



County of Monterey

Item No.

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

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Report

Receive a preliminary response to Referral Number 2025.15 (Church) regarding adoption of an urgency ordinance placing a moratorium on new Battery Energy Storage Systems (BESS) in the unincorporated areas of Monterey County while new policies and regulations for BESS are developed.

RECOMMENDATION:

It is recommended that the Board of Supervisors receive a report and provide direction to staff to prepare an interim ordinance (4/5ths vote required to adopt an interim ordinance) and proceed with development of new regulations for BESS in the unincorporated areas of Monterey County.

SUMMARY:

On October 22, 2025, Supervisor Church introduced a referral (Referral No. 2025.15) requesting adoption of an urgency ordinance placing a moratorium on Battery Energy Storage System (BESS) facilities in the unincorporated areas while the County develops policies for oversight, permitting and operations of BESS facilities. Housing and Community Development (HCD) and the Office of County Counsel have been assigned lead roles in responding to this referral. This report provides a preliminary response to the referral pursuant to the Board Policy Manual regarding the referral process.

For the purposes of estimating costs, efforts, challenges, and timing on this referral there are two distinct but required and related efforts that HCD and the Office of the County Counsel would undertake: the preparation and adoption of an interim ordinance, and the development of new rules during the time the interim ordinance is effective.

DISCUSSION:

Interim Ordinance

California Government Code section 65858 allows local jurisdictions to adopt, without following the procedures otherwise required for adoption of a zoning ordinance (as an urgency measure), and to protect the public safety health and welfare, an interim ordinance prohibiting any use(s) that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the local government intends to study within a reasonable time. An interim ordinance pursuant to this provision cannot be adopted or extended unless findings are made that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of the use(s) under current zoning rules would result in that threat to public health, safety, or welfare. Interim ordinances considered under Government Code section 65858 must be adopted by the Board of Supervisors with at least a 4/5th vote.

If adopted, the interim ordinance would be in effect for 45 days. That 45 days may be extended (4/5th vote required again) twice, by 10 months and 15 days and subsequently by 1 year, or once by 22 months and 15 days. In both cases, the interim ordinance could be effective for a total of 2 years.

If pursued, HCD working with the Office of County Counsel, would draft an interim ordinance and schedule the ordinance for Board consideration at a noticed public hearing and less than two months later, we would return to the Board for a second public hearing to consider an extension to the interim ordinance. It is anticipated that staff could have the interim ordinance before the Board in early February 2026. An ordinance extending the effective date would then likely be considered in late March/early April 2026 and we would have until February 2028 to work on long-term regulations.

HCD and the Office of County Counsel can accomplish the task of processing the interim ordinance with little costs or impacts to existing services. An interim ordinance is limited to prohibiting a use while rules are being studied. In this case, utility scale BESS facilities would be prohibited during the time the interim ordinance is effective. There is a high degree of confidence that the County can make the findings needed for the adoption of an interim ordinance relating to utility scale BESS in this case. However, there remains a state certification process under the State Energy Resources Conservation and Development Commission (Energy Commission) for BESS facilities capable of storing 200 megawatthours or more of electrical energy that may allow for BESS development despite a local prohibition/interim ordinance (California Public Resources Code section 25545 *et seq.*). As such, a BESS provider could bypass the County permitting process and seek approval directly from the Energy Commission if the proposed facility is capable of storing 200 megawatthours or more. (Public Resources Code section 25545.1). Specifically, even if the Board adopts an interim ordinance putting a moratorium on permitting for BESS facilities, an operator could still seek approval from the Energy Commission.

It is also worth noting that Governor Newsom just signed Senate Bill 283, authored by Senator John Laird (D-Santa Cruz), which requires battery developers to work directly with local fire agencies before construction begins. The new law also mandates safety inspections before a facility can go online, with the cost of those inspections covered by the facility owner. The bill goes into effect on January 1, 2026.

This step of adopting an interim ordinance establishing the temporary prohibition on BESS facilities can only be done in conjunction with the requirement to contemplate new rules for the review and oversight of BESS facilities in the unincorporated areas. The development of new requirements will take additional resources (see discussion below).

The Counties of Orange and Solano both adopted interim ordinances placing moratoriums on new BESS facilities. Both counties are still within the two years under the interim ordinances and studying permanent regulations.

New Rule Making

In connection with adoption of an interim urgency ordinance, the County of Monterey will be committing to development of new rules for BESS facilities in the unincorporated areas with the goal of implementing the new rules before the expiration of the interim ordinance (2 years maximum). New rule adoption must follow normal state law procedures and legal requirements including environmental review, noticed public hearings, and opportunity for public participation. This step will take time. An exact timeline is difficult to determine at this stage.

Creating new rules for BESS facilities will involve staff time from multiple agencies including the MBARD, fire agencies, Sheriff, Health, the Department of Emergency Management, HCD, and the Office of County Counsel. Staff time would be needed for data collection, review of legal and technical information, public participation, inter-departmental coordination and consultation, public hearings, reports, ordinances, regulatory processes (CEQA, Energy Commission, Coastal Commission, etc.), and implementation. It is anticipated that HCD would lead the effort on development of new rules. HCD has not had an opportunity to coordinate with other departments on their staffing and resource needs before producing this preliminary report. Some of the resource needs may depend on the specifics of any rules that may be adopted and the level of effort needed to implement those rules after their adoption. On the topic of resources, given recent events related to BESS facilities, the County is already in a position where significant progress has been made on data collection and technical review. Anecdotally, staff believes that there may be costs incurred by agencies in response to BESS facility incidents that should be considered when weighing the cost of developing rules aimed at preventing the incidents or at least being prepared to respond in an organized fashion. Leading the effort, HCD will likely request some funding to prepare necessary environmental documentation. Specific costs will be developed but are estimated to be in the range of about \$100,000.

Challenges to rule development include, but are not limited to:

- An evolving regulatory landscape at local and state levels which could impact outcomes and require adjustments;
- An evolving understanding of technology, the hazards posed by the technology, and adequate ways to prevent of plan for those hazards; and
- Competing priorities for limited staff resource time.

HCD has six positions on the long-range planning team who are tasked with development of new land use polies and regulations. Two of those six positions are currently vacant. In early 2025, the Board adopted priorities for HCD and the long-range planning team has been focused on the following projects:

- 1) Housing Element 6th Cycle Update, Rezoning and Implementation;
- 2) Permit Process Streamlining;
- 3) Castroville Community Plan Update;
- 4) Moss Landing Community Plan Update;
- 5) Chualar Community Plan
- 6) Carmel River Floodplain Restoration and Environmental Enhancement (CRFREE) Project;
- 7) Safety Element Update;
- 8) Environmental Justice Element;
- 9) Vacation Rental Ordinances (coastal certification)

- 10) Accessory Dwelling Unit Ordinances & Land Use Plans (coastal certification; Inland)
- 11) Big Sur Coast Land Use Plan Update; and
- 12) Fort Ord Habitat Resource Management Plan.

HCD has completed items 9 and 10 from the list above. Of note, substantial progress has been made on item 4; the Moss Landing Community Plan Update. There is overlap with the proposed BESS facility regulations and the ability to complete the Moss Land Community Plan update. Adding BESS facility activities to the HCD priorities would likely delay progress on items 2, 3, 4 and 11.

Staff recognizes the need to address BESS facilities for the protection of public health, safety and welfare and hence we are recommending the Board direct staff to proceed with the interim ordinance and the necessary rule making.

OTHER AGENCY INVOLVEMENT:

This report has been prepared by HCD with input from the Office of County Counsel. Moving forward with development of new regulations for BESS facilities will involve multiple Agencies including: the Air District, Fire Districts, the Sheriff's Office, Health, the Department of Emergency Management, HCD, and the County Counsel.

FINANCING:

An exact estimate of the costs to complete the necessary tasks is not available at this time. It is estimated that staff resources included in the FY 25-26 adopted budget for HCD would be allocated and no additional staff resources are required to develop the necessary ordinances and regulations on behalf of HCD. Additional resources may be requested to implement new rules in the future dependent on the nature of the rules that are developed. HCD anticipates that planning consulting services may be needed to provide technical assistance and/or assist with environmental review pursuant to CEQA. Roughly estimated to be approximately \$100,000 in the 26-27 fiscal year.

BOARD OF SUPERVISORS STRATEGIC PLAN GOALS:

Adopting of an interim ordinance and development of new rules for BESS facilities would align with the goals of the Board to improve the well-being and quality of life and to create and maintain safe a resilient community by addressing the health and safety threats posed by such facilities. It could be somewhat of an impediment in the Sustainable infrastructure category as BESS facilities are part of the electrification strategy in addressing climate goals.

Mark a check to the related Board of Supervisors Strategic Plan Goals:

- ☒ X_ Well-Being and Quality of Life
- ☐ - Sustainable Infrastructure for the Present and Future
- ☒ X_ Safe and Resilient Communities
- ☐ Diverse and Thriving Economy
- ☐ Dynamic Organization and Employer of Choice

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The following attachments are on file with the Clerk of the Board:
Attachment A - Referral No 2025.15