



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: June 11, 2025

Department: Public Works

Title:

Public hearing to consider amendments to clarify existing code provisions related to battery energy storage systems in the Marion County Urban and Rural Zone Codes Chapters 16 and 17.

Management Update/Work Session Date: Management Update: 2/11/25, Work Session: 4/15/25 Audio/Visual aids ☐

Time Required: 10 min Contact: Brandon Reich Phone: 503-566-4175

Requested Action:

Staff recommended motion: Approve amendments to clarify existing code provisions related to battery energy storage systems in the the Marion County Urban and Rural Zone Codes Chapters 16 and 17. Other motion options for consideration are: 1. Continue the public hearing, 2. Close the public hearing and leave the record open to deliberate at a late date, 3. Close the public hearing and not adopt amendments at this time.

Issue, Description
& Background:

On April 15, 2025, the Marion County Board of Commissioners held a work session to discuss battery energy storage systems. These systems are not expressly contemplated in county zoning code, state statute or state administrative rule. The board expressed a desire to clarify the applicability of the existing code to this use and on May 14, 2025, initiated a process to consider code amendments. Today before the board is the hearing to consider amendments to clarify existing code provisions related to battery energy storage systems in the the Marion County Urban and Rural Zone Codes Chapters 16 and 17.

Financial Impacts:

None

Impacts to Department
& External Agencies:

None

List of attachments:

Staff Report with draft code amendments

Presenter:

Brandon Reich

Department Head
Signature:

for Brandon Reich

County Commissioners
Danielle Bethell, Chair
Colm Willis
Kevin Cameron

Chief Administrative Officer
Jan Fritz



Director
Brian Nicholas, PE

Deputy Director
Dennis Mansfield

MARION COUNTY PUBLIC WORKS

MEMORANDUM

DATE: May 16, 2025
TO: Marion County Board of Commissioners
FROM: Marion County Public Works – Brandon Reich, Planning Director
SUBJECT: Public Hearing on Amendments to clarify the applicability of existing code provisions related to battery energy storage systems in the Marion County Urban and Rural Zone Codes Chapters 16 and 17.

BACKGROUND

Commercial Battery Energy Storage Systems (“BESS”) use batteries to store electrical energy for use on the electrical grid. These systems are not explicitly listed in the county zoning code. These amendments provide the county the opportunity to clarify the applicability of existing code provisions related to battery energy storage systems and determine if they are a permitted use at this time.

COMMENTS

At the time this staff report was prepared, no comments were received.

FACTS AND ANALYSIS

Code Applicability

While these facilities are not explicitly referenced in code, there are two existing code provisions that a BESS could be considered, depending on available evidence: a utility facility or a power generation facility.

Historically, utility facilities have been structures and facilities such as cellular towers, wastewater treatment facilities, and city wells, which can be found on urban or rural land, including resource farm and forest zones. These are usually owned by a public entity and provide regular utility service to customers in an area. While a BESS is connected to the electrical power grid, and may be located near a substation, it appears to be ancillary to the grid or substation and not a utility service itself. Without additional evidence and analysis, a commercial BESS cannot be considered a utility facility.

TO: Marion County Board of Commissioners
FROM: Marion County Public Works – Brandon Reich, Planning Director
SUBJECT: Public Hearing on Amendments to clarify the applicability of existing code provisions related to battery energy storage systems in the Marion County Urban and Rural Zone Codes Chapters 16 and 17.
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A commercial BESS could also be considered a power generation facility. Power generation involves storing power in some manner that gets converted to electricity for use on the grid, such as water stored at an elevation behind a dam which is used to generate electrical power. A BESS stores electrical power from the grid to be placed back on the same grid later. In this manner a BESS could be considered power generation because of its role in storing power for use on the electrical grid. However, a BESS stores power previously generated rather than generates new power for the grid. As a result of this process, and without additional evidence and analysis, a BESS cannot be considered a power generation facility.

At this time there do not appear to be zoning code provisions related to BESS in Oregon Statute or Oregon Administrative Rules.

Land Use Criteria and Standards

A commercial BESS is a more intensive use than many other uses contemplated in the zoning code. It also brings with it potential impacts that could be at least partially mitigated through criteria adopted in the zoning code and standards for development. The potential issues include fires; release of gases, chemicals, and metals; potential pollution of air, water and soil; loss of farmland; increased demands on emergency response; and decommissioning.

Future code amendments could adopt criteria and standards for these systems to mitigate potential impacts. These could include code amendments related to setbacks, farmland protection, fire system requirements, development of emergency response plans, facility monitoring, site development standards, decommissioning plan, and others.

RECOMMENDATION

Because battery energy storage systems are a novel use that are not explicitly allowed by county code, nor implicitly contemplated in code, and there are no zoning code provisions related to them in Oregon Statute or Oregon Administrative Rules, they are not allowed by the zoning code at this time without possible future amendments. This prohibition does not apply to personal battery storage systems that do not primarily store power for public use or sale.

Staff recommends the board review the suggested amendments and direct staff to prepare an ordinance for its consideration of adoption.

Attachments:

Draft code amendments

Chapter 16.01

GENERAL ZONING PROVISIONS

Sections:

- 16.01.010 Zoning classification.
- 16.01.020 Designation of zones.
- 16.01.030 Comprehensive Plan designation and zone classifications.
- 16.01.040 Zoning map.

16.01.050 Battery Energy Storage Systems

16.01.010 Zoning classification.

In order to achieve the intent and purpose in MCC 16.35.030, zoning classifications and overlay zones are hereby established for all unincorporated areas of Marion County located within urban growth boundaries as provided in Chapters 16.02 to 16.25 MCC. These classifications and overlay zones identify uses permitted subject to the development requirements in Chapter 16.24 MCC and Chapters 16.26 through 16.34 MCC. Conditional uses are subject to the development requirements in the applicable zone, in Chapters 16.26 through 16.34 MCC, and any requirements imposed as a condition of approval pursuant to MCC 16.40.030 and 16.40.040. Zone changes, other than legislative changes, are subject to the requirements of Chapters 16.26 through 16.34 MCC and any requirements imposed as a condition of approval pursuant to MCC 16.39.060 and 16.39.070. [Ord. 1301 § 4 (Exh. A), 2010; Ord. 863 § 5, 1990. UZ Ord. § 1.10.]

16.01.020 Designation of zones.

As prescribed in MCC 16.01.010, Marion County is divided into use zones. The zones included in this title are as follows:

Chapter	Classification	Abbreviation
16.02	Single-Family Residential	RS
16.03	Limited Multiple-Family Residential	RL
16.04	Multiple-Family Residential	RM
16.05	Commercial Office	CO
16.06	Commercial Retail	CR
16.07	Commercial General	CG
16.08	Highway Commercial	HC
16.09	Industrial Commercial	IC
16.10	Industrial Park	IP
16.11	General Industrial	IG
16.12	Heavy Industrial	IH
16.13	Urban Transition	UT
16.14	Reserved	
16.15	Urban Development	UD
16.16	Public	P

[Ord. 1301 § 4 (Exh. A), 2010; Ord. 863 § 5, 1990. UZ Ord. § 1.20.]

16.01.030 Comprehensive Plan designation and zone classifications.

Zone classifications implement the Comprehensive Plan designations. Because this title implements several city comprehensive plans and not all plan designations are identical for all cities, those in the Salem/Keizer Comprehensive Plan are used below. For cities other than Salem, the zoning administrator shall decide which of the following zones implement the applicable plan designation on the basis of the intent in the applicable comprehensive plan. The zone classifications below are listed in order of most restrictive to least restrictive under the appropriate plan designation. Following are the zones allowed in the Salem Area Comprehensive Plan designations:

Comprehensive Plan Designation	Zone Classification
Developing Residential	RS, UT, UD, RL, RM
Single-Family Residential	RS, UT, UD
Multifamily Residential	RL, RM, UT, UD
Commercial	CO, CR, CG, HC, UT, UD
Industrial	IC, IP, IG, IH, UT, UD
Community Service	P

[Ord. 1454 § 4 (Exh. B), 2023; Ord. 1301 § 4 (Exh. A), 2010; Ord. 863 § 5, 1990. UZ Ord. § 1.30.]

16.01.040 Zoning map.

This title includes official zoning maps. The maps, together with all explanatory matter thereon, identify the boundaries of the zones and overlay zones established in Chapters 16.02 to 16.25 MCC, and the application of land use regulations in this title to certain lands. The maps shall be filed in the office of the zoning administrator. The zoning administrator shall amend the maps when so directed by county ordinance. The maps shall be available for public review and copies of the maps shall be provided at reasonable cost. When requested the zoning administrator shall certify that a copy of all or a portion of any map “is the current zoning map contained in the Marion County Zoning Ordinance” on a specific date. [Ord. 1301 § 4 (Exh. A), 2010; Ord. 863 § 5, 1990. UZ Ord. § 1.40.]

16.01.050 Battery Energy Storage Systems

Notwithstanding any other provision in code, a commercial battery energy storage system, which uses batteries to store electrical energy for use on the electrical grid, is not allowed in any zone. This prohibition does not apply to personal battery storage systems that do not primarily store power for public use or sale.

Chapter 17.110

GENERAL PROVISIONS

Sections:

Article III. General Provisions

- 17.110.620 Zones – Official map.
- 17.110.630 Certification.
- 17.110.650 Location.
- 17.110.660 Amending official zoning map.
- 17.110.670 Replacement of official zoning map.
- 17.110.680 Administration of the title.
- 17.110.690 Minimum requirements.
- 17.110.700 Effect on other ordinances, agreements between parties.
- 17.110.705 Permit expiration dates.
- 17.110.710 Rules for interpretation of zone boundaries.
- 17.110.720 Interpretation of title.
- 17.110.725 Interpretation of uses.
- 17.110.730 Similar uses.
- 17.110.735 Battery Energy Storage Systems**
- 17.110.740 Fees.
- 17.110.755 Transferability.
- 17.110.760 Complaints regarding violations.
- 17.110.765 Board authority.
- 17.110.770 Vision clearance area.
- 17.110.780 Minimum street width.
- 17.110.790 Lots abutting a partial street.
- 17.110.800 Dwellings and all other buildings to be accessible to public street.
- 17.110.810 Application of zoning regulations.
- 17.110.820 Conformance and permits required.
- 17.110.830 Water resource protection.
- 17.110.831 Significant and potential mineral and aggregate sites.
- 17.110.832 Protection of scenic and natural areas and trails.
- 17.110.833 Stormwater management.
- 17.110.834 Noise impacts.
- 17.110.835 Fish and wildlife habitats.
- 17.110.836 Historic structures or sites.
- 17.110.838 Agricultural soils determination.
- 17.110.840 Amendment of text only.
- 17.110.850 Pending zone change proceedings.
- 17.110.860 Violations of regulations unlawful – Proof of violation prima facie evidence of owner's responsibility.
- 17.110.870 Enforcement and penalties for violations.
- 17.110.880 Savings clause.

17.110.720 Interpretation of title.

A. The director may, in the administration of this title, issue an interpretation of its provisions consistent with subsections (B)(1) and (2) of this section. This interpretation is not a land use decision and is not appealable.

B. When, in the administration of this title, there is doubt by the director regarding the intent of this title, the director may request an interpretation of the provision by the planning commission or hearings officer, who may issue an interpretation of the question if they have determined that such interpretation is within their power and is not a legislative act. Any interpretation of this title shall be based on the following:

1. The purpose and intent of this title as applied to the particular section and question; and
2. The opinion of the Marion County legal counsel when requested by the director, planning commission or hearings officer.

C. The director, planning commission or hearings officer may decide that the interpretation of the question is not within their power or that there is insufficient basis upon which to make an interpretation and may request the director to study the problem and, where necessary, propose an amendment to this title.

D. The interpretation by the planning commission or hearings officer shall be forwarded to the board for its information. Copies of the interpretation shall also be furnished each commissioner, the hearings officer and the director. When such interpretation is of general public interest, copies of such interpretation shall be made available for public distribution. [Ord. 1271 § 5, 2008; Ord. 1227 § 4, 2006; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1055 § 4, 1997; Ord. 516 § 2, 1978. RZ Ord. § 110.720.]

17.110.725 Interpretation of uses.

The following rules shall apply in interpreting use classification and descriptions:

A. Within each zone, uses are classified as “permitted” and “conditional.” Further, uses are functionally classified by description of the particular activity (such as “single-family residence”), or by reference to a category in the Standard Industrial Classification Manual, 1987 (SIC). The SIC is an aid to interpretations. Where the term used to describe a permitted or conditional use is defined in this code, the definition takes precedence over any SIC classification.

B. When uses have a functional SIC classification, the applicable SIC index number assigned to the manual is referenced as an aid to interpretation.

C. Where a use is not described with reference to the SIC manual or defined in this code, the words describing such use are to be given their ordinarily accepted meaning. The descriptions and lists of included activities in the SIC classifications may be used to interpret which use classification is appropriate for a particular use not specifically identified in this title.

D. A use defined in this code is also included within an SIC category, and it is the intent that the use defined in this code be allowed in a zone where the SIC category including the defined use is referenced even though the use is not specifically referenced in the zone.

E. A use defined in ORS Chapter 215 or OAR Chapter 660 takes precedence over any definition or SIC classification. [Ord. 1271 § 5, 2008. RZ Ord. § 110.725.]

17.110.730 Similar uses.

The director may permit in any zone any use not described or listed in this title for any other zone if, in the opinion of the director, the requested use is of the same general type and is similar to the uses permitted in the zone. Such review and permission shall be made in the same manner as other interpretations of this title. The director shall use the Standard Industrial Classification Manual, 1987, as a guide in making this interpretation. [Ord. 1271 § 5, 2008; Ord. 1227 § 4, 2006; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1055 § 4, 1997; Ord. 516 § 2, 1978. RZ Ord. § 110.730.]

17.110.735 Battery Energy Storage Systems

Notwithstanding any other provision in code, a commercial battery energy storage system, which uses batteries to store electrical energy for use on the electrical grid, is not allowed in any zone. This prohibition does not apply to personal battery storage systems that do not primarily store power for public use or sale.