

BROCKWAY TOWNSHIP  
ORDINANCE NO. 2024-17

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

Brockway Township ordains:

**Section 1. Purpose**

Brockway Township (the "Township") adopts the following revisions to the Township's Zoning Ordinance for the health, safety and welfare of Township residents.

**Section 2. Add New Section 14.54 to the Zoning Ordinance**

The Township's Zoning Ordinance is amended to add a new section 14.54, which reads as follows in its entirety:

**Section 14.54 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 in the AG, Agricultural Districts in Section 25 on the east side M-19 (Emmett Road) between Wilkes Road and Norman Road and Section 36 on the east side of M-19 (Emmett Road) between Norman Road and M-136 (Metcalf Road), subject to special land use and site plan approval, pursuant to the requirements and conditions of this Zoning Ordinance.

### **3. Application Requirements.**

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

a. Application for a Special Land Use Permit (SLUP) and site plan approval shall be filed with the Township pursuant to Article XIV and Section 18.06 of the Zoning Ordinance. Supporting data and documentation shall be submitted in their entirety at time of application.

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 drawn to scale shall be submitted pursuant to Section 18.06. In addition to the requirements specified in Section 18.06, the site plan shall provide the following at minimum:

- i. Identification of project boundaries and delineations of all lots and parcels within the project boundaries.
- ii. Identification of Participating and Non-participating parcels. Including Footprints of existing structures and fence lines on participating and nonparticipating parcels.
- iii. Delineation of County drains and other drainage ways, and the layout of agricultural drain tile fields.
- iv. A description of the proposed technology from the system manufacturer with a preliminary equipment specification sheet that documents the proposed Utility-Scale Battery Energy Storage System components, inverters and associated electrical equipment that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of a Building Permit.

- v. An electrical diagram detailing Utility-Scale Battery Energy Storage Systems layout, associated components, and buildings. Electrical interconnection methods with all National Electrical Code compliant disconnects and other current devices.
- vi. Locations of existing and proposed above and below ground transmission lines that connects the Utility-Scale Battery Storage System to the utility grid. Including substations, electrical cabling from the Utility-Scale Battery Energy Storage System to the substation, ancillary equipment, and third-party transmission lines related to the project.
- vii. In the event the storage unit/vault is in the ground, a complete detailed drawing, including size of unit/vault, depth and materials used for the unit/vault, must be included.
- viii. Topographic grades on participating parcels at 2-foot intervals.
- ix. Documentation and delineation of existing wooded areas, regulated wetlands, regulated floodplains, threatened and endangered species, and lakes, streams, or ponds.
- x. Identification of existing conservation areas and state game areas on and adjacent to the project site.
- xi. Locations of property lines, roads rights-of-way, other rights-of-way and easements, and required setbacks.
- xii. Proposed access roads and any needed improvements to public roads to provide access to the proposed Utility-Scale Battery Energy Storage System.
- xiii. The locations, grades, and dimensions of temporary and permanent access roads or driveways from the nearest county road or state highway.
- xiv. Existing and proposed aboveground and underground utilities located on participating or non-participating parcels, such as gas lines, telephone lines, cable lines, etc.
- xv. Locations and dimensions of proposed signs.
- xvi. Location and orientation of any exterior lighting, which shall comply with the Brockway Township Outdoor Lighting Ordinance. Batteries used in relation to lighting shall be shown on the site plan.
- xvii. Locations of any structures or trees greater than six (6) inches caliper to be removed.
- xviii. Provide a pre-construction soil test of site and methods for dust and erosion control during construction.
- xix. Estimated number of construction jobs and estimated number of permanent jobs associated with the development.

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 stormwater assessment and plan to maintain and repair any damage impacts at the expense of the electric provider/owner to drainage and drain tiles and plan to prevent stormwater pollution, 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. The applicant shall engage a Township-approved complaint vendor to submit a detailed, written complaint, web-based resolution process to resolve complaints from the Township board, property owners, or residents concerning the construction or operation of the large-scale solar energy system. The complaint resolution process, which must be approved by the Planning Commission as a condition of approval of the special land use permit application, shall include the following elements at minimum:

- i. The complaint vendor shall report to the Township Board
- ii. The complaint vendor shall manage a public website that includes a timestamped log of all complaints. Methods of contact shall include voice, text, and email.
- iii. The Township shall have management control of the complaint website and oversight of hosting company. The applicant shall not be permitted to edit, change, or control the site.
- iv. The complaint vendor shall log into site and update status of each complaint's resolution with complete logging.
- v. A complaint investigation escrow account in the amount of \$25,000 shall be established with the Township by the applicant for investigation of complaints. Funds in this account may be used at the discretion of the Township Board for investigation of complaints. This fund must be replenished by the applicant or solar facility owner at any point that the balance falls below \$10,000.
- vi. A flow chart shall be provided showing the complaint response protocol including (1) a time limit for acting on and resolving complaints, (2) how complaints are recorded and dealt with, and (3) a provision specifying that resolution in some instances shall include rendering the unit inoperable.

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

l. An escrow account shall be set up when the applicant applies for a special land use permit for a Utility-Scale Battery Energy Storage System installation. The escrow amount shall be sufficient to cover all costs associated with the SLUP application review and approval process, which costs can include, but are not limited to, fees of the township attorney, township planner, and township engineer, and other experts contracted by the Township, as well as any reports or studies which the Township anticipates will be required during the review process. Such escrow amount shall include regularly established fees. At any point during the zoning review process, the Township may require that the applicant place additional monies into the escrow account, in the event that the amount of funds in the escrow account are insufficient to cover the review costs incurred by the Township. If additional funds are required by the Township to be placed in escrow and the applicant refuses to do so the zoning review and approval process shall cease until and unless the applicant makes the required escrow deposit. Funds remaining in the escrow account upon completion of the review process shall be returned to the applicant. An itemized billing of all expenses shall be provided to the applicant and Planning Commission upon request.

m. 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.

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

o. 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.

p. 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 (MCL 324.36501 et. seq.); and any other applicable laws and rules in force at the time the application is considered by the Township.

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

r. An unredacted safety manual for all components of the project and material safety data sheets that include the type and quantity of all materials used in the operation of all equipment shall be submitted for distribution to first responders to be kept with the St. Clair County Emergency Manager and the Township Board. This safety manual should include, but not be limited to, what to do if the Battery Storage Systems catches fire, etc.

#### 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 and comply with the Brockway Township Outdoor Lighting Ordinance. 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 consisting of an eight (8) foot high standard chain link fence (as determined by DNR requirements) must be installed around all electrical equipment related to 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 L<sub>max</sub>, as measured at the property line of any adjacent parcel at any given time. Sound measurements shall be instantaneous rather than averaged. Sound analysis or modeling performed by a sound engineer approved by the Township must confirm that that the Utility-Scale Battery Energy Storage System will not exceed the maximum permitted sound pressure level.

d. *Height.* Utility-Scale Battery Energy Storage Systems and associated structures should not exceed fifteen (15) feet in height.

e. *Setbacks.* No part of the Utility-Scale Battery Energy Storage System shall be closer than four-hundred fifty (450) feet to a front, side, or rear property line or road right-of-way.

f. *Signage.* Appropriate signs warning of high voltage must be posted at safe intervals at the entrance and around the perimeter of the Utility-Scale Battery Energy Storage System. A sign shall also be posted providing the name(s) of operator(s) and emergency contact numbers (more than one).

g. *Screening.* The perimeter of a Utility-Scale Battery Energy Storage System shall be screened by evergreen or native vegetative plantings whenever existing natural vegetation does not otherwise reasonably obscure the energy storage facility from public roads and adjacent residential structures, subject to the following requirements:

- i. When an energy storage facility is adjacent to a residentially zoned or used lot, front, side, and rear yard screening shall be required as

determined by the Planning Commission to address specific site needs at the time of site plan review.

- ii. The landscape screening shall use plant materials that will blend into the natural setting and existing environment without adverse visual impact on the natural features or character of the surrounding area.
- iii. The landscape screening shall be within a twenty-five (25) foot wide greenbelt surrounding the energy storage facility on all sides. The screening shall consist of a double row of evergreen trees planted no farther than fifteen (15) feet apart. The evergreen trees shall be eight (8) feet in height at the time of planting. A native vegetative buffer may be approved by the Planning Commission if it has equal screening value.
- iv. All dead or diseased plant material shall be replaced by the applicant within six (6) months, or within the next appropriate planting period, whichever occurs first.
- v. Failure to install or continuously maintain the required landscaping shall constitute a violation of this Ordinance and the special land use permit may be subject to revocation

h. *Electro Magnetic Interference.* The Utility-Scale Battery Energy Storage System shall not produce electromagnetic interference that exceeds any applicable standards established by federal and state laws and regulation and/or adversely affects normal operation of radio, television, internet or cellular telephone service.

i. *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.

j. *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.

k. *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 protection plan should detail the procedures, training and equipment required to

respond to the fire emergencies. If specialized equipment is required it shall be provided at the expense of the applicant. 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).

l. *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. Brockway Township shall be listed as an additional insured on the policy at all times. Proof of a current policy is required annually and must be provided each year to the Township prior to the anniversary date of the SLUP.

m. *Permits.* All required county, state, and federal permits must be obtained before the Utility-Scale Battery Energy Storage System begins operating. A building permit 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.

n. *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. All decommissioned structures and project-related materials shall be removed from the site for disposal. All aboveground and underground components, foundations, and ancillary equipment must be removed. The land shall be returned to the same state and topography it was in prior to the Utility-Scale Battery Energy Storage System. The applicant shall provide agronomy data to substantiate the suitability of the soil for agriculture. 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 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.

o. *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 (not to include scrap costs), 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. Further financial security requirements shall include the following at minimum:

- i. Lapse of a valid performance guarantee shall immediately revoke all facility permits issued by the Township and the applicant shall cease operation immediately. The Township shall take action permitted by law against assets of facility or the parent company.
- ii. In the event of a sale or transfer of ownership or operation of the Utility-Scale Battery Energy Storage System, the original financial security requirements shall be maintained throughout the entirety of the process and shall not be altered.
- iii. The applicant shall acknowledge that failure to keep the security bond or escrow account in full force and effect at all times while the Utility-Scale Battery Energy Storage System exists shall constitute a material and significant violation of the special land use approval and this ordinance and will subject the owner to all available enforcement remedies, including possible revocation of the special land use approval.
- iv. The Township shall have access to the funds provided for security for the expressed purpose of completing decommissioning if decommissioning is not completed by the applicant within three hundred sixty-five (365) days of the end of the project life or facility abandonment.
- v. Township officials or their designated representatives shall be granted the right of entry onto the site, pursuant to reasonable notice, to evaluate the pace of decommissioning or to effectuate decommissioning.

p. *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.

q. *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.

r. *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.

s. *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.

t. *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.

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:

<b>Setback Description</b>	<b>Setback Distance</b>
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 3. Amendment of Section 4.03.**

Section 4.03 of Brockway Township’s Zoning Ordinance is hereby amended to add “Energy Storage Facilities” as a special land use in the AG, Agricultural Districts in Section 25 on the east side M-19 (Emmett Road) between Wilkes Road and Norman Road and Section 36 on the east side of M-19 (Emmett Road) between Norman Road and M-136 (Metcalf Road).

**Section 4. 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 5. 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 6. Effective Date.**

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