



County Executive Office

S33E

Memorandum

March 3, 2025

To: Clerk of the Board of Supervisors

From: Michelle Aguirre, Interim County Executive Officer

Subject: Exception to Rule 21

*M. Aguirre*

2025 MAR -5 AM 8:19  
 CLERK OF THE BOARD  
 COUNTY OF ORANGE  
 BOARD OF SUPERVISORS  
 Digitally signed by Michelle Aguirre  
 DN: cn=Michelle Aguirre, o=County of Orange, ou=CEO, email=Michelle.Aguirre@ocgov.ca.us, c=US  
 Date: 2025.03.04 09:01:46 -0800

RECEIVED

The Office of County Counsel is requesting a Supplemental Agenda Staff Report for the March 11, 2025 Board Hearing.

Agency: County Counsel

Subject: Extend Urgency Ordinance Moratorium on Large-Scale BESS Facilities

Districts: All Districts

**Reason Item is Supplemental:** This item will continue the current urgency ordinance moratorium on large-scale Battery Energy Storage System ("BESS") facilities for an additional ten (10) months and fifteen (15) days and is intended to allow staff sufficient time to develop and bring to the Board proposed regulations for large scale BESS facilities. This Agenda Staff Report and attachments were finalized after the filing deadline to the Clerk of the Board.

**Justification:** This item is to be placed on the agenda pursuant to Government Code section 65858, subdivision (a), which requires any extension of an urgency ordinance moratorium to be brought to the Board within 45 days of the original urgency ordinance's passage. The interim urgency moratorium expires on March 16, 2025. Thus, the March 11, 2025, is the last Board meeting before the expiration.

Concur: *Doug Chaffee*  
 Doug Chaffee, Chair of the Board of Supervisors

cc: Board of Supervisors  
 County Counsel



**SUPPLEMENTAL AGENDA ITEM  
 AGENDA STAFF REPORT**

**MEETING DATE:** 3/11/2024  
**LEGAL ENTITY TAKING ACTION:** Board of Supervisors  
**BOARD OF SUPERVISORS DISTRICT(S):** All Districts  
**SUBMITTING AGENCY/DEPARTMENT:** County Counsel  
**DEPARTMENT HEAD REVIEW:** Leon Page  
*Department Head Signature*  
**DEPARTMENT CONTACT PERSON(S):** Leon Page (714) 834-3303  
 Nicole Walsh (714) 834-6257

**RECEIVED**  
 2025 MAR -5 AM 8:49  
 CLERK OF THE BOARD  
 COUNTY OF ORANGE  
 BOARD OF SUPERVISORS

**SUBJECT:** Extend Urgency Ordinance Moratorium on Large-Scale BESS facilities

<p><b>CEO CONCUR</b>                  Digitally signed by Michelle Aguirre                  DN: cn=Michelle Aguirre, o=County of Orange, ou=CEO, email=Michelle.Aguirre@ocgov.ca.us, c=US                  Date: 2025.03.04 09:01:16 -0800</p> <p><i>Michelle Aguirre</i></p> <p>CEO Signature</p>	<p><b>COUNTY COUNSEL REVIEW</b>                  Approve Ordinance for Form                  Action</p> <p><i>Nicole M. Walsh</i></p> <p>County Counsel Signature</p>	<p><b>CLERK OF THE BOARD</b>                  Public Hearing</p> <p>4/5 Vote</p>
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**Budgeted:** N/A      **Current Year Cost:** N/A      **Annual Cost:** N/A  
**Staffing Impact:** No      **# of Positions:** N/A      **Sole Source:** N/A  
**Current Fiscal Year Revenue:** N/A  
**Funding Source:** N/A      **County Audit in last 3 years:** N/A  
**Levine Act Review Completed:** N/A  
**Prior Board Action:** 1/28/2025 #32A

**RECOMMENDED ACTION(S)**

1. Waive reading of the title of the ordinance.
2. Receive and approve OC Development Services Report supporting extension of the moratorium and describing measures that have been taken to alleviate conditions that led to adoption of the urgency moratorium (Attachment A).
3. Order further reading of the ordinance be waived.
4. Hold the public hearing.
5. Consider the matter.
6. Adopt Ordinance (Attachment B) by four-fifths vote.

**SUMMARY:**

Extension of the uncodified interim urgency ordinance for a temporary moratorium on the issuance of any permits for large-scale BESS facilities in unincorporated Orange County for an additional ten (10) months and fifteen (15) days per California Government Code Section 65858 will provide additional time for staff to develop and present to the Board of Supervisors measures necessary to alleviate hazardous conditions related to BESS facilities.

**BACKGROUND INFORMATION:**

On January 28, 2025, the Board of Supervisors (Board) approved an urgency ordinance placing a moratorium on the permitting of large-scale Battery Energy Storage System (“BESS”) facilities in unincorporated Orange County for 45 days, directed OC Public Works to study and draft a proposed ordinance regulating large-scale BESS facilities for consideration by the Board, and directed OC Public Works to collaborate with internal County departments and Orange County Fire Authority (OCFA) to provide a report to the Board ten (10) days prior to the expiration of the urgency ordinance describing or recommending measures to alleviate the conditions which led to the adoption of the urgency ordinance.

Currently, the County has no zoning regulations specific to large-scale BESS facilities. Since adoption of the interim urgency ordinance, OC Public Works and County Counsel have had discussions with internal County departments, OCFA, Southern California Edison, and San Diego Gas & Electric to obtain initial feedback and input on potential regulations. A memorandum is included as Attachment A to provide a report back to the Board describing recommended measures, including a zoning code amendment, and anticipated additional time requirements.

Pursuant to Government Code Section 65858, the Board may extend the time the urgency ordinance is effective by 10 months and 15 days. OC Public Works and County Counsel require additional time to better understand the risks posed by large-scale BESS facilities, the scope of potential regulations, and to coordinate with OCFA and other stakeholders regarding appropriate regulations to minimize any potential fire risk posed by large-scale BESS facilities in fire hazard zones and throughout unincorporated Orange County. The full extension of 10 months and 15 days is requested but OC Public Works and County Counsel intend to bring regulations for adoption by Fall 2025.

**Compliance with CEQA:**

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.

**FINANCIAL IMPACT:**

N/A

**STAFFING IMPACT:**

N/A

**REVIEWING AGENCIES:**

N/A

**ATTACHMENT(S):**

Attachment A – Battery Energy Storage System (BESS) Urgency Ordinance Follow-up Memorandum

Attachment B – Uncodified Ordinance BESS Facilities

Attachment C – Government Code Section 65858

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ORANGE COUNTY  
OC Public Works  
MEMORANDUM

County Administration South  
601 North Ross Street  
Santa Ana, CA 92701

P.O. Box 4048  
Santa Ana, CA 92702

(714) 667-8800

info@ocpw.ocgov.com

OCPublicWorks.com



**Date:** February 26, 2025  
**To:** Nicole Walsh, Senior County Counsel  
**From:** Justin Kirk, Deputy Director, OC Public Works/ Development Services  
**Subject:** Battery Energy Storage System (BESS) Urgency Ordinance Follow Up

DS  
JK

In response to the Board of Supervisors' adoption of Urgency Ordinance No. 25-002 placing a moratorium on large scale BESS facilities in unincorporated Orange County, OC Public Works has initiated coordination with Orange County Fire Authority (OCFA), Southern California Edison (SCE), and San Diego Gas & Electric (SDG&E) in studying and drafting regulations on BESS facilities. To alleviate potentially hazardous conditions related to BESS facilities, OC Public Works/Development Services anticipates 9-12 months to allow adequate time for staff to:

1. Consult with key energy stakeholders (SCE and SDG&E) to seek feedback on policy design;
2. Coordinate with OCFA on review process for utility-scale BESS project applications to ensure projects are consistent with OCFA guidance and address safety and fire concerns;
3. Consider the 2025 California Fire Code updates (expected to be available in July 2025) that will likely include changes related to electrical energy storage systems; and
4. Amend the County's zoning code to regulate BESS facilities with the following considerations:
  - a. Public Safety of residences and businesses
  - b. Potential hazards, such as Very High Fire Hazard Severity Zones
  - c. Safety measures for BESS installations and decommissioning protocols
  - d. Aesthetic concerns
  - e. Noise impacts
  - f. Federal and State regulations pertaining to energy storage systems and renewable energy facilities
  - g. Future demands

cc: Kevin Onuma, Director, OC Public Works  
Leon Page, County Counsel

ORDINANCE NO. 25-xxxx

AN UNCODIFIED INTERIM URGENCY ORDINANCE OF THE  
COUNTY OF ORANGE, CALIFORNIA, EXTENDING A TEMPORARY  
MORATORIUM ON THE ISSUANCE OF PERMITS FOR BATTERY ENERGY  
STORAGE SYSTEM FACILITIES

WHEREAS, on January 28, 2025, the Board of Supervisors (“Board”) directed OC Development Services staff to initiate study and drafting of regulations to address the development of Battery Energy Storage System (“BESS”) facilities in unincorporated Orange County; and

WHEREAS, concurrent with the Board’s January 28, 2025, direction, the Board enacted a 45-day interim urgency moratorium on the issuance of any permits for BESS facilities in unincorporated Orange County, to ensure that any such facilities are consistent with the regulations the Board ultimately adopts; and

WHEREAS, no party currently has a vested right to construct a BESS facility in unincorporated Orange County; and

WHEREAS, allow additional time for the County of Orange to consider, study and assess the various approaches to the regulation of BESS facilities and ways to address risks associated with such facilities, it is necessary to extend the moratorium for an additional 10 months and 15 days; and

WHEREAS, the Board has considered and adopted the report, attached as Exhibit A, supporting the extension of the interim ordinance; and

WHEREAS, without the extension of the interim moratorium unincorporated areas could be affected and such facilities may be located in areas which are unsuitable or fail to address through appropriate mitigation the specific risks posed by such locations; and

WHEREAS, the extension of the interim urgency moratorium will prevent the issuance of any permits for large-scale BESS facilities in the unincorporated area and will prevent any uses for BESS facilities from being established that would conflict with the regulations on BESS that the County adopts; and

WHEREAS, there is no other feasible or less burdensome alternative to the extension of the interim urgency moratorium; and

WHEREAS, pursuant to California Government Code Section 65858 the moratorium shall be effective for ten (10) months and fifteen (15) days, and may be extended by further Board action for an additional year.

The Board of Supervisors of 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 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 CEQA Guidelines.

SECTION 3. Moratorium Extension. The issuance of any permits for BESS facilities in unincorporated Orange County is hereby prohibited in any zoning district for ten (10) months and fifteen (15) days pending a full and complete study of how to best regulate BESS facilities in unincorporated Orange County. Residential and certain Non-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, Part 6 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 Public Resources Code section 25640, et seq., and any BESS facility authorized pursuant to that process shall remain so authorized and new facilities that qualify for the Opt-In Certification Process remain able to Opt-In.

SECTION 4. Findings. The extension of the interim urgency moratorium is enacted pursuant to Government Code Section 65858. This Board hereby adopts and approves the report attached hereto as Exhibit A, and finds that approval or issuance of any permits for BESS facilities in unincorporated Orange County would result in a threat to the public health, safety and welfare of the community in that: (a) the County does not currently possess regulations specific to BESS facilities, (b) BESS facilities have inherent risks that can only be addressed through appropriate regulation, including but not limited to, fire risk that is exacerbated in very high fire hazard severity zones, which are prevalent throughout unincorporated Orange County, 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 extend the prohibition of the issuance of such permits for an additional ten (10) months and fifteen (15) days.

SECTION 5. Effective Date. This ordinance shall take effect immediately upon its adoption by a four-fifths (4/5<sup>ths</sup>) vote of this Board. This ordinance shall continue in effect for ten (10) months and fifteen (15) 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 days prior to the expiration of this extension of the interim urgency ordinance, OC Planning/Development Services shall issue a written report describing the measures taken or recommending measures to alleviate the condition which led to the adoption of this extension of the interim urgency ordinance.

SECTION 7. Severability. If any provision of this ordinance or the applications thereof to any person or circumstances is held invalid, the remainder of the ordinance and the applications of such provision will remain in effect to the extent permitted by applicable law.