

ORDINANCE NO. 2024-14R

AN INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO EXTENDING URGENCY ORDINANCE NO. 2024-12R 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 ("Project"). 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 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 with 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; and

WHEREAS, 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, at its October 9, 2024, City Council meeting, staff's findings demonstrated that the

potential for development of new commercial BESS facilities within the City 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 threaten public safety and welfare; and

WHEREAS, at its October 9, 2024, meeting, the City Council voted to approve an Interim Ordinance prohibiting new commercial battery energy storage systems within the City, unless a use permit was approved prior to October 9, 2024, based upon a need for the immediate preservation of the public health, safety, and welfare as set forth herein, for an initial period of forty-five days while City staff researched and selected the best recommended course of action to address the safety-related concerns regarding BESS facilities ("Urgency Ordinance No. 2024-12R"); and

WHEREAS, the temporary prohibition on BESS facilities is scheduled to expire on November 23, 2024; and

WHEREAS, City staff has issued a written report to the City Council on the progress of its study along with measures taken to alleviate the condition that led to the adoption of Urgency Ordinance No. 2024-12R; and

WHEREAS, City staff is still in the process of conducting research to understand the impacts of BESS facilities and uses on community welfare and explore potential amendments to the City's Municipal Code and General Plan in relation to BESS facilities, including but not limited to review, evaluation, and comment on the San Diego County BESS Best Practices – Policy Recommendations for Battery Energy Storage Systems Projects Report which is being developed by the County; and

WHEREAS, City staff remains concerned that the absence of adequate land use policies and

standards to address BESS facilities, including those necessary to implement SB 38 and prevent potentially catastrophic impacts to nearby residents and environmental resources, poses a current and immediate threat to the public's safety and welfare; and

WHEREAS, in light of the significant safety risks associated with BESS facilities, City staff seeks additional time to further investigate these issues, formulate recommendations for City Council consideration, and explore adjustments to the City's General Plan and Zoning Regulations to mitigate the safety risks associated with BESS facilities.

NOW, THEREFORE, the City Council of the City of Escondido does 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 the CEQA (Public Resources Code §21000, et seq.) pursuant to CEQA Guidelines (Cal. Code Regs., tit. 14, §15000 et seq.) Section 15060(c)(2) [activity will not result in a direct or reasonably foreseeable indirect physical change in the environment]. Here, this Interim Ordinance is merely extending the current prohibition on 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. Further, the 10-Day Report, attached to this Ordinance as Exhibit "A", merely describes actions previously taken to alleviate the conditions which led to the adoption of Urgency Ordinance No. 2024-12R.

Alternatively, this Interim Ordinance is exempt from CEQA under CEQA Guidelines Sections 15061(b)(3) [it can be seen with certainty that there is no possibility the activity in question may have a significant effect on the environment], and, in the alternative, 15307 [Class 7 categorical exemption for

regulatory activity to assure the protection of natural resources], and, in the alternative, 15308 [Class 8 categorical exemption for regulatory activity to assure the protection of the environment]. Here, this Interim Ordinance will extend the current prohibition on certain projects from being able to proceed for a period of time during which the City will study the potential development. This activity is meant to assure the protection of the environment and natural resources by studying the hazards associated with BESS facilities, such as unique fire and explosion hazards, for potential development of zoning regulations for BESS facilities. Currently, there are no commercial BESS facilities in the city. This Project merely preserves the status quo. Further, the 10-Day Report merely describes actions previously taken to alleviate the conditions which led to the adoption of Urgency Ordinance No. 2024-12R.

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, this Interim Ordinance will extend the current prohibition on certain projects from being able to proceed 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. Further, the 10-Day Report merely describes actions previously taken to alleviate the conditions which led to the adoption of Urgency Ordinance No. 2024-12R.

SECTION 3. This Interim Ordinance is urgently needed for the immediate preservation of the public health, safety, and welfare based on the findings of this Interim Ordinance and corresponding action report. This Interim Ordinance shall take effect immediately upon adoption.

SECTION 4. Urgency Ordinance No. 2024-12R is hereby extended for ten months and fifteen days,

unless earlier repealed by the City Council or extended in accordance with the provisions set forth in California Government Code Section 65858.

SECTION 5. 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 ordinance, the term "commercial" means the use of a BESS facility to provide electricity to third parties, for consideration.

SECTION 6. The penalties for land use violations that are prescribed in Sections 33-1310 through 33-1313 of the Escondido Municipal Code shall apply to violations of the provisions of this Interim Ordinance.

SECTION 7. If any provision of this 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 ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this resolution are severable. The City Council declares that it would have adopted this resolution irrespective of the invalidity of any portion thereof.

SECTION 8. The City Council hereby directs staff to prepare, execute, and file with the County of San Diego Clerk a notice of exemption within five working days of the adoption of this Ordinance.

SECTION 9. This extension 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 10. Unless further extended by City Council, this extension Ordinance shall remain in effect until close of business on October 5, 2025.

SECTION 11. 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 12. Pursuant to Government Code Sections 36934 and 36937(b), this Ordinance shall be effective immediately upon its adoption.

SECTION 13. The City Clerk is hereby directed to certify to the immediate passage of this 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 20th day of November, 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
19FF55DB8C3B409
DANE WHITE, Mayor of the
City of Escondido, California

ATTEST:

DocuSigned by:
Zack Beck
A58535D0BDC1430...
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. 2024-14R passed at a regular meeting of the City Council of the City of Escondido held on the 20th day of November, 2024.

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

ORDINANCE NO. 2024-14R

**10-DAY REPORT REGARDING MEASURES TAKEN TO ALLEVIATE
CONDITIONS WHICH LED TO ADOPTION OF URGENCY ORDINANCE NO.
2024-12R ESTABLISHING A TEMPORARY PROHIBITION ON NEW
COMMERCIAL BATTERY ENERGY STORAGE SYSTEMS WITHIN THE CITY
OF ESCONDIDO**

I. Background

At its October 9, 2024, meeting, the City Council of the City of Escondido ("City") adopted an urgency interim ordinance establishing a temporary prohibition on new commercial battery energy storage systems ("BESS") within the City's boundaries ("Urgency Ordinance No. 2024-12R"). More specifically, Urgency Ordinance No. 2024-12R prohibits any use permit, variance, building permit, business license, or any other entitlement for use from being approved or issued for the establishment, construction, or operation of a commercial BESS facility for any location or property within the City, 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 could continue in operation as approved but cannot be replaced or modified in a manner that would require revision or amendment to the use permit under the City's Zoning Regulations.

An interim ordinance takes immediate effect upon adoption and expires forty-five days after adoption, unless extended at a later date after notice and a public hearing for up to an additional ten months and fifteen days, and subsequently for an additional twelve months. (Government Code Section 65868(a).)

Urgency Ordinance No. 2024-12 took effect on October 9, 2024, and will expire on November 23, 2024. Government Code Section 65858(d) requires that at least ten days prior to the expiration of an interim ordinance or any extension, the City Council must issue a written report describing the measures taken to alleviate the condition(s) which led to the adoption of the ordinance.

II. Measures Taken Since the Adoption of the Interim Ordinance

As City staff's findings demonstrate, Urgency Ordinance No. 2024-12R was enacted in order to preserve public health, safety, and general welfare of City residents, firefighters, and emergency responders during emergency operations, based on, among other things, the hazards of fire, explosion, or dangerous conditions in new and existing BESS facilities and negative economic impacts inconsistent with the City's adopted 2023 to 2028 Comprehensive Economic Development Strategy.

To alleviate the conditions that led to the adoption of Urgency Ordinance No. 2024-12R, the City has taken the following steps since adoption:

- 1) City staff have taken preliminary steps to study and consider the hazards associated with commercial BESS facilities, land use development policies, and standards relating to commercial BESS facilities to evaluate the potential development of such facilities within the City.

- 2) In collaboration with the City Attorney's office, City staff have explored amendments to the City's General Plan and Zoning Regulations aimed at enhancing public safety and mitigating the potentially catastrophic impacts of new commercial BESS facilities in the City and nearby communities in order to accomplish the goals of Urgency Ordinance No. 2024-12R. This includes research into what other cities in California are doing in order to enhance safety standards and environmental safeguards regarding commercial BESS facilities and identify effective legislative frameworks that could be adapted to local needs.
 - City staff have found at least one city within the state has adopted an "Energy Storage Facility" ordinance (City of Beaumont, Ordinance No. 1142), prohibiting energy storage facilities in all zones except their industrial zone; adopting definitions for jargon associated with BESS facilities; and adopting use standards for such facilities; and
 - City staff continue to review contemporary literature on BESS facilities as they relate to zoning ordinances, including but not limited to the U.S. Department of Energy's technical report *Energy Storage in Local Zoning Ordinances* dated October 2023. (https://www.pnnl.gov/main/publications/external/technical_reports/PNNL-34462.pdf);
- 3) City staff have engaged with interested parties likely to be affected by a commercial BESS facility prohibition to collect their concerns and unique insights that will guide the development of specific regulations and mitigation strategies addressing both community safety and the impact of commercial BESS facilities within the City of Escondido.
- 4) Recognizing the distinct safety risks associated with commercial BESS facilities, including but not limited to fire and environmental risks, City staff have taken preliminary steps toward an in-depth review of existing emergency response procedures to enhance emergency preparedness for potential incidents at these sites. Such steps include review, evaluation, and comment on the San Diego County BESS Best Practices – Policy Recommendations for Battery Energy Storage Systems Projects which is currently being developed by the County. City staff have also taken preliminary steps toward identifying environmental sensitive watercourses that could be impacted by BESS facility proximity.

III. Conclusion

The City has not concluded its research and thus has not yet taken any action at this time regarding the form of any permanent regulations pertaining to the establishment or use of commercial BESS facilities. As a result, an extension of urgency Ordinance No. 2024-12R is recommended to allow the City the time to effectively study and consider land use development policies and standards related to commercial BESS facilities that should be added to the City's General Plan and Zoning Regulations.