the FRP is in alignment with acceptable operating procedures, capabilities, resources, etc.
 - 2. A description of all on-site equipment and systems to be provided to prevent or handle fire emergencies.
 - 3. A description of all contingency plans to be implemented in response to the occurrence of a fire emergency.
 - 4. A commitment to review and update the FRP with fire departments, first responders, and county emergency managers at least once every three (3) years.
 - 5. An analysis of whether plans to be implemented in response to a fire emergency can be fulfilled by existing local emergency response capacity. The analysis should include identification of any specific equipment or training deficiencies in local

emergency response capacity and recommendations for measures to mitigate deficiencies.

6. The means by which firefighters and other emergency services personnel can access and shut down the system on an emergency basis. This information shall be provided to the Township or other appropriate agency managing emergency response.
7. A 24-hour emergency contact telephone number for use by emergency services providers.
8. The FRP must meet all requirements of the Clean and Renewable Energy and Energy Waste Reduction Act, as amended, MCL 460.1001 et. seq
9. Other information the applicant finds relevant.
10. Other information the Fire Department finds relevant.

iii. The Emergency Response Plan (ERP) shall include:

1. Evidence of consultation or a good faith effort to consult with local first responders and county emergency manager to ensure that the ERP is in alignment with acceptable operating procedures, capabilities, resources, etc.
2. An identification of contingencies that would constitute a safety or security emergency (fire emergencies are to be addressed in a separate fire response plan);
3. Emergency response measures by contingency;
4. Evacuation control measures by contingency;
5. Community notification procedures by contingency;
6. An identification of potential approach and departure routes to and from the facility site for police, fire, ambulance, and other emergency vehicles;
7. A commitment to review and update the ERP with fire departments, first responders, and county emergency managers at least once every three (3) years;
8. The means by which firefighters and other emergency services personnel can access and shut down the system on an emergency basis. This information shall be provided to the Township or other appropriate agency managing emergency response.

9. A 24-hour emergency contact telephone number for use by emergency services providers.
 10. An analysis of whether plans to be implemented in response to an emergency can be fulfilled by existing local emergency response capacity, and identification of any specific equipment or training deficiencies in local emergency response capacity;
 11. Other information the applicant finds relevant.
 12. Other information the Fire Department and County Emergency Manager finds relevant.
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- iv. A report detailing the sound modeling results along with mitigation plans to ensure that sound emitted from the system will remain below the required limit throughout the operational life of the system.
 - v. Hazard Mitigation Analysis that complies with NFPA 855, as amended.
 - vi. A Groundcover and Vegetation Establishment and Management Plan shall be provided as part of the site plan. Vegetation establishment must include native species and natural seed mixes and may not include invasive plant species or noxious weeds and shall satisfy Section 226(6)(a) and Section 226(6)(b) of Michigan Public Act 233 of 2023.
 - vii. Equipment specification sheet(s) for the system components, if available.
 - viii. All proposed changes to the landscape of the existing site, including grading, vegetation removal, fencing and vegetative screening. Views shall be minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping or other screening methods that will harmonize with the character of the property and surrounding area while not interfering with ventilation or exhaust ports.
 - ix. Drawings showing the layout of the proposed system, including distances from all existing and proposed structures/buildings and fencing on the site to all lot lines including to all boundaries of a leased site, where applicable, and to all structures/buildings on adjacent nonparticipating properties.
 - x. Preliminary Augmentation Plan demonstrating the proposed augmentation phases including which structures/components are expected to be installed and in which time frames shall be provided.
 - xi. The height of all existing and proposed buildings/structures.
 - xii. A preliminary electrical schematic plan for the proposed system, including disconnect and overcurrent devices.
 - xiii. Preliminary Decommissioning Plan and Decommissioning Agreement as described above.

21. Waiver. The Township Planning Commission shall have the authority to review and consider alternatives in both the dimensional and physical requirements contained in this ordinance as part of the special land use review process upon a finding that such change promotes the health, safety and general welfare of the Township. In addition, the Township recognizes the ever-changing technical capabilities of battery storage infrastructure and of new technology in general, and that changing technology may result in future changes to an approved Battery Energy Storage System facility. Minor changes within the footprint of an approved Site Plan and/or Special Land Use Permit, such as, without limitation, modifying battery storage equipment with new technologies, may be administratively reviewed and approved by the Zoning Administrator.
22. Modifications that increase a facility's footprint or total energy capacity by 10% or more require a new site plan and special ~~exception~~ land use approval by the Planning Commission. Any increase in energy capacity requires written notification to the Township Zoning Administrator and/or designated personnel at least 30 days prior to the increase in energy capacity. All obligations, including but not limited to the community host agreement and decommissioning agreement, must be updated to reflect the increase in energy capacity. The financial surety shall be increased if there is an increase in energy capacity.
23. An executed Community Host Agreement in the amount of an annual payment of \$825 per megawatt of nameplate capacity for 20 years, which shall be executed prior to commercial operation of the Battery Energy Storage System facility. Payment to the Township shall begin upon commercial operation and it shall be the Township's option to require up to 66% of such total payment up front, not to exceed \$2 million.
24. Building Permit or Construction. Prior to issuance of a building permit or if a building permit is not required, within 7 days prior to commencement of construction, the following information shall be provided.
 - a. Equipment specification sheets.
 - b. Identification and contact information for the installer(s) of the proposed system.
 - c. Approved Augmentation Plan.
 - d. Approved Decommissioning Plan and Decommissioning Agreement in recordable form and acceptable to the Township Attorney.

- e. Life expectancy of the system components including the anticipated schedule for battery replacement to maintain megawatts over the system's lifetime.
- f. Hazard Mitigation Analysis.
- g. Operation and Maintenance Manual.
- h. Electrical schematic plan for the system, including disconnect devices.
- i. An approved FRP and ERP by the Fire Chief.
- j. Approved Decommissioning Plan, Decommissioning Agreement and proof of financial guarantee for decommissioning.

D. On-Site Battery Energy Storage Systems.

- 1. On-Site Battery Energy Storage Systems shall be allowed as a permitted use in all zoning districts, subject to the provisions of the Zoning Ordinance.
- 2. A building permit shall be required for all on-site battery energy storage systems.
- 3. On-Site battery energy storage systems with an aggregate energy capacity of more than 1 megawatt are subject to additional regulations in the applicable fire code (NFPA 855, as amended), and required documentation shall be submitted along with the building/electrical permit applications.
- 4. Coverage. Lot coverage shall not exceed the otherwise permissible percentage of lot coverage in the applicable zoning district.
- 5. Setbacks. All battery energy storage system structures and related structural apparatus not physically attached to a building shall satisfy the setback requirements in the applicable zoning district, but in no circumstance may an on-site battery storage system or any related apparatus be less than 25' from a property line.

SECTION II

AMENDMENT TO ARTICLE 3 SECTION 3.1.N LM LIGHT MANUFACTURING DISTRICT

Article 3 Section 3.1.N Light Manufacturing District is amended by adding a new subsection 3.1.N.3.p as follows:

- p. Battery Energy Storage System, Small OFF-Site, subject to Article 4 Section 4.61.

SECTION III

AMENDMENT TO ARTICLE 3 SECTION 3.1.N LM LIGHT MANUFACTURING DISTRICT

Article 3 Section 3.1.N Light Manufacturing District is amended by adding a new subsection 3.1.N.3.q as follows:

- q. Battery Energy Storage System, Large OFF-Site, subject to Article 4 Section 4.61.

SECTION IV

AMENDMENT TO ARTICLE 3 SECTION 3.1.P M MANUFACTURING DISTRICT

Article 3 Section 3.1.P, M Manufacturing District, is amended by adding a new subsection g, Battery Energy Storage Systems, Off-Site Small BESS and Off-Site Large BESS, which shall read as follows:

- g. Battery Energy Storage Systems - Small Off-Site and Large Off-Site, subject to Article 4 Section 4.61.

SECTION V

AMENDMENT TO ARTICLE 3 SECTION 3.1

Article 3 Section 3.1 is amended by adding a new subsection 3.1.T as follows:

3.1.T BATTERY ENERGY STORAGE SYSTEM LARGE OFF-SITE OVERLAY DISTRICT.

1. A Battery Energy Storage System Large Off-Site Overlay District is established wherein a Battery Energy Storage System Large Off-Site is a special land use in any zoning district on a parcel(s) of at least 140 contiguous acres and meeting the additional requirements in Article 4 Section 4.61. At no time shall this district occupy more than 200 acres of land in the Township in the aggregate.

1. Site Selection. A Battery Energy Storage System Large Off-Site Overlay Zoning District in the AGR Agricultural Residential District shall not unreasonably diminish farmland, including, but not limited to, prime farmland and, to the extent that evidence of such farmland is available in the evidentiary record, farmland dedicated to the cultivation of specialty crops.
2. At least 100 acres must remain open space or can be offered by the applicant for public recreation indoor or outdoor uses. Subject to Township Planning Commission approval, as part of the special land use approval, the open space/public recreation may be split off from the

facility parcel with proper assurances but shall still count towards the Township district aggregate.

SECTION VI
SEVERABILITY

Should any provision or part of the within Ordinance be declared by any court of competent jurisdiction to be invalid or unenforceable, the same shall not affect the enforceability of the balance of this Ordinance which shall remain in full force and effect.

SECTION VII
REPEAL

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION VIII
EFFECTIVE
DATE

This Ordinance shall take effect eight days after publication after adoption.

Nicole Beauchamp, Clerk
Charter Township of Comstock

