

**AN ORDINANCE IMPOSING A 365-DAY MORATORIUM ON THE ACCEPTANCE OF
NEW APPLICATIONS FOR BATTERY ENERGY STORAGE SYSTEMS (BESS) AND
DECLARING AN EMERGENCY**

WHEREAS the Growth Management Act (GMA) requires Kitsap County to comprehensively plan for growth under Chapter 36.70A RCW and to adopt development regulations that are consistent with the County's Comprehensive Plan. The County is also authorized to make and enforce within the unincorporated area of the county all police and sanitary regulations that are not in conflict with state law;

WHEREAS Kitsap County is authorized by RCW 36.70.795 and RCW 36.70A.390 to impose a moratorium when the legislative authority determines a pause is necessary to give time to make an informed decision and protect the status-quo;

WHEREAS across the country jurisdictions are seeing increased requests to site Battery Energy Storage Systems (BESS). A BESS is an emerging type of energy storage technology that uses groups of large, rechargeable batteries to store electrical energy for future use and typically consists of batteries, power conversion systems, and control equipment;

WHEREAS BESS facilities can be powered by renewable and nonrenewable energy sources and are often identified as a way to reduce carbon emissions from fossil fuels, reduce energy costs by being able to provide electrical load balancing and grid stabilization, help alternative energy distribution, such as from solar and wind power projects, and to provide backup power during grid outages;

WHEREAS BESS facilities can also have significant and serious risks, such as thermal runaway situations, fires, explosions, and the release of toxic gases therefrom, as well as noise and low-frequency sound impacts, groundwater impacts, and impacts to rural character and wildlife;

WHEREAS BESS facilities may be small and used on a consumer-scale for single-family residences, or may be large and used on a commercial scale. BESS facilities can take on a variety of designs based on the number of battery modules and the type of batteries used (e.g., lithium-ion, lead-acid, nickel-cadmium, sodium-sulfur);

WHEREAS time is needed for the County to study whether or not battery energy storage system facilities are compatible within certain zoning designations, either as permitted or conditionally allowed uses, and if so, in which zone(s) and whether current zoning regulations in Kitsap County Code and/or other official controls and development standards need to be updated to ensure such facilities can be safely and appropriately sited within the County;

WHEREAS applying current and outdated regulations in Kitsap County Code to new technologies and business models could lead to approval of BESS facilities that are incompatible, undesirable, unsafe, and/or inconsistent with long-term planning goals and objectives of the County, particularly when current 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;

WHEREAS the Board of County Commissioners (Board) desires to be proactive for reviewing and siting BESS facilities to encourage efficient and flexible electrical storage for while ensuring public safety and neighborhood compatibility;

WHEREAS the Board finds it necessary to pause the acceptance of requests to site BESS facilities while the County develops regulations for BESS facilities; and

WHEREAS, this action is taken consistent with the State Environmental Policy Act (SEPA) provisions at WAC 197- 11- 880 regarding emergency actions.

NOW, THEREFORE, BE IT ORDAINED:

Section 1. Preliminary Findings. The recitals set forth above are hereby adopted as the Kitsap County Board of Commissioner's findings in support of the moratorium imposed by this ordinance. The Board of Commissioners may, in its discretion, adopt additional findings at the conclusion of the public hearing referenced in Section 5. In addition, the Board makes the following findings of fact:

- A. 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 regulation and re-affirmed that moratoria are not per se takings.
- B. Regulations currently in effect do not contemplate BESS development nor adequately ensure the protection of land within Kitsap County for BESS development.
- C. Kitsap County intends to develop permanent regulations to address the deficiencies in current regulations.
- D. This ordinance is exempt from the public participation requirements of the GMA, subject to the requirements of RCW 36.70A.390.
- E. An emergency exists and the immediate adoption of a moratorium imposed by this ordinance is necessary for the protection of the public health, safety, property, and peace.

Section 2. Moratorium. A moratorium is hereby imposed upon the acceptance of any new applications for permits proposing to site BESS facilities in unincorporated Kitsap County.

Section 3. Work Plan.

Under RCW 36.70A.390, a year is necessary for the County to accomplish the following studies and investigative review:

- A. The County is aware that BESS facilities may pose significant risks and will investigate the risks of explosion from overheating and resulting environmental contamination, as well as the general risk of fires that can take time to extinguish, require large volumes of water and chemicals to bring under control, and which may result in environmental contamination;
- B. The County is aware that BESS facilities may produce noise, including low-frequency humming, visual impacts, and impacts to wildlife, and the County will investigate the scope of this issue and where facilities may be best suited to reduce incompatibility with adjacent land uses, including, potentially, industrial zones rather than rural, commercial or residential zones;
- C. The County is aware that BESS facilities may create additional strain on local emergency response agencies and their personnel, and the County will investigate the scope of this issue in collaboration with local emergency response agencies;
- D. The Washington State Department of Ecology is beginning to compile guidance on BESS facility sites that the County will need to study before updating its zoning and other regulations applicable to BESS facilities;
- E. The Washington State Legislature adopted House Bill 1216 in 2023, and new Washington State regulations are codified at WAC 51.54A.0322 which are intended to minimize the risks of lithium-ion BESS facilities through fire safety requirements and construction standards and will take effect soon. The County will study these new laws and regulations to determine what effects they will have on local regulatory authority. Other counties are also investigating the effects of these regulations. For example, King County is studying whether its codes need updating to add conditions for approving these types of facilities, including zoning, safety, and insurance requirements; Kitsap County desires to learn about King County's regulatory initiatives before finalizing updates to its regulations;
- F. Puget Sound Energy (PSE) 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 County can finalize updates to its regulations;
- G. It is unknown what fiscal or economic development benefits would flow to the County if battery energy storage system facilities were permitted within the County or which zone(s) would be most advantageous for siting them. The County needs to investigate and analyze potential economic impacts and tax revenues associated with such projects.

Section 4. Effective Period for the Moratorium. The Kitsap County Board of County Commissioners hereby finds and declares that an emergency exists which necessitates that this ordinance becomes effective immediately to preserve public welfare and to prevent the potential for siting BESS facilities. Accordingly, the moratorium set forth in this ordinance shall be in effect immediately and shall expire in 365 days (June 10, 2026), unless terminated sooner or further extended by the Kitsap County Board of County Commissioners.

Section 4. Public Hearing. Pursuant to RCW 36.70.795 and RCW 36.70A.390, the Kitsap County Board of Commissioners will set a public hearing within sixty days from the date this Ordinance is passed.

Section 5. Declaration of Emergency. The Kitsap County Board of Commissioners hereby declares for the public interest, safety and welfare reasons set forth above, that an emergency exists necessitating that this ordinance take effect immediately upon its passage.

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 of any other section, sentence, clause or phrase of this ordinance.

Adopted this 11 day of June 2025

ATTEST:



Dana Daniels
Dana Daniels, Clerk of the Board

BOARD OF COUNTY COMMISSIONERS
Kitsap County, Washington

Christine Rolfes
CHRISTINE ROLFES, Chair

Oran Root
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Approved as to form

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