TOWNSHIP OF BERTRAND

COUNTY OF BERRIEN, STATE OF MICHIGAN

ORDINANCE NO. 241114A

ADOPTED: November 14, 2024

EFFECTIVE: November 29, 2024

COMPATIBLE RENEWABLE ENERGY ZONING ORDINANCE TEXT AMENDMENTS

An amendment to the Bertrand Charter Township Zoning Ordinance to regulate the development of certain energy facilities within the Township through a compatible renewable energy ordinance pursuant to 2023 PA 233, as may be amended, MCL 460.1221 et. seq.; to provide for severability; to repeal all ordinances or parts of ordinances in conflict therewith; and to provide an effective date.

THE TOWNSHIP OF BERTRAND

BERRIEN COUNTY, MICHIGAN

ORDAINS:

SECTION I

AMENDMENT TO ZONING ORDINANCE TO CREATE A COMPATIBLE RENEWABLE ENERGY ORDINANCE

The Bertrand Charter Township Zoning Ordinance is amended to add the following new Section creating a Compatible Renewable Energy Ordinance to read as follows:

CHAPTER 11.04 NN. COMPATIBLE RENEWABLE ENERGY ORDINANCE.

1. DEFINITIONS.

Words used herein shall have the following definitions:

a. "Affected local unit" means a unit of local government in which all or part of a proposed energy facility will be located.

b. "Aircraft detection lighting system" means a sensor-based system designed to detect aircraft as they approach a wind energy facility and that automatically activates obstruction lights until they are no longer needed.

c. "Applicant" means an applicant for a Township permit.

d. "Certificate" means a certificate issued for an energy facility by the Michigan Public Service Commission under MCL 460.1226(5).

e. "Compatible renewable energy ordinance" means an ordinance that provides for the development of energy facilities within the local unit of government, the requirements of which are no more restrictive than the provisions included in section MCL 460.1226(8). A local unit

of government is considered not to have a compatible renewable energy ordinance if it has a moratorium on the development of energy facilities in effect within its jurisdiction.

f. "Construction" means any substantial action taken constituting the placement, erection, expansion, or repowering of an energy facility.

g. "Dark sky-friendly lighting technology" means a light fixture that is designed to minimize the amount of light that escapes upward into the sky.

h. "Energy facility" means an energy storage facility, solar energy facility, or wind energy facility. An energy facility may be located on more than 1 parcel of property, including noncontiguous parcels, but shares a single point of interconnection to the grid.

i. "Energy storage facility" means a system that absorbs, stores, and discharges electricity with a nameplate capacity of 50 megawatts or more and an energy discharge capacity of 200 megawatt hours or more. Energy storage facility does not include either of the following:

   a. Fossil fuel storage.

   b. Power-to-gas storage that directly uses fossil fuel inputs.

j. Fossil fuel storage. Power-to-gas storage that directly uses fossil fuel inputs. "Independent power producer", or "IPP", means a person that is not an electric provider but owns or operates facilities to generate electric power for sale to electric providers, this state, or local units of government.

k. "Light intensity dimming solution technology" means obstruction lighting that provides a means of tailoring the intensity level of lights according to surrounding visibility.

l. "Light-mitigating technology system" means an aircraft detection lighting system, a light intensity dimming solution technology, or a comparable solution that reduces the impact of nighttime lighting while maintaining night conspicuity sufficient to assist aircraft in identifying and avoiding collision with the wind energy facilities.

m. "Local unit of government" or "local unit" means a county, township, city, or village.

n. "Local unit of government" or "local unit" means a county, township, city, or "Maximum blade tip height" means the nominal hub height plus the nominal blade length of a wind turbine, as listed in the wind turbine specifications provided by the wind turbine manufacturer. If not listed in the wind turbine specifications, maximum blade tip height means the actual hub height plus the actual blade length.

o. "Nameplate capacity" means the designed full-load sustained generating output of an energy facility. Nameplate capacity shall be determined by reference to the sustained output of 2 an energy facility even if components of the energy facility are located on different parcels, whether contiguous or noncontiguous.

p. "Nonparticipating property" means a property that is adjacent to an energy facility and that is not a participating property.

q. "Occupied community building" means a school, place of worship, day-care facility, public library, community center, or other similar building that the applicant knows or reasonably should know is used on a regular basis as a gathering place for community members.

r. "Participating property" means real property that either is owned by an applicant or that is the subject of an agreement that provides for the payment by an applicant to a landowner of monetary compensation related to an energy facility regardless of whether any part of that energy facility is constructed on the property.

s. "Person" means an individual, governmental entity authorized by this state, political subdivision of this state, business, proprietorship, firm, partnership, limited partnership, limited liability partnership, co-partnership, joint venture, syndicate, business trust, labor organization, company, corporation, association, subchapter S corporation, limited liability company, committee, receiver, estate, trust, or any other legal entity or combination or group of persons acting jointly as a unit.

t. "Repowering", with respect to an energy facility, means replacement of all or substantially all of the energy facility for the purpose of extending its life. Repowering does not include repairs related to the ongoing operations that do not increase the capacity or energy output of the energy facility.

u. "Solar energy facility" means a system that captures and converts solar energy into electricity, for the purpose of sale or for use in locations other than solely the solar energy facility property, and with a nameplate capacity of 50 megawatts or more. Solar energy facility includes, but is not limited to, the following equipment and facilities to be constructed by an electric provider or independent power producer: photovoltaic solar panels; solar inverters; access roads; distribution, collection, and feeder lines; wires and cables; conduit; footings; foundations; towers; poles; crossarms; guy lines and anchors; substations; interconnection or switching facilities; circuit breakers and transformers; energy storage facilities; overhead and underground control; communications and radio relay systems and telecommunications equipment; utility lines and installations; generation tie lines; solar monitoring stations; and accessory equipment and structures.

v. "Wind energy facility" means a system that captures and converts wind into electricity, for the purpose of sale or for use in locations other than solely the wind energy facility property, and with a nameplate capacity of 100 megawatts or more. Wind energy facility includes, but is not limited to, the following equipment and facilities to be constructed by an electric provider or independent power producer: wind towers; wind turbines; access roads; distribution, collection, and feeder lines; wires and cables; conduit; footings; foundations; towers; poles; crossarms; guy lines and anchors; substations; interconnection or switching facilities; circuit breakers and transformers; energy storage facilities; overhead and underground control; communications and 3 radio relay systems and telecommunications equipment; monitoring and recording equipment and facilities; erosion control facilities; utility lines and installations; generation tie lines; ancillary buildings; wind monitoring stations; and accessory equipment and structures.

2. APPLICATION TO CONSTRUCT AN ENERGY FACILITY.

An electric provider or IPP that proposes to obtain a certificate from the Michigan Public Service Commission to construct an energy facility within the Township shall follow the following application process:

a. At least 60 days before the public meeting provided for in MCL 460.1223, an electric provider or IPP shall offer in writing to meet with the Township Supervisor, or the Supervisor's designee, to discuss the site plan. The offer to meet must be delivered by email and certified mail and

must also be sent to the Township Board in care of the Township Clerk in this same manner. The Supervisor or Supervisor's designee must respond within 30 days from the offer to meet.

b. Within 30 days following the meeting described in paragraph 1, the Township Supervisor shall notify the electric provider or IPP planning to construct the energy facility that the Township has a compatible renewable energy ordinance. If all affected local units with zoning jurisdiction provide similar timely notice to the electric provider or IPP, then the electric provider or IPP shall file for approval of a permit with the Township.

c. To file for approval of a permit the electric provider or IPP must submit a complete application to the Township Clerk. The application form to be used shall be adopted by resolution of the Township Board. The application shall contain the items set forth in MCL 460.1225(1), except for (l)(j) and (s). The application may also require other information to determine compliance with this Compatible Renewable Energy Ordinance. By resolution, the Township may establish an application fee and escrow policy to cover the Township's reasonable costs of review and processing of the application, including but not limited to staff, attorney, engineer, planning, environmental, or other professional costs.

3. APPLICATION REVIEW.

The application shall be processed as a special land use subject to the provisions of this Article. The Bertrand Charter Township Planning Commission shall approve or deny the application within 120 days after receiving a complete application. This deadline may be extended by up to 120 days if jointly agreed upon by the Township Board and the applicant. In consideration of the application the Planning Commission must approve the application and issue a permit for the requested construction if it complies with the following standards:

a. For a solar energy facility, all of the following:

i. 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

ii. Fencing for the solar energy facility complies with the latest version of the National Electric Code as of November 29, 2024, or any applicable successor standard approved by the Michigan Public Service Commission as provided in MCL 460.1226(8)(a)(ii).

iii. Solar panel components do not exceed a maximum height of 25 feet above ground when the arrays are at full tilt.

iv. The solar energy facility does 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.

v. The solar energy facility will implement dark sky-friendly lighting solutions.

vi. The solar energy facility will comply with any more stringent requirements adopted by the Michigan Public Service Commission as provided in MCL 460.1226(8)(a)(iv).

b. For a wind energy facility, all of the following:

i. The following minimum setback distances, measured from the center of the base of the wind tower:

Setback Description	Setback Distance
Occupied community buildings and residences on nonparticipating properties	2.1 times the maximum blade tip height to the nearest point on the outside wall of the structure
Residences and other structures on participating properties	1.1 times the maximum blade tip height to the nearest point on the outside wall of the structure
Nonparticipating property lines	1.1 times the maximum blade tip Height
Public road right-of-way	1.1 times the maximum blade tip height to the center line of the public road right-of-way
Overhead communication electric transmission, not including utility service lines to individual houses or outbuildings	1.1 times the maximum blade tip height to the center line of the easement containing the overhead line

ii. Each wind tower is sited such that any occupied community building or nonparticipating residence will not experience more than 30 hours per year of shadow flicker under planned operating conditions as indicated by industry standard computer modeling.

iii. Each wind tower blade tip does not exceed the height allowed under a Determination of No Hazard to Air Navigation by the Federal Aviation Administration under 14 CFR part 77.

iv. The wind energy facility does 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.

v. The wind energy facility is equipped with functioning light-mitigating technology. To allow proper conspicuity of a wind turbine at night during construction, a turbine may be lighted with temporary lighting until the permanent lighting configuration, including the light-

mitigating technology, is implemented. The Township may grant a temporary exemption from the requirements of this subparagraph if installation of appropriate light mitigating technology is not feasible. A request for a temporary exemption must be in writing and state all of the following:

a) The purpose of the exemption.
b) The proposed length of the exemption.
c) A description of the light-mitigating technologies submitted to the Federal Aviation Administration.
d) The technical or economic reason a light-mitigating technology is not feasible.
e) Any other relevant information requested by the Township.

vi. The wind energy facility meets any standards concerning radar interference, lighting, subject to subparagraph v., or other relevant issues as determined by the Township.

vii. The wind energy facility will comply with any more stringent requirements adopted by the Michigan Public Service Commission as provided for in MCL 460.1226(8)(b)(vii). Before adopting such requirements, the commission must determine that the requirements are necessary for compliance with state or federal environmental regulations.

3. For an energy storage facility, all of the following:

i. 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

ii. The energy storage facility complies with the version of NFPA 855 “Standard for the Installation of Stationary Energy Storage Systems” in effect on November 29, 2024, or any applicable successor standard adopted by the Michigan Public Service Commission as provided for in MCL 460.1226(8)(c)(ii).

iii. The energy storage facility does 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.

iv. The energy storage facility will implement dark sky-friendly lighting solutions.

v. The energy storage facility will comply with any more stringent requirements adopted by the Michigan Public Service Commission as provided in MCL 460.1226(8)(c)(v).

4. ISSUANCE AND COMPLIANCE WITH PERMIT.

a. Upon approval of an application the Township shall issue the permit to the electric provider or IPP. Construction of the proposed energy facility must begin within 5 years after the date the permit is issued and any challenges to the grant of the permit are concluded. The Township Board may extend this timeline at the request of the electric provider or IPP without requiring a new application.

b. The permit shall require the electric provider or IPP to remain in compliance at all times with the standards identified for approval of the permit and all documentation submitted with and affirmations made in the application, including, but not limited to, the site plan, decommissioning plan, fire response plan, and emergency plan. No changes may be made to the permit by the electric provider or IPP without the written agreement of the Township. The energy facility must further comply with all local ordinances, state and federal laws and regulations except as otherwise provided in Section MCL 460.1231. The Township shall not revoke a permit except for material noncompliance with the permit by the electric provider or IPP.

c. A permit may be transferred to another electric provider or IPP upon the filing with the Township of an attestation by the transferee that it accepts the terms of the permit and acknowledges that it is subject to this Ordinance.

5. HOST COMMUNITY AGREEMENT.

The permit holder shall enter into a host community agreement with the Township within 90 days after issuance of the permit. The host community agreement shall require that, upon commencement of any operation, the energy facility owner must pay the Township $2,000.00 per megawatt of nameplate capacity located within the Township. 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 Township and the permit holder within said 90 days.

6. INTERPRETATION.

The provisions contained in this Article are intended to meet the definition of a Compatible Renewable Energy Ordinance pursuant to 2023 PA 233, as may be amended, MCL 460.1221 et. seq. and shall only be interpreted in a manner consistent with such intent.

SECTION II
SEVERABLITY

The provisions of this ordinance are hereby declared to be severable. If any clause, sentence, word, section or provision is hereafter declared void or unenforceable for any reason by a court of competent jurisdiction, it shall not affect the remainder of such ordinance which shall continue in full force and effect.

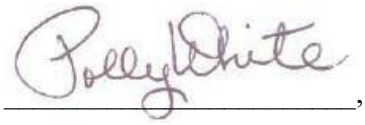
SECTION III REPEAL

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

SECTION X
EFFECTIVE DATE

This ordinance shall take effect on the later of November 29, 2024 or eight (8) days after publication after adoption, which publication shall occur in a newspaper of general circulation in the Township within fifteen (15) days after adoption.

BERTRAND CHARTER TOWNSHIP


_____, Clerk

Polly White