

ORDINANCE NO. 2024-12R

AN INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO PROHIBITING NEW COMMERCIAL BATTERY ENERGY STORAGE SYSTEMS WITHIN THE CITY OF ESCONDIDO, ADOPTED AS AN URGENCY MEASURE; AND FINDING THE ACTION TO BE EXEMPT FROM CEQA

WHEREAS, the City of Escondido, California, ("City") is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, in general, a Battery Energy Storage Systems ("BESS") facility collects energy from the grid, stores it, and then discharges that energy later to provide electricity or other grid services when needed, typically at times of high demand; and

WHEREAS, Escondido Energy Center, LLC ("Applicant") is proposing to construct a BESS facility on land currently owned by Escondido Energy Center, LLC located at 1968 Don Lee Place (Assessor's Parcel No.: 228-381-74-00); and

WHEREAS, on February 7, 2024, Applicant filed a land use development application (Planning Case No. PL24-0037), constituting a request for Major Plot Plan to establish a 50-megawatt (MW) BESS facility comprised of 31 lithium-ion battery storage enclosures. The proposed project is located within the General Industrial (M-2) zoning designation. Article 26 of the Escondido Zoning Ordinance (Chapter 33 of the Escondido Municipal Code) permits for a wide-range of activities, including those considered "heavy" or "intensive" outside storage needs, heavier equipment, and operational characteristics that require the least restrictive design standards. The General Industrial zoning designation specifically allows for power plants, oil refineries and bulk stations, transmission facilities, and uses involving hazardous chemicals and waste, all of which are similar in intensity of a BESS; and

WHEREAS, a BESS within the General Industrial zone would be permitted via the Major Plot Plan review process as outlined and pursuant to Article 61 (Administration and Enforcement), Division 8 (Plot Plans) of Chapter 33 (Zoning) of the Escondido Municipal Code; and

WHEREAS, the City's current Zoning Regulations do not contain criteria specifically for BESS facilities; and

WHEREAS, in 2022, the Governor signed into law Assembly Bill 205 ("AB 205"), which expands the California Energy Commission's ("CEC") powerplant siting authority- previously limited to thermal powerplants-to certain renewable energy facilities, including energy storage systems (as defined in Pub. Util. Code section 2835) that are capable of storing 200 Megawatt-hours or more of electrical energy; and

WHEREAS, pursuant to AB 205 (as codified at Pub. Res. Code Division 15, Chapter 6.2), an applicant proposing to build a qualifying energy facility may file an "opt- in application for certification" at the CEC and the CEC's permitting authority over the proposed project is "in lieu of any permit, certificate, or similar document required by a state, local, or regional agency, or federal agency, to the extent permitted by federal law, for those facilities"; and

WHEREAS, in reviewing so-called opt-in projects, the CEC functions as the Lead Agency for purposes of California Environmental Quality Act ("CEQA") review. In certifying an opt-in project, the CEC must make certain findings; and

WHEREAS, whether or not an Applicant's proposed project requires local entitlement approvals, there remain significant public safety-related concerns that must be analyzed prior to any BESS project moving forward within Escondido, whether at the 1968 Don Lee Place site or elsewhere in the community; and

WHEREAS, there have been several recent fires at BESS facilities in and around the City as well as throughout California and nationwide. BESS facilities that use lithium-ion batteries create particularly unique fire and explosion hazards. Lithium-ion batteries are considered inherently safe and stable but certain conditions elevate the risk of fire such as impacts, puncture, or mechanical damage, overcharging, overheating, and short circuits. The site for the pending application is within 700 feet of established residential uses located within the County; and

WHEREAS, on August 28, 2024, the City Council adopted Resolution No. 2024-113, which is incorporated herein as though set forth in full, outlining the Council's concerns with the proliferation of BESS projects in and around the City of Escondido, including negative economic impacts inconsistent with the City's adopted 2023 to 2028 Comprehensive Economic Development Strategy and potential public health and safety risks associated with the ignition of fires, including "thermal runaways," from these facilities; and

WHEREAS, on September 5, 2024, at approximately 12:09 p.m., the Escondido Fire Department responded to a fire at a 30 MW San Diego Gas and Electric ("SDG&E") BESS facility located at 571 Enterprise Street within the City of Escondido ("incident"). The incident entailed an active fire of a Lithium-Ion battery bank used for the purposes of energy storage. Due to specific hazards resulting from the burning of Lithium-Ion batteries, the City deployed a defensive strategy focused on protecting adjacent structures containing additional batteries and implemented evacuations of the surrounding area. Mandatory evacuations resulting from the incident included an area approximately one square mile for approximately 48-hours. Certain Escondido Unified School District schools and facilities shut down as a result of the fire as well. Responders from the Escondido Fire Department and Police Departments, as well as the San Diego County Hazardous Materials Division, Health Departments, and SDG&E monitored the site, including water and air sampling for

public health and safety; and

WHEREAS, on October 7, 2023, the Governor of California signed into law Senate Bill 38 ("SB 38"), which amends California Public Utilities Code Section 761.3 to address safety concerns with BESS projects. SB 38 requires every BESS facility in California to establish an emergency response and emergency action plan for the facility to protect surrounding residents, neighboring properties, emergency responders, and the environment. The BESS facility owner or operator must coordinate with local emergency management agencies, unified program agencies, and local first responders to develop the plan, and submit the plan to the county and the city where the facility is located; and

WHEREAS, given the fairly new technology, lack of long-term study of the performance and risk associated with these facilities, as well as the ever-increasing megawatt capacity of these projects, the City of Escondido has not had an adequate opportunity to undertake a comprehensive study of the developing technologies and designs such that it can publish appropriate development guidelines for these projects to ensure the public's welfare and safety; and

WHEREAS, California Government Code Section 65858 provides that, without following the procedures otherwise required prior to the adoption of a zoning ordinance, an urgency measure in the form of an interim ordinance may be adopted by a four-fifths vote of the City Council to protect the public from a current and immediate threat to the public health, safety, or welfare resulting from a contemplated zoning proposal. Government Code Section 65868 further provides that such an urgency measure shall be effective for only 45 days following its adoption, but may be extended beyond the initial 45-day period, following compliance with that Section, for an additional 10 months and 15 days and subsequently for an additional 12 months; and

WHEREAS, the potential for development of new commercial BESS facilities within the City of

Escondido without adequate land use policies and standards in place to implement SB 38 and to prevent potentially catastrophic interference with nearby communities presents a current and immediate threat to the public's safety and welfare, and the approval of use permits, building permits, or other applicable entitlements for such uses would result in that threat to public safety and welfare; and

WHEREAS, while this interim ordinance is in effect, the City intends to study and consider land use development policies and standards related to BESS facilities that should be added to the City's General Plan and Zoning Regulations and minimum workforce standards and develop an emergency response plan; and

WHEREAS, the City Council has the authority under Government Code Sections 36934 and 36937(b) to adopt an ordinance that takes effect immediately if it is an ordinance for the immediate preservation of the public peace, health or safety, contains a declaration of the facts constituting the urgency, and is passed by a four-fifths vote of the City Council; and

WHEREAS, the City finds it is necessary for the City Council to adopt this Interim Ordinance as an Urgency Ordinance, as set forth in the above recitals, which are incorporated herein by reference, and pursuant to the powers under Government Code Sections 36934 and 36937(b), for the immediate preservation of the public health and safety.

NOW, THEREFORE, the City Council of the City of Escondido, California, DOES HEREBY ORDAIN as follows:

SECTION 1. The recitals above are each incorporated by reference and adopted as findings by the City Council.

SECTION 2. This Interim Ordinance is not subject to CEQA (Public Resources Code §21000, et seq.) pursuant to CEQA Guidelines (Cal. Code Regs., tit. 14, §15000 et seq.) Section 15060(c)(2) as the

activity will not result in a direct or reasonably foreseeable indirect physical change in the environment. Here, the Interim Ordinance will prohibit certain projects from proceeding for a period of time during which the City will study the potential development. As a result, this Interim Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment. Alternatively, this Interim Ordinance is exempt from CEQA pursuant to Public Resources Code Section 21080(b)(4) and CEQA Guidelines Section 15269(c) because it prevents a clear and imminent danger that requires immediate action to prevent or mitigate the loss of, or damage to, life, health, property, and essential public services. Here, the Interim Ordinance will prohibit certain projects from proceeding for a period of time during which the City will study the potential development. This activity is meant to prevent or mitigate the loss of, or damage to, life, health, property, and essential public services by studying the hazards associated with BESS facilities, such as unique fire and explosion hazards, for potential development of zoning regulations for BESS facilities.

SECTION 3. From and after the date of enactment of the Interim Ordinance, no use permit, variance, building permit, business license, or any other entitlement for use shall be approved or issued for the establishment, construction, or operation of a commercial BESS facility for any location or property within the City of Escondido, unless a use permit was approved prior to October 9, 2024, authorizing the establishment, construction, and operation of the commercial BESS facility, in which case the commercial BESS facility may continue in operation as approved but may not be replaced or modified in any manner that would require revision or amendment to the use permit under the City's Zoning Regulations. As used in this Interim Ordinance, the term "commercial" means the use of a BESS facility to provide electricity to third parties, for consideration.

SECTION 4. This Interim Ordinance is urgently needed for the immediate preservation of the public health, safety, and welfare based on the findings herein. It shall take effect immediately upon

adoption and shall be of no further force and effect 45 days following the date of its adoption, unless earlier repealed by the City Council or extended in accordance with the provisions set forth in California Government Code Section 65858.

SECTION 5. The penalties for land use violations that are prescribed in Sections 33-1310 through 33-1313 of the Municipal Code shall apply to violations of the provisions of this Interim Ordinance.

SECTION 6. If any provision of this Interim Ordinance or its application to any person or circumstance is held to be invalid, such invalidity has no effect on the other provisions or applications of the Interim Ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this ordinance are severable. The City Council declares that it would have adopted this resolution irrespective of the invalidity of any portion thereof.

SECTION 7. The City Council hereby directs staff to prepare, execute, and file with the County of San Diego Clerk a Notice of Exemption within five (5) working days of the adoption of this Interim Ordinance.

SECTION 8. This Interim Ordinance is intended to supplement, not to duplicate or contradict, applicable state and federal law and shall be interpreted in light of that intent.

SECTION 9. Unless extended by City Council, this Interim Ordinance shall remain in effect until close of business on November 23, 2024.

SECTION 10. SEPARABILITY. If any section, subsection sentence, clause, phrase or portion of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 11. Pursuant to Government Code Sections 36934 and 36937(b), this Ordinance shall be effective immediately upon its adoption.

SECTION 12. The City Clerk is hereby directed to certify to the immediate passage of this Interim Ordinance and to cause the same or a summary to be published one time within 15 days of its passage in a newspaper of general circulation for the City of Escondido.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Escondido at a regular meeting thereof this 9th day of October, 2024 by the following vote to wit:

AYES : Councilmembers: C. GARCIA, J. GARCIA, MARTINEZ, MORASCO, WHITE

NOES : Councilmembers: NONE

ABSENT : Councilmembers: NONE

APPROVED:

DocuSigned by:
Dane White
19FEE5DB8C3B409...
DANE WHITE, Mayor of the
City of Escondido, California

ATTEST:

DocuSigned by:
Zack Beck
A58535D0BDC1420...
ZACK BECK, City Clerk of the
City of Escondido, California

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO : ss.
CITY OF ESCONDIDO)

I, Zack Beck, City Clerk of the City of Escondido, hereby certify that the foregoing ORDINANCE NO. 2024-12R passed at a regular meeting of the City Council of the City of Escondido held on the 9th day of October, 2024.

ZACK BECK, City Clerk of the
City of Escondido, California

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