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CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS*Memorandum*

To: Robin Steiler, Clerk of the Board
 From: Vice Chair Katrina Foley, Fifth District
 Date: January 22, 2025
 RE: Supplemental Item for January 28, 2025, Board of Supervisors Meeting

S32A

Please add this supplemental item to the January 28, 2025, Board of Supervisors meeting:

Summary:

I request that the Board (1) enact an urgency ordinance placing a moratorium on the permitting of large-scale Battery Energy Storage System (“BESS”) facilities in unincorporated Orange County, and (2) direct staff to study and draft a proposed ordinance regulating BESS facilities and to bring the same back to the Board for its consideration.

Background:

BESS facilities are increasingly popular on a commercial scale throughout California as a means of assisting the State in both meeting its clean power production goals and addressing the ability of the electrical grid to serve all customers in times of high energy demand. The State has enacted regulations for BESS and small-scale energy storage projects, including establishing an opt-in certification system through the California Energy Commission for certain BESS facilities.

However, most local jurisdictions, including the County, have yet to adopt and enact local regulations. BESS facilities, specifically those that rely on lithium-ion batteries, carry with them increased fire risks. BESS facilities in California have been involved in 10 fires since September 2021, with one incident igniting in the City of Santa Ana in 2024, two igniting in San Diego, and most recently, a serious fire in Monterey in January 2025. Most of these fires were not in high fire risk areas, yet they still impacted the local community and forced evacuations.

As the most recent fires in Monterey in 2025 and San Diego in 2024 demonstrate, fires involving BESS facilities carry with them specific challenges for firefighters as well as concerns about toxic fumes being released by fires. These concerns are compounded for lithium-ion BESS facilities, because lithium-ion batteries are known to occasionally spontaneously ignite through a process known as “thermal runaway,” which can occur when a battery is overcharged, damaged, or exposed to high temperatures. The fires that broke out at the 250-Megawatt (MW) Gateway Energy Storage facility in San Diego in May 2024 and the 350-Megawatt (MW) Moss Landing facility in Monterey demonstrate that such fires can continue to burn for days on end and can even reignite after fire crews believe the blaze to be under control.

In the last year, two incorporated Orange County cities enacted moratoria on BESS facilities within their jurisdictional limits to address these concerns through local regulations. Both these cities are surrounded by open space and high fire hazard severity areas.

At present, the County has no regulations specific to BESS facilities, and would require time to coordinate with the Orange County Fire Authority (OCFA) to study and draft such regulations. After the seventh driest December on record, all of Orange County is now classified as being in a severe drought by the National Oceanic and Atmospheric Association's (NOAA) National Integrated Drought Information System. Drought conditions have been exacerbated since the beginning of the year by multiple incidents of high wind conditions, which have in turn led to multiple fire ignitions, with the largest fires being the Eaton and Palisades fires in Los Angeles County, which left tens of thousands of people homeless. Since January 1, 2025, alone, there have been at least five separate fires in Orange County reported to OCFA which risked rapid spread in high wind conditions, along with numerous other, smaller fire ignitions throughout the County. Additionally, much of unincorporated Orange County has been identified by the State Department of Forestry and Fire Protection as a high or very high fire hazard severity zone.

In the last six months, the County has received two separate inquiries regarding its regulations for BESS facilities from developers interested in pursuing such facilities. Given the current fire prone conditions, the risks posed by BESS facilities, and the County's lack of specific BESS facility regulations, I ask that the Board of Supervisors approve the following recommended actions at our January 28, 2025, meeting. The proposed Urgency Ordinance is consistent with existing State regulation.

Recommended Action Items:

1. Waive reading of the title of Urgency Ordinance and Adopt, by four-fifths vote, Urgency Ordinance placing a moratorium on BESS facilities in unincorporated Orange County and find that the adoption of the Urgency Ordinance is necessary to protect the public health, safety and welfare.
2. Direct OC Public Works to coordinate with OCFA in studying and drafting regulations on BESS facilities for the Board's consideration.
3. Direct OC Public Works, in coordination with OCFA, to issue a report to the Board no later than ten (10) days prior to the expiration of the Urgency Ordinance or any extension thereof describing the measures taken or recommending measures to alleviate the hazardous conditions related to BESS facilities.

Attachment – Draft Urgency Ordinance Establishing a Moratorium on Large Scale Battery Energy Storage Systems

cc: Members of the Board of Supervisors
Michelle Aguirre, Interim CEO
Kevin Onuma, Interim Director, OC Public Works
Justin Kirk, Deputy Director, Development Services, OC Public Works

ORDINANCE NO. _____

**AN UNCODIFIED URGENCY ORDINANCE OF THE
ORANGE COUNTY BOARD OF SUPERVISORS
ESTABLISHING A MORATORIUM ON LARGE SCALE BATTERY ENERGY
STORAGE SYSTEMS**

WHEREAS, during the last few weeks, conditions of extreme peril to the safety of persons and property within Orange County have occurred and remain due to high winds and extremely dry, severe drought conditions, as demonstrated by multiple fire ignitions throughout Orange County and Los Angeles County, as well as multiple red flag warnings issued by the National Weather Service, and the Orange County Fire Authority's determination that all of Orange County has a moderate to very high fire risk, with inland and Santa Ana Mountain areas possessing the highest levels of fire risk; and

WHEREAS, large scale battery energy storage systems ("BESS") as defined by Public Resources Code section 25642 and Public Utilities Code Section 2835, are increasingly used throughout the State to supplement available electric power during times of high energy usage, and often take the form of lithium-ion battery storage; and

WHEREAS, lithium-ion batteries pose a fire risk as there are multiple documented instances in which they have spontaneously ignited, and fires involving BESS facilities are extremely difficult and hazardous to control or extinguish; and

WHEREAS, the combination of extremely dry fire-prone conditions throughout Orange County and the difficulty of extinguishing fires related to BESS pose a potentially catastrophic fire risk for unincorporated Orange County, especially in large areas identified as high or very high fire hazard severity zones by the State Department of Forestry and Fire Protection; and

WHEREAS, the County of Orange ("County") does not presently possess any specific land use or other regulations on the construction and/or operations of BESS facilities; and

WHEREAS, the County has received at least two inquiries regarding the establishment of BESS facilities within unincorporated Orange County within the last six (6) months; and

WHEREAS, the County requires time to better understand the risks posed by BESS and to coordinate with the Orange County Fire Authority (“OCFA”) on appropriate regulations that would minimize fire risk posed by BESS in fire hazard zones and throughout unincorporated Orange County; and

WHEREAS, multiple fire ignitions have occurred in Orange County since January 1, 2025, with the Pico Fire igniting in San Clemente on January 20, 2025, a small fire in the Santa Ana Riverbed on January 7, 2025, the Turtle Ridge fire in Irvine on January 16, 2025, the Vintage Fire in Lake Forest on January 13, 2025, the Bee Fire in Newport Beach on January 20, 2025, and multiple, smaller illegal fire ignitions between January 1 and 21, 2025; and

WHEREAS, to allow time for the County of Orange to consider, study, and assess the various approaches to the regulation of BESS facilities and to coordinate with the OCFA regarding regulations that would minimize fire risk posed by BESS facilities in unincorporated Orange County, it is necessary to enact a moratorium on the establishment of any BESS facility within the unincorporated areas of Orange County; and

WHEREAS, pursuant to California Government Code Section 65858, this moratorium shall be effective for forty-five (45) days and may be extended by further action by the Board of Supervisors (“Board”) for an additional ten (10) months and fifteen (15) days.

The Board of Supervisors for the County of Orange does ordain as follows:

SECTION 1. Recitals. The above recitals are true and correct and are incorporated herein as if set forth in full and are relied upon by this Board for its adoption of this Urgency Ordinance.

SECTION 2. Environmental Review. This Urgency Ordinance is not subject to the California Environmental Quality Act (“CEQA”) because the subject activity is not a project as defined by CEQA pursuant to Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment), Section 15060(c)(3) (the activity is not a project) and Section 15378(b)(5) of the State CEQA Guidelines.

SECTION 3. Moratorium. The establishment of any large-scale Battery Energy Storage System (“BESS”), as defined by Public Utilities Code section 2835 and Public Resources Code section 25642, is hereby prohibited in any zoning district within the unincorporated County of Orange pending a full and complete study and enactment of a zoning code amendment pertaining

to the appropriate locations for such use within unincorporated Orange County. Residential Battery Energy Storage associated with electric vehicle charging and/or solar energy systems, as defined by Government Code Section 65850.52(a)(2) and (a)(3), shall remain subject to established State regulations pursuant to Government Code Sections 65850.5, 65850.52, and 65850.55, and California Code of Regulations, Title 24, Subchapters 7 and 10, and the County's established Building and Zoning Code requirements, and no such regulations shall be altered by virtue of anything in this moratorium. Nothing in this Urgency Ordinance shall be interpreted to conflict with the Opt-In Certification Process for BESS established by and under the authority of the California Energy Commission, pursuant to Government Code section 25640, et seq., and any BESS facility authorized pursuant to that process shall remain so authorized.

SECTION 4. Findings. This Urgency Ordinance is enacted pursuant to Government Code Section 65858. This Board hereby finds that approval of any land use entitlement for the uses described in this Urgency Ordinance would result in a threat to the public health, safety and welfare of the community in that: (a) the County of Orange does not have specific land use regulations in place to address proposals for BESS facilities; (b) large scale BESS facilities have demonstrable fire and safety risks associated with their establishment and operation, particularly in high fire hazard areas; and (c) there is no feasible alternative to enactment of this interim Urgency Ordinance that will satisfactorily mitigate or avoid the previously identified impacts to the public health, safety and welfare. Accordingly, it is necessary to prohibit such uses until a study is completed to determine how the County of Orange is to plan for such uses.

SECTION 5. Effective Date. This interim Urgency Ordinance shall take effect immediately upon its adoption by a four-fifths (4/5) vote of this Board. This interim Urgency Ordinance shall continue in effect for forty-five (45) days from the date of its adoption and shall thereafter be of no further force and effect unless otherwise extended pursuant to Government Code Section 65858.

SECTION 6. Report. Ten (10) days prior to the expiration of this interim Urgency Ordinance or any extension thereof, OC Public Works shall collaborate both with internal County departments and with the Orange County Fire Authority to issue a written report describing the measures taken, or recommending measures, including a zoning code amendment, to alleviate the conditions which led to the adoption of this interim Urgency Ordinance.

SECTION 7. Penalties. Any person, firm, partnership, corporation or other entity violating this Urgency Ordinance shall be guilty of a misdemeanor and may be prosecuted criminally or civilly as set forth in Section 7-9-130.3 of the Orange County Codified Ordinances.

SECTION 8. Severability. If any provision of this Urgency Ordinance or the applications thereof to any person or circumstances is held invalid, the remainder of the Urgency Ordinance and the applications of such provision will remain in effect to the extent permitted by applicable law.