

ORDINANCE NO. 2026-BCCO-_____

AN ORDINANCE OF THE HOWARD COUNTY BOARD OF COMMISSIONERS AMENDING THE HOWARD COUNTY ZONING ORDINANCE TO ESTABLISH REGULATIONS FOR THE SITING, CONSTRUCTION, OPERATION, MAINTENANCE, AND DECOMMISSIONING OF UTILITY-SCALE BATTERY ENERGY STORAGE SYSTEMS

WHEREAS,

The Howard County Board of Commissioners ("Board") is charged with protecting the public health, safety, and welfare of the residents of Howard County, Indiana; and

WHEREAS,

The Board finds that utility-scale Battery Energy Storage Systems ("BESS") are an emerging land use with unique operational, environmental, infrastructure, and emergency response considerations that warrant specific local development standards; and

WHEREAS,

The Board further finds that properly designed and regulated Battery Energy Storage Systems may provide benefits to the electric grid while also creating potential impacts upon neighboring properties, agricultural land, drainage systems, transportation infrastructure, emergency response capabilities, and other public resources if not appropriately regulated; and

WHEREAS,

Howard County has previously adopted a comprehensive zoning ordinance pursuant to Indiana Code Chapter 36-7-4 governing land use and development within the unincorporated areas of the County; and

WHEREAS,

Indiana Code Chapter 36-7-4 authorizes counties to regulate the use and development of land through zoning ordinances adopted in accordance with a comprehensive plan; and

WHEREAS,

Indiana Code Chapter 36-1-3 grants political subdivisions all powers necessary or desirable in the conduct of their local affairs except as otherwise prohibited by law; and

WHEREAS,

The Board finds that the establishment of objective standards governing the location, construction, operation, maintenance, emergency response, financial assurance, and decommissioning of Battery Energy Storage Systems promotes the public health, safety, convenience, and general welfare while providing certainty to property owners and applicants; and

WHEREAS,

The Board further finds that the standards established herein are intended to supplement, and not replace, applicable federal and state statutes, regulations, and permit requirements.

NOW, THEREFORE, BE IT ORDAINED

by the Howard County Board of Commissioners, Indiana, that the Howard County Zoning Ordinance is hereby amended by adding the following provisions governing Utility-Scale Battery Energy Storage Systems.

ARTICLE I

TITLE, PURPOSE, AUTHORITY, AND APPLICABILITY

Section 1.01. Title.

This Ordinance shall be known and may be cited as the **Howard County Battery Energy Storage System Ordinance** ("BESS Ordinance").

Section 1.02. Purpose.

The purposes of this Ordinance are to:

- A. Protect the public health, safety, and general welfare;
- B. Establish uniform standards governing the siting, construction, operation, maintenance, inspection, modification, and decommissioning of Utility-Scale Battery Energy Storage Systems;
- C. Protect neighboring residential properties, agricultural operations, public infrastructure, drainage systems, and environmentally sensitive areas;

D. Ensure adequate coordination with emergency management agencies, fire departments, law enforcement agencies, and emergency medical service providers;

E. Establish objective standards for permit review and approval;

F. Require appropriate financial assurance for the removal and restoration of BESS facilities at the end of their useful life; and

G. Promote orderly development consistent with the Howard County Comprehensive Plan and the Howard County Zoning Ordinance.

Section 1.03. Authority.

This Ordinance is adopted pursuant to the authority granted by:

1. Indiana Code Chapter 36-7-4;
2. Indiana Code Chapter 36-1-3;
3. All other applicable provisions of Indiana law.

Section 1.04. Applicability.

This Ordinance applies to all Utility-Scale Battery Energy Storage Systems proposed within the unincorporated areas of Howard County unless specifically exempted herein.

Nothing contained herein shall relieve any applicant from complying with all applicable federal, state, or local statutes, ordinances, regulations, permits, or approvals.

Section 1.05. Relationship to Other Laws.

Where this Ordinance imposes a greater restriction than another applicable ordinance or regulation, the provisions of this Ordinance shall govern to the extent permitted by law.

Nothing contained herein shall be construed as superseding any mandatory federal or state approval applicable to a Battery Energy Storage System.

ARTICLE II

DEFINITIONS

Section 2.01. Purpose.

For purposes of this Ordinance, the following words and phrases shall have the meanings set forth below unless the context clearly indicates otherwise. Terms not specifically defined herein

shall have the meanings assigned by the Howard County Zoning Ordinance or applicable Indiana law.

Section 2.02. Definitions.

Applicant means the person, corporation, limited liability company, partnership, governmental entity, or other legal entity submitting an application for approval of a Utility-Scale Battery Energy Storage System under this Ordinance.

ANSI means the American National Standards Institute.

Battery means one or more electrochemical cells electrically connected to store and discharge electrical energy. Batteries contained in consumer products intended primarily for residential or personal use are excluded from this definition.

Battery Energy Storage System (BESS) means a system consisting of one or more batteries, battery modules, battery cells, inverters, transformers, power conversion equipment, control systems, fire suppression systems, monitoring equipment, enclosures, foundations, and all associated electrical, mechanical, communications, safety, and accessory equipment designed to receive, store, and discharge electrical energy.

Board of Commissioners means the Howard County Board of Commissioners.

Board of Zoning Appeals (BZA) means the Howard County Board of Zoning Appeals established pursuant to Indiana Code Chapter 36-7-4.

Cell means the basic electrochemical unit capable of storing and releasing electrical energy.

Commercial Operation means the date upon which a BESS begins regular operation for the purpose of providing energy storage services.

Construction means grading, clearing, excavation, installation of access roads, placement of foundations, fencing, utility installation, equipment delivery, erection of structures, or any other physical improvement associated with development of a BESS.

Construction does **not** include:

1. Soil borings;
2. Surveying;
3. Environmental testing;
4. Archaeological investigations;
5. Wetland delineations; or
6. Other preliminary investigative activities that do not permanently improve the site.

County means Howard County, Indiana.

Dedicated-Use Building means a building designed and constructed primarily for housing Battery Energy Storage System equipment.

Emergency Management Agency (EMA) means the Howard County Emergency Management Agency.

Emergency Response Plan (ERP) means the written emergency response plan required by this Ordinance describing emergency procedures, emergency contacts, firefighting strategies, hazardous material response procedures, evacuation procedures, and coordination with local emergency responders.

Enclosure means any building, cabinet, container, vault, or similar structure housing Battery Energy Storage System equipment.

Energy Storage means technology capable of receiving, storing, and subsequently discharging electrical energy.

Fire Code means the Indiana Fire Code, as amended.

Improvement Location Permit (ILP) means the permit required by the Howard County Zoning Ordinance authorizing construction of approved improvements.

NFPA means the National Fire Protection Association.

NEC means the National Electrical Code.

Non-Dedicated-Use Building means any building containing Battery Energy Storage System equipment that is not designed exclusively for that purpose.

Non-Participating Property means property that is not subject to a lease, easement, purchase agreement, license, or other agreement authorizing the construction or operation of the proposed Battery Energy Storage System.

Non-Participating Residence means an occupied dwelling located upon Non-Participating Property existing on the date a complete application is filed.

Occupied Community Building means an existing occupied:

- school;
- church or place of worship;
- public library;
- daycare facility;
- community center; or
- other similar public assembly building.

Operator means the entity responsible for the day-to-day operation and maintenance of a Battery Energy Storage System.

Owner means the person or legal entity holding an ownership interest in a Battery Energy Storage System.

The term does **not** include:

1. A landowner who merely leases property to the BESS owner and has no ownership interest in the BESS; or
2. A lender holding only a security interest.

Participating Property means real property subject to a written lease, easement, purchase agreement, license, or other recorded agreement authorizing construction or operation of a Battery Energy Storage System.

Planning Commission means the Howard County Area Plan Commission.

Plan Director means the Executive Director of the Howard County Area Plan Commission or the Director's authorized designee.

Project Area means all real property included within the approved limits of a Battery Energy Storage System project.

Public Road means any public street, highway, road, or right-of-way maintained by Howard County, the State of Indiana, or another governmental entity.

Thermal Runaway means the uncontrollable increase in battery temperature resulting in self-heating, fire, explosion, or release of hazardous gases.

Utility-Scale Battery Energy Storage System means any Battery Energy Storage System having an aggregate nameplate capacity of **one (1) megawatt (MW) or greater**, or such other threshold established by the Howard County Zoning Ordinance.

Variance means a variance granted by the Howard County Board of Zoning Appeals pursuant to Indiana Code Chapter 36-7-4.

Zoning Ordinance means the Howard County Zoning Ordinance, as amended from time to time.

ARTICLE III

APPLICABILITY, PERMIT REQUIREMENTS, AND APPLICATION PROCEDURES

Section 3.01. Applicability.

This Ordinance shall apply to every Utility-Scale Battery Energy Storage System proposed within the unincorporated territory of Howard County.

This Ordinance governs the siting, construction, installation, operation, expansion, modification, maintenance, inspection, abandonment, decommissioning, and removal of all Utility-Scale Battery Energy Storage Systems.

Smaller battery storage systems serving individual residences, farms, commercial buildings, or industrial facilities for on-site consumption may be exempt from certain provisions of this Ordinance as determined by the Plan Director, provided such facilities comply with all applicable building, electrical, fire, and zoning regulations.

Section 3.02. Prohibition.

No person shall construct, install, locate, expand, modify, energize, or operate a Utility-Scale Battery Energy Storage System without first obtaining all approvals required by this Ordinance.

No grading, clearing, excavation, fencing, road construction, foundation installation, utility installation, or other site development activities constituting construction under this Ordinance shall occur until all required permits have been issued.

Section 3.03. Required Approvals.

Prior to commencement of construction, the Applicant shall obtain:

- A.** A Special Use Permit from the Howard County Board of Zoning Appeals;
- B.** Any Variance required under the Howard County Zoning Ordinance;

C. Site Plan approval from the Plan Director;

D. An Improvement Location Permit issued by the Plan Director following approval of all required plans and documentation;

E. Every applicable federal and state permit required for construction or operation of the project.

Issuance of one approval shall not relieve the Applicant of obtaining any additional approval required by law.

Section 3.04. Permit Applications.

Applications shall be submitted upon forms approved by the Howard County Area Plan Commission.

An application shall not be deemed complete until all information required by this Ordinance has been submitted.

The Plan Director may reject incomplete applications without prejudice.

Section 3.05. Application Contents.

Each application shall include, at a minimum:

A. General Information

1. Applicant name.
2. Owner name.
3. Operator name.
4. Mailing addresses.
5. Electronic mail addresses.
6. Telephone numbers.
7. Organizational structure.
8. Emergency contact information.

B. Property Information

1. Legal descriptions.
2. Parcel numbers.

3. Ownership information.
 4. Participating property agreements.
 5. Easements.
 6. Recorded access rights.
 7. Utility easements.
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C. Site Plan

A professionally prepared site plan showing:

- property boundaries;
 - setback lines;
 - all Battery Energy Storage System equipment;
 - battery enclosures;
 - transformers;
 - substations;
 - access roads;
 - drainage facilities;
 - fencing;
 - security gates;
 - overhead and underground utilities;
 - participating properties;
 - non-participating properties;
 - occupied residences;
 - occupied community buildings;
 - regulated drains;
 - wetlands;
 - flood hazard areas;
 - construction staging areas;
 - adjacent roadways;
 - railroad rights-of-way;
 - municipal boundaries;
 - existing and proposed vegetation.
-

D. Technical Information

The Applicant shall submit:

- equipment specifications;
- manufacturer's installation manuals;
- electrical one-line diagrams;
- fire suppression system specifications;

- hazardous materials inventory;
 - spill prevention procedures;
 - ventilation design;
 - battery chemistry information;
 - emergency shutdown procedures;
 - thermal runaway mitigation procedures;
 - compliance certifications;
 - Underwriters Laboratories certifications;
 - applicable ANSI, NEC, NFPA, and Indiana Fire Code compliance documentation.
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E. Environmental Information

The Applicant shall provide:

- wetland delineations;
 - drainage analysis;
 - erosion control plans;
 - stormwater management plans;
 - floodplain determinations;
 - revegetation plans;
 - agricultural restoration plans where applicable.
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F. Transportation

The Applicant shall submit:

- Road Use Agreement;
 - Transportation Management Plan;
 - construction traffic routes;
 - overweight vehicle routes;
 - pre-construction road condition survey.
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G. Emergency Response

The Applicant shall submit:

- Emergency Response Plan;
- Fire Department coordination plan;
- emergency contact list;
- training program;

- mutual aid agreements, if applicable.
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H. Financial Assurance

The Applicant shall submit:

- evidence of liability insurance;
 - financial assurance documentation;
 - proposed decommissioning agreement;
 - decommissioning cost estimate prepared by a licensed professional engineer.
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I. Other Information

The Applicant shall provide every additional document reasonably required by the Plan Director, Board of Zoning Appeals, County Surveyor, Highway Department, Emergency Management Agency, Drainage Board, or County Commissioners for review of the application.

Section 3.06. Technical Review.

Following submission of a complete application, the Plan Director shall distribute the application to the appropriate reviewing agencies.

Reviewing agencies may include:

- Plan Commission;
- County Surveyor;
- Highway Department;
- Drainage Board;
- Emergency Management Agency;
- Fire Departments;
- County Engineer;
- County Attorney;
- Technical Advisory Committee, if established.

Each reviewing agency may submit written comments and recommendations.

Section 3.07. Public Hearing.

The Board of Zoning Appeals shall conduct a public hearing in accordance with Indiana Code and the Howard County Zoning Ordinance.

Notice shall be provided as required by law.

Interested persons shall be afforded an opportunity to be heard.

Section 3.08. Approval Standards.

The Board of Zoning Appeals may approve a Special Use Permit only upon finding that the Applicant has demonstrated compliance with the objective requirements of this Ordinance, including:

1. Compatibility with surrounding land uses.
2. Compliance with setback requirements.
3. Compliance with fire protection standards.
4. Compliance with drainage requirements.
5. Compliance with road use requirements.
6. Protection of public health and safety.
7. Adequate financial assurance.
8. Compliance with all applicable state and federal approvals.

The Board may impose reasonable conditions necessary to ensure continued compliance with this Ordinance.

Section 3.09. Permit Duration.

A Special Use Permit shall remain valid for one (1) year after issuance unless construction has commenced.

Upon written request demonstrating substantial progress, the Board of Zoning Appeals may grant one extension not exceeding one (1) additional year.

Failure to commence construction within the approved period shall render the permit void unless extended.

Section 3.10. Improvement Location Permit.

Following approval of the Special Use Permit and satisfaction of all conditions, the Plan Director may issue an Improvement Location Permit.

Construction shall commence within ninety (90) days following issuance of the Improvement Location Permit and thereafter proceed diligently toward completion.

Failure to commence construction or failure to diligently pursue construction may constitute grounds for permit revocation in accordance with applicable law.

ARTICLE IV

DESIGN STANDARDS, FIRE PROTECTION, AND EMERGENCY RESPONSE

Section 4.01. General Design Standards.

Every Utility-Scale Battery Energy Storage System shall be designed, constructed, installed, operated, maintained, repaired, and decommissioned in accordance with:

1. This Ordinance;
2. The Howard County Zoning Ordinance;
3. The Indiana Building Code;
4. The Indiana Fire Code;
5. The National Electrical Code (NEC);
6. NFPA 855, NFPA 70, and other applicable National Fire Protection Association standards;
7. ANSI standards;
8. Manufacturer specifications; and
9. Any additional applicable federal or state requirements.

No used, experimental, prototype, or uncertified battery equipment shall be installed unless specifically approved by the Board of Zoning Appeals following submission of engineering documentation demonstrating equivalent safety and reliability.

Section 4.02. Equipment Certification.

All battery systems, battery modules, containers, inverters, transformers, switchgear, control equipment, monitoring systems, fire suppression equipment, and associated electrical components shall be certified by Underwriters Laboratories (UL) or another nationally recognized testing laboratory acceptable to the County.

The Applicant shall submit documentation demonstrating compliance before issuance of an Improvement Location Permit.

Section 4.03. Maximum Height.

No battery enclosure, inverter, transformer, switchgear, communications tower, lighting standard, security structure, or accessory structure shall exceed ~~twenty thirty-five (35)~~ feet above finished grade unless otherwise authorized by the Howard County Zoning Ordinance.

Where required by federal law, the Applicant shall obtain all necessary approvals from the Federal Aviation Administration.

Section 4.04. Underground Utilities.

All on-site electrical collection lines, communications lines, and utility service lines shall be installed underground except where connection to existing overhead utility infrastructure is necessary or specifically approved by the servicing utility.

Section 4.05. Lighting.

Lighting shall be limited to that reasonably necessary for:

- public safety;
- security;
- maintenance;
- emergency response; and
- regulatory compliance.

All lighting shall be:

1. Fully shielded;
2. Directed downward;
3. Designed to minimize off-site glare;
4. Controlled by timers, motion sensors, or equivalent technology where practicable.

Section 4.06. Fire Protection Systems.

Every Battery Energy Storage System shall incorporate fire detection, fire suppression, ventilation, and emergency isolation systems appropriate for the battery chemistry utilized.

Fire protection systems shall be designed in accordance with:

- NFPA 855;
- Indiana Fire Code;
- manufacturer recommendations;
- requirements of the local fire department.

Section 4.07. Emergency Response Plan.

Prior to commissioning, the Applicant shall submit an Emergency Response Plan ("ERP") approved by the Howard County Emergency Management Agency and the fire department having jurisdiction.

The ERP shall include, at a minimum:

1. Site plans identifying all access roads.
2. Locations of battery containers.
3. Fire suppression equipment.
4. Disconnect switches.
5. Emergency shutoff controls.
6. Hazardous material inventories.
7. Safety Data Sheets.
8. Thermal runaway response procedures.
9. Evacuation procedures.
10. Fire water management procedures.
11. Contact information for responsible personnel available twenty-four (24) hours per day (names, titles, email addresses, cell phone numbers).
12. Incident notification procedures.
13. Coordination with local emergency responders.

In the event of a response for prevention, cleanup, containment or abatement of an actual potential fire, spill, and/or release of hazardous materials, the Owner and/or Operator of the site shall pay for all costs and expenses incurred as a result of such response including, but not limited to, actual labor costs of the response organization and/or emergency management personnel involved in the response thereto for the prevention, mitigation, containment, cleanup or abatement of the actual or potential discharge of hazardous materials, cost of equipment

operation, damage and loss, cost of materials obtained directly by the response organization and the cost of any contract labor and materials incurred by any governmental body or emergency response agency.

Nothing in this section shall alleviate the need to comply with all other applicable safety, fire and emergency laws and regulations.

Section 4.08. Emergency Contact.

The Owner shall maintain twenty-four (24) hour emergency contact information throughout the operational life of the project.

Changes in emergency contact personnel shall be reported to the Plan Director and Emergency Management Agency within ten (10) business days.

Section 4.09. Emergency Training.

Prior to commercial operation and annually thereafter, the Owner shall provide training, at its expense, for:

- local fire departments;
- emergency medical services;
- law enforcement;
- emergency management personnel;
- other responding agencies.

Training shall include:

- battery chemistry;
 - thermal runaway recognition;
 - firefighting strategies;
 - hazardous material response;
 - evacuation procedures;
 - incident command coordination;
 - site familiarization.
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Section 4.10. Mutual Aid.

Where local emergency resources are insufficient to respond to a major Battery Energy Storage System incident, the Owner shall cooperate with participating agencies through mutual aid agreements or other emergency response arrangements approved by the County.

Section 4.11. Security.

Every Battery Energy Storage System shall be enclosed by security fencing unless entirely enclosed within another approved secured energy facility.

Security fencing shall:

1. Be at least eight (8) feet in height;
2. Include lockable access gates;
3. Prevent unauthorized access;
4. Comply with applicable building and fire codes.

Razor wire shall be prohibited unless specifically authorized by applicable law.

Section 4.12. Warning Signs.

Warning signs shall be installed at all entrances and other appropriate locations.

Signs shall include:

- "DANGER — HIGH VOLTAGE";
- "NO TRESPASSING";
- emergency contact information;
- facility identification;
- emergency 911 address;
- GPS coordinates;
- other information reasonably required by emergency responders.

All signs shall be maintained throughout the operational life of the project.

Section 4.13. Noise Standards.

Operation of the facility shall comply with all applicable state law and the following standards:

1. Noise shall not exceed ~~fifty-five (55)~~forty-five (45) dBA or ~~forty-five (45)~~fifty-five (55) dBC at the property line of a Non-Participating Property.
 2. A certified baseline noise study shall accompany the application.
 3. Post-construction sound testing shall be completed following commencement of operation.
 4. The Owner shall investigate and correct verified violations.
 5. Required testing shall be performed by qualified professionals at the Owner's expense.
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Section 4.14. Vegetation Management.

Combustible vegetation shall be removed or controlled around battery enclosures in accordance with applicable fire code requirements.

Vegetation management shall not interfere with approved drainage facilities or required landscape buffers.

Section 4.15. Annual Review.

The Owner shall annually review the Emergency Response Plan with:

- Emergency Management Agency;
- responding fire departments;
- other affected emergency response agencies.

Updated plans shall be submitted whenever significant operational changes occur.

Section 4.16. Incident Reporting.

The Owner shall notify the Plan Director, Emergency Management Agency, and the responding fire department within twenty-four (24) hours following:

- fire;
- explosion;
- thermal runaway;
- hazardous material release;
- evacuation;
- injury requiring hospitalization;
- any incident requiring outside emergency response.

A written incident report shall be submitted within seven (7) calendar days describing:

1. The incident;
2. Cause, if known;
3. Corrective actions;
4. Measures implemented to prevent recurrence.

ARTICLE V

ZONING DISTRICTS, SETBACKS, LANDSCAPE BUFFERS, AND SITE DESIGN

Section 5.01. Permitted Zoning Districts.

Utility-Scale Battery Energy Storage Systems shall be permitted only upon property zoned **Agricultural (AG)** or **Heavy Industrial (I)**, and only upon approval of a Special Use Permit in accordance with this Ordinance and the Howard County Zoning Ordinance.

Battery Energy Storage Systems shall not be permitted within residential, commercial, floodplain, or overlay zoning districts except as may be authorized by a future amendment to the Howard County Zoning Ordinance.

Section 5.02. General Setback Requirements.

Every Battery Energy Storage System shall comply with the minimum setbacks applicable to the underlying zoning district and the additional setbacks established by this Article.

Where two setback requirements apply, the more restrictive setback shall govern.

Section 5.03. Participating Property Setbacks.

Unless otherwise waived under Section 5.09, every Battery Energy Storage System structure shall be located not less than:

- One thousand two hundred (1,200) ~~five hundred (500)~~ feet from any participating property boundary;

- five hundred (500) feet from any public road right-of-way;
 - five hundred (500) feet from any railroad right-of-way.
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Section 5.04. Non-Participating Property Setbacks.

Every Battery Energy Storage System structure shall be located not less than:

One Thousand (1,000) feet from every property line of a Non-Participating Property.

Section 5.05. Municipal Boundary Separation.

Battery Energy Storage System facilities shall be located not less than **two (2) miles** from the corporate limits of any incorporated municipality.

Section 5.06. Occupied Community Buildings.

Battery Energy Storage System facilities shall be located not less than **two (2) miles** from:

- public schools;
- private schools;
- licensed daycare centers;
- churches;
- other Occupied Community Buildings as defined by this Ordinance.

Distances shall be measured from the nearest Battery Energy Storage System structure to the nearest point of the building.

Section 5.07. Water Resource Protection.

Battery Energy Storage System facilities shall be located not less than **one (1) mile** from:

- public water supply reservoirs;
- lakes;
- rivers;
- streams;
- regulated waterways;

- public drinking water wells;
- private potable water wells.

Measurements shall be taken from the nearest Battery Energy Storage System structure.

Section 5.08. Public Road Setbacks.

No Battery Energy Storage System equipment shall be located within **five hundred (500) feet** of the nearest edge of any public road right-of-way.

Section 5.09. Internal Property Line Waivers.

Property lines separating Participating Properties may be exempted from setback requirements upon:

1. execution of a written waiver by every affected property owner;
2. recording of the waiver in the Office of the Howard County Recorder; and
3. approval by the Board of Zoning Appeals.

Such waivers shall not reduce setbacks from Non-Participating Property.

Landscape Buffer Standards

Section 5.10. Purpose.

Landscape buffers are intended to:

- reduce visual impacts;
 - preserve rural character;
 - improve wildlife habitat;
 - stabilize soils;
 - minimize erosion;
 - provide year-round screening.
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Section 5.11. Required Buffer Width.

Landscape buffers shall be:

- not less than fifteen (15) feet wide;
 - not greater than thirty (30) feet wide unless otherwise approved;
 - entirely outside regulated drain rights-of-way;
 - entirely outside utility easements unless specifically approved.
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Section 5.12. Planting Requirements.

Landscape buffers shall consist primarily of native species appropriate for Howard County.

Plantings shall include:

A. Canopy Trees

Minimum:

One canopy tree every twenty (20) to thirty (30) linear feet.

Approved examples include:

- Bur Oak
- White Oak
- Swamp White Oak
- American Sycamore
- Hackberry
- Red Maple
- Norway Spruce
- Blue Spruce

Minimum planting size:

- 1½-inch caliper
 - ten (10) feet in height
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B. Understory Trees

Not less than twenty-five percent (25%) of all trees shall consist of understory species including:

- Eastern Redbud
- Serviceberry

- or comparable native species.
-

C. Shrubs

Shrubs shall be planted at intervals of six (6) to ten (10) feet.

Approved species include:

- American Hazelnut
- Gray Dogwood
- Red Osier Dogwood
- Ninebark
- Elderberry

Minimum container size:

Five-gallon.

D. Groundcover

All landscape buffer areas shall be seeded with either:

- native prairie grasses; or
 - native pollinator habitat meeting the Purdue Pollinator Scorecard.
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Section 5.13. Prohibited Plant Material.

The following shall not be used:

- invasive species;
 - Callery Pear;
 - Tree of Heaven;
 - invasive ornamental species;
 - species likely to interfere with drainage facilities.
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Section 5.14. Installation Standards.

All landscape material shall be installed in accordance with ANSI A300 standards.

Installation shall include:

- mulch;
 - watering plan;
 - wildlife protection;
 - replacement schedule.
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Section 5.15. Maintenance.

The Owner shall maintain landscape buffers throughout the operational life of the Battery Energy Storage System.

Dead, diseased, or damaged plant material shall be replaced during the next planting season.

The Owner shall actively control invasive species.

Section 5.16. Performance Standard.

Landscape buffers shall achieve effective visual screening within three (3) years after installation.

If effective screening has not been achieved, the Plan Director may require additional plantings.

Section 5.17. Warranty Bond.

Prior to commencement of construction, the Applicant shall provide a Landscape Warranty Bond or other financial security acceptable to the County.

If the Owner fails to maintain required landscaping, the County may draw upon the financial security to restore compliance.

Section 5.18. Screening Exemptions.

Internal landscape buffers between adjacent Participating Properties may be waived upon:

1. written agreement of every affected property owner;
 2. recording of the agreement; and
 3. approval by the Board of Zoning Appeals.
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Section 5.19. Site Appearance.

The Owner shall maintain the project in a clean and orderly condition.

Equipment, fencing, landscaping, and signage shall be repaired or replaced when damaged or deteriorated.

Storage of unused materials, refuse, or abandoned equipment outside approved enclosures is prohibited.

ARTICLE VI

DRAINAGE, EROSION CONTROL, ROAD USE, AND AGRICULTURAL RESOURCE PROTECTION

Section 6.01. Purpose.

The purpose of this Article is to protect Howard County's regulated drainage system, agricultural land, public roads, bridges, rights-of-way, and related public infrastructure from adverse impacts associated with the construction, operation, maintenance, and decommissioning of Utility-Scale Battery Energy Storage Systems.

Division 1. Drainage Protection

Section 6.02. Applicability.

This Article applies whenever:

1. a regulated drain;
2. legal drain;
3. drainage easement;

4. regulated watershed; or
5. subsurface drainage system

is located within, adjacent to, or reasonably affected by a proposed Battery Energy Storage System.

Section 6.03. County Surveyor Review.

Prior to approval of an application, the Applicant shall provide written notice to the Howard County Surveyor identifying all regulated drains and drainage facilities located within or affected by the project.

No application shall be considered complete until the Surveyor has been provided the required materials.

Section 6.04. Drainage Analysis.

The Applicant shall submit a professional drainage study demonstrating that the project will not:

- increase peak discharge;
- increase runoff volume;
- increase runoff velocity;
- impair regulated drains;
- increase downstream flooding;
- obstruct drainage facilities;
- damage subsurface drainage systems.

The analysis shall extend to the next adequate downstream outlet as determined by the County Surveyor.

Section 6.05. Drainage Design.

Stormwater management facilities shall comply with:

- Howard County Drainage Board requirements;
- applicable IDEM regulations;
- County drainage standards.

No drainage improvement shall adversely affect neighboring property.

Section 6.06. Pre-Construction Drain Maintenance.

Prior to commencement of construction, the Drainage Board may require maintenance of regulated drains affected by the project.

Maintenance may include:

- debris removal;
- ditch cleaning;
- brush removal;
- bank stabilization;
- sediment removal.

All required work shall be performed at the Applicant's expense.

Section 6.07. Drain Crossings.

No road, utility, conduit, cable, or other project infrastructure shall cross a regulated drain without:

1. written approval of the Drainage Board;
 2. recommendation of the County Surveyor;
 3. compliance with County design standards.
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Section 6.08. Tile Protection.

Existing agricultural drainage tile shall be protected during construction.

Damage to drainage tile shall be repaired:

- promptly;
- at the Applicant's expense;
- in accordance with specifications approved by the County Surveyor.

Temporary repairs shall not satisfy this requirement.

Section 6.09. Construction Documentation.

The Applicant shall provide:

- pre-construction photographs;
- pre-construction video;
- post-construction photographs;
- post-construction video;

of regulated drains affected by the project.

Documentation shall be submitted in a format approved by the County Surveyor.

Section 6.10. Post-Storm Inspection.

Following rainfall exceeding one (1) inch within twenty-four (24) hours during construction, the Applicant shall inspect affected drainage facilities.

Conditions requiring corrective action shall be reported to the County Surveyor within forty-eight (48) hours.

Section 6.11. Maintenance Access.

Permanent access sufficient for County maintenance equipment shall be maintained to all regulated drains throughout the operational life of the project.

Section 6.12. Sediment Control.

Sediment originating from project activities shall not enter regulated drains.

Any sediment deposited within regulated drains shall be removed immediately at the Applicant's expense.

Section 6.13. Financial Assurance.

The County may require additional financial assurance for:

- drainage restoration;
 - emergency repairs;
 - corrective maintenance;
 - restoration of damaged drainage infrastructure.
-

Division 2. Road Use

Section 6.14. Road Use Agreement Required.

Prior to construction, the Applicant shall enter into a Road Use Agreement approved by the Board of Commissioners.

Section 6.15. Minimum Contents.

The Road Use Agreement shall include:

1. Existing road condition survey.
 2. Proposed haul routes.
 3. Oversize vehicle routes.
 4. Seasonal load restrictions.
 5. Required roadway improvements.
 6. Maintenance responsibilities.
 7. Repair obligations.
 8. Financial assurance.
 9. Traffic control procedures.
 10. Emergency detour procedures.
 11. Construction schedule.
 12. County inspection rights.
-

Section 6.16. Road Damage.

The Applicant shall repair all damage caused by project construction, operation, maintenance, or decommissioning.

Repairs shall restore affected roads to a condition equal to or better than the condition existing immediately prior to construction.

Section 6.17. Financial Security.

The Board of Commissioners may require:

- cash escrow;
- irrevocable letter of credit;
- surety bond; or
- other acceptable financial assurance

to secure completion of roadway repairs.

Section 6.18. Temporary Closures.

The Applicant shall coordinate temporary road closures with:

- Highway Department;
- Sheriff's Office;
- Emergency Management Agency;
- emergency service providers.

Except in emergencies, at least twenty-four (24) hours advance notice shall be provided.

Division 3. Agricultural Protection

Section 6.19. Agricultural Infrastructure.

The Applicant shall protect existing agricultural infrastructure including:

- drainage ditches;
 - waterways;
 - field tile;
 - access lanes;
 - irrigation facilities;
 - fences;
 - farm entrances.
-

Section 6.20. Damage Repair.

Damage caused by construction, maintenance, or decommissioning shall be repaired promptly at the Applicant's expense.

Repairs shall restore the affected property to a condition reasonably equivalent to its pre-construction condition.

Section 6.21. Agricultural Restoration.

Following construction or decommissioning, disturbed agricultural land shall be:

- decompacted where necessary;
- graded;
- stabilized;
- reseeded or restored;
- returned to productive agricultural use unless otherwise agreed by the landowner.

Section 6.22. Enforcement.

Failure to comply with this Article may result in:

1. Stop Work Orders;
2. permit suspension;
3. permit revocation;
4. County completion of corrective work at the Applicant's expense;
5. any additional remedy authorized by law.

Payment of civil penalties shall not relieve the Applicant of its obligation to complete required corrective actions.

ARTICLE VII

OPERATIONS, MAINTENANCE, INSPECTIONS, REPORTING, AND INSURANCE

Section 7.01. Operational Standards.

The Owner and Operator shall operate every Battery Energy Storage System in accordance with:

1. this Ordinance;
2. the Howard County Zoning Ordinance;
3. all applicable federal and state laws;
4. manufacturer operating specifications;
5. all conditions of approval imposed by the Board of Zoning Appeals.

Failure to maintain compliance constitutes a violation of this Ordinance.

Section 7.02. Maintenance.

The Owner shall maintain all project improvements in a safe, secure, and operable condition throughout the life of the project.

Maintenance shall include, at a minimum:

- battery enclosures;
- transformers;
- switchgear;
- access roads;
- fencing;
- landscaping;
- drainage facilities;
- stormwater controls;
- fire suppression systems;
- warning signs;
- security systems.

Damaged or defective equipment shall be repaired or replaced promptly.

Section 7.03. Annual Operating Report.

On or before March 1 of each year, the Owner shall submit an annual report to the Plan Director containing:

- A. Current Owner and Operator information.
- B. Emergency contact information.
- C. Certification that the facility remains in compliance with this Ordinance.

- D. Summary of maintenance performed during the previous calendar year.
 - E. Summary of emergency incidents, if any.
 - F. Certification that required insurance and financial assurance remain in effect.
 - G. Any material operational changes.
-

Section 7.04. Major Modifications.

No material modification to a Battery Energy Storage System shall occur without prior County approval.

Material modifications include:

1. changes in battery chemistry;
2. increases in generating or storage capacity;
3. relocation of battery enclosures;
4. replacement of major electrical equipment with equipment substantially different in design;
5. expansion of the project area.

Routine maintenance and replacement of equipment with substantially equivalent equipment shall not require amendment of the Special Use Permit.

Section 7.05. County Inspections.

The County may inspect the project for compliance with this Ordinance.

Except in emergencies, reasonable advance notice shall be provided to the Owner.

The Owner shall provide reasonable access to County representatives for inspection of:

- battery enclosures;
- electrical equipment;
- fire protection systems;
- drainage facilities;
- landscaping;
- road improvements;
- required records.

Nothing herein shall authorize inspection beyond that permitted by law.

Section 7.06. Independent Professional Review.

Where the County reasonably determines that specialized expertise is required to evaluate compliance, it may require review by an independent licensed professional engineer or other qualified consultant.

Unless otherwise provided by law, the reasonable cost of such review shall be borne by the Applicant or Owner.

Section 7.07. Corrective Action.

If an inspection identifies a violation, the Plan Director shall provide written notice describing:

1. the violation;
2. corrective measures required;
3. time allowed for correction.

Failure to complete corrective action within the specified period may result in enforcement under Article IX.

Section 7.08. Incident Reporting.

The Owner shall notify the Plan Director, Emergency Management Agency, and the responding fire department within twenty-four (24) hours after:

- fire;
- explosion;
- thermal runaway;
- hazardous material release;
- evacuation;
- structural failure;
- any event requiring outside emergency response.

Within seven (7) calendar days, the Owner shall submit a written report describing:

A. Date and time.

B. Nature of the incident.

C. Cause, if known.

D. Corrective actions taken.

E. Measures implemented to prevent recurrence.

Section 7.09. Insurance.

Liability Insurance. Throughout the operational life of the project, the Owner shall maintain commercial general liability insurance covering:

- bodily injury;
- property damage;
- pollution liability, where applicable;
- other coverage required by the Board of Commissioners.

Howard County may be named as an additional insured where permitted by law and as required by the approval documents.

Certificates of insurance shall be filed annually with the Plan Director.

Responsibility for Third-Party Damage

1. As a continuing condition of every Special Use Permit issued under this Ordinance, the Owner and Operator shall be responsible for repairing or compensating for legally recoverable damages to real property, personal property, agricultural operations, livestock, crops, drainage improvements, water supplies, or other lawful property interests proximately caused by the construction, operation, maintenance, malfunction, fire, explosion, thermal runaway, hazardous material release, emergency response activities, or decommissioning of the battery Energy Storage System.
2. The Owner shall maintain insurance or other financial resources reasonably sufficient to satisfy foreseeable claims described in this Section throughout the operational life of the project and shall provide evidence of such coverage to the County upon request.
3. Nothing in this Section shall be construed to create strict liability, expand or diminish any cause of action available under Indiana law, waive any legal defense otherwise available to any party, or limit the rights of any person to pursue remedies otherwise authorized by law.
4. Failure to maintain the insurance or financial responsibility required by this Section shall constitute a violation of this Ordinance and may result

in suspension or revocation of the Special Use Permit following notice and an opportunity to be heard.

Section 7.10. Indemnification.

To the fullest extent permitted by law, the Owner shall indemnify and hold harmless Howard County, its elected officials, officers, employees, boards, commissions, and agents from claims arising from the construction, operation, maintenance, or decommissioning of the Battery Energy Storage System, except to the extent caused by the County's own gross negligence or willful misconduct.

Section 7.11. Ownership Changes.

The Owner shall notify the Plan Director in writing at least thirty (30) days before any transfer of ownership or operational control.

The notice shall include:

1. name of the successor Owner or Operator;
2. emergency contact information;
3. evidence that insurance and financial assurance will remain in effect;
4. a written assumption of all obligations imposed by this Ordinance and the Special Use Permit.

No transfer shall relieve a prior Owner of obligations that accrued before the effective date of the transfer.

Section 7.12. Records Retention.

The Owner shall maintain the following records for inspection during normal business hours:

- maintenance records;
- inspection reports;
- incident reports;
- emergency response training documentation;
- insurance certificates;
- financial assurance documentation;
- operating logs required by this Ordinance.

Records shall be retained for not less than five (5) years unless a longer retention period is required by law.

Section 7.13. Continuing Duty to Comply.

Compliance with this Ordinance is a continuing obligation.

Issuance of a permit does not relieve the Owner or Operator from responsibility to maintain compliance throughout the life of the Battery Energy Storage System.

ARTICLE VIII

DECOMMISSIONING, SITE RESTORATION, AND FINANCIAL ASSURANCE

Section 8.01. Purpose.

The purpose of this Article is to ensure that every Utility-Scale Battery Energy Storage System is removed at the end of its useful life, that affected property is restored, and that Howard County is protected from financial liability associated with abandonment or failure to decommission.

Section 8.02. Decommissioning Required.

Every Battery Energy Storage System shall be completely decommissioned upon the occurrence of any of the following:

1. Permanent cessation of commercial operation;
2. Abandonment of the facility;
3. Failure to operate for twelve (12) consecutive months, unless extended by the Board of Commissioners upon a showing of good cause;
4. Revocation of all required permits where continued operation is prohibited;
5. Any other event requiring removal under applicable law.

Temporary shutdowns caused by force majeure, equipment replacement, transmission constraints, or similar circumstances shall not constitute abandonment provided the Owner submits a written restoration plan acceptable to the County.

Section 8.03. Decommissioning Plan.

Prior to issuance of an Improvement Location Permit, the Applicant shall submit a Decommissioning Plan prepared and sealed by a Professional Engineer licensed in the State of Indiana.

The Plan shall include:

- A. A narrative describing the sequence of decommissioning.
- B. Estimated schedule.
- C. Equipment removal procedures.
- D. Disposal and recycling methods.
- E. Transportation methods.
- F. Site restoration procedures.
- G. Cost estimate.
- H. Identification of responsible parties.

The Plan shall be approved by the Board of Commissioners as part of the project approval.

Section 8.04. Scope of Decommissioning.

Unless otherwise approved by the Board of Commissioners and the affected landowner, decommissioning shall include removal of:

- battery containers;
- battery modules;
- transformers;
- inverters;
- substations owned by the project;
- switchgear;
- communications equipment;
- foundations;
- concrete pads;
- fencing;

- gates;
 - signage;
 - underground electrical collection systems, unless their removal would create greater environmental damage;
 - access roads not requested to remain by the landowner.
-

Section 8.05. Site Restoration.

Following equipment removal, the Owner shall:

1. Remove foundations to a minimum depth of **three (3) feet below finished grade**, unless a greater depth is required by permit or agreement.
2. Decomact disturbed agricultural soils.
3. Restore natural drainage patterns.
4. Repair damaged field tile.
5. Restore regulated drains.
6. Replace topsoil where disturbed.
7. Regrade disturbed areas.
8. Stabilize disturbed soils.
9. Seed disturbed areas with vegetation acceptable to the landowner and the County.

If the landowner requests an alternative final condition in writing and the County approves, restoration may be modified accordingly.

Section 8.06. Time for Completion.

Decommissioning shall begin within one hundred eighty (180) days after the County determines that a decommissioning trigger has occurred.

Unless extended by the Board of Commissioners for good cause, all decommissioning activities shall be completed within twelve (12) months after commencement.

Section 8.07. Financial Assurance.

Before issuance of an Improvement Location Permit, the Applicant shall provide financial assurance acceptable to the Board of Commissioners.

Acceptable forms include:

- Irrevocable Letter of Credit;
 - Cash Escrow;
 - Surety Bond;
 - another form approved by the County Attorney.
-

Section 8.08. Amount of Financial Assurance.

Financial assurance shall equal one hundred percent (100%) of the estimated cost of decommissioning, **without deduction for salvage value**, unless the Board of Commissioners expressly authorizes such deduction based upon substantial competent evidence.

The estimate shall be prepared by a Professional Engineer licensed in Indiana.

Section 8.09. Review of Financial Assurance.

The Owner shall submit an updated engineer-certified cost estimate every three (3) years.

The Board of Commissioners may require adjustment of the financial assurance whenever estimated costs materially change.

Section 8.10. Failure to Decommission.

If the Owner fails to commence or complete decommissioning within the required time, the County may:

1. Draw upon the financial assurance;
 2. Enter the property to complete decommissioning as authorized by law;
 3. Recover costs exceeding the financial assurance;
 4. Record liens authorized by Indiana law;
 5. Pursue any other remedy available by law or equity.
-

Section 8.11. Landowner Notice.

Before drawing upon financial assurance, the County shall provide written notice to:

- the Owner;

- the Operator;
- the record owner of the property.

The notice shall describe:

- the default;
- corrective action required;
- time allowed for response.

Nothing herein limits the County's authority to act immediately where necessary to protect public health or safety.

Section 8.12. Release of Financial Assurance.

Financial assurance shall not be released until:

1. The Owner submits a final certification by a Professional Engineer.
2. The County Surveyor verifies satisfactory restoration of drainage facilities.
3. The Plan Director verifies compliance with this Ordinance.
4. The Board of Commissioners formally approves release by resolution.

Section 8.13. Continuing Liability.

Release of financial assurance shall not relieve the Owner of liability for:

- latent defects;
- environmental contamination;
- violations discovered after release;
- contractual obligations owed to Howard County.

Section 8.14. Successors and Assigns.

All obligations imposed by this Article shall run with the project and shall bind all successors, assigns, transferees, and subsequent Owners.

Transfer of ownership shall not terminate or reduce any obligation established under this Ordinance.

ARTICLE IX

ENFORCEMENT, PENALTIES, MISCELLANEOUS PROVISIONS, AND EFFECTIVE DATE

Section 9.01. Administration.

The Howard County Plan Commission, Plan Director, Board of Zoning Appeals, Board of Commissioners, County Surveyor, Drainage Board, Highway Department, Emergency Management Agency, and other County officials shall administer this Ordinance within the scope of their respective statutory authority.

Section 9.02. Compliance Required.

Every Owner, Operator, Applicant, successor, assignee, contractor, subcontractor, and person acting on behalf of a Battery Energy Storage System shall comply with:

1. this Ordinance;
 2. all conditions of approval;
 3. all permits issued by Howard County;
 4. all applicable federal and state laws.
-

Section 9.03. Right of Inspection.

Upon reasonable notice, except where immediate action is necessary to protect public health or safety, authorized County representatives may inspect any Battery Energy Storage System for compliance with this Ordinance.

The Owner shall provide reasonable access to project facilities and records necessary to determine compliance.

Section 9.04. Notice of Violation.

Whenever the Plan Director determines that a violation exists, written notice shall be served upon the Owner or Operator describing:

- A. the violation;
 - B. corrective measures required;
 - C. the deadline for compliance;
 - D. the consequences of failure to comply.
-

Section 9.05. Stop Work Orders.

The Plan Director may issue a Stop Work Order whenever:

1. construction is proceeding without required permits;
2. construction materially deviates from approved plans;
3. work creates an immediate threat to public health or safety;
4. the Owner fails to comply with this Ordinance.

Work shall not resume until the violation has been corrected and written authorization has been issued by the Plan Director.

Section 9.06. Suspension or Revocation of Permits.

Following notice and an opportunity to be heard, the Board of Zoning Appeals or Board of Commissioners, as authorized by law, may suspend or revoke approvals issued under this Ordinance for substantial or continuing violations.

Grounds include:

- material misrepresentation;
 - repeated violations;
 - abandonment;
 - failure to maintain required financial assurance;
 - failure to comply with permit conditions.
-

Section 9.07. Civil Penalties.

Unless otherwise provided by law, any person violating this Ordinance shall be subject to a civil penalty not exceeding Ten Thousand Dollars~~Two Thousand Five Hundred Dollars (\$2,500.00)~~ (\$10,000.00) for each violation.

Each day a violation continues constitutes a separate violation.

Assessment of a civil penalty shall not excuse compliance with this Ordinance.

Section 9.08. Additional Remedies.

In addition to any civil penalty, Howard County may seek:

1. injunctive relief;
2. declaratory judgment;
3. specific performance;
4. recovery of costs and expenses authorized by law;
5. any other remedy available at law or in equity.

The remedies provided by this Ordinance are cumulative.

Section 9.09. Emergency Action.

Nothing in this Ordinance shall prevent the County from taking immediate action necessary to eliminate an imminent threat to public health, safety, or property.

Emergency actions may include:

- restricting access;
- ordering temporary shutdown;
- coordinating emergency response;
- performing emergency stabilization.

The County may recover emergency response costs where authorized by law.

Section 9.10. Appeals.

Any decision made pursuant to this Ordinance may be appealed in the manner provided by the Howard County Zoning Ordinance and Indiana Code Chapter 36-7-4.

Section 9.11. Transfer of Ownership.

A transfer of ownership or operational control shall not relieve any Owner or Operator of obligations accrued before the effective date of the transfer.

The successor Owner shall assume all obligations imposed by:

- this Ordinance;
- the Special Use Permit;
- the Improvement Location Permit;
- all recorded agreements.

Section 9.12. Severability.

If any provision, subsection, sentence, clause, phrase, or application of this Ordinance is held invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

The Board of Commissioners declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, and phrase independently of any portion declared invalid.

Section 9.13. Conflicting Ordinances.

Where this Ordinance imposes more restrictive requirements than another Howard County ordinance or regulation, the provisions of this Ordinance shall govern to the extent permitted by law.

Nothing contained herein shall supersede mandatory federal or Indiana statutory requirements.

Section 9.14. Repealer.

All ordinances or parts of ordinances inconsistent with this Ordinance are repealed only to the extent of the inconsistency.

Section 9.15. Effective Date.

This Ordinance shall take effect immediately upon adoption by the Howard County Board of Commissioners and publication as required by Indiana law.

ADOPTED

ADOPTED by the Howard County Board of Commissioners this ____ day of _____, 2026.

BOARD OF COMMISSIONERS OF HOWARD COUNTY, INDIANA

Jack W. Dodd, President

R. Brad Bray, Vice President

Jeff S. Lipinski, Commissioner

ATTEST:

Jessica Secrease, Howard County Auditor