



DATE: September 10, 2025
TO: Orange County Planning Commission
FROM: OC Development Services/Planning
SUBJECT: Public Hearing –for Zoning Code Amendment CA 24-03 – Battery Energy Storage System Facilities Ordinance
PROPOSAL: Recommend for adoption by the Board of Supervisors the proposed Zoning Code Amendment CA 24-03 to include development standards for Battery Energy Storage System (BESS) facilities located within unincorporated areas of the County of Orange.

ZONING

DISTRICT/

GENERAL PLAN

DESIGNATION: N/A

LOCATION: Unincorporated Areas of the County of Orange

APPLICANT: OC Development Services/Planning

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RECOMMENDED ACTIONS

OC Development Services/Planning recommends the Planning Commission:

- a. Receive staff report and public testimony.
- b. Adopt Planning Commission Resolution No. 25-05 (Attachment 1) to:
 1. Find that the proposed project is exempt from the provisions of the California Environmental Quality Act (CEQA), Common Sense Exemption, pursuant to CEQA Guidelines Section 15061 (b) (3).
 2. Recommend to the Board of Supervisors adoption of the proposed Zoning Code Amendment CA 24-03 (Attachment 2) to add Section 7-9-122 “County of Orange Battery Energy Storage System Facilities” and amend Section 7-9-134.6 to include Battery Energy Storage System Facilities definition.

BACKGROUND

On October 8, 2024, the Board of Supervisors (Board) approved Supplemental Item #S14D, which directed OC Public Works/Planning staff (staff) to research and draft an ordinance setting forth

development guidelines and standards for Battery Energy Storage Systems (BESS), also known as Lithium-ion Battery Storage projects.

On December 11, 2024, Planning Commission authorized initiation of General Plan Amendment GPA 24-03 and Zoning Code Amendment CA 24-03 to address BESS.

On January 28, 2025, the Board approved Supplemental Item #S32A, which adopted an interim Urgency Ordinance placing a 45-day moratorium on establishment of large-scale BESS facilities in all unincorporated areas of the County of Orange. The Board also directed OC Public Works staff to coordinate with the Orange County Fire Authority (OCFA) to provide a report (describing or recommending measures to alleviate the conditions which led to the adoption of the urgency ordinance) back to the Board of Supervisors 10 days prior to the expiration of the interim Urgency Ordinance.

On March 11, 2025, the Board approved Supplemental Item #S33E (inclusive of the report required by the approval of Supplemental Item #S32A), which extended the interim Urgency Ordinance and moratorium by 10 months and 15 days to allow additional time for staff to consider, study, and assess the various approaches to the regulation of BESS facilities. The extension of the interim Urgency Ordinance prevents the issuance of any permits, except those specifically exempted including residential and other smaller BESS, for BESS facilities in the unincorporated areas of the County of Orange. The interim Urgency Ordinance, which expires on January 26, 2026, does not apply to the residential and non-residential energy storage requirements specified by the California Code of Regulations, Title 24, Part 6

On March 26, 2025, staff held a study session and presented information on policy considerations to gain feedback from the Planning Commission on development of the regulatory framework.

On May 28, 2025, staff held a second study session and presented information in response to Planning Commission feedback from the first study session and presented and gained feedback on the proposed draft zoning code amendment text.

DISCUSSION/ANALYSIS

Legislative Actions Regarding BESS Facilities

The State Legislature has adopted the following statutes on BESS facilities:

- SB 100 (2018)
 - Requires all electricity in California to come from renewable and zero-carbon resources by 2045.
- AB 205 (2022)
 - Broadened California Energy Commission (CEC) authority to permit certain clean and renewable energy facilities through an Opt-In Certification Program (Attachment 4 – CEC Opt-In Certification Program Fact Sheet);
 - BESS facilities capable of storing 200 megawatt-hours (MWh) or more are eligible to participate in the Opt-In Certification Program;
 - The permit issued by the CEC through the Opt-In Certification Program is in lieu of any local jurisdiction permits.

- SB 38 (2024)
 - Requires all independently operated BESS facilities to provide an emergency response and emergency action plan to the permitting jurisdiction and for the operator to coordinate with the local emergency response agency in developing this plan.

The State Legislature is currently considering two new bills that would enable more local authority over BESS facilities and require updates to the California Building Standards Code to include the latest National Fire Protection Association (NFPA) 855 installation standards for BESS facilities:

- AB 303 (introduced to State Assembly on January 23, 2025)
 - Removes authority from CEC to permit BESS facilities capable of storing 200 MWh or more; local jurisdictions to permit all BESS facilities.
 - Requires BESS facilities capable of storing 200 MWh or more to be located at least 3,200 feet away from sensitive receptors (e.g., residences, schools, hospitals, businesses open to the public) and not located within environmentally sensitive sites (e.g., very high fire hazard severity zones, coastal zones, flood hazard areas, earthquake fault).
- SB 283 (introduced to the State Senate on February 5, 2025)
 - Requires latest NFPA 855 installation standards be incorporated into the California Building Standards Code and requires applicants to certify compliance with NFPA 855 installation standards for stationary energy storage systems and specific COA related to compliance with NFPA 855.
 - Requires the building commission and the Office of the State Fire Marshal to adopt provisions that are at least as protective as the most recently published edition of the NFPA 855, Standard for the Installation of Stationary Energy Storage Systems, in the next update of the California Building Standards Code adopted after July 1, 2026.

Codes and Regulations

At present, the County of Orange has no regulations specific to BESS facilities. To be consistent with existing building public safety requirements and to ensure the County’s ability to adapt to updates to existing codes with no gaps in compliance, the proposed BESS ordinance requires all BESS facilities to meet all applicable standards of the adopted Building and Safety Codes and the adopted Fire Code in effect on the date an application is submitted. This requirement ensures new requirements like those proposed through SB 283 will be enforceable by the County through compliance with the California Building Standards Code.

Outreach

Staff coordinated with OCFA, key energy stakeholders – Southern California Edison (SCE) and San Diego Gas & Electric (SDG&E), BESS technology manufacturers and developers, and labor unions and trades groups to gain input throughout the process. Below is a summary of feedback and staff responses:

No.	Feedback	Response
1	Regulatory consistency with other jurisdictions will provide for more predictable permitting process throughout the state	Staff has noted this feedback. The County’s proposed BESS facilities requirements are similar to the State’s

		preliminary draft BESS Model Ordinance and Guidance.
2	Developers of BESS facilities will more likely cite a facility where there is easy interconnection to the energy grid (e.g., existing substation) to minimize the need to build additional infrastructure.	Staff has noted this feedback.
3	Consider limiting or prohibiting BESS facilities in areas susceptible to wildfires or designated as very high fire hazard severity.	Included in the proposed BESS Facilities Ordinance: <ul style="list-style-type: none"> BESS facilities are prohibited on properties designated as very high fire hazard severity zone.
4	Consider prohibiting BESS facilities designed to be wholly enclosed in a building and encourage facilities to be mostly outdoors.	Included in the proposed BESS Facilities Ordinance: <ul style="list-style-type: none"> Only BESS equipment or appurtenances are required to be in enclosures, which is consistent with current fire safety best practice of self-contained unit enclosures.
5	Consider requiring installations to be performed by licensed and skilled workers for safety purposes.	<p>Although the proposed BESS Facilities Ordinance does not include a requirement mandating installations to be performed by licensed and skilled workers, proper installation of equipment required by existing building and safety code and fire code as well as the required emergency response and emergency action plan through the proposed BESS Facilities Ordinance are in place to safeguard the public.</p> <p>Additionally, the proposed BESS Facilities Ordinance includes consistency requirement with Public Resources Code section 25545.10, where no use permit for a battery energy storage system facility shall be granted unless the applicant has entered into a legally binding and enforceable agreement with, or that benefits, a coalition of one or more community-based organizations, such as workforce development and training organizations, labor unions, social justice advocates, local governmental entities, California Native American tribes, or other organizations that represent community interests, where there is mutual benefit to the parties to the agreement – i.e., “Community</p>

		Benefit Agreement”. The topics and specific terms of the community benefits agreements may vary.
6	Consider requiring a separation distance of BESS facilities from residences, community facilities, and property lines consistent with the latest adopted California Fire Code requirements.	<p>The proposed BESS Facilities Ordinance includes a 100 feet separation distance, which is aligned with the separation distance required for BESS facilities in the adjacent County of San Diego and is more restrictive than current fire code requirements. It should be noted that land use requirements set forth by the County’s BESS Facilities Ordinance can be more restrictive than Fire Code, but not less restrictive.</p> <p>The separation distance development standard set forth in the proposed BESS Facilities Ordinance may be modified on a project-by-project basis through a request for deviation from development standards to the Planning Commission. There is language in the proposed zoning code amendment text that allows for a request for deviation from development standards set forth in the BESS ordinance to be reviewed and approved by the Planning Commission through a Use Permit process.</p>
7	Consider requiring a Hazard Mitigation Analysis (HMA) and other Fire Code strategies as well as conditions of approvals to account for changes to the HMA during building permit process.	<p>Included in the proposed BESS Facilities Ordinance:</p> <ul style="list-style-type: none"> • A HMA is required to be concurrently reviewed and approved with any Use Permit application for proposed BESS facilities. • A standard condition of approval to account for changes to the HMA during building permit process.

OCFA will remain an integral reviewing agency for all future proposed BESS facility project applications to the County of Orange as required by the BESS Facilities Ordinance.

To date, the comments received from the public have been related to how this proposed County of Orange BESS Facilities Ordinance will affect a proposed BESS facility in the City of San Juan Capistrano. The proposed County of Orange BESS Facilities Ordinance is applicable only to the unincorporated areas of the County of Orange. Additional comments received included BESS related information and material shared by the commentator that were provided to the Planning Commission during the first study session.

Planning Commission Feedback

At the second study session, the Planning Commission provided the following feedback on the draft proposed zoning code amendment text:

PC Feedback #1: Consider including environmental clean-up in the decommissioning requirements.

Considerations:

1. There is language in the proposed zoning code amendment text requiring information on site restoration to be submitted as part of the required decommissioning plan.
2. The preliminary BESS Model Ordinance and Guide from the state includes clarification on the required extent of the restoration efforts to be, "...site restored to a condition reasonably similar to its original state...".

Staff Response:

- County Proposed BESS Regulation includes similar language to the state preliminary guidance on the required extent of restoration efforts to the proposed BESS Facilities Ordinance as it relates to the requirements for the decommissioning plan. It is anticipated that environmental clean-up tasks, as appropriate, should be identified through the restoration plan.

PC Feedback #2: Assess the current flexibility included in the draft proposed ordinance that allows the ability for the Planning Commission to review various BESS facility projects to determine its appropriateness as it relates to potential legal challenges.

Considerations:

1. There is language in the proposed zoning code amendment text that allows for a request for deviation from development standards set forth in the BESS ordinance to be reviewed and approved by the Planning Commission through a Use Permit process.
2. Zoning Code Section 7-9-125.6 – Findings Required: specifies that if the land use regulations of a planned community or specific plan allow a discretionary permit, other than a Variance Permit, to modify the site development standards to be less restrictive than otherwise stated in the enabling ordinance, the following additional finding shall be made: "The alternative development standard(s) will result in an equivalent or better project in terms of adverse impacts and public benefits to the immediate and surrounding community."

Staff Response:

- To be consistent with current zoning code requirements for modified development standards, the same finding required under Section 7-9-125.6 of the Zoning Code has been included in the BESS ordinance.

An updated Development Standards Comparison Table is included as Attachment 3. The table reflects revised information relating to the inclusion of Electrical Energy Storage Systems (ESS) in place of the previous Stationary Storage Battery Systems to the County of Los Angeles latest published version of the Fire Code and the addition of the State's preliminary draft of the BESS Model Ordinance and Guide.

It should be noted that although the Planning Commission authorized initiation of General Plan Amendment GPA 24-03, it was determined that no amendments to the General Plan are required. The addition of BESS Facilities regulations is consistent with the objectives, policies, and general land uses and programs specified in the General Plan.

CEQA COMPLIANCE

The proposed Zoning Code Amendment CA 24-03 is exempt (Common Sense Exemption) from the provisions of CEQA pursuant to CEQA Guidelines Section 15061 (b) (3) since there is no possibility that the addition of regulations for BESS Facilities to the Zoning Code, may have a significant effect on the environment. Proposed future BESS facilities will be reviewed under CEQA at the time of application to determine appropriate environmental review.

Submitted by:

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ATTACHMENTS

1. Planning Commission Resolution No. 25-05
2. Proposed Zoning Code Amendment Text
3. Development Standards Comparison Table

APPEAL PROCEDURES

The Approving Authority for this project is the Board of Supervisors, thus there is no appeal process, nor a Board of Appeals relating to the decision of the Planning Commission on this proposal. The Planning Commission is serving as an advisory body and will be making a recommendation to the Board of Supervisors on the project and the associated CEQA determination. Please submit your comments to OC Development Services/Planning prior to the Planning Commission Public Hearing.