GRAHAM SUSTAINABILITY INSTITUTE
CENTER FOR EMPOWERING COMMUNITIES
UNIVERSITY OF MICHIGAN

# What Local Governments Should know about Michigan's New Renewable Energy Siting Policies

Sarah Mills and Madeleine Krol
Center for EmPowering Communities, Graham Sustainability Institute, University of Michigan
(Last revision: 8/12/2024)

This document includes our best current understanding of Michigan's new renewable energy siting policies–HB5120/HB5121, now Public Acts 233 and 234 of 2023. The information in this document is intended for educational purposes only and should not be interpreted as legal advice. Local officials are strongly encouraged to consult with a municipal attorney.

We wish to thank colleagues associated with the Michigan Association of Planning, Michigan Townships Association, Michigan Municipal League, and MSU Extension for providing feedback on the original questions and content.

We have updated this document in light of the MPSC engagement sessions that took place from March through June, and this document is heavily informed by MPSC staff's June 2024 draft recommendations on application filing instructions and procedures for implementation of the law. When these instructions are finalized by the Commission, we will update these FAQs. Further, we will endeavor to find answers to additional questions that arise from communities as the law goes into effect. If you believe any information contained in this document is incorrect or have additional questions you'd like answered, please don't hesitate to contact us at krol@umich.edu.

## Frequently Asked Questions (Click question to jump to the answer):

1) **What is Public Act 233 of 2023?**
    - Public Act 233 of 2023, signed by Governor Whitmer on November 28, 2023, makes significant changes to the permitting process for utility-scale renewable energy facilities, including solar, wind, and energy storage. The Act creates an option for developers to go directly to the Michigan Public Service Commission (MPSC) to construct a utility-scale renewable energy facility if each affected local unit of government does not have a compatible renewable energy ordinance (hereafter CREO). In communities where the local units of government have adopted a CREO, which is defined as being no more restrictive than the provisions in section 226(8) of the Act[1], the developer must first have its proposed project reviewed at the local level. If the project is denied by any of the local units of government, then the developer may submit the application to the MPSC.
    - This law, which is referenced by a new amendment to the Michigan Zoning Enabling Act[2], resides as a new "Part 8: Wind, Solar, and Storage Certification" in the "Clean and Renewable Energy and Energy Waste Reduction Act"[3] which lays out the newly amended renewable energy, energy storage, and energy efficiency targets that utilities must meet.
    - The law will take effect November 29, 2024.

2) **What kind of projects does the new permitting process laid out in PA 233 apply to?**
    - The new permitting process laid out in PA 233 solely applies to wind, solar, and energy storage projects above the capacity/size thresholds listed in the Act[4]. This refers to any solar energy facility with a nameplate capacity of 50 megawatts or more, any wind energy facility with a nameplate capacity of 100 megawatts or more, and any energy storage facility with a nameplate capacity of 50 megawatts or more *and* an energy discharge capability of 200 megawatt hours or more. Any solar energy, wind energy, or energy storage facilities below these thresholds are subject to conventional local zoning. While the law is

[1] Section 221 (f)
[2] Michigan Zoning Enabling Act, 2006 PA 110, MCL 125.3101 et seq. The amendment was through a companion bill HB 5121 which became PA 234 of 2023.
[3] 2008 PA 295, (MCL 460.1013)
[4] Section 222 (1)

silent on whether the capacity thresholds refer to AC or DC power, staff's recommendation that it be measured in AC seems to not be controversial.[5]

- There is still some ambiguity about how hybrid projects (which include solar or wind plus energy storage) are to be measured; staff recommends adding the capacity of each technology[6] while some of those who provided comments suggest that the solar or wind component alone must meet the threshold for the project to qualify for MPSC permitting.
- There is also a special exception in the law for cities and villages.The law does not apply (i.e., developers may not seek a permit from the MPSC) in cases where a project is located entirely within the boundaries of a city or a village AND one of the following applies: the municipality is the owner of participating property in the project, is the developer of the facility, or owns an electric utility that would take service from the proposed facility.[7] In all other cases–including where only a portion of the project is outside of the municipal borders, the developer may seek a certificate from the MPSC unless all of the local units have a CREO. Due to the large footprint of wind and solar facilities, it is rare that the project would be entirely within municipal limits. However, storage projects that meet the 50MW/200MWh threshold in the law could be sited on as few as 5 acres, so may easily be located entirely within municipal boundaries.

3) **Are there only two pathways for permitting applicable projects: at the local level through a CREO, or at the state level through the MPSC?**
   - The short answer is no.
   - This law gives developers the *option* to go through the state-level process[8]. Developers may still choose to go through the local process, whether or not the local government has a CREO, and the law makes clear that local policies, including zoning, are in "full force and effect" for projects where the MPSC has not issued a certificate through this new state-level process.[9] MPSC staff's suggested flowchart further affirms developers may pursue non-CREO local

[5] Case No. U-21547 Staff Draft Application Instructions and Procedures, page 5 of the pdf
[6] Case No. U-21547 Staff Draft Application Instructions and Procedures, page 5 of the pdf
[7] Section 222 (4)
[8] Section 222 (2)
[9] Section 231 (4)

permitting[10] and goes as far as to encourage developers to seek local siting where there is a workable local ordinance.[11]

- Adopting a CREO, though, is the only option that guarantees the developer must first go through the local process.[12] Said another way, local governments that have existing zoning ordinances in place may keep those ordinances even if they don't meet the definition of a CREO. However, if the developer finds the ordinance is unworkable or just prefers getting a certificate through the MPSC, then they are able to follow the rules laid out in the Act to initiate approval by the MPSC, which, while requiring notice and a public meeting[13] in each affected local unit, need not comply with local zoning.

**4) Will local communities be notified if a developer is proposing a project?**

- Yes, the Act requires the developer to hold a public meeting in each local unit of government in which the project is being proposed.[14] 60 days before the meeting, the developer needs to offer to meet with the chief elected official, or their designee, in each affected local unit of government.[15] 30 days before the public meeting, the developer needs to notify the clerk in each affected local unit of government about the meeting, and at least 14 days before the meeting, the developer needs to publish notice of the meeting in a newspaper or online.[16] Furthermore, staff is recommending that the developer mail notice of the public meeting to postal addresses in the vicinity of the project.[17] Public commenters have provided conflicting comments about the extent of postal notification.

**5) Will there be "rule-making" for this process? If so, what is likely to be addressed and what timeline can be expected?**

- It's not expected that there will be formal rule-making for this process, but the Commission did issue orders for a stakeholder engagement process to help

---

[10] Case No. U-21547 Staff Draft Application Instructions and Procedures, page 6 of the pdf
[11] Case No. U-21547 Staff Draft Application Instructions and Procedures, page 9 of the pdf
[12] Section 223 (3)
[13] Section 223 (1)
[14] Section 223 (1)
[15] Section 223 (2)
[16] Section 223 (1)
[17] Case No. U-21547 Staff Draft Application Instructions and Procedures, page 11 of the pdf

inform staff recommendations.[18] Between March and July 2024, MPSC staff held 7 teleconferences, most of which were multiple hours in length, that included presentations and feedback from a wide range of stakeholders, along with opportunities for public comment. Recordings of these meetings, along with slides, are all available online.[19] At these meetings, staff also presented in written form three waves of "straw proposals" seeking feedback on various aspects of implementation. On June 21, staff issued draft application instructions and procedures for formal public comment.[20] Over 100 stakeholders including local governments and energy developers, submitted comments on the draft.[21]

- It's not clear yet when the MPSC will finalize the application instructions and procedures; we anticipate early fall.

## *Questions on setting up CREOs*

6) **Where is PA 233 clear and where is there gray area, particularly about what communities seeking to have a Compatible Renewable Energy Ordinance (CREO) can and can't do?**
   - This remains one of the murkiest issues of PA 233 implementation.
   - PA 233 defines a CREO as one which is "no more restrictive than the provisions outlined in Section 226 (8)" of the Act[22]. This section includes setbacks and sound standards for each technology, plus some technology-specific standards, including height limits for wind and solar, fencing requirements for solar, and flicker standards for wind. The Act is clear that CREOs may not be stricter on any of these elements. Most people we've talked to believe that ordinances that place additional *types* of setbacks (e.g. setbacks from participating property lines) or noise standards (e.g. noise limits at participating property lines) not explicitly specified in the Act would render an ordinance non-compatible.

---

[18] https://mi-psc.my.site.com/sfc/servlet.shepherd/version/download/0688y00000BubM7AAJ

[19] https://www.michigan.gov/mpsc/commission/workgroups/2023-energy-legislation/renewable-energy-and-energy-storage-facility-siting

[20] Case No. U-21547 Staff Draft Application Instructions and Procedures

[21] https://mi-psc.my.site.com/s/case/5008y000009kJfbAAE/in-the-matter-on-the-commissions-own-motion-to-open-a-docket-to-implement-the-provisions-of-public-233-of-2023

[22] Section 221 (f)

- There's pretty wide agreement, however, among those engaged in the MPSC stakeholder process that 226(8) includes only a subset of regulations which are common in existing renewable energy projects, such as landscaping and screening. The law gives MPSC pretty wide authority to add conditions of approval,[23] and staff included many of these typical zoning regulations within their recommendations.[24] The question that remains is whether local governments, through a CREO, may require the same conditions.
- Further, the standards that the MPSC will use to evaluate proposals include impacts on natural features, parks, historical and cultural sites,[25] impacts on farmland,[26] and consideration of the impact on local land use.[27] Local zoning typically addresses these through restrictions on geography (e.g. in which zoning districts or overlay zones energy facilities can be constructed). However, it's not clear if local governments, through a CREO, can apply the same standards or restrictions.
- Currently, MPSC staff's recommendation is that "any provision in PA 233 is an acceptable provision in a CREO, as long as the requirement utilized by the [local government] is not more restrictive than the requirement for the Commission."[28] On the one hand, staff's recommendation appears to provide local units with significantly more opportunity to regulate the placement and impacts of projects. On the other hand, since it's not clear how stringently the Commission will apply some of these standards or place conditions on projects, it will be impossible for local governments to determine whether they are doing so in a way that is more or less restrictive than the statute allows. Thus, local governments who include some of these non-numeric standards in their CREOs assume some amount of risk (see Question 9) if they deny a project which complies with 226(8) but not these other standards. Some of these things will sort themselves out over time as the Commission hears cases and applies its standards and conditions. But in the interim it still presents some amount of uncertainty to both developers and local units.

---

[23] Section 226 (6)
[24] Case No. U-21547 Staff Draft Application Instructions and Procedures, pages 47-49 of the pdf
[25] Section 226 (7) (c)
[26] Section 226 (7) (f)
[27] Section 226 (6)
[28] Case No. U-21547 Staff Draft Application Instructions and Procedures, page 8 of the pdf

- For the time-being, the least risky approach for those wishing to adopt a CREO is to include only those standards in Section 226(8), along with the application requirements in Section 225(1).[29] The sample CREO[30] that we have developed takes this approach. Those with more risk tolerance may consider mimicking the other language in the law, but also may consider whether they claim this as a CREO or a "workable" ordinance (see Question 17).

7) **If there is a dispute between a local government and developer about whether or not an ordinance is a CREO, how will it be resolved?**
   - The law is silent on the issue, and it is still not clear. Staff recommended that if a developer files for MPSC approval while in dispute with a local government about whether a CREO exists, an administrative law judge would make the determination.[31] However, numerous stakeholders both from industry and local government had questions or critique about this recommendation.

8) **If a local unit has compatible regulations for one type of energy system (e.g. solar), but not the other two (e.g., wind and energy storage), does the ordinance still count as a CREO?**
   - While there is some ambiguity in the law, staff has recommended that "a CREO may be an ordinance for a single technology".[32] This recommendation has received little to no negative feedback and so we assume this is a safe assumption moving forward.

9) **What are the consequences if a jurisdiction with a Compatible Renewable Energy Ordinance (CREO) denies a project?**
   - If a community with a CREO fails to timely approve or deny an application,[33] denies an application that complies with section 226 (8)[34], or amends its zoning ordinance to be more restrictive after the local government notifies the

---

[29] Section 223 (3) (a) says that CREOs "shall comply with the requirements of Section 225(1)"
[30] https://docs.google.com/document/d/1dHrztmqIdu0K1SQps8CIJfhr9fH0u1-u/edit?usp=sharing&ouid=112081481872033800349&rtpof=true&sd=true
[31] Case No. U-21547 Staff Draft Application Instructions and Procedures, page 9 of the pdf
[32] Case No. U-21547 Staff Draft Application Instructions and Procedures, page 8 of the pdf
[33] Section 223 (3) c(i)
[34] Section 223 (3) c(ii)

developer that it has a compatible ordinance,[35] the developer may submit their application to the MPSC[36]. But in that case, the developer does not need to[37]:

- Hold a new public meeting,[38] nor
- Grant each local affected unit of governments funds for the local intervenor compensation fund (which may be a combined total of up to $150,000 for affected local units).[39]

- Further, if the MPSC approves a project that the local government previously denied via the CREO process, the local government loses its ability to have a CREO in the future.[40] While the law is unclear about whether the CREO designation is lost forever, staff's recommendation is that the local government "may choose to amend its ordinance to become a CREO in the future…to bring the ordinance into conformance with the statute" and so regain CREO status.[41] This recommendation has received little to no negative feedback and so we assume this is a safe assumption moving forward.
- Furthermore, while not directly addressed in staff's instructions, even if a jurisdiction's ordinance is rendered non-CREO for one technology (e.g., wind), it could claim CREO status if presented with an application for a different technology (e.g., solar) so long as the regulations for that other technology are in conformance with the statute. See Question 8.

**10) The law states that the developer must first go through the local process if the chief elected official in <u>each</u> affected local unit of government notifies the developer that they have a CREO.[42] Why is this important?**

- For projects that cross zoning jurisdictions–as many wind and solar projects do!–in order for any of those communities to <u>guarantee</u> that the developer has to first go through local zoning, all zoning jurisdictions must declare they have CREOs. If any of the zoning jurisdictions does not have a CREO, the developer may take the whole project to the MPSC.

---

[35] Section 223 (3) c(iii)
[36] Section 223 (3) c
[37] Section 223 (3) d
[38] Section 223 (1)
[39] Section 226 (1)
[40] Section 223 (5)
[41] Case No. U-21547 Staff Draft Application Instructions and Procedures, pages 8-9 of the pdf
[42] Section 223 (3)

- In early 2024, the word <u>each</u> posed an even bigger challenge, even for projects within a single township.[43] This stems from the definition of affected local units (ALU) of government within the law. An ALU is defined as "a county, township, city, or village"[44] "in which all or part of a proposed energy facility will be located."[45] Since both townships and counties are listed as affected local units of government, a plain reading of the law would suggest that even if a proposed project will only be in a single township, the township and county must both declare that they have a CREO in place if they wish to prevent the developer from going to the MPSC. This raised further questions about whether a CREO could be anything other than a zoning ordinance. While the ambiguity in the law persists, staff's recommendation that only ALUs with zoning authority need to have a CREO has been generally accepted by the full range of stakeholders. And so it is safe to assume that ALUs without zoning authority do not need to develop a CREO. [See Question 11 for an unresolved issue about the definition of an ALU.].

## *<u>Host Community Agreements</u>*

**11) For projects that go through the MPSC process, is there a clear understanding of which unit(s) of government will receive the $2k/MW payment?**

- The short answer is no.
- The law states that projects that go through the state process "shall enter into a host community agreement with each affected local unit." The agreement requires a one-time payment of $2,000/MW "located within the affected local unit."[46] So if a 100 MW project has 75 MW in Township A and 25 MW in Township B, Township A gets $2k*75 and Township B gets $2k*25. There is no dispute here. The dispute is about whether the developer also needs to enter into a host community agreement with the county. Or, if the county is the zoning jurisdiction, whether the township is ineligible for the host community agreement and only the county will receive the money.
- The real dispute is about the definition of "affected local unit of government"(ALU) within the law. An ALU is defined as "a county, township,

[43] See the recordings from the March 7th and March 19th MPSC engagement sessions for more on this debate.
[44] Section 221 (n)
[45] Section 221 (a)
[46] Section 227 (1)

city, or village"[47] "in which all or part of a proposed energy facility will be located."[48] The plain reading of the law would suggest that both the township and the county are affected local units. And that is the basis of staff's recommendation: "Because each geographic location will have at least two ALUs, such as a township and a county, the provisions of PA 233 indicate that both of the ALUs, the township and the county, qualify for host benefit agreements in the amount of $2,000/MW each. If there is a portion of a facility in a village, that is also part of a township and a county, in that instance for that portion, each of the three ALUs would qualify for host benefit agreements in the amount of $2,000/MW each."[49]

- However, many commenters have pushed back on this interpretation and believe that the ALU should properly be interpreted as the local unit of government that has zoning jurisdiction.[50] While the definition of ALU has a financial impact on the value of host community agreements, it also has implications for which local governments are provided notice that a developer wishes to develop a project,[51] which local governments may intervene by right in the MPSC contested case process,[52] and which local governments are eligible for intervenor funds.[53]

**12) How do host community benefits work if a project is permitted through a Compatible Renewable Energy Ordinance (CREO) at the local level or in unzoned local units of government?**

- The $2k/MW host community agreement[54] that is required for projects that are approved by the MPSC is not automatically guaranteed for communities that approve projects at the local level either through a CREO or other "workable" local zoning ordinance, or in an unzoned community where there is no local government zoning approval. Local units of government that host renewables projects may be able to enter into a host community or community benefit

[47] Section 221 (n)
[48] Section 221 (a)
[49] Case No. U-21547 Staff Draft Application Instructions and Procedures, page 20 of the pdf
[50] See the recording of the March 19th MPSC engagement session as well as filings/comments on the Draft Instructions.
[51] Section 223 (2)
[52] Section 226 (3)
[53] Section 226 (1)
[54] Section 227 (1)

agreement–and, in fact, many current hosts of renewable energy projects have entered into such agreements–but the details of those agreements are important to determining their legality and enforceability. Communities who wish to enter into a host community agreement outside of the MPSC process should consult their municipal attorney.

- While not a replacement for a host community agreement, the new Renewables Ready Communities Award[55] provides $5,000/MW for communities that host large renewable energy projects, but this incentive is only available for projects approved through a local process. The award, administered by the Michigan Department of Environment, Great Lakes, and Energy, guarantees that at least half of the award (i.e., $2,500/MW) goes to the "host"--defined as a township, city, or village.[56] In situations where a county has zoning authority, the county is eligible for the other half $2,500/MW; in all other situations, the "host" receives the full $5,000/MW. The program currently has $30 Million available, but it was recently announced[57] that a $129 Million grant from the US Environmental Protection Agency will expand the program.

## *Thinking through pros and cons of the different paths*

**13) What are a local government's options in light of PA 233?**

- There are effectively four options available to local governments in light of PA 233: Two options involve projects being approved through the MPSC, and two involve siting at the local level.
- Option 1: Voluntary MPSC Certification

  The law provides an option for communities to "request the MPSC to require" that all large-scale projects seek approval from the MPSC.[58] In this option, communities can make a simple amendment to their ordinance directing developers to the MPSC, or just tell any developers – in writing –

---

[55] https://www.michigan.gov/egle/about/organization/materials-management/energy/rfps-loans/renewables-ready-communities-award

[56] https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Programs/MMD/Energy/RFP/FY24-Renewables-Ready-Communities-Award.pdf?rev=1a33776da99547fca2864606173e2f8d&hash=D230CF7E557A52CD1A949E3886A693F2

[57] https://www.michigan.gov/whitmer/news/press-releases/2024/07/22/gov-whitmer-announces-291-million-investment-from-biden-harris-administration-to-lower-costs#:~:text=%E2%80%93%20Today%2C%20Governor%20Gretchen%20Whitmer%20announced,of%20renewable%20energy%20like%20wind%2C

[58] PA 233 section 222 (2).

that they do not have a CREO and prefer the developer to work with the MPSC.

- Pros: It requires the least amount of effort by the local government in establishing zoning or evaluating projects, and allows the MPSC to apply their full range of criteria to the project. The local government will be kept informed through the local process, will receive the $2k/MW host community agreement and funds to intervene at the MPSC, but can remain largely uninvolved.
- Cons: There is less opportunity to insert local community priorities into the approval if your zoning ordinance does not articulate these preferences. It also may be controversial to willingly send projects to the state. Further, projects approved through the MPSC path are not eligible for the Renewables Ready Communities Award.[59]

- Option 2: Compatible Renewable Energy Ordinance (CREO)

  In this option, the community would amend its ordinance to be in compliance with Section 226(8) of the law. Based on our analysis (see solar and wind analysis excel sheets here), very few local governments have zoning ordinances that comply, and most include elements not listed in the law. So this will almost certainly require a zoning amendment, but the amendment would be relatively straight-forward following a sample CREO template.

  - Pros: This is the only option to ensure that a developer must seek approval from the local level, though for a large project that spans borders, it may only stay local if your neighbors also adopt CREOs or workable ordinances. Because communities using the CREO are held to strict time limits to approve or deny the application, it is generally seen as a developer's most-preferred path, and so communities with CREOs may, in fact, attract developers which can advance climate or economic goals. Projects approved at the local level are eligible for the $5k/MW Renewable Ready Communities Award.
  - Cons: There is no opportunity to add local requirements that deviate from those laid out in the law, including provisions commonly in zoning such as screening, without incurring some risk.

[59] The Michigan Department of Environment, Great Lakes, and Energy provides information on the Renewables Ready Communities Award at https://www.michigan.gov/egle/about/organization/materials-management/energy/rfps-loans/renewables-ready-communities-award

Further, there are penalties for local governments with a CREO that fail to approve the project within the time limits laid out in the law, deny a project that meets the standards set in section 226(8) of the law, or amend their zoning ordinance to impose additional restrictions once they have notified a developer that they have a CREO (see Question 9).

- Option 3: Workable Incompatible Ordinance (WIO)

  There is no definition in PA 233 of a workable ordinance, but it is generally understood as a zoning ordinance that is in some way more restrictive than a CREO, but one that a developer finds preferable to MPSC approval (see Question 15). Some communities may already have WIOs. Others may need to amend or adopt an ordinance that is workable. This option uses the knowledge that developers may want to avoid the state process (see Question 14) to include priorities that are important to the community.

  - Pros: This option allows local governments to include local preferences for development within their ordinance and maintain local control, but within bounds (otherwise, it would not be "workable"). Projects approved at the local level, even through a non-CREO ordinance, are eligible for the $5k/MW Renewable Ready Communities Award.
  - Cons: This requires the most deliberative community conversation about what your priorities are and which you are willing to sacrifice in order to keep the approval at the local level, which may be lead to tough conversations. There is no clear line about what is workable, and what might be workable to one developer may not be workable to another, so there is no guarantee that a developer will not seek approval from MPSC.

- Option 4: Incompatible ordinance

  This is the option for communities that want to limit projects or wish to articulate more priorities in their ordinance than a developer finds workable. Any proposed project (where there are willing landowners) will almost certainly go through the MPSC process. The local government will receive intervenor funds to contest the case, but the decision to approve the project will ultimately rest with the MPSC.

  - Pros: It allows the community to articulate all of its wishes, and push any controversy or trade-offs between them to the MPSC, and

it is possible that the MPSC will deny the project or incorporate more of the community priorities than the community would have been able to achieve locally. Where a community had already adopted an incompatible ordinance, this can be the lowest cost option. The community, by not claiming CREO status, will be able to receive the intervenor funds as well as the $2k/MW host community agreement.

- Cons: This approach places all of the discretion of weighing priorities in the hands of the MPSC, rather than the community. Further, given that the whole purpose behind PA 233 was to overcome incompatible ordinances, it is unlikely that MPSC will regularly deny projects, especially those that do not first try to find a workable solution.

**14) Why might a developer prefer to apply for permitting at the local level rather than opting for the MPSC path?**

- A recent nation-wide study of renewable energy developers found that developers themselves believe state-level processes are more expensive and result in community benefits. Unless the MPSC process differs significantly from these other state-level processes, it is likely that developers will continue to prefer to work with local governments–either through a CREO or another "workable" ordinance.
- To save time: the MPSC has up to a year to act once the application is complete,[60] whereas CREOs have 120 days – and up to 240 days upon mutual agreement – to act once the site plan is filed.[61] While a workable ordinance may not have the same time limit, if it can proceed more quickly than the state, it may be in the developer's interest to work it out locally.
- To save money: at the MPSC process, a developer must fund a local intervenor compensation fund ($150k),[62] plus pay the host community agreement $2k/MW (or potentially $4k or $6k/MW).[63] Furthermore, the contested case process at the MPSC is costlier than most local zoning processes.
- To enable local governments to be eligible for the Renewables Ready Communities Award: only projects approved through local processes are

[60] Section 226 (5)
[61] Section 223 (3) b
[62] Section 226 (1)
[63] Section 227 (1)

eligible for the $5k/MW RRCA Award, and this award is paid by the state, not the developer (see Question 12).

- As a result, local governments may have some negotiating room to ask for things in their ordinances, or accept additional benefits voluntarily offered by the developer, if it means that they can save the developer time/money.

**15) What's a "workable", non-CREO ordinance?**

- To be clear, the law does not refer to a "workable" ordinance; it's a concept we're using to help suggest what might be another option for local communities.
- A "workable" zoning ordinance is one that doesn't satisfy the definition of a CREO (i.e., it may have larger setback distances or lower noise levels than in PA 233), but is one that a developer finds allows them to build a viable project. Indeed, most of the existing wind and solar farms in the state have been built under "workable" local zoning ordinances that include regulations that extend to topics beyond what is listed in Section 226(8) and/or which have different setback or noise thresholds.
- "Workable" ordinances, though, hinge on "reasonableness": they provide enough land and not-too-excessive regulations (e.g., for screening or landscaping) to make a project viable. The point at which such provisions become too burdensome in the opinion of an energy developer is the practical point at which the developer will apply to the MPSC for a certificate instead of seeking zoning approval at the local level.
- Also, note, that what might be "workable" for one developer may not be "workable" for all.

**16) How can I tell if my ordinance is CREO or "workable"?**

- Based on analysis of EGLE's renewable energy zoning database, our analysis finds that most wind zoning ordinances[64] and about three quarters of the solar ordinances[65] in the state are not compliant with even the most generous definition of CREO because the setbacks, noise limits, and height limits do not comply with Section 226 (8).

[64] https://graham.umich.edu/media/files/CREO-Wind-Coding_Center-for-EmPowering-Communities-U-M_2024-04-25.xlsx
[65] https://graham.umich.edu/media/files/CREO-Solar-Coding_Center-for-EmPowering-Communities-U-M_2024-04-25.xlsx

- If limiting geography (e.g., saying you can allow wind or solar in some districts, but not in others) or adding in other stipulations (e.g., screening, groundcover) renders an ordinance a non-CREO, then practically no existing ordinances in Michigan are CREO.
- Furthermore, more than 70% of communities lack a solar ordinance and there are practically no existing energy storage ordinances in the state, so if CREO compatibility requires having all three technologies sufficiently addressed, practically speaking, all communities in the state can be assumed not to have CREOs.
- However, many ordinances in the state may be "workable". We have developed this guidance[66] for helping to assess workability, based on looking at recently built projects. If your community has been approached by a renewable energy developer at some point in the recent past, you probably have a sense of whether or not your ordinance is "workable". If your community has not yet been approached, we suggest you follow the guide, which includes rank-ordering your priorities, and amending your zoning ordinance as outlined in the guide. If a developer is interested in siting a project in your community at the local level, they are very likely to approach the local government to tell you where your ordinance may be unworkable, allowing you to amend if needed.

**17) From a local jurisdiction's perspective, what are the advantages and disadvantages of adopting a Compatible Renewable Energy Ordinance (CREO) compared to instead adopting a "workable" ordinance?**

- Because they both involve local approval, CREOs and "workable" ordinances are both eligible for the $5,000/MW Renewable Ready Communities Award.
- The advantage of a CREO is that it precludes the developer from going straight to the MPSC; a workable ordinance has no such guarantee. Further, while a CREO likely requires a zoning amendment (i.e., there are practically no local governments with CREOs right now), it is significantly more straight-forward than trying to determine what is safely "workable".
- The drawback of a CREO, however, is that it doesn't allow a local government to articulate any additional priorities, and most communities–in fact, most

[66] https://graham.umich.edu/media/files/Developing-Workable-Renewable-Energy-Ordinances.pdf

zoned communities in Michigan hosting existing wind and solar farms[67]–have priorities that extend beyond the standards in Section 226(8). This is particularly regrettable if a community passes a CREO as a way to ensure local control and the Renewables Ready Communities Award (RRCA), but the project ends up being permitted by the MPSC because a neighbor either had an (unworkable) incompatible ordinance or chose voluntary MPSC certification. A community with a "workable" ordinance may still similarly miss-out on the RRCA if neighbors opt for an incompatible ordinance or voluntary certification, but MPSC staff has recommended that if this happens, the Commission will consider the provisions within the workable ordinance for that portion of the project.[68]

- Another comparative drawback of a CREO is that if a community with a CREO takes too long in reviewing the application, changes its ordinance to add additional restrictions, or ultimately denies a project that otherwise complies with Section 226(8), it faces penalties including loss of intervenor funds (see Question 9). MPSC staff has recommended that communities with WIOs will be, in all cases, entitled to intervenor funds.[69]
- Ultimately, which is better – CREO or "workable" ordinance – hinges a bit on how its neighbors plan to act and how much and what type of risk the community is willing to assume. If neighboring zoning jurisdictions aren't also planning to develop CREOs or WIOs–or some are actively planning to develop incompatible ordinances or voluntarily seek MPSC certification– then there are relatively few benefits of a single jurisdiction developing a CREO in isolation.
- Instead, unless the community is completely satisfied with the CREO standards, it may be better to develop a bare-bones WIO that is based on a CREO but includes additional standards that don't strictly meet CREO standards but which are workable.

[67] https://graham.umich.edu/media/files/Developing-Workable-Renewable-Energy-Ordinances.pdf
[68] Case No. U-21547 Staff Draft Application Instructions and Procedures, page 13 of the pdf
[69] Case No. U-21547 Staff Draft Application Instructions and Procedures, page 9 of the pdf

**18) From a local jurisdiction's perspective, if their ordinance is silent on energy, what are the pros/cons of staying the course and not addressing these energy technologies at all?**

- The benefit of staying the course is that the local unit does not need to invest resources (both time and money) into developing planning and zoning, and can effectively push any controversy that a renewable proposal might bring to the community onto state policymakers.
- The drawback of such an approach is that, if the local unit does want to intervene before the MPSC[70], not having thought through renewable energy facilities within the context of their overall land use planning (e.g., where renewable energy compliments or conflicts with future land use plans) may put them at a disadvantage.

**19) What should a community do right now?**

- If you haven't already, start a conversation with your neighboring local governments to find out how they plan to act. If your jurisdiction is interested in adopting a CREO but neighbors are not, you may want to consider a different option since each local government in a proposed project needs to have a CREO in order to unlock the "guaranteed" benefits of the CREO option over a "workable" option.
- If you choose a path that requires amending your zoning ordinance (i.e., CREO or "workable"), then you should quickly move to make amendments. Any amendments to the master plan will need to follow the procedures of the Michigan Planning Enabling Act[71] and any amendments to the zoning ordinance will need to follow the procedures of the Michigan Zoning Enabling Act.[72] You can find a sample CREO, annotated sample zoning ordinances, and workable ordinance guidance on our website or through EGLE's Renewable Energy Academy. There are also regional trainings, resources, and presentations available or planned through the Renewable Energy Academy, local government associations including the Michigan Townships Association, and through the Michigan Association of Planning.

[70] Section 226 (1) and Section 226 (3)
[71] 2008 PA 33, MCL 125.3801 et seq.
[72] 2006 PA 110, MCL 125.3101 et seq.