



AGENDA NO: 8.a

MEETING DATE: February 25, 2025

Staff Report

TO: Honorable Mayor and City Council

DATE: February 25, 2025

FROM: Airlin Singewald, Community Development Director

SUBJECT: Consider Adoption of Urgency Ordinance No. 670 extending Urgency Ordinance No. 668 prohibiting applications for grid-scale Battery Energy Storage Systems (BESS) facilities

RECOMMENDED ACTION

1. Consider the attached written report that describes the measures taken to alleviate the conditions which led to the adoption of Ordinance No. 668, as required by Government Code Section 65858(d).
2. Adopt Urgency Ordinance No. 670, entitled “An Urgency Ordinance of the City Council of the City of Morro Bay, California, Extending Urgency Ordinance No. 668 Imposing a Prohibition on the Application Acceptance, Approval, Commencement, Establishment, Operation, Relocation, or Expansion of Grid-Scale Battery Energy Storage Systems (BESS) within the City Limits During the Pendency of the City’s Review and Adoption of Regulations of Such Uses; and Finding the Action to be Exempt from CEQA.”
3. Provide further direction to Staff to initiate public meetings that address whether a permanent BESS ordinance shall set development standards for future projects or prohibit them outright.

ALTERNATIVES

1. Direct staff to amend the attached written report and/or urgency ordinance, including proposed findings, before adopting by a 4/5 vote.
2. Do not adopt the urgency ordinance extending Ordinance No. 668, and instead provide staff with alternative direction. Under this alternative, the urgency ordinance would expire on March 14, 2025.

FISCAL IMPACT

Staff prepared the attached written report, urgency ordinance, and this staff report with assistance from the interim City Attorney. The Community Development Department completed this work effort with its existing FY 2024-25 budget.

BACKGROUND

On January 28, 2025, the City Council adopted an interim ordinance (Ordinance No. 668) imposing as an urgency measure a prohibition on the application acceptance, approval, commencement, establishment, operation, relocation, or expansion of grid-scale battery energy storage systems (BESS) within the City limits. The City Council found that the potential for development of new grid-scale BESS facilities in Morro Bay without adequate land use policies

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City Manager Review: <u>_____</u>	City Attorney Review: <u>_____</u>
<u>_____RWS_____</u>	

and standards in place presents a current and immediate threat to the public's safety and welfare, especially in light of a major fire that broke out on January 16th at an existing BESS facility in the unincorporated community of Moss Landing in Monterey County. The BESS facility at Moss Landing is owned and operated by the same applicant for a BESS facility in Morro Bay. The purpose of the interim ordinance is to temporarily prohibit a land use that the City has deemed potentially harmful to the public while staff further studies the identified land use and contemplates permanent regulations to protect public health and safety.

Under Government Code Section 65858, the initial term of an interim urgency ordinance is 45-days. Ordinance No. 668 is therefore set to expire on March 14, 2025. After notice pursuant to Government Code Section 65090 and a public hearing, the City Council may extend the interim urgency ordinance for up to 22 months and 15 days. The item before the Council on this date, February 25th, was noticed as a public hearing to extend the initial urgency ordinance, which the Council can do by adopting the attached Ordinance No. 670 by a 4/5 vote.

DISCUSSION

Government Code Section 65858 requires that 10 days prior to the expiration of an urgency ordinance, the legislative body issue a written report describing the measures being taken to alleviate the condition which led to the adoption of the urgency ordinance. Because this staff report and the attached written report (Attachment A) will be published with the agenda materials for the City Council meeting on February 25, 2025, which is more than 10 days in advance of Ordinance No. 668's expiration, the City will comply with Government Code Section 65858(d).

Summary of Ordinance No. 668 10-Day Written Report

Since Ordinance No. 668 was enacted on January 28, 2025, staff has identified and analyzed data related to BESS discussion topics raised at the November 12, 2024 City Council meeting. This includes, but is not limited to, researching what other jurisdictions in California have done to address and regulate BESS applications, collecting research articles and case studies of BESS land use regulations from across the country, and beginning to identify and organize the next tasks required for the development of a permanent ordinance. Some of these steps are listed below:

- Research SB 38 further and collaborate with City emergency response personnel (Police, Fire, and Harbor) to understand what will be required to develop an effective emergency response and emergency action plan for BESS facilities.
- Continue collaborative efforts with California Coastal Commission staff to fully understand how the City's Local Coastal Program would need to be amended to reflect future BESS regulations, and how the Coastal Act might play a role.
- Develop public information materials that encourage community involvement and input on BESS health and safety topics.

Permanent Ordinance

The proposed extension ordinance would provide time for staff to research and develop for Council consideration permanent regulations to address the impacts of BESS facilities. The attached ordinance would extend the urgency ordinance to January 28, 2027. A permanent ordinance may require Coastal Commission approval of a Local Coastal Program (LCP) amendment. To provide sufficient time for Coastal Commission approval, staff recommends a target completion date for a permanent ordinance of May 2025.

There are two main options for a permanent ordinance. These include: 1) a permanent prohibition on BESS facilities; or 2) a permanent ordinance that includes specific use standards regulating the location, design, and permit requirements for BESS facilities. In either scenario, a BESS developer could ask the State to override local zoning as part of the AB 205 Opt-in Certification program. The California Energy Commission would have to make findings of public convenience and necessity to override local zoning regulations.

A permanent BESS prohibition would add a use definition to the zoning code for a grid-scale BESS facilities, which would be prohibited in all zoning districts citywide. A permanent BESS ordinance would allow for BESS facilities in certain zoning districts subject to setbacks from sensitive receptors, permitting requirements, and other standards to protect public health and safety.

CONCLUSION

The attached written report details the actions staff has taken since the adoption of Ordinance No. 668 on January 28, 2025, to alleviate the conditions that led to its adoption. By issuing this report the City will comply with Government Code Section 65858(d), which mandates the City Council to issue such a report at least 10 days prior to the expiration of an urgency ordinance.

Urgency ordinances have an initial term of 45 days, meaning that Ordinance No. 668 will expire on March 14, 2025, unless extended by the City Council. Because Ordinance No. 668 was issued with the necessary public notice, it may be extended for up to 22 months and 15 days (2 years total). The adoption of Ordinance No. 670 (Attachment B) by a 4/5 vote of the Council will extend the urgency ordinance prohibiting BESS applications within Morro Bay until January 28, 2027. In that time, staff will work under Council direction and with public involvement to draft a permanent BESS ordinance.

Neither this urgency ordinance nor a permanent City ordinance would prevent a BESS facility from obtaining State approval to locate in Morro Bay through the California Energy Commission's AB 205 Opt-in Certification Program, which allows for an override of local zoning.

ATTACHMENTS

1. Ordinance No. 668 10-Day Written Report
2. Ordinance No. 670, extending Ordinance No. 668 for 22 months and 15 days