

**ORDINANCE NO. 07-2024**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COVINGTON, WASHINGTON, RELATING TO ADOPTING A TEMPORARY 12-MONTH MORATORIUM ON THE ACCEPTANCE, PROCESSING, AND/OR APPROVAL OF APPLICATIONS FOR BUILDING AND LAND DEVELOPMENT PERMITS AND RELATED LAND USE DECISIONS FOR BATTERY ENERGY STORAGE SYSTEM FACILITIES PROPOSED TO BE LOCATED IN ANY ZONE WITHIN THE CITY OF COVINGTON; SCHEDULING A PUBLIC HEARING; RECOGNIZING THAT A WORK PLAN WILL BE ESTABLISHED; ADOPTING FINDINGS OF FACT; PROVIDING FOR SEVERABILITY; DECLARING AN EMERGENCY; AND ESTABLISHING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, within the express terms of the Covington Municipal Code (“CMC”) and the Growth Management Act, the Washington State Legislature has conferred upon the governing bodies of Washington code cities the right to establish and adopt moratoria related to land uses, as set forth in RCW 35A.63.220 and RCW 36.70A.390; and

WHEREAS, a moratorium is a pause on all new development, land use, and construction applications, which allows cities to consider new development and zoning regulations; and

WHEREAS, Battery Energy Storage System (BESS) facilities are installations designed to store electrical energy for later use, typically consisting of batteries, power conversion systems, and control equipment; and

WHEREAS, the primary function of BESS facilities is to store excess electricity generated during periods of low demand or high renewable energy production, such as from solar or wind sources. This stored energy can then be discharged when demand is high or when renewable energy generation is low, helping to stabilize the electrical grid and improve overall energy reliability; and

WHEREAS, time is needed for the City of Covington (“City”) to study whether battery energy storage system facilities are compatible and should be allowed within City limits, either as a permitted or conditional use, and if so, in which zone(s) and whether current zoning regulations in Title 18 CMC and/or other official controls and development standards need to be updated to ensure such facilities can be safely and appropriately sited within the City; and

WHEREAS, the City’s development regulations, and specifically the definition of “Utility Facility” in CMC 18.20.050 and the permitted and conditional uses provided in CMC Chapter 18.125.040, have not been updated to reflect recent technological changes and business models in the energy storage and electric utility industry; and

WHEREAS, applying these outdated regulations in Title 18 CMC to new technologies and business models could lead to approval of battery energy storage system facility projects that are undesirable, unsafe, and/or inconsistent with long-term planning goals and objectives of the City, particularly when the existing regulations have not been reviewed and updated for best practices nor reconsidered in light of technological changes and potential effects such facilities have on surrounding areas and community resources; and

WHEREAS, the City Council of the City of Covington (“City Council”) has determined the following facts, and identified the following unknown risks and economic factors, that may be relevant in assessing the desirability of, and siting concerns associated with, battery energy storage system facilities in the City:

- A. Battery energy storage systems are essentially rechargeable battery arrays that store excess energy when demand on the electrical grid is low and can feed power back into the system when demand is high (or energy production is low).
- B. The elements used in batteries can pose risks of explosion from overheating and of environmental contamination.
- C. Battery energy storage system facilities present fire hazards that can take weeks to extinguish, requiring massive volumes of water and chemicals to bring under control.
- D. Battery energy storage system facilities are sites where hazardous chemicals such as cyanide and hydrofluoric acid are present and thus pose the potential for discharge to surrounding property, air, and groundwater in the event of a fire.
- E. Battery energy storage system facilities create a potential for air quality hazards in the event of a fire.
- F. Battery energy storage system facilities may produce noise and visual impacts that are not currently well understood by the city.
- G. Battery energy storage system facilities may produce impacts on wildlife that are not currently well understood by the city.
- H. Battery energy storage system facilities may be more appropriate for heavy industrial zones than commercial, neighborhood retail offices, or residential zones.
- I. Battery energy storage system facilities may create additional strain on local emergency response agencies and their personnel.
- J. The Washington State Department of Ecology is beginning to compile guidance on battery energy storage system facility sites that the City wishes to study before updating its zoning and other regulations applicable to battery energy storage system facilities.
- K. The Washington State Legislature adopted House Bill 1216 in 2023, and new Washington State regulations codified at WAC 51.54A.0322 which are intended to minimize the risks of lithium-ion battery energy storage system facilities through fire safety requirements and construction standards and will take effect soon. The City desires to study these new laws and regulations to determine what effects they will have on local regulatory authority. King County is studying whether its codes need updating to add conditions for approving these types of facilities, including zoning, safety, and insurance requirements. The City desires

to learn about King County's regulatory initiatives before finalizing updates to the City's zoning regulations and official controls.

- L. Puget Sound Energy ("PSE"), which is conducting Requests For Proposals for third-party private entities to develop energy storage facilities connected via high-voltage transmission lines to PSE's regional substations, has published safety and reliability requirements for such facilities that need to be explored and better understood before the City can determine whether to permit battery energy storage system facilities in the City, and under what conditions.
- M. It is unknown what fiscal or economic development benefits would flow to the City if battery energy storage system facilities were permitted within the City or which zone(s) would be most advantageous for siting them. The City needs to investigate and analyze potential economic impacts and tax revenues associated with such projects.

WHEREAS, due to the unique characteristics of battery energy storage system facilities, certain existing requirements in the CMC may not appropriately address or mitigate the community impacts and risks such facilities may present; and

WHEREAS, processing applications for land use approvals, development permits, and related applications or code interpretations for battery energy storage system facilities under existing zoning regulations and other official controls could potentially result in approvals of undesirable and incompatible development until such time that the City has properly reviewed its regulations and implemented any zoning code revisions or additional controls deemed necessary and proper for the health, safety, and general welfare of the City and its residents; and

WHEREAS, the City's Comprehensive Plan update includes analysis and recommendations for needed zoning code amendments to implement the Land Use element and Economic Development element of the Comprehensive Plan following its anticipated adoption in December 2024; and

WHEREAS, it would be an efficient use of resources and an appropriate exercise of its planning authority under the Growth Management Act and Chapter 35A.63 RCW for the City to integrate an analysis of whether, and under what regulatory parameters, battery energy storage system facilities should be allowed uses within the City with the City's ongoing work on the Land Use chapter and other elements of the Comprehensive Plan and development regulations; and

WHEREAS, the City Council has significant concerns about whether battery energy storage system facilities can be appropriately reviewed and analyzed under current regulations and finds that unless the City acts immediately to preserve the status quo, there are likely to be adverse impacts on the City and the health, safety, and welfare of its citizens; and

WHEREAS, pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City may adopt a moratorium that is effective for no longer than six months but may adopt a moratorium that is effective for up to 12 months if a work plan is developed for conducting appropriate studies and analyses over that longer period; and

WHEREAS, to promote public health, safety, and welfare, the City Council deems it necessary and proper to impose a moratorium on land use and development permit applications related to battery energy storage system facilities for a period of 12 months; and

WHEREAS the City Council deems it appropriate to hold a public hearing on June 11, 2024, and may adopt additional findings following the conclusion of said public hearing; and

WHEREAS, the City possesses land use jurisdiction and regulatory authority over the City's incorporated lands; and

WHEREAS, the adoption of this moratorium is exempt from the threshold determination requirements under the State Environmental Policy Act; and

WHEREAS, Council's desire to maintain the status quo justifies the declaration of an emergency and the designation of this ordinance as a public emergency ordinance necessary for the protection of public health, public safety, public property, or the public peace by the Council; and

WHEREAS, the potential adverse impacts on public health, property, safety, and welfare of the City and its citizens if this moratorium does not take effect immediately, further justifies the declaration of an emergency and the designation of this ordinance as a public emergency ordinance necessary for the protection of public health, public safety, public property, or the public peace by the Council; and

WHEREAS, Council finds that the enactment of this ordinance constitutes an emergency due to the need to immediately prevent the community detriment that would occur by allowing further self-service storage facility development proposals to vest under the current land use regulations; and

WHEREAS, RCW 35A.13.190 permits an ordinance to become effective immediately but requires that it must be passed by a majority plus one of the whole membership of Council to have such an effect; and

WHEREAS, the moratorium imposed herein promotes the public good and is necessary for the protection of public health, property, safety, and welfare. A public emergency exists requiring that the City's moratorium takes effect immediately upon adoption.

NOW, THEREFORE, The City Council of the City of Covington, Washington, do ordain as follows:

Section 1. Findings of Fact. The recitals set forth above are hereby adopted as the City Council's initial findings of fact in support of the moratorium established by this ordinance. The City Council may, in its discretion, adopt additional findings after the public hearing referenced in Section 3 below.

Section 2. Moratorium Imposed. Pursuant to RCW 35A.63.220, and RCW 36.70A.390, a temporary development moratorium is hereby imposed upon battery energy storage system facilities in any zone within the City of Covington. This moratorium also applies to the City's acceptance, processing, or approval of any applications for building permits and land use permits for battery energy storage system facilities, including without limitation:

- A. Development permits;
- B. Special use permits;
- C. Building permits;
- D. Clearing and grading permits;
- E. Short plats;
- F. Subdivisions;
- G. Binding site plans;
- H. Site plan reviews;
- I. Conditional use permits;
- J. Reasonable use exceptions;
- K. Variances from Title 18 CMC regulations;
- L. Deviations from any City of Covington engineering design and construction standards or other technical codes for any battery energy storage system facility within the City or any other type of development permit, approval, or code interpretation in connection with same; and
- M. Any other development permits related to battery energy storage system facilities.

Section 3. Public Hearing. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council will hold a public hearing at the City Council's regular meeting, at 7:00 p.m., on Monday, June 11, 2024, or as soon thereafter as the business of the City Council shall permit, in order to take public testimony on this moratorium and to consider adopting further findings of fact.

Section 4. Referral to Staff; Work Plan. City staff and the Covington Planning Commission are hereby authorized and requested, as part of their ongoing work on the 2024 Comprehensive Plan periodic update and review of current zoning regulations, to study the issues identified in this ordinance and to develop recommendations for whether battery energy storage system facilities should be allowed uses within the City and, if so, what zoning regulations and public processes are needed to protect the health, safety, and welfare of the community and ensure that such facilities are developed in a manner that is compatible with the overall plan and vision for the City. These recommendations shall be reviewed and considered by the Covington City Council for inclusion in the 2024 Comprehensive Plan update, Title 18 of the Covington Municipal Code, and/or other official controls of the City. This work plan is subject to change upon subsequent direction of the City Council following the public hearing referenced in Section 3 of this ordinance.

Section 5. Severability. If any section, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or situation, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining

portions of this ordinance or its application to other persons or situation. The City Council of the City of Covington hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clauses, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

Section 6. Corrections. Upon the approval of the city attorney, the city clerk and the codifiers of this ordinance are authorized to make any necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers, and any reference thereto.

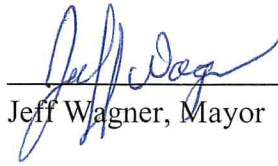
Section 7. Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 8. Declaration of Emergency; Effective Date; Duration. The City Council hereby finds and declares that there is a significant potential for battery energy storage system facilities to create substantial adverse effects on public health, safety, and welfare if not addressed by adequate and appropriate development regulations; therefore, an emergency exists which necessitates that this ordinance become effective immediately in order to preserve the public health, safety, and welfare. Non-exhaustive underlying facts necessary to support this emergency declaration are included in the recitals above, all of which are adopted by reference as findings of fact as if fully set forth herein. This moratorium shall take effect immediately and shall remain in effect for 12 months, unless terminated earlier by the Council; provided, however, Council may, in its sole discretion, renew the moratorium for one or more six-month periods in accordance with state law. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City.

Passed by the City Council of the City of Covington this 14th day of May, 2024.

Signed in authentication of its passage this 14<sup>th</sup> day of May, 2024.

[Signature Page Follows]

  
\_\_\_\_\_  
Jeff Wagner, Mayor

EFFECTIVE: 05-14-2024

PUBLISHED: 05-17-2024

AUTHENTICATED:

  
\_\_\_\_\_  
Krista Bates, City Clerk

APPROVED AS TO FORM:

/s/ Mark Orthmann, as authorized by email on May 14, 2024

Mark Orthmann, City Attorney