

ORDINANCE # 2597**OF THE COUNTY OF LAKE**

AN ORDINANCE TO AMEND the Unincorporated Lake County Unified Development Ordinance, County of Lake, State of Indiana, adopted June 13, 2023 specifically to amend **Title 154**, Unified Development Ordinance 2560; **Article 8**, Supplemental Use Regulations; **Chapter 080**, Regulations for Battery Energy Storage Systems (BESS), **Section B**. Application Submittal Requirements, **Item 12**. Abandonment, Decommissioning, and Disposal of items throughout the life of the Battery Energy Storage Systems (BESS); to add a requirement for abandonment and decommissioning as follows:

BE IT ORDAINED by the County Council of the County of Lake, State of Indiana that the Unincorporated Lake County Unified Development Ordinance (UDO) be amended as follows:

WHEREAS, the Lake County Council (Council) is charged with amendments to the Unified Development Ordinance;

WHEREAS, the Council finds that large-scale Battery Energy Storage Systems (BESS) present unique land use, infrastructure, environmental, and long-term site restoration considerations;

WHEREAS, the Council further finds that the absence of clear abandonment and decommissioning standards may result in blight, environmental degradation, or undue financial burden upon the Lake County and its residents;

WHEREAS, the proposed ordinance amendment establishes reasonable, objective, and enforceable standards governing abandonment, decommissioning, disposal, and financial assurance for Battery Energy Storage Systems (BESS);

WHEREAS, the proposed ordinance amendment is consistent with the Comprehensive Plan and advances the public health, safety, and welfare;

WHEREAS, the Plan Commission after a duly held public hearing hereby recommends approval of Section 18: Abandonment, Decommissioning, and Disposal of Battery Energy Storage Systems (BESS), including all associated definitions and requirements, as presented; and,

WHEREAS, the Council finds that the proposed ordinance is authorized by Indiana law, is reasonable in scope, and is necessary to protect the County's long-term land use interests.

NOW, THEREFORE, BE IT RESOLVED by the Lake County Council that:

INSERT:

Section 154-8-80 Battery Energy Storage Systems, Section B. Application Submittal Requirements, Item 12. Abandonment, Decommissioning, and Disposal of items throughout the life of the Battery Energy Storage Systems (BESS)

Definitions

The following definitions are applicable to this Section and are designed to be objective, measurable, and defensible, minimizing discretion while preserving County Code Enforcement authority.

County – means the Lake County Plan Commission, Lake County Board of Zoning Appeals, Lake County Board of Commissioners, or Lake County Council unless otherwise specifically specified.

Inactive - means a condition in which a Battery Energy Storage Systems (BESS), or a substantial portion thereof, has ceased normal operations for a continuous period of time, including but not limited to one or more of the following:

- A. Absence of on-site personnel other than for security, inspection, or maintenance; or,
- B. Written confirmation by the owner or operator that operations have ceased or been suspended.

Temporary shutdowns for routine maintenance, equipment replacement, emergency repairs, or force majeure events shall not constitute inactivity, provided such shutdowns do not exceed twelve (12) consecutive months.

Abandoned - means a Battery Energy Storage Systems (BESS) that has been inactive for a continuous period of fifteen (15) months or more and for which the owner or operator has not received written approval from the appropriate County bodies authorizing continued inactivity.

A determination of abandonment may be made by the County based on utility records, site inspections, sworn statements, or other objective evidence.

Material Removal - means the removal, dismantling, or permanent deactivation of Battery Energy Storage Systems (BESS) infrastructure that:

- A. Reduces the operational capacity of the facility by twenty-five percent (25%) or more;
- B. Involves removal of primary electrical, mechanical, or structural systems;

- C. Results in the permanent closure of a building or a major functional component of the facility; or
- D. Constitutes partial or full decommissioning of the Battery Energy Storage Systems (BESS).

Routine maintenance, repair, or like-for-like equipment replacement shall not be considered Material Removal.

Presumption of Abandonment

Battery Energy Storage Systems (BESS) that remain inactive for a continuous period of fifteen (15) months or more shall be presumed abandoned, unless otherwise approved by the County Board of Zoning Appeals in the case of a revised Special Exception or the County Plan Commission and County Council in the case of a change of use requiring a zoning map amendment (Zone Change) after a public hearing.

Any Battery Energy Storage Systems (BESS) presumed abandoned shall be decommissioned in accordance with this section. If decommissioned, the site shall be restored to pre-development conditions, unless otherwise approved by the appropriate County bodies in the case of a revised Special Exception or a change of use requiring a zoning map amendment (Zone Change).

Notice of Discontinued Operations

- A. The owner or operator shall notify the Plan Commission and Director (154-18-50) by Certified Mail (return receipt requested) of the proposed date of discontinued operations and the anticipated timeline for decommissioning and removal.
- B. Such notice must be provided no less than ninety (90) days prior to the proposed date of discontinued operations, unless otherwise approved by the appropriate County bodies.
- C. Decommissioning and removal shall be completed in compliance with the approved Decommissioning Plan.
- D. The Board of Zoning Appeals may approve reasonable amendments or modifications to an approved Decommissioning Plan through a revised Special Exception, provided such amendments do not materially reduce the scope or effectiveness of decommissioning.
- E. Any Battery Energy Storage Systems (BESS) that has been abandoned shall be fully decommissioned and removed within one (1) year of the date abandonment is established by the County.

Decommissioning Requirements

Decommissioning shall include but not be limited to, at a minimum, the following:

- A. Physical removal of all above and below-grade installations, structures, equipment, batteries, containers, security barriers, fencing, and electrical or communications transmission lines from the site;
- B. Recycling, reuse, or lawful disposal of all solid waste, hazardous waste, and regulated materials in compliance with all applicable local, state, and federal laws and regulations; and
- C. Site stabilization and revegetation sufficient to minimize erosion and restore the site to pre-development conditions.

The Director may authorize the owner-operator to leave approved landscaping elements or designated below-grade foundations in place where removal would increase erosion risk or cause unnecessary environmental disturbance.

Decommissioning Plan

- A. A Decommissioning Plan shall be submitted concurrently as an element of the Special Exception application.
- B. The Decommissioning Plan shall demonstrate the owner-operator's obligation and ability to remove all equipment and facilities upon the end of operations or the useful life of the Battery Energy Storage Systems (BESS), and shall include but not be limited to:
 - 1. Removal of all batteries, containers, installations, structures, and foundations;
 - 2. Removal of all electrical transmission and utility components;
 - 3. Removal and proper handling of any and all specialized assets; and
 - 4. Restoration of soil conditions and vegetation. Soils shall be tested post-removal to ensure there is no contamination.
- C. The owner-operator shall provide a detailed decommissioning cost estimate prepared by a third-party Indiana State Licensed Professional Engineer, approved by the County in a written instrument, with demonstrated experience in Battery Energy Storage Systems (BESS) or industrial facility decommissioning.
- D. The cost estimate shall identify all parties responsible for decommissioning and shall account for all labor, equipment, transportation, disposal, recycling, remediation, and site restoration costs necessary to restore the site to pre-development conditions.
- E. Estimated costs shall not be offset by the potential salvage value of any equipment.
- F. The Decommissioning Plan and cost estimate shall be updated and recalculated every five (5) years throughout the life of the Battery Energy Storage Systems (BESS) and shall be subject to County review and comment prior to submission to the County Board of Commissioners for approval. Each update shall be reflected in an adjusted financial guarantee amount, if applicable.

Financial Guarantee

- A. The owner-operator shall provide a financial guarantee sufficient to cover the full approved decommissioning cost estimate. Acceptable forms of financial guarantee may include, but are not limited to, a performance bond, letter of credit, escrow account, or other negotiable surety subject to County review and comment prior to submission to the County Board of Commissioners for approval.
- B. The financial guarantee shall be approved and accepted by the Board of Commissioners prior to issuance of any building permits for the Battery Energy Storage Systems (BESS).
- C. The financial guarantee shall remain in effect for the entire operational life of the Battery Energy Storage Systems (BESS) and shall be adjusted in accordance with each five-year updated cost estimate.
- D. If the owner-operator fails to decommission the Battery Energy Storage Systems (BESS) in accordance with the approved Decommissioning Plan or fails to submit the required five-year cost estimate update, the County may request the County Board of Commissioners to draw upon the financial guarantee and retain a third-party contractor to complete decommissioning and site restoration.

Disposal and Recycling During Operations

- A. Throughout the life of the Battery Energy Storage Systems (BESS), components and systems may be replaced, upgraded, removed, or retired, including but not limited to fire suppression systems, security components, cabling, and related infrastructure.
- B. In addition to the Decommissioning Plan, the owner-operator shall submit a Disposal and Recycling Plan describing how such materials will be handled during ongoing operations.
- C. The Disposal and Recycling Plan shall address, at a minimum:
 - 1. A narrative of the removal process for all components, including batteries, battery containers, foundations, and transmission lines.
 - 2. A disposal plan for hazardous waste (e.g., lithium-ion modules) in accordance with federal and state regulations.
 - 3. Detailed restoration steps to return the site to its original or "clean" state (e.g., re-vegetation, soil stabilization).
- D. Disposal or recycling activities may occur incrementally or as part of a full-scale decommissioning.
- E. Except for routine maintenance and like-for-like replacements, the Plan Commission and Director shall be notified of significant disposal, recycling, or removal activities to determine whether additional building permits, zoning approvals, or demolition permits are required.

Finally, as stated in 154-1-120, if any portion of this amendment is held to be invalid or unconstitutional by a court of competent jurisdiction, that portion is to be deemed severed from the UDO and in no way affects or diminishes the validity of the remainder of the UDO.

This ordinance shall take effect immediately upon its passage according to law.

ORDINANCE NO. _____ IS HEREBY
APPROVED DENIED NO ACTION

COUNTY COUNCIL OF LAKE COUNTY, INDIANA, THIS ____ DAY OF _____, 2026.

Mrs. Christine Cid, President

Mr. Ronald G. Brewer, Sr., Vice President

Mr. Ted Bilski, Member

Mr. Dave Hamm, Member

Mr. Charlie Brown, Member

Mr. Pete Lindemulder Member

Mr. Randy Niemeyer, Member

ORDINANCE # 2598

OF THE COUNTY OF LAKE

AN ORDINANCE TO AMEND the Unincorporated Lake County Unified Development Ordinance, County of Lake, State of Indiana, adopted June 13, 2023 specifically to amend **Title 154**, Unified Development Ordinance 2560; **Article 8**, Supplemental Use Regulations; **Chapter 090**, Regulations for Data Centers, **Section A**. All applications for Special Exception approval must include at least the following information in addition to the standard submittal requirements for a special exception use, **Item 18**. A Decommissioning Plan, and **Section I**. Data center facilities that remain inactive for more than 15 consecutive months must be decommissioned unless otherwise approved by Plan Commission action at a public hearing. If decommissioned, the site must be restored to pre-development conditions or repurposed for permitted uses; as follows:

BE IT ORDAINED by the County Council of the County of Lake, State of Indiana that the Unincorporated Lake County Unified Development Ordinance (UDO) be amended as follows:

WHEREAS, the Lake County Council (Council) is charged with amendments to the Unified Development Ordinance;

WHEREAS, the Council finds that large-scale Data Centers present unique land use, infrastructure, environmental, and long-term site restoration considerations;

WHEREAS, the Council further finds that the absence of clear abandonment and decommissioning standards may result in blight, environmental degradation, or undue financial burden upon the County and its residents;

WHEREAS, the proposed ordinance amendment establishes reasonable, objective, and enforceable standards governing abandonment, decommissioning, disposal, and financial assurance for Data Centers;

WHEREAS, the proposed ordinance amendment is consistent with the Comprehensive Plan and advances the public health, safety, and welfare;

WHEREAS, the Plan Commission after a duly held public hearing, hereby recommends approval of Section 18: Abandonment, Decommissioning, and Disposal of Data Centers, including all associated definitions and requirements, as presented; and,

WHEREAS, the Council finds that the proposed ordinance is authorized by Indiana law, is reasonable in scope, and is necessary to protect the County's long-term land use interests.

NOW, THEREFORE, BE IT RESOLVED by the Lake County Council that:

DELETE:

Item 18. A Decommissioning Plan.

DELETE:

Section I. Data center facilities that remain inactive for more than 15 consecutive months must be decommissioned unless otherwise approved by Plan Commission action at a public hearing. If decommissioned, the site must be restored to pre-development conditions or repurposed for permitted uses.

INSERT:

18. Abandonment, Decommissioning, and Disposal of items throughout the life of the Data Center

18.1 Definitions

The following definitions are applicable to this Section and are designed to be objective, measurable, and defensible, minimizing discretion while preserving County Code Enforcement authority.

County – means the Lake County Plan Commission, Lake County Board of Zoning Appeals, Lake County Board of Commissioners, or Lake County Council unless otherwise specifically specified.

Inactive - means a condition in which a Data Center, or a substantial portion thereof, has ceased normal operations for a continuous period of time, as evidenced by one or more of the following:

- A. Electrical consumption limited to baseline levels necessary solely for security, safety, or minimal maintenance;
- B. Absence of active data processing, storage, or transmission for commercial or institutional purposes;
- C. Absence of on-site personnel other than for security, inspection, or maintenance; or
- D. Written confirmation by the owner or operator that operations have ceased or been suspended.

Temporary shutdowns for routine maintenance, equipment replacement, emergency repairs, or force majeure events shall not constitute inactivity, provided such shutdowns do not exceed twelve (12) consecutive months.

Abandoned - means a Data Center that has been inactive for a continuous period of fifteen (15) months or more and for which the owner or operator has not received written approval from appropriate County bodies authorizing continued inactivity.

A determination of abandonment may be made by the County based on utility records, site inspections, sworn statements, or other objective evidence.

Material Removal - means the removal, dismantling, or permanent deactivation of Data Center infrastructure that:

- A. Reduces the operational capacity of the facility by twenty-five percent (25%) or more;
- B. Involves removal of primary electrical, mechanical, cooling, or structural systems;
- C. Results in the permanent closure of a building or a major functional component of the facility; or
- D. Constitutes partial or full decommissioning of the Data Center.

Routine maintenance, repair, or like-for-like equipment replacement shall not be considered Material Removal.

18.2 Presumption of Abandonment

Data Centers that remain inactive for a continuous period of fifteen (15) months or more shall be presumed abandoned, unless otherwise approved by the Plan Commission and County Council after a public hearing.

Any Data Center presumed abandoned shall be decommissioned in accordance with this section. If decommissioned, the site shall be restored to pre-development conditions, unless otherwise approved by the County.

18.3 Notice of Discontinued Operations

- A. The owner or operator shall notify the Plan Commission and Director (154-18-50) by Certified Mail (return receipt requested) of the proposed date of discontinued operations and the anticipated timeline for decommissioning and removal.
- B. Such notice must be provided no less than ninety (90) days prior to the proposed date of discontinued operations, unless otherwise approved by the County.
- C. Decommissioning and removal shall be completed in compliance with the approved Decommissioning Plan.

- D. The Board of Zoning Appeals may approve reasonable amendments or modifications to an approved Decommissioning Plan through a revised Special Exception, provided such amendments do not materially reduce the scope or effectiveness of decommissioning.
- E. Any Data Center that has been abandoned shall be fully decommissioned and removed within one (1) year of the date abandonment is established by the County.

18.4 Decommissioning Requirements

Decommissioning shall include, at a minimum, the following:

- A. Physical removal of all above and below-grade installations, structures, equipment, security barriers, fencing, and electrical or communications transmission lines from the site;
- B. Recycling, reuse, or lawful disposal of all solid waste, hazardous waste, and regulated materials in compliance with all applicable local, state, and federal laws and regulations; and
- C. Site stabilization and revegetation sufficient to minimize erosion and restore the site to pre-development conditions.

The Director may authorize the owner-operator to leave approved landscaping elements or designated below-grade foundations in place where removal would increase erosion risk or cause unnecessary environmental disturbance.

18.5 Decommissioning Plan

- A. A Decommissioning Plan shall be submitted concurrently as an element of the special exception application.
- B. The Decommissioning Plan shall demonstrate the owner-operator's obligation and ability to remove all equipment and facilities upon the end of operations or the useful life of the Data Center, and shall include:
 - 1. Removal of all installations, structures, and foundations;
 - 2. Removal of all electrical transmission and utility components;
 - 3. Removal and proper handling of all specialized information technology assets; and
 - 4. Restoration of soil conditions and vegetation.
- C. The owner-operator shall provide a detailed decommissioning cost estimate prepared by a third-party Indiana State Licensed Professional Engineer, approved by the County in a written instrument, with demonstrated experience in Data Center or industrial facility decommissioning.
- D. The cost estimate shall identify all parties responsible for decommissioning and shall account for all labor, equipment, transportation, disposal, recycling,

remediation, and site restoration costs necessary to restore the site to pre-development conditions.

- E. Estimated costs shall not be offset by potential salvage value of any equipment.
- F. The Decommissioning Plan and cost estimate shall be updated and recalculated every five (5) years throughout the life of the Data Center and shall be subject to County review and approval. Each update shall be reflected in an adjusted financial guarantee amount, if applicable.

18.6 Financial Guarantee

- A. The owner-operator shall provide a financial guarantee sufficient to cover the full approved decommissioning cost estimate. Acceptable forms of financial guarantee may include, but are not limited to, a performance bond, letter of credit, escrow account, or other negotiable surety approved by the County.
- B. The financial guarantee shall be submitted to the Plan Commission and Director for review and approved by the County Board of Commissioners prior to issuance of any building permits for the Data Center.
- C. The financial guarantee shall remain in effect for the entire operational life of the Data Center and shall be adjusted in accordance with each five-year updated cost estimate.
- D. If the owner-operator fails to decommission the Data Center in accordance with the approved Decommissioning Plan or fails to submit the required five-year cost estimate update, the County may draw upon the financial guarantee and retain a third-party contractor to complete decommissioning and site restoration.

18.7 Disposal and Recycling During Operations

- A. Throughout the life of the Data Center, components and systems may be replaced, upgraded, removed, or retired, including but not limited to servers, processors, storage systems, networking equipment, cooling systems, racks, fire suppression systems, security components, cabling, generators, and related infrastructure.
- B. In addition to the Decommissioning Plan, the owner-operator shall submit a Disposal and Recycling Plan describing how such materials will be handled during ongoing operations.
- C. The Disposal and Recycling Plan shall address, at a minimum:
 1. Secure data sanitization methods (e.g., wiping, degaussing, physical destruction);
 2. Secure removal, transportation, and documented chain of custody;
 3. Compliance with applicable data protection, privacy, and environmental regulations; and
 4. Use of certified recycling, resale, or Information Technology Asset Disposition (ITAD) vendors, where applicable.

