

ORDINANCE NO. 2024-1852-U-E

EXTENSION OF AN INTERIM ORDINANCE PROHIBITING NEW COMMERCIAL BATTERY ENERGY STORAGE SYSTEMS WITHIN THE UNINCORPORATED TERRITORY OF THE COUNTY OF SOLANO, ADOPTED AS AN URGENCY MEASURE.

The Board of Supervisors of the County of Solano ordains as follows:

SECTION 1. Findings

- A. There is a growing demand for Battery Energy Storage Systems (BESS) in the State of California due to increased demand for renewable electricity to reach the State's clean energy goals and mechanisms to ensure reliability of the State's electric system, among other things.
- B. In general, a 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. This can help improve the reliability and efficiency of the electric grid system while also potentially stabilizing power rates.
- C. There have been several recent fires at BESS facilities both in 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 and thermal runaways such as impacts, puncture or mechanical damage, overcharging, overheating, and short circuits.
- D. 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 where the facility is located.
- E. SB 38 recognizes the many hazards that BESS facilities create, providing that the mandated emergency response and action plan may consider responses to potential offsite impacts such as poor air quality, threats to municipal water supplies, water runoff, and threats to natural waterways. The plan may also include procedures related to shelter-in-place orders and road closure notifications.
- F. The County of Solano has received a Use Permit application from Corby Energy Storage, LLC for a proposed BESS facility on land with an Exclusive Agriculture

(A-40) zoning designation. If approved, this will be one of the largest BESS projects in the state.

- G. The County of Solano's current Zoning Regulations allow BESS facilities on A-40 land with a Use Permit as "Utility facilities or infrastructure, outside of right-of-way." The Zoning Regulations do not contain criteria specifically for BESS facilities, so the general criteria used for other types of use permits are applied.
- H. The potential for development of new commercial BESS facilities within Solano County 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 additional use permits, building permits, or other applicable entitlements for such uses would result in that threat to public safety and welfare.
- I. On January 23, 2024, at a duly noticed public hearing, the Board of Supervisors adopted as an urgency measure Ordinance No. 2024-1852-U, an interim ordinance prohibiting new commercial BESS facilities within the unincorporated territory of Solano County. The interim ordinance is in effect for 45 days following its adoption and will expire on March 8, 2024, unless extended prior to that date by a four-fifths vote of the Board of Supervisors after notice and hearing.
- J. In the time since Ordinance No. 2024-1852-U was adopted, County staff has started to study and consider land use development policies and standards related to BESS facilities that should be added to the County's General Plan and Zoning Regulations.
- K. In the time since Ordinance No. 2024-1852-U was adopted, County staff has further examined and identified the characteristics of BESS facilities that present an imminent risk to public health, safety, and welfare as those "front-of-the meter" BESS facilities. "Front-of-the-meter" BESS facilities include utility-scale generation, utility-scale energy storage, connect to transmission and distribution lines, and generally rely on more complex grid management systems and high rates of electricity turnover. In contrast, "behind-the-meter" BESS facilities are primarily used to meet single customer onsite energy storage needs.
- L. On February 27, 2024, at least 10 days prior to the expiration of Ordinance No. 2024-1852-U, the County issued a written progress report in accordance with Government Code section 65858(d). That report is incorporated herein as **Exhibit A**, and indicates the progress made and need for additional time to study appropriate land use development policies and standards related to BESS facilities.
- M. It is now appropriate to extend Ordinance No. 2024-1852-U for an additional 22 months and 15 days as an urgency measure necessary for the immediate protection of the public health, safety, and welfare. Upon extension, this interim

ordinance will apply to “front-of-the-meter” BESS facilities and remain in effect until January 23, 2026, unless superseded or repealed prior to that date.

SECTION 2. Interim Prohibition on Commercial Battery Energy Storage Systems

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 “front-of-the-meter” BESS facility for any location or property within the unincorporated territory of Solano County, unless a use permit was approved prior to January 23, 2024, authorizing the establishment, construction, and operation of the “front-of-the-meter” BESS facility, in which case the “front-of-the-meter” 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 County’s Zoning Regulations.

SECTION 3. Effective Period

This interim ordinance is urgently needed for the immediate preservation of the public health, safety, and welfare. It shall take effect immediately upon adoption and shall be of no further force and effect after January 23, 2026 and may be superseded or repealed prior to that date.

SECTION 4. Authority

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 Board of Supervisors to protect the public from a current and immediate threat to the public health, safety, or welfare resulting from the approval of an entitlement for use. 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, following compliance with that section, for up to an additional 22 months and 15 days beyond the original 45-day period.

SECTION 5. Environmental Review

This interim ordinance is not subject to the California Environmental Quality Act (Public Resources Code §21000, et seq.) (CEQA) 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]. Additionally or 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], 15307 [Class 7 categorical exemption for regulatory activity to assure the protection of natural resources], and 15308 [Class 8 categorical exemption for regulatory activity to assure the protection of the environment].

SECTION 6. Penalties

The definitions and penalties for land use violations that are prescribed in Chapter 28 of the Solano County Code shall apply to violations of the provisions of this interim ordinance.

SECTION 7. Severability

If any provision of this interim ordinance or the application of it to any persons or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of the interim ordinance are declared to be severable.

SECTION 8. County Actions

During the period of this interim ordinance, the Director of Resource Management shall: (1) review and consider options for the regulation of BESS facilities in the unincorporated area of Solano County, (2) issue a written report describing the measures which the County has taken to address the conditions that led to the adoption of this ordinance at least 10 days prior to the expiration of this urgency ordinance on January 23, 2026, and (3) make that written report available to the public on the County website.

PASSED and ADOPTED by the Solano County Board of Supervisors at its regular meeting on February 27, 2024 by the following vote:

AYES: SUPERVISORS Hannigan, Brown, Williams, Vasquez, and Chair Mashburn

NOES: SUPERVISORS None

EXCUSED: SUPERVISORS None



MITCH H. MASHBURN, Chair
Solano County Board of Supervisors

ATTEST:
BILL EMLIN, Clerk
Solano County Board of Supervisors

By: 
Alicia Draves, Chief Deputy Clerk

Introduced: February 27, 2024
Adopted: February 27, 2024
Effective: February 27, 2024
Operative: Through January 11,
2026

10-Day Report on Solano County Interim Urgency Ordinance No. 2024-1852-U as Required by Government Code section 65858(d)

Background

On January 23, 2024, the Solano County Board of Supervisors adopted an interim urgency ordinance (Ordinance No. 2024-1852-U) enacting a temporary moratorium on the issuance of new entitlements for commercial battery energy storage systems (BESS) in the unincorporated area of Solano County. The Board found that the potential for development of new commercial BESS facilities in Solano County without adequate land use policies and standards in place presents a current and immediate threat to the public's safety and welfare, and that the approval of additional entitlements for BESS facilities would result in that threat to public safety and welfare. The purpose of Ordinance No. 2024-1852-U is to allow County staff time to conduct further research and analysis on the health and safety impacts of BESS facilities, and evaluate various options for land use development policies and standards that should be added to the County's General Plan and Zoning Regulations.

Under Government Code section 65858, the initial term of an interim urgency ordinance is 45 days. Ordinance No. 2024-1852-U is therefore set to expire on March 8, 2024. After notice pursuant to Government Code section 65090 and a public hearing, the Board of Supervisors may extend the interim urgency ordinance for up to 22 months and 15 days. The action to extend Ordinance No. 2024-1852-U will be considered by the Board on February 27, 2024.

Government Code section 65858 requires that 10 days prior to the expiration of an interim urgency ordinance, the County issue a written report describing the measures being taken to alleviate the condition which led to the adoption of the interim urgency ordinance. This memo serves as that written report describing what is currently taking place to address the need for the interim moratorium on new commercial BESS facilities. This memo will be published with the agenda materials for the Board's February 27, 2024 public meeting, more than 10 days in advance of Ordinance No. 2024-1852-U's expiration.

Measures Taken to Alleviate the Conditions that Led to the Adoption of Ordinance No. 2024-1852-U

Since Ordinance No. 2024-1852-U was enacted on January 23, 2024, County staff has worked diligently to identify and analyze data related to the BESS discussion topics raised at the January 23rd Board meeting. The Solano County Land Use and Transportation Committee also held a public meeting on February 20, 2024, where it considered and discussed next steps for staff to take during the moratorium period for public outreach and update of the county code.

The following specific activities are currently being undertaken by County staff:

- Researching national approaches to model BESS ordinances to update Chapter 28 of the Solano County Zoning regulations through a zone text amendment process.
 - A draft outline of the model ordinance follows:
 - Authority

- Statement of Purpose
- Definitions
- Applicability
- General Requirements
- Permitting Requirements
- Safety
- Permit Time Frame and Abandonment
- Enforcement
- Severability
- Analyzing SB 38 to understand what will be required to develop an effective emergency response and emergency action plan for BESS facilities.
- Analyzing other State laws impacting future County standards and policies, including the California Fire Code.
- Researching State and Federal grant funding for BESS projects.
- Utilizing county geographical information system (GIS) to evaluate county electrical substation locations, their surrounding land uses and verify potential radii around each for potential BESS locations.
- Attending training programs on best practices related to BESS facilities.
- Collaborating with other jurisdictions and agencies to share knowledge and develop “best practice” standards that will inform development of permanent land use development policies and standards in the County’s Zoning Regulations.
- Responding to numerous public inquiries regarding the interim Urgency Ordinance and the future permanent ordinance.
- Developing public information materials that seek stakeholder input on BESS health and safety topics.

Next Steps

The above reflects the actions taken during the short period since Ordinance No. 2024-1852-U was enacted on January 23, 2024. Despite County staff’s diligent efforts, the conditions which necessitated adoption of the moratorium continue to exist at the present time and the moratorium is set to expire on March 8, 2024. Extending the moratorium until January 23, 2026 will provide County staff with necessary time to complete its analysis and research appropriate land use development policies and regulations to ensure the protection of the public health, safety, and welfare. More time will also provide greater opportunity for public input, and adequate time for the Planning Commission to review of proposed changes to the County’s Zoning Regulations.