

BATTERY ENERGY STORAGE SYSTEMS (BESS) SITING ORDINANCE

I. INTRODUCTION

A. Title.

This ordinance shall be known, cited, and referred to as the "Mason County Ordinance Regulating the Siting of Battery Energy Storage Systems (BESS)."

B. Purpose/Scope.

The purpose of this Ordinance is to establish minimum requirements and regulation of any Applicant/Developer/Owner engaged in the construction, erection, placement, location, maintenance, modification, operation, and decommissioning of Battery Energy Storage Systems (BESS) in Mason County, IL in a manner that promotes economic development and ensures the protection of health, safety, and welfare while also avoiding adverse impacts to the County.

BESS may be allowed on industrially zoned parcels as a Special Use Permit. BESS may be allowed in agriculturally zoned parcels only as a portion of a Commercial Solar Energy Facility or Commercial Wind Energy Facility which received a Special Use Permit from the County.

II. DEFINITIONS

- A. ANSI:** means the American National Standards Institute.
- B. APPLICANT:** means the entity, or person who submits to the County an application for the siting of any Battery Energy Storage System (BESS).
- C. APPLICATION:** means an application for a Special Use Permit for a Battery Energy Storage System (BESS) submitted to the Mason County Zoning Office. The application form may be modified from time to time by the County in order to provide sufficient information for permitting decisions to be made.
- D. AUTHORIZED AGENT:** means personnel authorized by the Mason County Board.
- E. BATTERY(IES):** means a single cell or a group of cells connected together electrically in series, in parallel, or a combination of both, which can charge, discharge, and store energy electrochemically or otherwise. For the purposes of this law, batteries utilized in consumer products are excluded from these requirements.
- F. BATTERY ENERGY STORAGE MANAGEMENT SYSTEM:** means an electronic system that protects energy storage systems from operating outside their safe operating parameters and disconnects electrical power to the energy storage system or places it in a safe condition if potentially hazardous temperatures or other conditions are detected.
- G. BATTERY ENERGY STORAGE SYSTEM (BESS):** means one or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include a stand-alone 12-volt car battery or an electric motor vehicle.
- H. BATTERY ENERGY STORAGE SYSTEMS (BESS) SPECIAL USE PERMIT:** means the formal approval of the application by the County Board.
- I. CAPABILITY:** means the ability, knowledge, experience, resources, and financial viability to complete the project.

- J. **CELL:** means the basic electrochemical unit, characterized by an anode and a cathode, used to receive, store, and deliver electrical energy.
- K. **COMMISSIONING:** means the systematic process that provides documented confirmation that a battery energy storage system functions according to the intended design criteria and complies with applicable code requirements.
- L. **DECOMMISSIONING:** means to return the property or site back to its pre-installation state or better as approved by a decommissioning plan.
- M. **DEDICATED-USE BUILDING:** means a building that is built for the primary intention of housing battery energy storage system equipment, and complies with the following:
 - 1. The building's only use is battery energy storage, energy generation, and other electrical grid-related operations.
 - 2. No other occupancy types are permitted in the building.
 - 3. Occupants in the rooms and areas containing BESS are limited to personnel that operate, maintain, service, test, and repair the battery energy storage system and other energy systems.
 - 4. Administrative and support personnel are permitted in areas within the buildings that do not contain battery energy storage system, provided the following:
 - a. The areas do not occupy more than 10 percent of the building area of the story in which they are located.
 - b. A means of egress is provided from the administrative and support use areas to the public way that does not require occupants to traverse through areas containing BESS or other energy system equipment.
- N. **DISTANCE:** means measured as feet on a level plane.
- O. **ENERGY CODE:** means the Illinois Power Agency Act (20 ILCS 3855/) as currently in effect and as hereafter amended from time to time.
- P. **FINANCIAL ASSURANCE:** means reasonable assurance from a credit worthy party or parties satisfactory to the County that any and all damages due to construction, operation, maintenance, and decommission caused by the BESS project will be repaired and/or that the project will be decommissioned. Examples of such include a performance bond, surety bond, trust instrument, cash, escrow, and/or irrevocable letter of credit.
- Q. **FIRE CODE:** means the fire code as adopted by the State of Illinois, as currently in effect and as hereafter amended from time to time.
- R. **HEARING FACILITATOR:** means a hearing facilitator, not affiliated with any pro BESS or anti-BESS group, which the County may unilaterally engage the services of to preside over any required hearings resulting from a Special Use Permit Application.
- S. **ILLINOIS LICENSED PROFESSIONAL ENGINEER:** means a qualified individual who is licensed as a professional engineer in the State of Illinois.
- T. **LICENSED ILLINOIS STRUCTURAL ENGINEER:** means a qualified individual who is licensed as a structural engineer in the State of Illinois.
- U. **LIKE-KIND REPLACEMENT:** means a BESS facility which meets or exceeds the standards and specifications of the BESS being replaced and complies with the applicable terms and conditions of this Ordinance.
- V. **NATIONALLY RECOGNIZED TESTING LABORATORY (NRTL):** means a U.S. Department of Labor designation recognizing a private sector organization to perform certification for certain products to ensure that they meet the requirements of both the construction and general industry OSHA electrical standards.
- W. **NEC:** means the National Electric Code.
- X. **NFPA:** means the National Fire Protection Association.

- Y. **NON-PARTICIPATING PROPERTY:** means any property that is not a participating property.
- Z. **NON-PARTICIPATING RESIDENCE:** means any residence located on non-participating property and that is existing and occupied on the date that an application for a Special Use Permit to develop a BESS is filed with the County.
- AA. **OCCUPIED COMMUNITY BUILDING:** means any one or more of the following buildings that is existing and occupied on the date that an application for a Special Use Permit to develop a BESS is filed with the County: a school, place of worship, day care facility, public library, or community center.
- BB. **OPERATING PERMIT:** means a permit that must be issued after the project is substantially complete, according to approval by the County's Zoning Administrator, to store and sell energy.
- CC. **OPERATOR:** means the entity responsible for the day-to-day operation and maintenance of the BESS, including any third-party subcontractors.
- DD. **OWNER:** means the entity or entities with an equity interest in the BESS, including their respective successors and assignees or an entity that becomes an owner through foreclosure. Owner does not mean the property from which land is leased for locating the BESS unless the property owner has an equity interest in the BESS; or any person holding a security interest in the BESS solely to secure an extension of credit.
- EE. **PARTICIPATING PROPERTY:** means a battery energy storage system host property or any real property that is the subject of a written agreement that provides the facility owner an easement, option, lease, or license to use the real property for the purpose of constructing a BESS or supporting facilities. Participating property also includes real property that is owned by a BESS owner for the purpose of constructing a BESS or supporting facilities.
- FF. **PRIMARY STRUCTURE:** means, for each property, the structure that one or more persons occupy the majority of time on that property for either business or personal reasons. The term "primary structure" includes structures such as residences, commercial buildings, hospitals, churches, day care facilities, schools, and agricultural buildings/structures.

III. APPLICABILITY

The requirements of this Ordinance shall apply to all BESS permitted, installed, or modified in Mason County, IL after the effective date of this Ordinance. Any BESS connected or integrated into a Commercial Solar Energy Facility or Commercial Wind Energy Facility shall be governed by the requirements of the applicable solar or wind ordinances.

Modifications to, retrofits or replacements of an existing BESS that increase the total battery energy storage system designed discharge duration or power rating shall be subject to this Ordinance. Any BESS that intends to modify, retrofit, or replace any existing equipment which increases the designed discharge duration or power rating shall apply for a Special Use Permit prior to modifying, retrofitting, or replacing said equipment.

The provisions of this Ordinance do not apply to the installation or operation of BESS which only provides stored energy to a residential parcel on which a BESS resides. Any BESS connected to a residential parcel must apply for and receive a Building Permit from the County, and once constructed and installed, provide the County and local emergency responders with the layout and location of said BESS.

IV. PROHIBITIONS

No BESS governed by Section III of this Ordinance shall be transported, constructed, erected, installed, located, or operated within Mason County, unless:

1. Special Use Permit Application approval has been granted by the County Board and a Building Permit has been issued by the Mason County Zoning Office; and
2. Road Use Agreements and Decommissioning Agreements have been entered into for each applicable governmental agency, and any required financial assurances have been posted and provided to the County.

V. BESS SPECIAL USE PERMIT APPLICATION

- A. The Applicant must submit an application to the Mason County Zoning Office for review, public hearing, and recommendation by the Mason County Zoning Board of Appeals pursuant to 55 ILCS 5/5-12009.5. Approval or denial of application will be made by the full County Board.
- B. Ten paper copies and ten electronically copies of the Special Use Permit Application must be submitted to the Mason County Zoning Office.
- C. Financial Assurance in the form of an Irrevocable Letter of Credit to assure the construction, installation and completion of the project or improvements. Such Financial Assurance (Irrevocable Letter of Credit) shall be provided by the Applicant prior to application of and receipt of Building Permits for the BESS and shall be in such amount as is determined to be 110% of the estimated BESS Project cost.
- D. The Special Use Permit Application shall contain or be accompanied by the following information:
 1. A site plan for the installation of BESS(s) showing the planned location of each BESS, guy lines, and anchor bases, primary structures, property lines (including identification of adjoining properties), setback lines, public and private access roads and turnout locations, substations, electrical cabling from the BESS to the substations, ancillary equipment, third party transmission lines, any above or below ground transmission lines related to the project, operations and maintenance building(s), layout of all structures within the geographical boundaries of any applicable setback, and the location of any construction staging areas including concrete batch plants. The size and locations of any road(s), lake(s), pond(s), or streams touching on said parcel or parcels of land shall be included.
 2. A BESS Project summary, including, to the extent available:
 3. A general description of the project; the potential equipment manufacturers, types of BESS(s), number of BESS(s), and name plate storing capacity of each BESS; the location of the project; and

4. A description of the Applicant, Owner, and Operator, including their respective business structures.
5. The names, addresses, and phone numbers of the applicant(s), owner(s) and operator(s), and all property owners who have signed a lease agreement; and information as to whether the petitioner or applicant is acting for himself or herself or as an agent, alter ego, or representative of a principal and the name and address of the principal; whether the petitioner or applicant is a corporation and of all stockholders or shareholders owning any interest in excess of 20 percent of all of the outstanding stock or shares of the corporation; whether the petitioner or applicant, or his or her principal, is a business or entity doing business under an assumed name, and if so, the name and residence of all actual owners of the business or entity; whether petitioner or applicant, or his or her principal, is a partnership, joint venture, syndicate, or an unincorporated voluntary association, and if so, the names and addresses of all partners or member of the partnership, joint venture, syndicate, or unincorporated voluntary association.
6. Prior to filing its Special Use Permit Application with the County, the Applicant must hold an in-person meeting at a location within the township of the planned BESS, or if no sufficient location is available within the township, a location in the County to inform the public of the BESS. In its Special Use Permit Application, Applicant shall provide sufficient documentation showing that a public meeting has been held and that all landowners and residents within 1.5 miles of the project footprint and within the project footprint have been properly notified of said public meeting.
7. Individual inventory designations for each separate BESS and Substation for reference in BESS Building Permits.
8. All required studies, reports, certifications, waivers, and approvals demonstrating compliance with the provisions of this Ordinance.
9. An Ecological Compliance Assessment Tool (EcoCAT) compliance.
10. A storm water pollution and prevention plan.
11. A decommissioning plan.
12. Any other information normally required by the County.
13. Sufficient documentation that the applicant, owner, company, and parent company/companies have the capability to complete the BESS project as proposed.
14. If the Applicant intends to offer a "good neighbor plan," a "property value guarantee plan" or any other financial incentive plan in connection with a proposed BESS project, a copy of such plan(s) shall be included with the application at the time the application is submitted.
15. BESS projects permitted through the issuance of an approved application within the unincorporated portions of Mason County and shall be subject to the National Electric

Code, International Fire Code, and the site plan application requirements set forth in this Section.

16. An electrical diagram detailing the battery energy storage system layout, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.
17. A preliminary equipment specification sheet that documents the proposed battery energy storage system components, inverters and associated electrical equipment that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.
18. Fire Safety Compliance Plan shall document and verify that the system and its associated controls and safety systems are in compliance with all state and federal codes.
19. Operation and Maintenance Manual shall describe continuing BESS maintenance and property upkeep, as well as design, construction, installation, testing and commissioning information and shall meet all requirements set forth in the Application.
20. Erosion and sediment control, storm water management plans, and firefighting effluent prepared to the Illinois Environmental Protection Agency (IEPA) standards and Department of Natural Resources (DNR), if applicable, and to such standards as may be established by the Mason County Board.
21. Applicant must submit a noise modeling report with its Special Use Application demonstrating compliance with the Illinois Pollution Control Board standard.

E. Special Use Permit Standards

1. Setbacks. Setbacks shall be:
 - a. 200 feet from the parcel line;
 - b. 200 feet from any public right-of-way;
 - c. 500 feet from any non-participating residential structure or occupied community building.
2. Height. BESS buildings and structures shall comply with industry standards and be included within the application.
3. Fencing Requirements. BESS, including all mechanical equipment, shall be enclosed by a ten (10) foot high fence with a locking gate to prevent unauthorized access unless housed in a dedicated-use building.
4. Screening and Visibility. BESS shall have views minimized from adjacent properties using architectural features, earth berms, landscaping, or other screening methods.

- F. Following Special Use Permit Application approval, and compliance with any and all conditions (if any) the Applicant is eligible to apply for BESS Building Permit.

- G. Actual on-site construction must commence within one year of Special Use Permit application approval by the County Board; if not completed or otherwise, permits will no longer be valid.
- H. An interconnection agreement must be completed with the electric utility in whose service-territory the system is located prior to receipt of any building permits.
- I. The failure to obtain the required BESS Building Permit shall be a violation of this Ordinance. Further, BESS Building Permits shall be issued only after application and approval by the Mason County Zoning Administrator and shall authorize only the use, arrangement, and construction for which was applied for and approved during the Special Use Permit hearing. Any use, arrangement, or construction not in compliance with that authorized shall be a violation of this Ordinance.

VI. DESIGN AND INSTALLATION

Following the granting of application approval under this Ordinance, a qualified Engineer shall seal site specific design of the foundation with local soil and subsurface conditions indicated on plans.

To ensure that the subsurface conditions of the site will provide proper support for the BESS, the applicant at their expense, shall provide soil and geotechnical boring reports for each BESS location to the independent engineer selected by the County Board for review and comment prior to the issuance of any BESS Building Permit.

A. Safety.

1. System Certification: BESS and equipment shall be listed by a Nationally Recognized Testing Laboratory to UL 9540 (Standard for BESS and Equipment) or approved equivalent, with subcomponents also meeting nationally recognized standards. Certified under the applicable electrical, building, and fire prevention codes as required.
2. Alternatively, field evaluation by an approved testing laboratory for compliance with UL 9540 (or approved equivalent) and applicable codes, regulations and safety standards may be used to meet system certification requirements.
3. All electrical components of the BESS shall conform to applicable local, state, and national codes and to relevant national and international standards (e.g., ANSI and International Electrical Commission). Utility lines connecting the ENERGY SOURCE, substations, etc., shall be placed underground where practical. All electrical wire and lines connecting BESS to another BESS or substation must be installed no less than six (6) feet deep. The owner/operator of the BESS Installation shall be a member of J.U.L.I.E and follow their rules and regulations. During the installation and before wires and lines are covered, there will be an inspection for compliance by an independent inspector chosen by the County and paid for by the Owner/Operator.
4. If there is damage to any battery components the damaged materials must be segregated from other batteries to halt any potential thermal runaway.

B. Signage.

1. All signage shall be made with letters and numbers at least three (3) inches in height with a light reflective surface.
2. Warning signs concerning voltage must be placed at all entrances of the BESS.
3. An emergency sign listing the 9-1-1 address shall be placed and maintained by the owner/operator at the entrance to each BESS access road from a public road. A sign or posting no more than four (4) square feet in area shall be placed, and maintained, with a toll-free telephone number answered by a live operator twenty-four hours a day seven days per week, for emergency calls.
4. A non-emergency phone number for the operator shall also be displayed for informational inquiries.
5. These phone numbers shall remain active with all calls being voice recorded for verification purposes and with comments and complaints logged and reported to the Mason County Zoning Office on a monthly basis.
6. The recorded calls shall be maintained for at least twelve (12) months.
7. Current phone numbers shall be maintained. Local Agency response shall be reimbursed by the project owner(s).
8. Upon completion of the construction of an approved BESS project, a reasonable visible sign to warn people to not approach while operating must be placed at the entrance of each access road.
9. Warning signs identifying underground wire locations shall be placed at all road crossings, creek, waterway, and ditch crossings, and all underground wire locations shall be GPS mapped and given to the Mason County GIS Office and J.U.L.I.E. (Joint Utility Locating Information for Excavators).

C. Lighting.

Lighting of the BESS shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from adjacent properties. No light pollution shall be allowed upon adjacent parcels.

D. Vegetation and Tree Cutting.

Areas within twenty (20) feet on each side of a BESS shall be cleared of combustible vegetation and other combustible growth.

E. Noise.

Noise generated from the BESS, components, and associated ancillary equipment shall not exceed Illinois Pollution Control Board limits.

F. Site Access.

1. BESS shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if applicable, the local ambulance district.
2. BESS, components, and associated ancillary equipment shall have required working space clearances, and electrical circuitry shall be within weatherproof enclosures marked with the environmental rating suitable for exposure in compliance with NFPA 70E.

G. Agriculture Damage Repair.

All damages to waterways, drainage ditches, field tiles, or any other infrastructures caused by the construction, maintenance, or decommissioning of the BESS must be completely repaired or replaced to an acceptable state within a reasonable amount of time determined by the property owner.

H. Use of Public Roads.

An Applicant, Owner, or Operator proposing to use any County, Municipality, Township, or Village Road(s) for the purpose of transporting BESS or Substation parts and/or equipment for construction, operation, or maintenance of the BESS(s) or Substation(s), shall:

1. In its Special Use Permit Application identify all such public roads intended for use including a site layout plan showing the applicable BESS sites, public road network used, access road entrances, underground collection system and power transformer sites; and
2. Identify all public agencies involved; and
3. Enter into Road Use Agreements with each of the affected jurisdictions and relevant government agencies prior to the receipt of Building Permits.
4. Obtain applicable weight and size permits from relevant government agencies prior to construction and/or maintenance activities.
5. To the extent an Applicant, Owner, or Operator must obtain a weight or size permit from the local agency of jurisdiction, the legal agreement shall:
 - a. conduct a pre-construction and/or pre-maintenance baseline survey to determine existing road conditions and right of way conditions and assess for potential future damage;

- b. identify necessary heavy and oversized equipment and materials over roads which may in certain cases be in excess of the design limits of the roads;
- c. widen, modify and/or improve roads including culverts, bridges, road shoulders and other related fixtures to permit such equipment and materials to pass;
- d. outline exact routes intended for construction and/or maintenance use;
- e. detail of maintenance responsibility and method of reimbursement if it is deemed the responsibility of a local governmental entity;
- f. expectations of the local governmental entity when road reconstruction is involved;
- g. easement on private property will be the sole responsibility of the Applicant, Owner, or Operator;
- h. outline of time schedule including any and all provisions during seasonal road postings;
- i. outline any and all permits required for entrance off the public roads;
- j. provide financial assurance (refer to definition Q) in the form of a sufficient cash escrow to be held by the Mason County Treasurer's Office for the purpose of repairing any damage to public roads caused by constructing, operating, or maintaining the BESS and its included equipment. This estimate will be determined by a Licensed Illinois Professional Engineer chosen by the County and paid for by the Applicant, Owner, or Operator;
- k. provide the Mason County Zoning Office with a signed copy of any agreements pertaining to the use of public roads prior to the issuance of a BESS Building Permit; and
- l. identify any special issues which may affect the public health, safety, and welfare.

I. Utility Lines and Electrical Circuitry.

All on-site utility lines shall be placed underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.

J. Compliance.

- 1. BESS must comply with site assessment that is intended to protect agricultural soils.
- 2. BESS developer(s) shall be required to initiate a natural resource review consultation with the IDNR (Illinois Department of Natural Resources) through the department's online, Ecological Compliance Assessment Tool (EcoCAT) program. Areas reviewed through this process will be reviewed for endangered species and wetlands. The cost of the EcoCAT consultation will be borne by the developer(s).
- 3. BESS are subject to the State of Illinois Storm Water Management regulations, erosion and sediment control provisions if adopted, and NPDES permit requirements.

VII. OPERATION

A. Permit.

An Operating Permit shall be obtained from the County prior to start of operation of the BESS.

B. Ownership Changes.

If the owner of the BESS changes or the owner of the property changes, the BESS Operating Permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the original BESS Operating Permit, site plan approval, Road Use Agreement(s) and Decommissioning Agreement. Any new owner or operator of the BESS shall notify the Mason County Zoning Office in writing of such change in ownership or operator, and written proof that it has assumed all obligations required by this Ordinance within thirty (30) days of the ownership change. The BESS Operating Permit and all other approvals for the BESS will be void if the new owner or operator fails to provide the required written notice. Reinstatement of a void BESS Operating Permit will be subject to the same review and approval processes for new applications under this Ordinance.

C. Maintenance.

1. The Owner or Operator of the BESS must submit, on an annual basis, a summary of the operation and maintenance reports to Mason County Zoning Office. In addition to the above annual summary, the Owner or Operator must furnish such operation and maintenance reports as the County reasonably requests.
2. The Mason County Zoning Office shall be advised in writing within thirty (30) days by the BESS operator or property owners (whichever entity/party holds the development and building permits) in the event the project is sold or otherwise transferred to another entity/party and/or the current operator/owner abandons the project.

D. Coordination with Mason County Emergency Management Agency.

1. The Applicant, Owner or Operator shall submit to the local EMA a copy of the site plan. In addition to the site plan, a plan pertaining to the planning, response, recovery, and mitigation of any natural or manmade hazard that may affect the BESS development must be negotiated.
2. Owner or Operator shall cooperate with the local fire department/adjacent fire departments/districts/EMA to develop an emergency response plan. In addition, at no cost to the local fire departments, the Owner or Operator shall provide to the local fire department/adjacent fire departments/districts/EMA, any and all specialized and necessary rescue or retrieval equipment occasioned by the use of the particular BESS being used at the project (i.e., fire retardant, tanks, respirators etc.)

3. As part of its Special Use Permit Application, Applicant shall submit an Emergency Management Plan.
4. Nothing in this section shall alleviate the need to comply with all other applicable fire laws and regulations.

E. **Materials Handling, Storage, and Disposal.**

1. All solid and liquid wastes related to the construction, operation, and maintenance of the BESS shall be removed from the site promptly and disposed of in accordance with all federal, state, and local laws.
2. A list of all hazardous solids and/or liquids that may be used on site shall be provided to the local fire departments and adjacent fire departments/districts/EMA, and the Mason County Zoning Administrator. All hazardous materials both liquid and solid related to the construction, operation and maintenance of the BESS shall be handled, stored, transported, and disposed of in accordance with all applicable laws.

VIII. LIABILITY INSURANCE

The Owner or Operator of the BESS(s) shall maintain a current general liability policy covering bodily injury and property damage with limits of at least \$10 million per occurrence and \$40 million in the aggregate, with an annual certificate of insurance being provided to the Mason County Zoning Office, with the County being added as an additional insured, with the designation of primary and non-contributory.

The Applicant shall promptly increase such liability insurance if such amount is increased in the BESS Ordinance and the applicant is notified in writing of same by the County. The applicant shall provide evidence of such increased insurance to the Mason County Zoning Office.

Insurance coverage shall be maintained without interruption from the date of permitting through the lifetime of the BESS project. Certificates of insurance acceptable to the County and in compliance with this section shall be filed with the County prior to the commencement of any work on the BESS and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required under this section shall contain a provision that coverages afforded under the policies shall not be cancelled or allowed to expire until at least sixty (60) days written notice has been given to the County.

Applicant shall also, to the fullest extent permitted by law, indemnify, and hold the County, its employees, board members, and agents harmless for any action due to or arising out of the construction, maintenance, decommissioning, deconstruction, and/or operation of the BESS, including the payment of any attorney's fee and costs arising out of any action due to or arising out of the construction, maintenance, decommissioning, and/or operation of the BESS.

IX. DECOMMISSIONING PLAN

Decommissioning will apply to all BESS projects and its equipment/components. Prior to receiving Special Use Permit Application approval, the County, the Applicant or Owner and/or the Operator

must agree to a Decommissioning Plan and Agreement that ensures the BESS project is properly decommissioned upon the end of project life or facility abandonment.

A. The BESS project applicant, project owner, and/or property owner shall include a decommissioning plan with:

1. The anticipated life expectancy of the BESS project(s);
2. The funding method(s), for the decommission and restoration of the project site to its original natural condition prior to the BESS development;
3. The method of ensuring that funds will be available for decommissioning and restoration;
4. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations;
5. The manner in which the site will be restored, including a description of how any changes to the surrounding areas and other systems adjacent to the battery energy storage system, such as, but not limited to, structural elements, building penetrations, means of egress, and required fire detection suppression systems, will be protected during decommissioning, and confirmed as being acceptable after the system is removed; and
6. A listing of any contingencies for removing an intact operational energy storage system from service, and for removing an energy storage system from service that has been damaged by a fire or other event.
7. Prior to receiving a Special Use Permit Approval under this Ordinance, the County, the Applicant or Owner, and/or Operator (Applicant) must agree to a written Decommissioning Agreement that ensures the BESS project is properly decommissioned and deconstructed upon the end of project life or facility abandonment.
8. If the site is damaged or nonfunctioning for any reason, the BESS project operator shall notify the Mason County Zoning Office within twenty-four (24) hours and then shall have six (6) months to bring the project back to its operational capacity. If for any reason the BESS is not operational or able to store or manage electricity after six (6) months, the operator/owner shall have six (6) months to complete decommissioning of the BESS and its equipment.
9. In the event of abandonment of the project or its equipment/components, the project site property owner/leaseholder shall bear ownership of the BESS and all of its equipment/components located on the property. The property owner of the project site shall bear the decommissioning costs in excess of any funds the County is able to access to ensure proper decommissioning of the project.
10. In the event of bankruptcy or similar financial default of the BESS project, the County shall use the decommissioning funds to the greatest extent possible. There may remain unresolved site issues beyond the scope of the County's ability to fund the

decommissioning of the BESS. To the extent the financial assurance provided to the County is insufficient to fund the complete decommissioning of the BESS, the property owner, the BESS owner, any parent entity of the BESS owner, any person or entity holding a greater than 20% interest in the BESS or parent entity of the BESS, any financial creditor or any other person/ entity holding an equity interest in the BESS shall be responsible for the decommissioning costs of the BESS. Prior to receipt of any Building Permits for a BESS, the above responsible entities shall execute an agreement with the County agreeing to fund the decommissioning of the BESS should the decommissioning financial assurance provided to the County be insufficient to fund the complete decommissioning of the BESS.

11. A provision that the terms of the Decommissioning Agreement shall be binding upon the Applicant and any of their successors, assigns, or heirs.
12. The County may sell any salvage material to reduce the County's expenses related to decommissioning of any project site and shall be granted access to each site to affect or complete decommissioning. The County may, but is not required to, allow a reduction of the decommissioning financial assurance in an amount equal to the salvage value of the BESS.
13. The plan shall include provisions for removal of all structures, BESS, transmission equipment, buildings, fences, cabling, debris, foundations, and physical material pertaining to the project, including the cost for disposal of all materials associated with the BESS. The plan will also include provisions for restoration of soil and vegetation and a plan ensuring financial resources will be available to fully decommission the site.
14. All solid and liquid wastes shall be disposed of in accordance with all local, state, and federal laws.
15. All hazardous materials shall be handled, stored, transported, and disposed of in accordance with all applicable local, state, and federal laws. EMA and HazMat Officials shall be notified of the handling, storage, transportation, and disposal of any and all hazardous materials.

B. Decommissioning Fund.

1. The cost estimate of decommissioning will be completed by a licensed Illinois Professional Engineer chosen by the County at the BESS project applicant's expense. Payment for said engineer's fee and any other third-party costs to prepare decommissioning cost estimates or negotiate decommissioning agreement(s) is not included in the initial application fee.
2. The decommissioning cost estimate will be reviewed at a minimum every three (3) years, by the County's chosen Illinois Licensed Professional Engineer, and revised, if necessary, at the Owner/Operators expense. The review and revised Agreement are subject to the approval of the County Board.
3. The County reserves the right to require more frequent decommissioning estimates and cash escrow requirements based on changing economic conditions.

4. At the conclusion of the project lifespan or when the project has failed to be commercially operable for greater than six (6) months, the BESS project's owner/operator shall notify the Mason County Zoning Office and then has twelve (12) months from the date of notification to decommission the site(s).

X. HEARING FACTORS

The County Board may approve a BESS Special Use Permit Application if it finds the evidence complies with state and federal law and regulations and with the standards of this zoning code, including the factors listed below. The factors below are applied as a balancing test, not individual requirements to be met.

1. The establishment, maintenance or operation of the BESS will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare;
2. The BESS will not be injurious to the uses and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values of surrounding properties;
3. The establishment of the BESS will not impede the normal and orderly development and improvement of the surrounding properties;
4. Adequate public utilities, access roads, drainage and/or necessary facilities have been or will be provided;
5. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets;
6. The proposed BESS is not contrary to the objectives of the current comprehensive plan of the County (if any); and
7. The BESS shall, in all other respects, conform to the applicable regulations of this Ordinance and the zoning district in which it is located (if a zoning ordinance is in effect), except as such regulations may, in each instance, be modified pursuant to the recommendations of and approved by the County Board.

XI. FEE SCHEDULE

A. Application Fees.

1. Prior to processing any Application for a BESS, the Applicant must submit a certified check to the County for the Application Fee equal to \$1,000.00 per megawatt (mW) of proposed nameplate capacity, up to a maximum fee of \$250,000.00. If the total nameplate capacity is below 1 mW, the application fee shall be reduced pro rata based on kilowatt (kW)

capacity. These funds shall be placed in an FDIC insured account and will be used to cover the County's cost incurred in processing the Application.

2. Should the actual costs to the County exceed the submitted Application Fee, the Applicant shall be responsible for those additional costs and shall remit additional funds to the County within 15 days of receipt of a request from the County. No hearings on an Application shall be conducted nor final decisions rendered on an Application if there are Application fees due to the County.
3. Any unused amounts of the Application Fee shall be refunded to the Applicant within six months of the County Board rendering a final decision on the matter, unless any pending litigation, disputes or negotiations involving the County exist regarding the BESS, in which case any amounts owed to the Applicant shall be refunded within six months of the conclusion of the litigation, disputes or negotiations. An Applicant may request any unused Application Fee be applied toward the Building Permit Fees for the Facility.

B. Building Permit Fees.

Prior to the issuance of building permits, the Building Permit Applicant must deposit a Building Permit Fee equating to \$5,000.00 per megawatt (mW) of nameplate capacity. If the total nameplate capacity is less than 1 mW, the building permit fee shall be reduced pro rata based on kilowatt (kW) capacity.

C. All Costs to be Paid by Applicant or Owner.

In addition to all fees noted above, the Applicant or Owner shall pay all costs incurred by the County, including but not limited to, those costs associated with all offices, boards and commissions of the County, and third-party costs incurred by the County. This includes, but is not limited to, the direct or indirect costs associated with the hearing, permitting, operations, inspections, decommissioning, litigation, disputes, and/ or negotiations.

XII. PUBLIC NUISANCE DEFAULTS AND REMEDIES

- A. Any BESS declared to be unsafe by the Mason County Board or the Mason County Zoning Office by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, damage, or abandonment is hereby declared a public safety issue and shall be abated by repair, rehabilitation, demolition, or removal in accordance with the procedures set forth in this ordinance.
- B. The Applicant's, Owner's, or Operator's failure to materially comply with any of the above provisions shall constitute a default under this Ordinance.
- C. Prior to implementation of the existing County procedures for the resolution of such default(s), the appropriate County body shall first provide written notice to the Owner and Operator, setting forth the alleged default(s). Such written notice shall provide the Owner and Operator a reasonable time period, not to exceed thirty (30) days, for good faith negotiations to resolve the alleged default(s).

- D. If the County determines that the parties cannot resolve the alleged defaults within the good faith negotiation period, the County shall make application to the circuit court for an injunction requiring conformance with this Ordinance or make such other order as the court deems necessary to secure compliance with the Ordinance.
- E. Any violation of this Ordinance shall be an offense punishable by a fine. Each violation shall be a separate offense. Each day a violation occurs or continues shall be a separate offense. A court may set any appropriate per day fine for each day the infraction exists or until such infraction is remedied. It is the goal of this Ordinance to promote structural safety to protect the public. The Court has the authority to set any appropriate fines and will consider the nature of the offense, the degree of public safety involved, and the efforts of the County and responsible owner or applicant to quickly and safely resolve any and all infractions. It is the intent that any dispute between the parties be resolved promptly and where possible by informal discussions as outlined elsewhere in this ordinance.
- F. The County reserves the right to hire outside Counsel to enforce this Ordinance or determine compliance with this Ordinance. The Owner/Operator is liable for payment of reasonable Attorney's fees in this regard.
- G. Nothing herein shall prevent the County from taking such other lawful action to prevent or remedy violations. All costs connected therewith shall accrue to the Applicant, Owner, or Operator responsible for the Project.

XIII. SEVERANCE

If any section, clause, or provision of the Ordinance is declared unconstitutional or otherwise invalid by a court of competent jurisdiction, said declaration shall not affect the validity of the remainder of the Ordinance as a whole or any part thereof, other than the part so declared to be unconstitutional or invalid.

XIV. LEGAL PROVISION

Penalties for Violations: After the effective date of this ordinance, any persons who, being the owner or agent of the owner of any land, or project developer, located within the territorial jurisdiction of this ordinance, thereafter, proceeds with development of a BESS prior to being approved under the terms of this ordinance shall be fined. Further, violations of this ordinance shall be subject to a fine of \$1,000 for each violation and \$1,000 for each additional day the violation is not corrected.

XV. INDEMNIFICATION

The Applicant, Owner, and/or Operator of the BESS project shall defend, indemnify and hold harmless the County of Mason and its officials from and against any and all claims, demands, losses, suites, causes of action, damages, injuries, costs, expenses, and liabilities whatsoever, including attorney's fees, without limitation arising out acts of omissions of the Applicant, Owner, and/or Operator associated with the construction, operation, or decommissioning of the BESS project.

After the effective date of this ordinance, no proposed BESS, as defined in this Ordinance and within Mason County's jurisdiction, shall proceed with construction until it has been submitted to and approved by the Mason County Board and/or its Authorized Agent in accordance with the provisions of this Ordinance.

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