



## Zoning Out Fossil Fuels

Zoning for Peaker Power Plants in the Hudson Valley

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# How can your municipality ensure it is prepared when a peaker plant developer comes to town?

- Smaller power plants under 25MW are primarily under local government jurisdiction and not subject to NYS Article 10.
- Most Hudson Valley municipalities do not have zoning specifically regulating power plants.



Jeffrey Anzevino/Scenic Hudson

# How have these plants been permitted under other communities' zoning codes?

In some municipalities, power plants have been permitted as “utility company structures” or “other industrial uses”:

- ▶ Cricket Valley, Dover NY (“industrial and other uses”)
- ▶ CPV Valley, Waywayanda NY (“Essential Services/Utilities”)
- ▶ Glidepath, Ulster NY (“utility company structures”)



# What Impacts Could Result From a Power Plant?

- Air pollution, including ozone precursors and particulate matter
- Greenhouse gas emissions contributing to climate change
- Visual impacts, including exhaust plumes that can linger for miles
- Noise impacts
- Potential for fire, explosion or spills
- Discharges of pollutants to water and water withdrawals
- Stormwater management



# Temporary Moratorium Can Be Implemented While New Zoning is Considered

- Review existing code: Does it address power plants at all? Is it vague? Could a power plant potentially fit in to a “catch-all” permitted use?
- Consider adopting a moratorium on power plants while you decide on appropriate zoning approach



## Moratoria should:

- Have a reasonable time frame;
- Have a valid public purpose;
- Strictly adhere to the procedure for adoption laid down by the enabling acts; and
- Specify a time certain when the moratorium will expire



# Consider: Should Power Plants Be Allowed At All In Your Town?

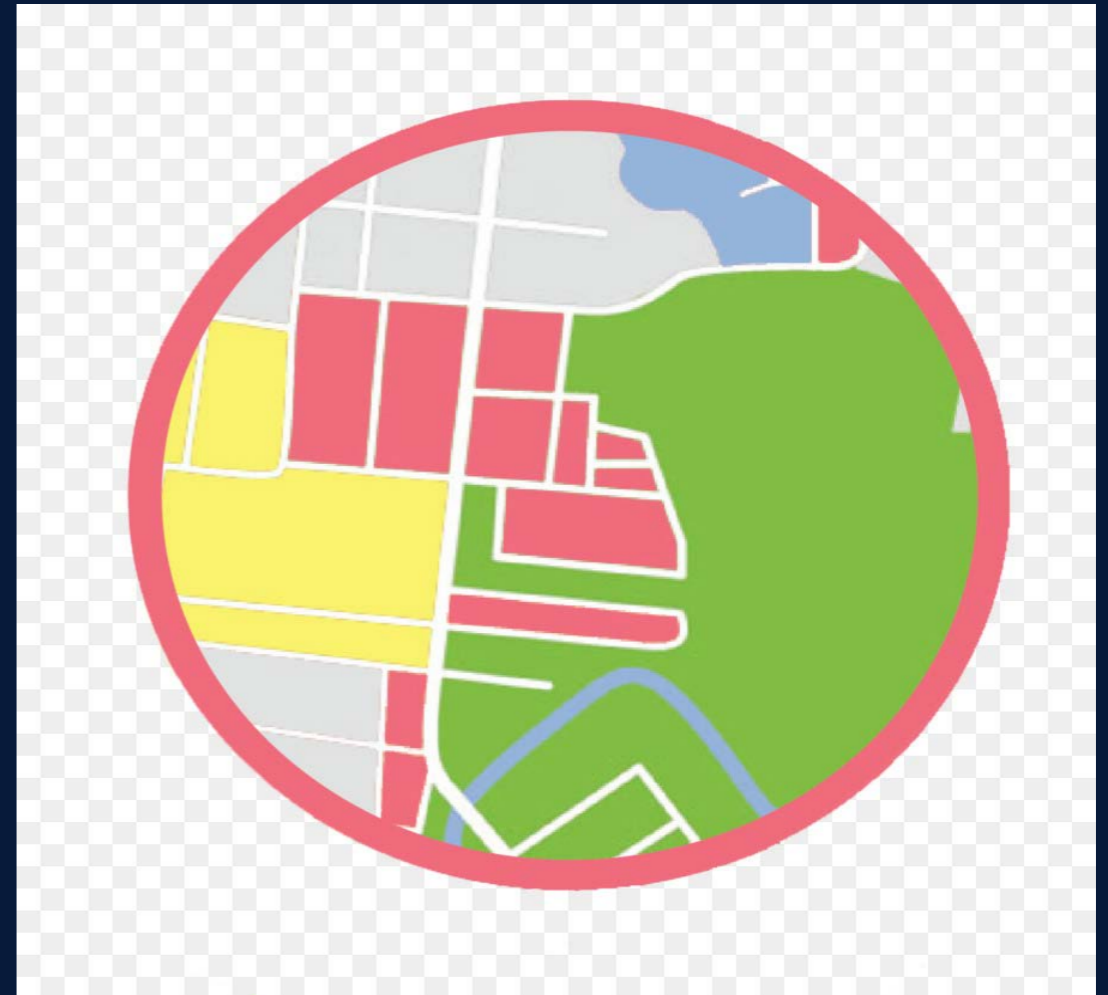


Power plants can be excluded entirely from your municipality.

- Localities can ban industrial uses as long as prohibiting a use is a reasonable exercise of its police powers to prevent damage to the rights of others and to promote the interests of the community as a whole.

# Recommendations for zoning

- Robust “purpose and intent” section with description of potential impacts of power plants on health, safety and welfare of residents of town.
- Clear definition of “fossil fuel electric generating facility”: A facility whose primary purpose is for the generation of electric power (in excess of [one megawatt]) powered by fossil fuel for offsite use.
- Clear statement of applicability to siting and construction of fossil fuel electric generating facilities within the municipality
- Acknowledge primacy of state law for power plants 25MW or greater







## **IF your municipality decides to allow fossil fuel electric generating facilities:**

- Limit to only heavy industrial zones
- Require a special use permit and site plan approval, with appropriate conditions
- Set criteria to address and mitigate potential impacts (i.e., screening requirements, stack height limits)
- Establish lot size and coverage limits, appropriate setbacks and building height limitations
- Require all applicable additional permits and approvals
- Require an enforceable plan and financial surety for decommissioning

# Sample Code Language for Issuance of Special Use Permit

The Town may not grant a special use permit for the construction or operation of a fossil fuel power generating facility, unless it shall first find and determine:

(a) The nature of the probable environmental impact, including a specification of the predictable adverse effect on the environment, public health and safety, aesthetics, scenic, historic and recreational value, forest and parks, air and water quality, fish and other marine wildlife.

(b) That the facility:

(1) Represents the minimum adverse environmental impact;

(2) Is compatible with the public health and safety;

(3) Will not discharge any effluent that will be in contravention of the standards adopted by the Department of Environmental Conservation;

(4) That the proposed facility is in compliance with criteria and requirements of this [section/chapter];

(5) That a harmonious relationship exists between the use of such facility and uses located in adjacent districts as reflected in the comprehensive plan; and

(6) That the proposed facility conforms to and is in compliance with, all zoning laws, ordinances, rules and regulations of the Town.



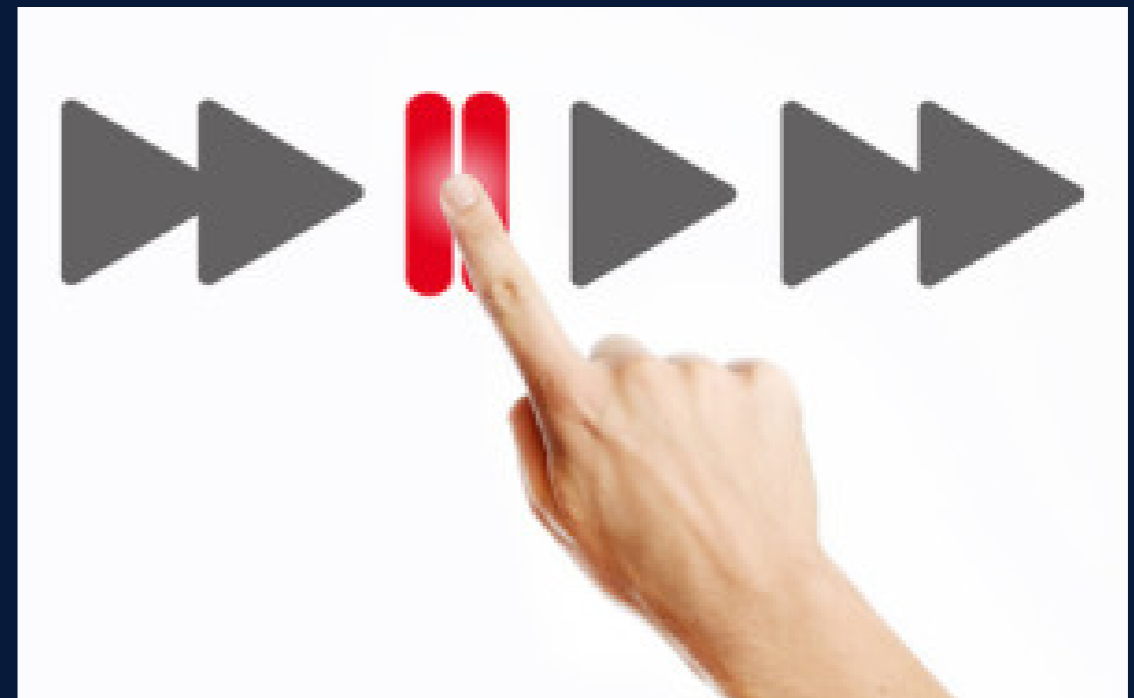
# To review...

**Step 1:** Review existing code

**Step 2:** Consider issuing temporary moratorium

**Step 3:** Decide whether fossil fuel power plants should be prohibited within your municipality, or whether they will be permitted but strictly regulated

**Step 4:** Develop new zoning code provisions with specific definitions and clear conditions





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