Chapter 17.4045 Large Electric Energy Facilities

Section 17.4045.01 PURPOSE

The purpose of this section is to establish Marathon County's role in the review process for the construction, operation and decommissioning of a large electric energy facility proposed within towns that have adopted Marathon County zoning; to review a proposed large electric energy facility pursuant to Wis. Stat. 196.491(3)(d)6. with respect to orderly land use and development plans within the affected area; to review each proposed large electric energy facility on a case-by-case basis to determine whether the environmental impacts of the proposed large electric energy facility on the public health, welfare and safety are such that it would be appropriate for the County to take steps to ensure such impacts are addressed, and to review a proposed large electric energy facility pursuant to and consistent with Wis. Stat. § 66.0401 for issues relating to public health or safety should a proposed large electric energy facility be subject to such restrictions. This section is further intended to ensure that public health, safety, and welfare are fully protected and adequately considered in the evaluation of such projects, along with associated land use, agricultural, infrastructure, environmental, and community impacts, prior to any action by a state regulatory body, including but not limited to the Public Service Commission of Wisconsin pursuant to Wis. Stat. § 196.491, the Wisconsin Department of Natural Resources pursuant to Wis. Stat. § 196.025(2m) or Wis. Stat. § 1.11, or the Wisconsin Department of Agriculture, Trade and Consumer Protection for purposes of compliance with Wis. Stat. § 1.11, Wis. Admin. Code Ch. PSC 4.30 or Wis. Admin. Code Ch. ATCP 3.03. The County's review shall not be deemed to inhibit the construction of any large electric energy facility project.

Section 17.4045.02 APPLICABILITY

This section applies only within towns that have adopted Marathon County zoning and applies to all proposed large electric energy facilities, including but not limited to wind, solar, battery storage, biomass, geothermal, hydrogen, nuclear, and other similar technologies, along with associated on-site facilities.

Section 17.4045.03 COUNTY REVIEW AND COORDINATION

Within thirty days of filing an engineering plan pursuant to Wis. Stat. § 196.491(3)(a)3. with the Wisconsin Department of Natural Resources or the Public Service Commission of Wisconsin, a person shall submit a copy of the engineering plan and the information set forth in Sec. 17.4045.03 to the County for review .

As part of the review process required in this section, a person shall provide the County Zoning Administrator or Designee with project information and participate in meetings necessary for the County to complete the review process set forth in Sec. 17.4045.04:

1. Project location, design, and operational characteristics;
2. Agricultural preservation and land use compatibility;
3. Impacts to roads, drainage systems, emergency services, and public infrastructure;
4. Environmental, stormwater, and natural resource impacts;
5. Compatibility with surrounding development and existing land uses;
6. Proposed mitigation measures addressing identified local concerns;
7. Any other information the County may reasonably require to adequately determine the requirements set forth in Sec. 17.4045.04.

Section 17.4045.04 COUNTY REVIEW PROCESS

Upon receipt of the engineering plan and the information set forth in Sec. 17.4045.03, the County may issue written findings, recommendations, requested mitigation measures, and identified areas of concern for consideration by the Wisconsin Department of Natural Resources within the environmental review process and by the Public Service Commission of its review of any application pursuant to Wis. Stat. § 196.491, and shall determine whether to submit a statement of position or take other action pursuant to Sec.17.4045.05 based on the following:

1. Whether the design and location of the project is in the best interest of public health, welfare and safety of the County's residents, visitors, businesses, natural resources and property; and

2. Whether the project will have undue adverse impact on other environmental values, including but not limited to, ecological balance, public health and welfare, historic sites, geological formations, the aesthetics of land and water and recreational use in the County and town in which the project is proposed to be located; and

3. Whether the project will unreasonably interfere with the orderly land use and development plans for the County and the town in which the project is proposed to be located.

Section 17.4045.05 COUNTY RESERVATION OF LEGAL RIGHTS AND REMEDIES

A person's compliance with this Chapter 17.4045 shall not foreclose the County's ability to take any action available to it regarding the project, including but not limited to intervention pursuant to Wis. Admin. Code Ch. PSC 2.20 or seeking review of a decision pursuant to Wis. Stat. § 196.491(3)(j) or Wis. Stat. Ch. 227.

Impermissible interference. means the blockage of wind from a wind energy system or solar energy from a collector surface or proposed collector surface for which a permit has been granted under this chapter during a collector use period if such blockage is by any structure or vegetation on property, an owner of which was notified under sub. (3) (b). "Impermissible interference" does not include:

1. Blockage by a narrow protrusion, including but not limited to a pole or wire, which does not substantially interfere with absorption of solar energy by a solar collector or does not substantially block wind from a wind energy system.
2. Blockage by any structure constructed, under construction or for which a building permit has been applied for before the date the last notice is mailed or delivered under sub. (3) (b).
3. Blockage by any vegetation planted before the date the last notice is mailed or delivered under sub. (3) (b) unless a municipality by ordinance under sub. (2) defines impermissible interference to include such vegetation.

Impounded Motor Vehicle. Any motor powered vehicle whether operable or inoperable and whether licensed or unlicensed, taken into custody and possession by a governmental agency or its legal agent pursuant to authority provided by statute, governmental regulations, or court order for the purpose of storage pending a final determination as to the disposition of said vehicle.

Institution for Higher Education. A facility for post-secondary education that grants associate, bachelor, master, or doctoral degrees and that may include research functions or professional schools.

Interchange. A grade separated intersection with one or more turning lanes for travel between intersecting highways.

Interior Lot. See Lot Types Interstate. See Street Terms.

Junk. Materials or products from materials such as glass, rags, paper, metals or plastic either worn out, broken, fit to be discarded or recycled.

Kennel. The breeding, raising, and/or training of dogs, cats, or other household pets of three months age or older not owned by the owner or occupant of the premises or for commercial gain.

Land Use. Any nonstructural use made of unimproved or improved real estate. Also see: "DEVELOPMENT".

Landing. An uncovered platform at the end of a flight of stairs or a platform for ingress and egress to a structure or a jump platform. A landing is a structural appurtenance not more than four feet wide unless further restricted in this Chapter.

Large Electric Generating Facility. means electric generating equipment and associated facilities designed for nominal operation at a capacity of 100 megawatts or more.

Large Wind Energy System. *Means a system having a total* installed nameplate capacity *of 300kW or greater* and consists of individual wind turbines that have an installed nameplate capacity of more than 100 kilowatts. Systems with *a total installed nameplate capacity of greater than 100MW may not be regulated by this ordinance.*

Lattice Tower. A support structure constructed of vertical metal struts and cross braces forming a triangular or square structure which often tapers from the foundation to the top.

Lawn or Grass Maintenance. The cutting or clipping of grass and the use of pesticides and fertilizer within prescribed manufacturers limits.

Legal Non-conforming Sign. Any sign that legally does not comply and conform to the provisions of this ordinance, at the time of the effective date of this ordinance.

Limited Outdoor Sales, Display or Storage (accessory to principal use). Outdoor display or sales of goods that are accessory to a principal use.

Livestock. Bovine animals, equine animals, goats, poultry, sheep, swine, farm-raised deer, farm-raised game birds, camelids, ratites, and farm-raised fish.

Loading Space. An off-street space or berth on the same lot with a building or contiguous to a group of buildings, for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials, and which abuts upon a street, alley or other appropriate means of access.

Chapter 17.410 INTERIM MORATORIUM ON DATA CENTERS

Section 17.410.01 PURPOSE AND INTENT

1. Purpose
    a. It is the purpose of this ordinance to establish a temporary moratorium on specified data center-related activities and approvals in order to protect the public health, safety, and welfare while the County conducts necessary review and considers appropriate regulatory standards.
2. Intent
    a. This ordinance is intended to protect public health, safety, and general welfare while guiding orderly and compatible land development throughout Marathon County. It establishes zoning districts and standards to promote appropriate land use relationships, support efficient infrastructure and public services, and ensure safe and well-planned transportation systems. It further seeks to preserve residential and agricultural character, protect natural and environmental resources, and encourage quality development consistent with community standards. The ordinance also provides uniform procedures for development review and supports coordinated planning with towns to ensure long-term flexibility and effective land use management.

    b. Where property is affected by the regulations imposed by this chapter and by other governmental regulations, the more restrictive regulations apply, and this chapter is intended to be liberally construed in favor of the County for the promotion of public health, safety, comfort, convenience, and general welfare.

    c. Data centers and similar high-intensity computing facilities may create land use impacts including, but not limited to, high electrical demand, significant utility infrastructure requirements, substantial cooling and mechanical systems, noise and vibration, emergency power generation and fuel storage, lighting and security features, traffic impacts during construction and periodic operations, and potential compatibility concerns with nearby residential, agricultural, and rural land uses.

    d. The County Board finds that an interim moratorium is necessary to allow adequate time for County staff and the Environmental Resources Committee to evaluate potential data center-related impacts and to consider whether amendments, clarifications, or additional standards to the Marathon County Zoning Ordinance are needed to ensure consistent administration of permits and protection of public health, safety, and welfare.

    e. During the moratorium period, the County intends to evaluate potential zoning text amendments, use classifications, application requirements, and performance standards related to data centers.

Section 17.410.02 AUTHORITY

The Marathon County Board of Supervisors has authority under Wisconsin Statutes, including but not limited to ss. 59.02(2) and 59.69, Wis. Stats.

Section 17.410.03 APPLICABILITY AND JURISDICTION

1. This provision applies to data center facilities proposed as the primary use of a parcel and/or to data center facilities exceeding 5,000 square feet in gross floor area. Data center facilities under 5,000 square feet that are accessory or incidental to a permitted principal use of the property shall be considered accessory structures and are not subject to this provision.

2. This ordinance applies to all territory within the unincorporated areas of Marathon County governed by Marathon County General Code of Ordnances Chapter 17-Zoning Code.

Section 17.410.04 MORATORIUM AND PROHIBITED ACTIONS DURING MORATORIUM

1. Moratorium Established. During the effective period of this ordinance, the County shall not accept, process, approve, or issue approvals, permits, or authorizations for New Data Center Development or Data Center Expansion within the jurisdiction of Marathon County Chapter 17-Zoning Code.

2. Covered Actions. This moratorium applies to, without limitation, the following:
   i. land use permits or zoning permits for new development or change in use;
   ii. conditional use permits or approvals, where applicable;
   iii. zoning map amendments or text amendments submitted primarily to allow New Data Center Development or Data Center Expansion; and
   iv. any other County zoning approval that, if granted, would authorize New Data Center Development or Data Center Expansion.

Section 17.410.05 EXEMPTIONS

1. This moratorium shall not apply to the following:
   i. Previously Issued and Lawfully Established Approvals. Work for which a land use permit or other County zoning approval has been lawfully issued prior to the effective date of this ordinance, provided the permit remains valid and has not expired, been revoked, or become void.
   ii. Ordinary Maintenance and Repair. Ordinary maintenance and repair activities that do not constitute Data Center Expansion.
   iii. Emergency Actions. Emergency work necessary to protect public health and safety or to restore utility service, as determined by the Zoning Administrator or designee.

Section 17.410.06 DURATION OF THE MORATORUIM

This moratorium shall remain in effect for twelve (12) months from the date of adoption, unless amended, extended, or repealed by the Marathon County Board of Supervisors. A progress update shall be provided to the Environmental Resources Committee at six (6) months following adoption.

Section 17.410.07 SEVERABILITY

If any provision of this ordinance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect the validity of the remaining provisions, which shall continue in full force and effect.

Section 17.410.08 REPEAL OF CONFLICTING PROVISIONS

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict

Chapter 17.409 BATTERY ENERGY STORAGE SYSTEMS (BESS)

Section 17.409.01 PURPOSE AND INTENT

The purpose of this section is to promote the safe, sustainable, and orderly development of Battery Energy Storage Systems (BESS) in Marathon County, consistent with the County's authority under Wis. Stats. §§ 59.69, 59.70(5), and 66.0401(1m).

This chapter provides land use, safety, and decommissioning standards that support innovation in energy storage while protecting public health and safety, environmental resources, and the character of surrounding land uses.

The County recognizes the important role of energy storage in supporting grid reliability and renewable energy integration and does not prohibit the development of such systems. Instead, the County seeks to ensure systems are appropriately sited and managed.

Section 17.409.02 APPLICABILITY

This ordinance applies to the siting, installation, operation, and decommissioning of all new BESS facilities in unincorporated areas of Marathon County under county zoning jurisdiction.

Projects regulated by the Wisconsin Public Service Commission under Wis. Stat. § 196.491 may be exempt from portions of this ordinance to the extent such regulation is preempted.

The County shall not prohibit BESS systems outright but reserves the right to apply reasonable land use and safety standards in accordance with Wis. Stat. § 66.0401(1m) and relevant federal law.

Section 17.409.03 NONEXCLUSIVITY AND SEVERABILITY

Nothing in this ordinance shall be construed to prohibit energy storage systems outright. The County affirms its intent to allow energy storage development in a manner consistent with public health, safety, and general welfare.

If any section or clause of this ordinance is found invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions.

Section 17.409.04 PERMIT, APPLICATION, AND FILING REQUIREMENTS

A. Private BESS (Under 1 MW, On-Site Use Only)
   1. Permit Type
      a. Zoning Permit required.
   2. Application Requirements:
      a. Site Plan Showing:
         1) Parcel boundaries
         2) BESS container location
         3) Setbacks from property lines and structures
         4) Existing structures
         5) Wetlands or floodplains (if applicable)

B. Commercial BESS (Any System Exporting Energy Off-Site or over 1 MW)
   1. Permit Type
      a. A Conditional Use Permit (CUP) shall be required in designated zoning districts Found in Table 3.
   2. Application Requirements
      a. Site Plan showing:
         1) Parcel boundary and full project footprint
         2) BESS containers/enclosure locations
         3) Fencing, access gates and berms
         4) Fire lanes and emergency access
         5) Driveways and internal roads

6) Existing structures
7) Setback distances (property lines, structures, roads, etc.)
8) Stormwater control features
9) Wetlands, floodplains, and environmental sensitive areas

b. Fire protection plan (in consultation with local fire department)
c. Screening and landscaping plan (as applicable)
d. Decommissioning plan and cost estimate
e. Financial assurance (bond or LOC for decommissioning)
f. Stormwater management plan per state and county standards
g. Hazard Mitigation Analysis.
   1) A Hazard Mitigation Analysis identifying potential failure scenarios, fire risks, explosion risks, thermal runaway risks, and potential impacts to surrounding properties shall be prepared by a qualified professional. The analysis shall be reviewed and acknowledged by the local fire department and the Marathon County Sheriff's Office prior to permit issuance.
h. Emergency Response Plan
   1) A detailed Emergency Response Plan shall be prepared for the facility. The plan shall be reviewed and approved by the local Fire Chief and the Marathon County Emergency Management Department prior to issuance of any zoning or conditional use permit.

Section 17.409.05 DEVELOPMENT STANDARDS

Setbacks are designed to ensure safety, minimize land use conflicts, and allow for fire access and emergency response. Standards are based on industry guidance (e.g., NFPA 855).

A. Private BESS
   1. Location & Setbacks
      a. Must be located in rear or side yard unless integrated with principal structure.
      b. Must meet principal structure setbacks (Table 2)
      c. Minimum 15 ft setback from all other on-site structures

   2. Safety Requirements
      a. Systems must be UL-listed or certified (UL 9540 or successor standard)
      b. Must comply with NFPA 855 and local fire code.
      c. Containers must be weather- and tamper-resistant.

   3. Screening
      a. Systems may be required to be screened in accordance with (Title 6) as determined by the Zoning administrator.

B. Commercial BESS
   1. Location and Setbacks
      a. Minimum 100 ft from all property lines.
      b. Minimum 200 ft from any existing dwelling not owned by system owner.

   2. Safety and Access
      a. Secured fencing. Commercial BESS facilities shall be enclosed by a security fence with a minimum height of seven (7) feet and a maximum height of ten (10) feet, equipped with locked access gates to prevent unauthorized access. ~~(max 10 ft) with locked access gates~~
      b. Posted emergency contact info, hazard signage, and disconnect instructions
      c. Downward-facing, motion-activated lighting (where practical)

   3. Fire Protection, Spill Protection and Code Compliance
      a. Must comply with NFPA 855
      b. Consultation with local fire department is required
      c. Emergency Response plan ~~must be submitted and approved~~
         1) The Emergency Response Plan shall be reviewed annually and updated as necessary to incorporate current safety practices, operational changes, or updated

response procedures. Modifications shall be reviewed by local Fire Chief and Marathon County Emergency Management.

d. First Responder Training and Equipment.
    1) Prior to commencement of operations, the system owner shall ensure that local first responders are adequately trained and equipped to respond to emergencies involving the specific battery technology installed at the facility. If the existing equipment or training available to local emergency responders is determined to be insufficient for appropriate response, the system owner shall be commercially responsible for providing reasonable training and necessary equipment prior to the commencement of operations.
    2) The system owner shall be responsible for replacing any specialized emergency response equipment provided pursuant to this section if such equipment is consumed, damaged or rendered unusable as a direct result of a response to an emergency associated with the Battery Energy Storage System, or upon reaching the end of its service life irrespective of use. Replacement equipment shall be of equivalent or greater capability and shall be provided within a reasonable timeframe to maintain emergency response readiness. The system owner shall also provide refresher training for local first responders at reasonable intervals, but no less than annually, or as requested by the jurisdictional Fire Chief or the Marathon County Sheriff's Office, throughout the operational life of the facility.
e. Emergency Event Costs
    1) The system owner shall be responsible for the commercially reasonable costs incurred by local emergency responders associated with responding to an emergency event occurring at the BESS facility.

4. Monitoring and Operational Safety
    a. Commercial BESS facilities shall maintain continuous 24-hour remote monitoring capable of detecting system faults, abnormal temperature conditions, fire risks, and other operational hazards.
    b. Monitoring systems shall provide the ability to notify the system operator immediately in the event of abnormal conditions.

5. Decommissioning
    a. Developer/owner is responsible for the removal of the project at the end of its useful life. Systems that cease operation for 12 consecutive months shall be decommissioned and restored to the to its pre-construction condition to the maximum extent possible, within 12 months of ceasing operations.
        1) The Zoning Administrator shall have the authority to determine cessation of operation based on energy output data, lack of maintenance, or visible site inactivity. The owner shall provide annual operational status reports upon request.
    b. A Decommissioning Plan must be developed, submitted, and approved by the County prior to the issuance of the zoning or conditional use permit. The County shall not unreasonably withhold, delay , or condition such approval. In summary the decommissioning plan is to identify:
        1) Steps for restoring the site of the project to pre-construction environmental and physical condition to the maximum extent possible
        2) Estimate the cost for restoration
        3) The decommissioning plan is to be reviewed every 5 years for the purpose of updating the cost for decommissioning and financial assurance as described in Section17.409.06.
    c. If the system owner fails to comply with decommissioning requirements, the County may draw upon the financial assurance to complete decommissioning.
    d. Decommissioning must include the removal of all BESS components and restoration of the site to its pre-development condition, to the greatest extent practicable.

Section 17.409.06 FINANCIAL ASSURANCE FOR COMMERCIAL BESS

A. Purpose
To ensure proper decommissioning of Commercial Battery Energy Storage Systems (BESS) and to protect the County and its residents from financial risk in the event a system owner fails to remove facilities, restore the site, or remediate any spills or hazardous releases, the County requires the establishment of financial assurance as a condition of approval.

B. Applicability
Financial assurance is required for all Commercial BESS installations, including systems of any capacity where energy is transmitted or sold off site. This assurance shall cover both decommissioning and potential spill or environmental remediation costs.

C. Form of Financial Assurance
1. They system Owner Shall provide financial assurance in the form of:
    - An Irrevocable letter of Credit
    - Surety Bond
    - Performance Bond

2. The instruments shall:
    - Be made payable to Marathon County
    - Remain in effect until decommissioning is completed and approved by the County, and
    - Be issued by a financial institution or surety authorized to do business in Wisconsin.

D. Amount
1. The financial assurance shall equal 100% of the estimated cost of decommissioning, site restoration, and potential spill or hazardous material remediation, as determined by a qualified third-party engineer and approved by the Zoning Administrator or designee.

2. The cost estimate shall:
    - Reflect full removal and disposal of BESS components
    - Include site grading, revegetation, access restoration, labor, and spill cleanup or containment costs if needed.

E. Updates and Adjustments
1. The cost Estimate shall be reviewed and updated:
    - Every (5) Years from the date of approval, or
    - At the County's discretion following a change in ownership, major system upgrade, or significant changes in risk factors affecting spill or environmental remediation costs review cycle if material changes to inflation, labor, or equipment costs occur.

2. The financial assurance shall be adjusted accordingly to reflect the updated estimate.

F. Use of Financial Assurance
1. If the system owner fails to begin or complete decommissioning or required spill remediation within the required timeline, the County may:
    - Issue a notice of default, and
    - Use the financial assurance to complete all necessary removal, site restoration, and spill or hazardous material cleanup.

G. Release of Financial Assurance
1. Financial assurance may be released only after:
    - A formal request is submitted by the system owner, and
    - The County confirms that all decommissioning, site restoration, and spill remediation requirements have been completed to the County's satisfaction, reserving the right to retain all or a portion of funds until final site approval.

Cultural, Municipal, or Public Use. A public or private non-profit facility for the benefit of and service to the general public including, but not limited to, community centers, cultural facilities such as libraries or museums, police and fire stations, and municipal and government uses.

Data Center. a facility, or portion of a facility, whose primary purpose is to house computer systems and associated components, including servers, network equipment, and data storage systems, together with supporting mechanical, electrical, power generation, cooling, ventilation, and security systems, where the facility is designed for or operates as:

i. enterprise data processing;
ii. colocation services;
iii. cloud computing infrastructure; and/or
iv. other large-scale digital data storage, processing, or transmission operations.

Data Center Expansion. Any physical expansion or intensification of an existing Data Center, including but not limited to building additions; new principal or accessory structures; installation or expansion of generators, fuel storage, substations, transformers, cooling equipment, or similar infrastructure; or other changes that increase operational capacity or intensity.

Data Center Development (New) The establishment of a new Data Center on a parcel where a Data Center did not lawfully exist prior to the effective date of this ordinance.

Day(s). Calendar day(s) unless otherwise specified.

Day Care or Child Care Facility. For the purpose of this code a day care or child care facility shall have the same definition as contained in Wis. Stats., 48.65(1).

Deck. A structure usually made of wood and/or synthetic materials which is accessory to a principal structure and which has no roof covering or side walls.

Decommissioning (BESS): The safe dismantling and removal of all energy storage equipment and restoration of the site to pre-development conditions, to the extent practicable.

Decommissioning (Wind Energy Systems, Solar Energy Systems). means removal of all of the following:

1. The above ground portion of a wind energy system or solar energy systems, including wind turbines and related facilities, Photovoltaic panels, support structures and related facilities, except for access roads if removal has been waived by the property owner.
2. All below ground facilities, except the following:
   a. Underground collector circuit facilities.
   b. Those portions of concrete structures 4 feet or more below grade.

Density. The number of dwelling units developed on an acre of land.

Department. Marathon County Conservation, Planning, and Zoning Department.

Development. Any artificial change to improved or unimproved real estate including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or substantial improvements to buildings, structures or accessory structures; the placement of building or structures; mining, dredging, filling, grading, paving, excavation or drilling operations; and the storage, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities.

Development Entrance Sign. A ground sign which identifies a residential or commercial subdivision, industrial or office park, or development with three or more buildings.

1. Street Island Sign. A small piece of land surrounded by public streets, private streets, and/or common driveways that is located near the entrance to a residential subdivision, a residential complex, a commercial or office park, an institutional complex, an industrial park or the like.

Directional Sign. Any sign which solely serves to designate the location or direction of any place or area located on the premises on which the sign is located.