

ORDINANCE NO. 3940

AN ORDINANCE OF THE CITY OF MOUNT VERNON, WASHINGTON, RATIFYING, RENEWING, CONFIRMING, AND CONTINUING THE MORATORIUM PREVIOUSLY ADOPTED BY COUNCIL THROUGH ORDINANCES 3913 AND 3915 PURSUANT TO RCW 35A.63.220 AND RCW 36.70A.390; RELATING TO BATTERY ENERGY STORAGE SYSTEMS; ADOPTING FINDINGS OF FACT JUSTIFYING ITS ACTION; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, RCW 35A.63.220 and RCW 36.70A.390 authorizes the City of Mount Vernon to enact interim 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, on May 28, 2025, at a regularly scheduled City Council meeting, the City Council declared an emergency and adopted by unanimous passage of Ordinance 3913, a moratorium on the acceptance of applications for permits to develop certain types of Battery Energy Storage Systems (BESS), adopting findings of fact, and directing City staff schedule the necessary public hearings as required by law within 60-days; and

WHEREAS, on July 23, 2025, the Mount Vernon City Council (City Council) held a public hearing and adopted Ordinance 3915 finding that the emergency continues to exist as set forth in Ordinance 3913, adopting additional findings, ratifying, and continuing the moratorium adopted through Ordinance 3913. Ordinance 3915 included a work plan and findings of fact allowing the moratorium to be in effect for up to one year; and

WHEREAS, Pursuant to RCW 36.70A.390 and/or RCW 35A.63.220, the moratorium placed into effect through Ordinances 3913 and 3915 will expire unless City Council takes action to renew the moratorium. The moratorium may be renewed for one or more six-month periods, provided a subsequent hearing is held and findings of fact are made prior to each renewal; and

WHEREAS, public notice of the City Council's May 27, 2026 hearing was posted on the City's permit portal on May 20, 2026 and published in the Skagit Valley Herald's classified section on May 21, 2026; and,

WHEREAS, on May 27, 2026, the City Council held a public hearing regarding the renewal of the moratorium established by Ordinances 3913 and 3915; and

WHEREAS, the City Council finds an emergency continues to exist as set forth in Ordinances 3913 and 3915 and there remains an urgent need to keep a moratorium in place, provide time to allow city staff to research battery energy storage systems, and draft proposed permanent regulations to be considered through the City's public participation process providing notice and opportunity for public input before the Planning Commission and City Council on any proposed regulations.

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

SECTION 1. RECITALS INCORPORATED. City Council adopts the recitals set forth above as additional findings of fact justifying adoption of this Ordinance and reaffirms the adoption of the findings

in Ordinance 3913 and 3915 enacting a moratorium on accepting applications for permits to construct, site, or develop BESS primarily intended, or likely to be used, to store and supply electrical power to the electrical grid within the City and incorporates those findings (including their recitals) as if set forth fully herein. Exhibit B to this Ordinance contains a copy of Ordinances 3913 and 3915. The Council may adopt additional findings in the event additional public hearings are held or evidence presented to the City Council.

SECTION 2. ADDITIONAL FINDINGS. The City Council adopts these additional findings and conclusions:

1. To date the City has completed the following that is part of the work plan adopted under Ordinance 3915:
 - a. Studied potential impacts to first responders, noise pollution and adverse visual impacts.
 - b. Researched potential mitigation measures to assist in reducing foreseeable impacts to property and people living next to and near future BESS.
 - c. Presentation from Puget Sound Energy was held before the City Council on October 15, 2025 regarding BESS.
 - d. Engaged in dialog with community members gravely worried about the siting of a BESS within or near the City.
2. The City's existing regulations are insufficient to protect the community's health, safety and welfare from the development of BESS. The City needs additional time to complete necessary research and technical assistance to develop a record and (through the record) recommendations from City staff on proposed development regulations to mitigate potential impacts from BESS.
3. That the City needs to thoroughly evaluate the public safety impacts from BESS including impacts resulting from a BESS failure. As noted by Matthew Paiss, a Pacific Northwest National Laboratory (PNNL) battery safety expert, "*As with any complex electrical appliance or piece of equipment, failures occasionally occur...while this is rare, it must be considered in the planning process.*"¹ Following is an illustrative list of potential impacts from BESS:
 - a. Thermal runaway, fire propagation, toxic off-gassing and explosion.
 - b. Safety of First Responders. First responders may need specialized training, equipment and chemical-specific extinguishing agents to safely suppress large-scale lithium-ion battery fires.
 - c. Contamination from toxic runoff, contaminated fire suppression water and potential air quality impacts.
 - d. Zoning Considerations. Noise pollution and adverse odor and visual impacts.

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 a maximum of six-months from adoption.

SECTION 5. CITY TO CONSIDER PERMANENT REGULATIONS. The City Council hereby directs the City's Development Services Department to continue research on battery energy storage systems used to provide power to the electrical grid and to continue 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.

¹ Battery Power, *PNNL Releases Guidance on Local Battery Energy Storage Systems*, (Battery Power, 2023) <https://www.batterypoweronline.com/news/pnnl-releases-guidance-on-local-battery-energy-storage-systems/> (accessed 05/19/2026).

SECTION 6. 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 7. 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. This Ordinance will not affect any existing rights, or any vested applications previously submitted to the City.

SECTION 8. 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.

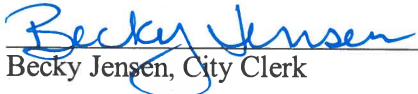
PASSED AND ADOPTED this 27th day of May, 2026

SIGNED IN AUTHENTICATION this 29th day of May, 2026.



Peter Donovan, Mayor
~~Becky Jensen, City Clerk~~

Attest:



Becky Jensen, City Clerk

Approved as to form:



Kevin Rogerson, City Attorney

Published May 30, 2026

EXHIBIT A

REVISED WORK PLAN FOR ESTABLISHING PERMANENT REGULATIONS

- A. **June 2026 to August 2026:** Study of potential impacts and mitigation measures to existing and future neighborhoods, transportation and utility systems
- B. **August to September 2026:** Meetings with City Council, Planning Commission, and other interested parties to discuss the interim regulations
- C. **September to November 2026:** Commerce, SEPA, Public Hearing, and Adoption
 - a. Commerce 60-day Notice
 - b. SEPA
 - c. Notice of Public Hearing
 - d. Public hearing(s) before the Planning Commission
 - e. Public hearing(s) before the City Council
 - f. Adoption of permanent development regulations

EXHIBIT B
ORDINANCES 3913 AND 3915

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

Published May 31, 2025

ORDINANCE NO. 3915

AN ORDINANCE OF THE CITY OF MOUNT VERNON, WASHINGTON, RATIFYING, RENEWING, CONFIRMING, AND CONTINUING THE MORATORIUM PREVIOUSLY ADOPTED BY COUNCIL THROUGH ORDINANCE 3913 PURSUANT TO RCW 35A.63.220 AND RCW 36.70A.390; RELATING TO BATTERY ENERGY STORAGE SYSTEMS; ADOPTING FINDINGS OF FACT JUSTIFYING ITS ACTION; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, RCW 36.70A.390 and RCW 35A.63.220 authorizes the City of Mount Vernon to enact moratoria while new regulations are considered and prepared; and requires the City to hold a public hearing on a moratorium within 60-days of adoption; and

WHEREAS, on May 28, 2025, at a regularly scheduled City Council meeting, the City Council declared an emergency and adopted a moratorium on accepting applications for permits to construct, site, or develop battery energy storage system(s) primarily intended, or likely to be used, to store and supply electrical power to the electrical grid within the City, adopting findings of fact, and directing City staff schedule the necessary public hearings as required by law within 60-days; and

WHEREAS, on July 23, 2025, the City held a public hearing regarding the continuation of the moratorium established by Ordinance 3913; and

WHEREAS, the City finds an emergency continues to exist as set forth in Ordinance No. 3913 and that there remains an urgent need to keep a moratorium in place and have the City's Development Services Department research battery energy storage systems and draft proposed permanent regulations to be considered through the City's public participation process allowing for public input and providing for public hearings before the Planning Commission and City Council.

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

SECTION 1. RECITALS INCORPORATED. City Council adopts the recitals set forth above as additional findings of fact justifying adoption of this Ordinance and reaffirms the adoption of the findings in Ordinance 3913 (attached to this Ordinance identified as **Exhibit A**) enacting a moratorium and incorporates those findings (including their recitals) as if set forth fully herein. The Council may adopt additional findings in the event additional public hearings are held or evidence presented to the City Council.

SECTION 2. ADDITIONAL FINDINGS. The City Council adopts these additional findings and conclusions:

1. After hearing all public testimony, reviewing the City's Comprehensive Plan and the legislative record in its entirety the City Council finds that: i) an emergency exists, and ii) the continuance of a moratorium on accepting applications for permits to construct, site, or develop battery energy storage system(s) that are primarily intended (or likely to be used) to store and supply electrical power to the electrical grid within the City is justified until the City can fully study the issue and that permanent development regulations be adopted through the City's otherwise required legislative process; and
2. Continuing Ordinance 3913 is necessary for the immediate preservation of the public welfare and economic vitality until all necessary code revisions and/or additions have been adopted by the City Council and is a legitimate exercise of the City's police power; and

3. A work plan is attached to this Ordinance identified as **Exhibit B** and includes tasks for related studies with target completion dates providing for a period longer than six months justifying the moratorium being in place for more than six months.

SECTION 3. The City Council hereby ratifies, continues, and renews the moratorium in its entirety adopted through Ordinance 3913 and its associated attachments. The moratorium in Ordinance 3913 will remain in effect until the City completes the otherwise required legislative process for the adoption of permanent code amendments. City Council shall make a decision to terminate the interim controls and regulations by ordinance, and termination shall not otherwise be presumed to have occurred. The City shall hold all necessary public hearings and adopt new findings as required under RCW 35A.63.220 and RCW 36.70A.390 if necessary and justified to continue the imposition of this Ordinance and Ordinance 3913 until the City's review has been completed.

SECTION 4. EFFECTIVE PERIOD. This ordinance shall take effect immediately upon passage by the City Council. This ordinance shall apply for a maximum of one year from the adoption of Ordinance 3913 unless earlier terminated or not renewed after a subsequent public hearing is held.

SECTION 5. CITY TO CONSIDER PERMANENT REGULATIONS. The City Council hereby directs that the City's Development Services Department continue research battery energy storage systems, and to proceed with 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 6. 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 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. PUBLICATION. This Ordinance shall be published by an approved summary consisting of the title.

PASSED AND ADOPTED this 23rd day of July, 2025

SIGNED AND APPROVED this 24th day of July, 2025.



Peter Donovan, Mayor



Becky Jensen, City Clerk

Approved as to form:



Kevin Rogerson, City Attorney

Published ~~July 26,~~ August 2, 2025

EXHIBIT A
ORDINANCE 3913

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

Published ^{August}~~May 31~~, 2025

EXHIBIT B
DEVELOPMENT SERVICES WORK PLAN

- A. **July 2025 to December 2025:** study of potential impacts and mitigation measures of battery energy storage systems to property and people living within and near as well as visiting the City.

- B. **January to February 2026:** meetings with City Council, Planning Commission, and other interested parties to discuss the interim regulations.

- C. **March to April 2026:** Completion of paperwork and processes with the Department of Commerce, and the City (SEPA and Notice of Public Hearings).

- D. **April to May 2026:**
 - a. Public hearing(s) before the Planning Commission
 - b. Public hearings before the City Council
 - c. Adoption of permanent regulations