Virginia Model Storage Ordinance Additional Comments

Thank you for the recent conversation about the model storage ordinance. We wanted to follow up with additional details on several of the items we discussed.

(1) NFPA 855 and the State Building Code – We understand that the model ordinance cannot require localities to enforce standards that have not been incorporated into the Virginia State Building Code, including newer versions of NFPA 855. However, there may be another mechanism for developers to demonstrate that a project is being designed to comply with the current NFPA 855 standard, such as submitting a compliance statement or plan with the application. This is important because, under the 2026 standard, large-scale fire testing can inform container spacing and overall site configuration and those issues that directly affect project design and siting.

(2) By Right Development – Energy Storage – While we understand that the model ordinance cannot recommend by-right development in specific zoning districts because zoning classifications vary by locality, we recommend that the accompanying guidance encourage localities to consider opportunities for by-right development where appropriate.

(3) Decommissioning – While the Virginia solar standards law establishes a five-year cycle for updating decommissioning plans, we recommend that decommissioning cost estimates for BESS be reviewed every 10 years. Battery technology and recycling markets continue to evolve, and the value and recoverability of battery materials can significantly affect decommissioning costs. A 10-year review cycle would better reflect these characteristics while still ensuring that cost estimates are periodically updated.

(4) Third Party Reviews – This is an issue we feel strongly about because third-party reviews can easily expand beyond their intended purpose. The scope of any third-party review should be agreed upon by the locality and the developer in advance and limited to determining compliance with the local ordinance. The third-party reviewer should not determine whether a permit should be approved, as that goes beyond assessing compliance with the ordinance. If a locality needs additional outside expertise to support its permitting decision, that assistance should be addressed separately and not incorporated into the third-party compliance review.

(5) Setbacks – We recommend that setbacks not include a numerical range. Setbacks should be determined by large scale fire propagation under NFPA 855 standards and other data driven safety considerations. For the model ordinance, we support mention of compliance with existing zoning setbacks, so long as they meet those required by NFPA 855. This ensures that BESS projects do not receive separate, more-restrictive requirements beyond those necessary for safety.