

Fountain County Zoning Ordinance

Article 10: Battery Energy Storage Systems (BESS)

Section 10.1: Purpose

The purpose of this Article is to regulate the siting, installation, operation, and decommissioning of Battery Energy Storage Systems (BESS) within Fountain County to promote the health, safety, and general welfare of residents, while balancing the need for renewable energy infrastructure with local agricultural, environmental, and community concerns. This Article is adopted pursuant to Indiana Code (IC) 36-7-4 and incorporates standards from NFPA 855 for fire safety and other relevant national guidelines.

Section 10.2: Definitions

For the purposes of this Article, the following terms shall have the meanings set forth below:

1. **Battery Energy Storage System (BESS):** An electrochemical device or system capable of storing electrical energy from the grid or a power source and discharging it when needed. This includes, but is not limited to, lithium-ion, flow batteries, and other emerging technologies, but excludes small-scale systems with a nameplate capacity of less than 500 kW intended for private residential or on-site commercial use. This definition aligns with the scope of NFPA 855.
2. **Participating Property:** Real property that is subject to a lease, easement, or other agreement allowing the installation and operation of a BESS, including leased farmland typical in Fountain County's agricultural areas.
3. **Non-Participating Property:** Any real property adjacent to or within 5280 ft of a BESS site that is not subject to such an agreement.
4. **Private Use:** A BESS with a nameplate capacity of less than 500 kW installed for personal, residential, or on-site non-commercial purposes, such as backup power for a single property owner.
5. **Special Use Permit:** A permit issued by the Fountain County Board of Zoning Appeals for uses that require additional review due to potential impacts on surrounding areas.
6. **Board of Zoning Appeals (BZA):** The Fountain County Board of Zoning Appeals, responsible for hearing variance requests and special use permits.

Section 10.3: Applicability and Prohibition

1. **Applicability:** This Article applies to all BESS with a nameplate capacity of 500 kW or greater. BESS is designated as a special use in all zoning districts within Fountain County, requiring a Special Use Permit prior to construction or operation.
2. **Exemptions:** Private Use BESS, as defined in Section 10.2, is exempt from the requirements of this Article. If a variance request for a Private Use BESS is heard by the BZA, the BZA is strongly encouraged to grant the variance, as this aligns with the intent of the ordinance to minimize all regulatory burdens on small-scale, personal systems.
3. **Prohibition:** No BESS subject to this Article shall be constructed, installed, or operated without a valid Special Use Permit. Violations shall be enforced through the penalty provisions in Section 10.9 and Section 5.14 This clause acknowledges renewable energy but prioritizes local compliance and safety. Notice of the Special Use Permit hearing shall meet all State of Indiana Requirements for Public Notice.

Section 10.4: Application Requirements

1. **Application Process:** Application for BESS shall be submitted to the Fountain County Zoning and Planning Department. The permit once issued shall be valid for one (1) year from issuance with construction commencing prior to one (1) year. Application fees shall be set by the Commission to cover administrative costs, balancing efficiency with the County's limited staff resources. Applications for a Special Use Permit shall be submitted to the Fountain County Board of Zoning Appeals.
2. **Required Submissions:** In addition to standard zoning application materials, applicants must provide at time of application.
 - A site plan showing proposed layout, access roads, and setbacks.
 - A visual impact simulation from key vantage points.
 - Soil compaction studies, considering farming practices.
 - An emergency response plan coordinated with local fire and emergency services.
 - Proof of compliance with NFPA 855 and other applicable standards.
 - A decommissioning plan as detailed in Section 10.8.
3. **Public Notice and Meetings:**

- Public notice shall be provided by notifying all adjacent property owners and residents within 5,280 feet (1 mile) via certified mail. This is at the cost of the developer.
- Notices shall also be sent to all landowners and residents within 5 miles of the proposed site via mail at the cost of the developer.
- At least three public meetings shall be held prior to permit approval, including stakeholders shall include the BESS Developer, Emergency Services (e.g., fire chiefs), landowners, Fountain County Council Member(s), Fountain County Commissioner(s), Fountain County Emergency Management, Non-participating landowners, Fountain County Advisory Planning Commission Attorney, Fountain County Zoning Administrator. The meeting shall allow for input on potential impacts, including safety, agriculture, and aesthetics. These meetings are hosted by the Fountain County Advisory Planning Commission and shall be held prior to the Special Use Permit hearing. All staff costs shall be paid by the developer and/or permit applicant.

Section 10.5: Design and Installation

1. **Standards:** All BESS shall exceed all ANSI, NEC, and NFPA 855 standards. Third-party (approved by the Fountain County Advisory Planning Commission) audits shall be required at the applicant's expense to verify compliance with the cost being paid by the BESS Developer.
2. **Height, Lighting, and Screening:** Structures shall not exceed 20 feet in height. Lighting shall be minimized to prevent light pollution, using motion-activated systems where necessary. Screening, such as berms or vegetative barriers, shall be required to preserve scenic views. Barriers must be approved by the Fountain County Advisory Planning Commission
3. **Vegetation and Erosion Control:** Vegetation clearance shall be limited to the minimum necessary. Measures to prevent erosion in clay-heavy soils, such as retaining native vegetation buffers, shall be implemented in accordance with Indiana Department of Natural Resources (DNR) guidelines.
4. **Noise Restriction:** Maximum sound levels associated with any component of a BESS may not exceed 30 decibels as measured at the property line.

Section 10.6: Setbacks

1. **Minimum Setbacks:** All BESS components shall maintain a setback of at least 5,280 feet (1 mile) from:

- Non-Participating Property lines.
- Residential dwellings, schools, hospitals, and other occupied structures.
- Cities, Villages, Towns
- Commercial Solar Energy Systems
- Public roads, rights-of-way (ROW), Private Roads,

Section 10.7: Operation

1. **Road Use Agreements:** Applicants shall enter into road use agreements for County roads, including escrow funds for repairs, particularly on gravel roads prevalent in Fountain County.
2. **Insurance and Training:** Operators shall maintain at least \$5 million per Incident and \$100 million aggregate in liability insurance with \$5000 deductible. Training mandates for local emergency responders shall be provided at the operator's expense, aligning with Fountain County Emergency Management's capacity.
3. **Monitoring:** Operations shall include air quality monitoring for potential off-gassing. Annual reports shall be submitted to the Commission, addressing any environmental or safety issues.

Section 10.8: Decommissioning Plan

1. **Financial Assurance:** A decommissioning plan shall include financial assurance mechanisms, an escrow account shall be established payable to Fountain County Indiana upon demand, to ensure removal without taxpayer burden. The amount shall cover full site restoration including removal of all equipment and restoration. The escrow amount is determined by receipt of 3 separate bids from licensed, bonded and qualified removal experts of which the sum is averaged. The escrow amount shall be redetermined yearly. Any and all fees associated with bidding shall be incurred by the developer or operator.
2. **Restoration Standards:** Upon decommissioning, the site shall be restored to its pre-installation condition, including soil testing post-removal to a depth of at least 48 inches, with extensions as needed for agricultural land to ensure viability for farming.

3. **Updates and Triggers:** Financial assurances shall be updated every five (5) years, including inflation adjustments. County-led decommissioning may be triggered by events such as operator bankruptcy or abandonment for more than six (6) months.

Section 10.9: Transfer, Penalty, and Severability

1. **Transfer:** Within 30 days any transfer of ownership or operation shall be reported to the County Commissioners and Fountain County Advisory Planning and subject to approval process by both bodies County within 30 days of receipt. Successor liability clauses shall be required to prevent "orphan" sites.
2. **Penalties:** Violations of this article shall be enforced pursuant to 5.04. The Landowner is responsible for \$50 per day of the violation up to a maximum of \$1500 and the Developer and/or operator is responsible for the remainder.
3. **Severability:** If any provision of this Article is held invalid, the remainder shall remain in full effect.

Section 10.10: Effective Date and Waivers

1. **Effective Date:** This Article shall become effective upon adoption by the Fountain County Commissioners.
2. **Reviews:** The ordinance shall be reviewed every three (3) years to adapt to technological advances, such as solid-state batteries.