



# GARDINER CITY COUNCIL AGENDA ITEM INFORMATION SHEET



Meeting Date		Department	
Agenda Item			
Est. Cost			
Background Information			
Requested Action			
City Manager and/or Finance Review			
Council Vote/ Action Taken			
Departmental Follow-Up			

City Clerk Use Only	1 <sup>st</sup> Reading _____	Advertised _____	EFFECTIVE DATE _____
	2 <sup>nd</sup> Reading _____	Advertised _____ w/in 15 Days	
	Final to Dept _____	Updated Book _____	Online _____

## **10.33 Battery Energy Storage Systems and Commercial Data Centers**

### **10.33.1 Definitions**

As used in this Chapter, the following terms shall have the meanings indicated:

**ANSI** – National Standards Institute

**Battery** – 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. For the purposes of this ordinance, batteries utilized in consumer products are excluded from these requirements.

**Battery Energy Storage Management System** – An electronic system that protects energy storage systems from operating outside their safe operating parameters.

**Battery Energy Storage System (BESS)** – One or more devices, assembled together, capable of storing energy in order to supply electrical energy, of any aggregate energy capacity, at a future time, not to include a stand-alone 12-volt car battery or an electric motor vehicle.

**Commercial Data Center (CDC)** – A standalone facility used primarily for the storage, management, processing, and transmission of digital data, which houses computer and/or network equipment, systems, servers, appliances, and other associated components related to digital data operations. Such facility may also include air handlers, power generators, water cooling and storage facilities, utility substations, and other associated utility infrastructure to support sustained operations at the commercial data center.

**Commercial Data Center Management System** – An electronic system that protects data center systems from operating outside their safe operating parameters.

**Dedicated Use Building** – A building that is built for the primary intention of housing Battery Energy Storage System or Commercial Data Center equipment, is classified as Group F-1 occupancy as defined in the International Building Code, and complies with the following:

- (1) The building's only permitted primary use is for BESS, energy generation, other electrical grid-related operations, or CDC.
- (2) Occupants in the rooms and areas containing BESS or CDC are limited to personnel that operate, maintain, service, test, and repair the battery energy storage system, other energy systems, or commercial data center.
- (3) No other occupancy types are permitted in the building.
- (4) Administrative and support personnel are permitted in incidental-use areas within the buildings that do not contain Battery Energy Storage Systems or Commercial Data Centers, 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 incidental-use areas to a public way that does not require occupants to traverse through areas containing battery energy storage systems or other energy systems.

### **10.33.2 General Requirements**

**10.33.2.1.-** Any structure built in accordance with this law will meet or comply with the following:

**10.33.2.1.1.** The Applicant of any Battery Energy Storage System or Commercial Data Center shall provide, at no cost to the City or fire department, fire department training related to potential fire issues that are site specific and could arise from the structure. This training shall be provided

when requested by the fire department, but must at least be provided on an annual basis, or when any updated equipment is installed;

**10.33.2.1.2.** If specialized equipment is needed by the fire department, the owner of any Battery Energy Storage System or Commercial Data Center structures will pay for the costs of such equipment or reimburse the applicable fire department or applicable local government office or agency for the purchase of same. If there is more than one (1) owner, then such owners shall share in the costs on a pro-rata basis in proportion to the assessed value of the properties on which the structure owned by each co-owner is located.

**10.33.2.1.3.** Fire Safety Compliance and Emergency Operation Plan. Prior to issuance of the building permit, the plan shall document and verify that the system and its associated controls and safety systems are in compliance with MUBEC. A copy of the approved Emergency Operations Plan shall be given to the system owner and the local fire department. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire code officials, and emergency responders.

### **10.33.3 Minimum Lot Size**

The minimum lot size for any lot containing a Battery Energy Storage System or Commercial Data Center shall be at least 0.75 acres, regardless of the dimensional lot requirement of the Land Use Zone in which it is located.

### **10.33.4 Fencing**

The Battery Energy Storage System, Commercial Data Center, and any associated interconnection equipment and dedicated use buildings shall be enclosed using at least six (6) foot fencing.

### **10.33.5 Buffers and Screening**

Any Battery Energy Storage System or Commercial Data Center must provide for the buffering and screening in accordance with the Land Use Ordinance Section 8.11 Buffer Area and Screening Standards for that zone.

### **10.33.6 Special Signage**

**10.33.6.1.** The signage shall be in compliance with ANSI Z535 and shall include the type of technology associated with the Battery Energy Storage Systems or Commercial Data Centers, the type of battery energy storage system, any special hazards associated with the system, the type of fire suppression system installed in the area of Battery Energy Storage Systems or Commercial Data Centers, and 24-hour emergency contact information.

**10.33.6.2.** As required by the MUBEC, disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad- mounted transformers and substations.

### **10.33.7 Vegetation and tree-cutting**

Areas within 10 feet on each side of the Battery Energy Storage System or Commercial Data Center shall be cleared of combustible vegetation and other combustible items. Single specimens of trees, shrubbery, or cultivated ground cover such as green grass, or similar plants used as ground covers shall be permitted provided that they do not form a means of readily transmitting fire. Removal of trees should be minimized to the extent possible.

### **10.33.8 Decommissioning**

**10.33.8.1.** All applications for a Battery Energy Storage System or Commercial Data Center shall be accompanied by a Decommissioning Plan detailing the process and estimated costs, to be

implemented upon abandonment and/or in conjunction with removal of the installation for any reasons. Prior to removal of the BESS or CDC, a permit for removal activities shall be obtained from the Code Enforcement Officer. For all other Battery Energy Storage Systems or Commercial Data Centers subject to regulation under this Ordinance, the Decommissioning Plan shall include the following provisions:

- 10.33.8.1.1.** The owner, operator, or their successors in interest shall remove any Battery Energy Storage System, Commercial Data Center, Dedicated-Use Building and all other buildings, structures, equipment, security barriers, feeders, and branch circuit wiring related thereto which have reached the end of their useful life or have been abandoned. The owner or operator shall physically remove the installation no more than one hundred and fifty (150) days after the date of discontinued operations. The owner or operator shall notify the City Code Enforcement Officer by certified mail of the proposed date of discontinued operations and plans for removal and apply for a permit. This includes:
- 10.33.8.1.1.1.** Disposal of all solid and hazardous waste in accordance with local, State, and Federal waste disposal regulations.
- 10.33.8.1.1.2.** Stabilization or re-vegetation of the site as necessary to minimize erosion. The CEO may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.
- 10.33.8.1.2.** As part of the decommissioning plan, the owner or operator of a Battery Energy Storage System or Commercial Data Center shall provide the City Manager with an irrevocable standby letter of credit or other form of financial security reasonably acceptable to the City attorney, which shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restoration of the site subsequent to removal. The amount of the letter of credit or other security shall be in the amount of one hundred percent (100%) of the cost of removal (to be detailed and provided) of the Battery Energy Storage System or Commercial Data Center and restoration of the property, which shall be renewed and updated every five (5) years. Delivery of the letter of credit or other security to the City shall occur prior to the commencement of operations.
- 10.33.8.1.2.1.** Credit shall be in an amount sufficient to remove all built systems and restore the site to conditions deemed appropriate by the City of Gardiner Code Enforcement Officer should the BESS or CDC cease operations due to exigent circumstances including, but not limited to fire, bankruptcy, natural disaster, plague, or other unforeseen circumstances.
- 10.33.8.1.3.** Absent notice of a proposed date of decommissioning and written notice of extenuating circumstances, the Battery Energy Storage System or Commercial Data Center shall be considered abandoned when it fails to operate for more than one (1) year without the written consent of the Planning Board (“Abandonment”). If the owner or operator of the BESS or CDC fails to remove the installation in accordance with the requirements of this section within one hundred and fifty (150) days of Abandonment or the proposed date of decommissioning, the City may enter the property and physically remove the installation using the applicant’s financial security funds.
- 10.33.8.1.4.** Upon the decommissioning of the BESS or CDC project and removal of all equipment, the soils at the site shall be restored to the condition that existed prior to the construction of the project.
- 10.33.8.1.5.** In the event of default of performance of such conditions, after proper notice, the letter of credit or other financial security shall be forfeited to the City, which shall be entitled

to maintain an action thereon. The letter of credit or other financial security shall remain in full force and effect until restoration of the property as set forth in the Decommissioning Plan is completed.

**10.33.8.2. Costs of Decommissioning/Removal** The operator of an installation and the owner of the real property on which such installation is located shall be jointly liable for all costs and expenses of the City incurred during and relating to the removal of an installation under this ordinance. Notwithstanding the foregoing, the City shall first attempt to secure payment for such costs and expenses from the operator of the installation; however, in the event the City is not made whole following reasonable attempts to collect such costs and expenses from the operator of the installation, the City reserves all rights under this ordinance to pursue payment for such costs and expenses from the owner of the real property on which the installation in question is located.

#### **10.33.9. Additional Site Plan Application Materials**

A Battery Energy Storage System or Commercial Data Center requires Site Plan approval. A Site Plan application shall include the following information:

**10.33.9.1.** A noise study conducted at the applicant's expense, showing that any noise will not exceed the applicable standards of the zoning district where the project is located, that there will be no negative impacts on adjacent lots, and that no noise or vibrations are detectable from nearby residences.

To be added to 8.8 Noise

8.8.5 Noise emitted from a Battery Energy Storage System or Commercial Data Center shall not exceed the applicable standards of the zoning district where the project is located.

8.8.5.1 Battery Energy Storage System and Commercial Data Center facilities shall submit a noise study, conducted at the applicant's expense, showing that there will be no negative impacts on adjacent lots and that no noise or vibrations are detectable from nearby residences.

To be added to Ch 17, Definitions

**Decommissioning Plan:** A plan to retire and remove the physical facilities and/or structures of a project site, including, but not limited to decontamination, dismantlement, site rehabilitation, costs, and timelines for decommissioning.