

ORDINANCE NO. 3913

An Interim Ordinance Declaring an Emergency and Adopting a Moratorium on the Acceptance of Applications for Permits to Develop Certain Types of Battery Energy Storage Systems used to Provide Power to an Electrical Grid

WHEREAS, the increasing demand for electricity as an energy source has resulted in some unanticipated impacts including the emergence of battery energy storage systems intended primarily to store and provide electrical energy to an electrical power grid; and

WHEREAS, battery energy storage systems, which have been used on a small scale to provide back-up power for residential users and small businesses, are being developed for use by electrical utilities and other suppliers to store electricity and release it on demand to all users on an electrical grid; and

WHEREAS, battery energy storage systems are frequently manufactured to fit batteries, chargers, controls, power conditioning systems in a single trailer-sized container, with transmission lines connecting the system to the electrical grid; and

WHEREAS, a battery energy storage system may consist of a single container or numerous containers known as a battery farm set within a large warehouse or outdoors in a field; and

WHEREAS, because the batteries used in battery storage systems commonly use lithium-ion technology, their large scale use presents a significant risk of fire hazards and thermal runaway events; and

WHEREAS, other known impacts from battery energy storage systems include noise pollution and the possibility of an adverse effect on aesthetics if constructed in sections of the City that may be incompatible with such use, including residential and retail areas; and

WHEREAS, the City does not presently have siting criteria for battery energy storage systems or regulations to address safety standards, security requirements, emergency response plans including fire suppression and evacuation plans, or standards for design, installation, and operation; and

WHEREAS, such criteria and regulations are necessary to address the unknown risks presented by large scale battery energy storage systems; and

WHEREAS, the City Council finds that current land use regulations do not identify or address the use of battery energy storage systems that will be used to supplant a utility's production of electrical energy; and

WHEREAS, RCW 35A.63.220 and RCW 36.70A.390 authorize cities to adopt interim land use regulations, official controls and moratoria to preserve the status quo while new plans or

regulations are considered and prepared and to renew such interim regulations, official controls, and moratoria; and

WHEREAS, RCW 36.70A.390 and RCW 35A.63.220 authorize that, so long as a subsequent public hearing is held and a work plan is adopted, a moratorium can be in place for up to one year; and

WHEREAS, without the adoption of this interim moratorium, there is the potential that battery energy storage facilities used to provide energy to the electrical grid could be sited within the City absent necessary regulations to ensure public safety and to preserve neighborhood aesthetics; and

WHEREAS, RCW 35A.63.220 and RCW 36.70A.390 authorize the City to adopt a moratorium or interim control on development and to hold a public hearing on the moratorium or interim control within 60 days of the commencement of the moratorium, and

WHEREAS, the City needs time to review information that affects the siting of battery energy storage systems intended to supply power to the electrical grid and to review the Mount Vernon Municipal Code in a comprehensive fashion to determine whether it sufficiently addresses the impacts of such uses and, if not, to adopt appropriate permanent regulations; and

WHEREAS, the Mount Vernon City Council deems it to be in the public interest to adopt the regulations and prohibitions set forth in this ordinance to allow for a thorough review to address the impacts ; and

WHEREAS, the City Council finds that an emergency exists within the City and that imposing a moratorium on the acceptance of applications to site a battery energy storage system within the City is necessary for the immediate preservation of the public peace, health, safety and welfare and for the support of City government and its existing institutions until additional review has been completed and any necessary code revisions have been adopted by the City Council; and

WHEREAS, the City utilized the State Attorney General Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property for evaluating constitutional issues, in conjunction with and to inform its review of the Ordinance. The City has utilized the process, a process protected under Attorney-Client privilege pursuant to law including RCW 36.70A.370(4), with the City Attorney's Office which has reviewed this ordinance, including the "warning signals" identified in the Memorandum, with decisions makers, and conducted an evaluation of all constitutional provisions potentially at issue and advised of the genuine legal risks, if any, with the adoption of this Ordinance to assure that the proposed regulatory or administrative actions did not result in an unconstitutional taking of private property, consistent with RCW 36.70A.370(2).

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF MOUNT VERNON, WASHINGTON, DO ORDAIN AS FOLLOWS:

SECTION 1. Findings. That the City Council adopts the recitals set forth above as its findings of fact justifying adoption of this Ordinance enacting the moratorium and official controls as set forth herein and incorporates those recitals as if set forth fully herein. The Council may adopt additional findings in the event that additional public hearings are held or evidence presented to the City Council.

SECTION 2. Additional Findings. The City Council adopts the additional findings and conclusions:

- A. An interim moratorium is a recognized technique to stem a potential rush for permits whenever a community decides to change its planning ordinances in order to prevent development inconsistent with the ultimate planning design that might be approved.
- B. That pursuant to WAC 197-11-880, the adoption of this ordinance is exempt from the requirements of a threshold determination under the State Environmental Policy Act.
- C. The City of Mount Vernon's Comprehensive Plan is hereby adopted by reference and shall be incorporated by this reference into the City's findings for this Ordinance.
- D. The moratorium shall be effective for at least six (6) months unless, before the public hearing, Development Services provides a work plan for necessary studies, in which case this moratorium shall be effective for twelve (12) months.
- E. The moratorium may be renewed for one or more six (6) month periods if a subsequent public hearing(s) is held and findings of fact are made prior to each renewal.
- F. The United States Supreme Court in *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002), held that moratoria are essential tools for successful development and re-affirmed that moratoria are not per se takings.

SECTION 3. Moratorium Imposed. Pursuant to the provisions of RCW 36.70A.390 and RCW 35A.63.220 the City hereby adopts a moratorium on accepting applications for permits to construct, site, or develop a battery energy storage system that is intended or likely to be used to primarily store and supply electrical power to the electrical grid within the City.

SECTION 4. Effective Period. This ordinance is immediately adopted and shall apply for one year from the date of its adoption unless earlier terminated or not renewed after a subsequent public hearing is held.

SECTION 5. Hearing To Be Held. Pursuant to RCW 36.70A.390 and/or RCW 35A.63.220, the City Council shall hold a public hearing on this interim zoning ordinance within 60 days of its adoption.

SECTION 6. City to Consider Permanent Regulations. The City Council hereby directs that the City Development Services Department begin research on battery energy storage systems used to provide power to the electrical grid and begin the process of drafting proposed permanent regulations to be considered through the City's public participation process including allowing for public input and providing for public hearings before the Planning Commission and City Council.

SECTION 7. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or

unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

SECTION 8. Effective Date and Declaration of Emergency. The City Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by a majority plus one of the whole membership of the Council, and that the same is not subject to a referendum. If this ordinance is not adopted immediately, applications for uses, building applications, permits or other types of land use/development permits/approvals could arguably become vested leading to development and land uses incompatible with the regulations eventually adopted by the City in its comprehensive review and formal regulation amendment/adoption process. Therefore, the moratorium ordinance must be adopted immediately as an emergency measure to protect the public health, safety and welfare, and to prevent the submission of applications, proliferation of incompatible land uses and efforts to incorrectly interpret existing regulations, in an attempt to vest rights for an indefinite period of time.

SECTION 9. Ordinance to be Transmitted to Department. Pursuant to RCW 36.70A.106, this Interim Ordinance shall be transmitted to the Washington State Department of Commerce as required by law.

SECTION 12. Publication. This Ordinance shall be published by an approved summary consisting of the title.

PASSED AND ADOPTED this 28th day of May, 2025

SIGNED AND APPROVED this 9th day of June, 2025.


Peter Donovan, Mayor

Attest:


Beck Jensen, City Clerk

Approved as to form:


Kevin Rogerson, City Attorney

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