**ROME TOWNSHIP**

**ORDINANCE NO. _____**

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

Rome Township ordains:

**Section 1. Add New Section 11.93 of the Zoning Ordinance**

The Township's Zoning Ordinance is amended to add a new section 11.93, which reads as follows in its entirety:

**Section 11.93 Utility-Scale Battery Energy Storage Facilities**

**1. Definitions**

a. *Battery management system*: 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 ("BESS") with a battery management system ("BMS").

c. *Utility-scale battery energy storage system*: 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 Utility-Scale Battery Energy Storage Systems are subject to the following requirements:

a. 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."

b. The Township may enforce any remedy or enforcement, including but not limited to the removal of any Utility-Scale Battery Energy Storage System pursuant to the Zoning Ordinance or as otherwise authorized by law if the Utility-Scale Battery Energy Storage System does not comply with this Ordinance.

c. Utility-Scale Battery Energy Storage Systems are permitted in the Township as a conditional use only in the Renewable Energy Overlay zoning district.

**3. Application Requirements.**

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

a. Application fee in an amount set by resolution of the Township Board.

b. 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.

c. 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.

d. Current photographs of the subject property.

e. 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.

f. 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.

g. 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.

h. 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.

i. Financial security that meets the requirements of this Section, which is subject to the Township's review and approval.

j. 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.

k. A plan for managing any hazardous waste, which is subject to the Township's review and approval.

l. 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.

m. A transportation plan for construction and operation phases, including any applicable agreements with the Lenawee County Road Commission and Michigan Department of Transportation, which is subject to the Township's review and approval.

n. 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.

o. 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.

p. Any additional information or documentation requested by the Planning Commission, Township Board, or other Township representative.

**4. System and Location Requirements.**

The site development requirements shall meet or exceed all of the requirements in the underlying district and all of the following:

a. *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.

b. *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.

c. *Noise.* The noise generated by a Commercial Utility-Scale Battery Energy Storage System must not exceed 45 dBA Lmax, as measured at the property line of any adjacent parcel.

d. *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.

e. *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 years by means of robotic camera, with the first inspection occurring before the Utility-Scale Battery Energy Storage System 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.

f. Health and Safety: The Planning Commission shall not recommend for approval any Utility-Scale Battery Energy Storage System Special Land Use Permit if it finds the Utility-Scale Battery Energy Storage System will pose an unreasonable safety hazard to the occupants of any surrounding properties or area wildlife. The Utility-Scale Battery Energy Storage System shall not contain any element or chemical that either singly or in combination with an element or chemical in the system or environment that has a reasonable potential to result in toxic environmental contamination (air, soil, water), thereby threatening the health of any form of life. A list of all components, elements or chemicals must be accompanied with all applicable MSDS forms and referred to, for clarification if required in associated reference guides, ie. CRC handbook or others to be determined) and is subject to the following:

Formatted

i. Surface Water Containment: All Utility-Scale Battery Energy Storage Systems must have water run off containment systems that comply with EPA standards. The system must be designed with the intention of containing surface water runoff. This runoff would be contained in the event solar panels or related equipment leaked into the soil of the solar field.

ii. In Field Containment of toxins or chemicals: The solar field must have a liner or containment material that would catch toxins, chemicals, or other harmful materials leaking from the solar panel and related equipment.

iii. Soil Testing: Because some elements or chemicals used by these solar arrays may have the potential for environmental contamination, soil testing of the Utility-Scale Battery Energy Storage System site will be a requirement as follows:

1. Baseline soil testing and analysis shall be done prior to construction with a sample taken from each (4) acre section of the grid.

2. Annually, after construction is complete the samples will be based on (2) acre sections. The samples collected by the solar arrays; the cores will be taken at the drip point (lowest point) of the panel.

3. Soil testing shall be done with a soil probe or auger in the top 4-6 inches producing a core. A minimum of 10 cores would be a sample.

4. Soil samples at the support base shall be taken for potential contamination.

5. Soil samples shall be used to determine the microbial health of the soil.

6. All soil testing shall be grid based with all samples being GPS mapped.

7. If any contamination, as a result of elements or chemicals from the solar array or the maintenance of the solar array, additional soil testing sites may be required. The analysis shall include any element or chemical introduced by the solar array or used during maintenance which either singly or in combination has the potential to result in environmental contamination.

8. The soil testing, lab analysis and review of the analysis shall be performed by a firm or firms chosen by the Planning Commission and paid for from the Application Escrow Deposit. The Planning Commission may require additional testing when warranted.

9. If environmental contamination is discovered the Utility-Scale Battery Energy Storage System shall be shut down, site cleaned and retested before being allowed to go back online.

~~f.~~

**Formatted:** Indent: Left: 0.75", No bullets or numbering

g. *Fire Protection.*

i. Before any construction of the Utility-Scale Battery Energy Storage System 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 or his or her designee 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.

ii. 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).

iii. 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).

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 the policy at all times.

i. *Permits.* All required county, state, and federal permits must be obtained before the Utility-Scale Battery Energy Storage System begins operating. A building permit from Lenawee County is required for construction of a Utility-Scale Battery Energy Storage System, regardless of whether the applicant or operator is otherwise exempt under state law.

j. *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 top soil 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.

k. *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 or escrow payment 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 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 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:

i. Current proof of insurance;

ii. Verification of financial security; and

iii. A summary of all complaints, complaint resolutions, and extraordinary events.

n. *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.

o. *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.

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 Utility-Scale Battery Energy Storage System pursuant to the Zoning 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.

**5. 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 Utility-Scale Battery Energy Storage Systems with a nameplate capacity of 50 megawatts or more and an energy discharge capability of 200 megawatt hours ~~or~~ more. To the extent these provisions conflict with the provisions in subsections 1-4 above, these provisions control as to such Utility-Scale Battery Energy Storage Systems. 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 subsections 1-4 above that do not conflict with this subsection remain in full force and effect.

Formatted: Highlight

a. *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 |

b. *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.

c. *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.

d. *Lighting.* The Utility-Scale Battery Energy Storage System must implement dark sky-friendly lighting solutions.

e. *Environmental Regulations.* The Utility-Scale Battery Energy Storage System 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 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 2. Addition of New Article 17**

A new Article 17 shall be added to the Zoning Ordinance as follows:

**Article 17 Renewable Energy Overlay District, RO**

(a) Purpose. The purpose of the overlay district is to provide suitable locations for renewable energy systems that are otherwise authorized under state law and the Zoning

Ordinance while protecting the public health, safety, and welfare of the Township and ensuring compatibility of land uses in the vicinity of renewable energy systems.

(b) Permitted Uses. All uses that are permitted uses in the underlying zoning district are permitted uses in the Renewable Energy Overlay District.

(c) Uses Permitted with Special Land Use Approval. The following uses are permitted by special land use approval in the Renewable Energy Overlay District:

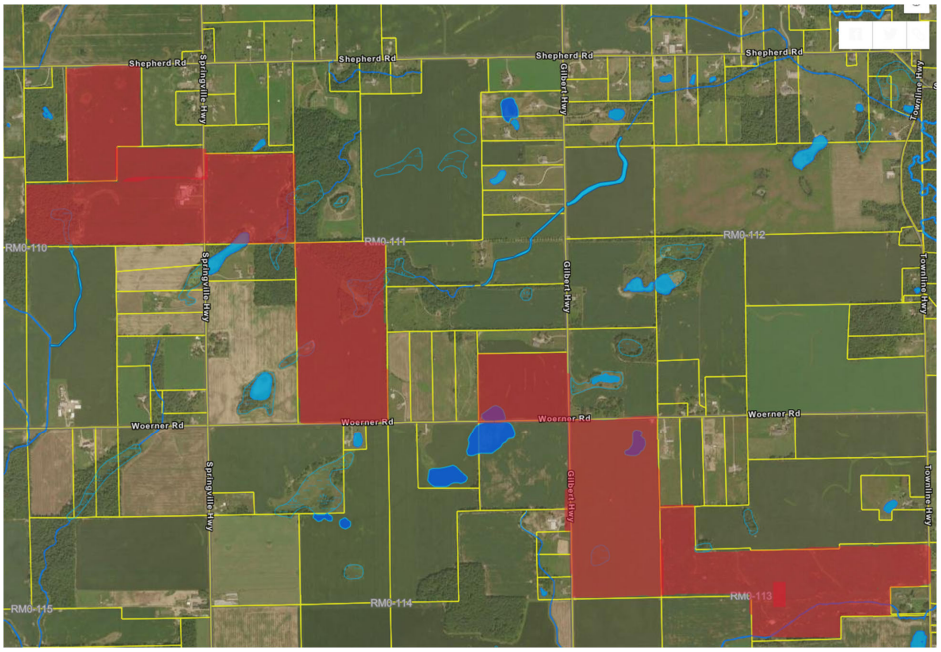
(1) Utility-Scale Battery Energy Storage Systems, subject to Section 11.93

(2) Solar Energy Systems, subject to Section 11.92

(3) Wind Energy Systems, subject to Section 11.91

(d) The new Renewable Energy Overlay District includes the following area:

4000 Townline Hwy Blk; RM0-113-2805-00 – 94 acres
4000 Gilbert Hwy Blk; RM0-113-1100-00 – 79 acres
5000 Gilbert Hwy Blk; RM0-111-4855-00 – 30 acres
8000 Woerner Rd Blk; RM0-111-3800-00 – 80 acres
5692 Springville Hwy; RM0-111-1600-00 – 40 acres
5692 Springville Hwy; RM0-100-2800-00 – 71 acres
9000 Shepherd Rd; RM0-100-2175-00 – 38 acres




The Township shall revise the Official Zoning Map to include the boundaries of the Renewable Energy Overlay District.

**Section 3. 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 4. 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 5. Effective Date.**

This Ordinance takes effect seven days after publication as provided by law.