

PLEASE TAKE NOTICE that the Mercer County Commissioners adopted the following amendment to the Mercer County Zoning Ordinance on July 15th, 2026, to create a Data Center Ordinance:

Chapter 4, Special Provisions, Section IX. Data Center

The following adopted amendment is available for inspection and copying in the office of the County Recorder, Monday- Friday, 8am-4pm or online at www.mercercountynynd.com.

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Mercer County Auditor

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A. Definitions

Data Center. A building, group of buildings, or campus of facilities, or a dedicated portion thereof, used primarily for the housing, operation, and maintenance of computer systems, servers, and associated equipment for the storage, processing, or transmission of digital data. A Data Center shall include all supporting and associated infrastructure necessary for its operation, located onsite, including but not limited to:

- Cooling systems, including air handling and water-based systems
- Water storage, treatment, and distribution facilities
- Backup power generation systems
- Non-utility electrical infrastructure, including substations, transmission lines, and interconnection facilities. Utility-related infrastructure shall be permitted separately.
- Energy storage systems
- Any other equipment or structures necessary to support continuous operations

For the purposes of this ordinance, all components and phases of a data center development on the subject data center parcel, including associated onsite infrastructure regardless of ownership, shall be considered part of a single project and subject to unified review and permitting. This definition includes, but is not limited to, hyperscale data centers and digital asset mining operations.

Data Center, Small. A data center as defined herein with a total electrical demand of 10

MW up to 50 MW.

Data Center, Large. A data center as defined herein with a total electrical demand in excess of 50 MW.

B. Purpose

The purpose of this Section is to establish standards and regulations for the development and operation of Data Centers in accordance with the purposes stated in Section [reference general zoning ordinance purpose provision].

C. Applicability

Data Centers require a conditional use permit in the Industrial District.

D. Submittal Requirements

The following submittal requirements must be provided as part of the conditional use permit application. The conditional use permit application is not deemed complete until the following submittal requirements are satisfied.

1. Site information, including:

a. Name and address of the owner, applicant, planner, architect, engineer, and landscape architect.

b. Date, scale and north arrow.

c. Total acreage of the site.

d. Title by which the property or project is to be referred.

e. Documentation verifying ownership and site control.

2. A copy of a survey prepared by a registered land surveyor, including a legal description of the property.

3. Current and proposed zoning classifications for the property.

4. Zoning classifications of adjacent parcels.

5. List of property owners within a mile of the subject property.

6. Location of all water wells within a mile of the subject property boundary as documented by the State of North Dakota.

7. Details of existing adjacent developments, including buildings, driveways, fences, walls, parking areas, etc.

8. Details of anticipated design life.

9. Outline of construction staging area.

10. Location of onsite hard surfaces, gravel surfaces, and any otherwise improved surfaces.

11. Estimated daily trips during construction and operation, including heavy trucks and passenger vehicles.

12. Existing and proposed access points.

13. General construction phasing plan.

14. Location and dimensions of all existing and proposed buildings and structures.

15. Location and layout of onsite power generation systems.

16. Location of existing and proposed onsite utility lines and major infrastructure (water lines, electrical lines, oil and gas pipelines, etc.)

17. Location of any proposed contiguous fire break.

18. A preliminary permanent erosion control plan, if development disturbs an area of one acre or more. Note that temporary erosion control information associated with construction activity is associated with the Development Permit.

19. Preliminary stormwater management components (such as retention areas, channels, etc.)

20. Preliminary wastewater discharge outlets, reservoirs and treatment facilities.

21. Existing above ground and below ground tanks.

22. Identification of floodplains, floodways, wetlands, and existing vegetation.

23. Proposed preliminary spacing and layout of yards and open areas between structures.

24. Preliminary location and measurements of all fences and walls.

25. Preliminary landscape plan including landscaping buffers and/or visual screening.

26. Preliminary identification and details of access details, including:

a. Width of proposed access drives and drive aisles.

b. Identification and location of the following elements:

i. Curb lines.

ii. Property lines.

iii. Sidewalks.

iv. Existing driveways, if applicable.

v. Parking regulations and signage.

vi. Utility poles.

vii. Light standards.

viii. Fire hydrants.

27. Preliminary off-street parking and loading facilities, including the number of spaces, as well as the dimensions of spaces, drive aisles, and loading zones.

28. Preliminary location, area, and height of all proposed buildings and freestanding signs, with complete elevations of the proposed structures or additions, including:

a. Proposed materials and colors for all building elements.

b. Cross-sectional views showing the relationship between roof-mounted mechanical equipment and the top of the screen wall.

c. Locations of utility meters and ground-sup-

ported transformers, along with proposed screening methods if visible to the public.

d. Location, area, and dimensions of all wall-mounted signs.

29. Preliminary waste disposal facilities, such as trash bins and compactors, including provisions for screening them from public view.

30. Preliminary engineering, drainage, and grading plans.

31. Preliminary description of electrical power supply for the Data Center demonstrating that sufficient capacity will be available to meet anticipated needs for electrical power. Include preliminary electrical power maximum demand.

32. Preliminary description of wastewater the facility will create and approach to managing discharges (if applicable).

33. Preliminary water use plan that includes:

a. Average and peak daily water demand;

b. Identification of all water sources;

c. Description of cooling technology;

d. Water conservation, reuse, or efficiency measures.

e. Any other water use-related information requested by the State of North Dakota to allow for State agency review and comments.

34. Applicant to develop, in coordination with the Zoning Administrator, a list of agencies necessary for project compliance with all applicable State and Federal laws, statutes, rules, and regulatory standards, and an anticipated schedule for necessary approvals.

35. Disclosure of any anticipated future phasing, including expansion of the data center campus. This includes, but is not limited to, additional buildings, phased development, increases in electrical demand, changes in cooling technology, or changes in water source.

36. Study/Analysis Requirements: All Data Center Types

a. Noise Study. Refer to Noise Mitigation Requirements section in Chapter 4.

b. Preliminary soil analysis for design of an appropriate foundation.

c. Visual impact analysis including visualizations of the proposal from adjacent public right of way, residences, or places of congregation.

d. Traffic impact study if daily trips exceed 500 or peak hour trips exceed 100. Refer to Traffic Impact Study section in Chapter 4, Industrial Use Standards.

37. Study/Analysis Requirements: Large Data Centers

a. Environmental review. Refer to Environ-

ment Review section in Chapter 4, Industrial Use Standards.

b. Preliminary estimates of employment and tax revenues associated with the Data Center.

c. Archeological Resource Survey and Consultation. The applicant shall consult with the State Historic Preservation Office (SHPO) at the State Historical Society of North Dakota at the beginning of the planning process for the Data center.

i. If SHPO staff determine that an archaeological survey is recommended for any part of the proposed project, the applicant shall contract with a qualified archaeologist to complete such surveys, and shall submit the results to the Zoning Administrator and the SHPO no less than 60 days prior to the start of construction. The SHPO will make recommendations for the treatment of any significant archaeological sites which are identified. Any issues in the implementation of these recommendations will be resolved by Mercer County Board of Commissioners in consultation with the SHPO. All information submitted under this provision is subject to NDCC Section 55-02-07.1.

ii. If any archaeological sites or human remains are found during construction, the applicant shall follow standard operating procedures as established by the SHPO and in accordance with NDCC Section 23-06-27 and associated North Dakota Administrative Code 40-02-03.

38. Biological Resources Survey. The applicant, in consultation with the US Fish & Wildlife Service - Ecological Services Office (USFWS) and the North Dakota Department of Game and Fish (NDGF) shall, for the project site, conduct a preconstruction inventory of existing wildlife management areas, scientific and natural areas, recreation areas, native prairies and forests, wetlands, and any other biologically sensitive areas and wildlife resources, particularly birds and bats, within the site and assess the presence of state- or federally-listed or threatened species, and other protected species, such as migratory birds. The results of the survey shall be submitted to the Zoning Administrator, USFWS and NDGF, no less than 60 days prior to the start of construction.

E. Hearing and Notification

1. Notification Provided. The applicant shall be responsible for mailing out certified notice letters to property owners within 5 miles of the proposed data center property. The

applicant will be responsible for the cost of the certified notice letter mailing. The County will provide a copy of the property owner notice letter to be sent out by certified mail. At least 30 days prior to the scheduled public hearing the applicant shall submit to the County proof of the certified letter mailing, a list of property owners within 5 miles, and a signed statement with a notary seal certifying all property owners within five miles of the request have been noticed.

2. Other Conditional Use Procedure Requirements. Other than the notification requirement provided in Section E.1. above, the data center conditional use permit application shall follow the procedure and hearing requirements provided in this Ordinance and in compliance with the North Dakota Century Code.

F. Use Standards

1. Data Center Building Setbacks. Required ½ mile (2,640') setback from the applicable noise source to the closest sensitive receptor building exterior wall. Sensitive receptors include single-family and multi-family dwellings, schools, churches, synagogues, and other similar religious institution or structures, and public parks. A greater setback is required if needed to achieve compliance with the noise mitigation requirements established in this ordinance. Any setback required may be waived by the affected landowner(s) in a written agreement between the landowner(s) and the project applicant/developer. The County shall be provided a copy of the agreement.

2. The applicant shall comply with applicable State of North Dakota setbacks from all wellheads and waters of the state.

3. Access Condition. All-weather access will be maintained by the owner/operator unless the access is dedicated and accepted by the local permitting jurisdiction. The data center shall have access to a paved road of sufficient capacity to accommodate the traffic the data center will generate, with continuous paved connection to a paved county or state road. Payment for improvements shall be addressed in a Road Improvement Agreement between the County and the project owner.

4. Structure Codes. All data processing and storage is contained within a permanent structure or structures constructed in compliance with the International Building Code and the International Fire Code.

5. Aesthetics. All equipment and structures

associated with the project will have non-reflective finishes and be of a color that blends into the surrounding landscape, except for any solar panels.

6. Lighting. Lighting must be fully shielded, unless otherwise required by law. To qualify as a "fully shielded" fixture, a light fixture must have the top and sides made of completely opaque material such that light only escapes from the bottom of the fixture. Fixtures with translucent or transparent sides, or sides with perforations or slits, do not qualify as fully shielded. Any glass or diffuser on the bottom of the fixture must be flush with the fixture (no drop lenses). Merely placing a light fixture under an eave, canopy, patio cover, or other similar cover does not qualify as fully shielded.

7. Vegetative Cover. Applicant shall consult with Mercer County Soil Conservation District

on seed mixture and shall re-seed areas of disturbed topsoil. Applicant shall maintain grass cover and control noxious weeds for the life of the project.

8. Radio Frequency Interference/Electromagnetic Interference (RFI/EMI).

a. All new facilities with potential to generate RFI/EMI shall be designed, constructed, and operated to minimize interference with existing communications infrastructure, including but not limited to public safety communication systems, aviation communication, and military operations.

b. Applicants must submit an RFI/EMI impact assessment as part of the permitting process, including a mapping of all existing facilities and infrastructure, including aviation communication and navigation systems, within a 1.5-mile radius of the proposed site.

c. Facilities generating RFI/EMI must incorporate shielding, grounding, or filtering, or other measures as necessary to minimize interference with existing communication networks, including aviation communication and navigation systems. If a facility is found to cause harmful RFI/EMI post-installation, the operator must take corrective action within 60 days of notification, including but not limited to adjusting frequencies, implementing additional shielding, or relocating equipment.

9. Chemical, Battery and E-Waste Storage and Disposal.

a. Data centers using or storing hazardous chemicals, including fuel, coolants, refrigerants, and fire suppression agents, must store chemicals in compliance with Occupational

Safety and Health Administration (OSHA) guidelines.

10. Backup batteries (e.g., lithium-ion, lead-acid) must be stored in safe, properly ventilated areas.

11. All batteries used on the premises must be regularly inspected for damage and replaced or recycled per Environmental Protection Agency (EPA) standards.

12. Disposal of batteries must be compliant with the Resource Conservation and Recovery Act (RCRA) guidelines and other state and federal regulations.

13. E-waste must be disposed of through electronic recycling facilities listed by the State of North Dakota.

14. Water Discharge. Discharge must comply with State of North Dakota requirements.

15. Liquid Containment and Spill Control Standards.

a. A Spill Prevention, Control, and Countermeasure (SPCC) plan must be implemented to prevent environmental contamination in the event of accidental spills or leaks.

16. Secondary containment systems must be installed to prevent leaks or spills from contaminating the environment.

17. Liquid containment and spill controls shall follow State and Federal statutes.

18. Air Emissions. To ensure alignment with modern emissions standards, all data center permanent emergency standby generators must comply with applicable State and Federal emission standards.

19. Emergency Management. Refer to Emergency Management section in Chapter 4.

20. Construction and Maintenance. Refer to Construction and Maintenance Standards in Chapter 4.

21. Demonstration of Electrical Service and Cost Responsibility. The applicant shall demonstrate compliance with one of the following means of providing electrical service to the data center site:

a. Option 1: On-Site Generation.

b. Option 2: Utility-Supplied Service Under Applicable Rates. The data center will take electrical service from the serving utility under tariffs, rate schedules or a large-load program applicable to its class of service and consistent with the rules, protocols, and market mechanisms of the regional transmission organization (RTO) in whose footprint the serving utility operates, and the rates and charges payable by the data center are structured to recover the costs of the ca-

capacity and electrical infrastructure necessary to serve the full planned buildout of the site.

i. Option 2 shall be satisfied by submission of a written certification from an authorized officer of the serving utility, addressed to the County, confirming that (1) a binding agreement is in place dedicating electrical capacity to the data center appropriate for its full planned buildout and (2) the data center will be billed for that service under the utility's applicable tariffs, rate schedules, or large-load program, which are structured to recover from the data center the costs of the capacity committed to it and of the electrical infrastructure necessary to serve the site, in each case subject to the utility's tariffs, applicable RTO protocols, regulatory orders, and principles generally governing rate recovery and cost allocation. The certification shall be conclusive evidence of compliance with Option 2. For purposes of this section, "full planned buildout" means the maximum electrical demand (in megawatts), subject to the load ramping schedule applicable to the electrical service and build out.

22. Confidential Treatment. Any certification or supporting materials submitted under this

section that are designated by the applicant or the serving utility as containing confidential, proprietary, or commercially sensitive information shall be handled by the County as confidential to the maximum extent permitted by applicable law, and the applicant or utility shall be given notice and an opportunity to object prior to any public disclosure.

23. No County Rate-Setting Authority. Nothing in this section authorizes the County to review, approve, modify, or otherwise regulate the serving utility's rates, tariffs, cost-of-service methodologies, or cost-allocation arrangements, all of which remain subject to the exclusive jurisdiction of the RTO, and the serving utility's governing board, as applicable.

24. Water and Energy Efficiency. The applicant shall incorporate water conservation and energy-efficient measures including, but not limited to, advanced cooling technologies, renewable energy integration, and sustainable design practices to minimize environmental impact.

25. Emergency Backup Systems. The applicant shall ensure that all backup power systems comply with safety regulations and do not pose environmental risks. Fuel storage and emissions from backup generators must comply with local, state, and federal

environmental standards.

G. Project-related Damages

1. The permittee is responsible for damage caused by the facility or its components.
2. The permittee must repair, restore, or compensate for verified off-site damage within 120 days of the date the damage is verified by the County.
3. The permittee must maintain insurance sufficient to cover damage claims.
4. The County shall be indemnified from damage claims tied to the project.

H. End of Use

1. The data center shall be decommissioned in the event it is not in use for 12 consecutive months unless the permittee, owner, or operator of the data center submits an action plan to bring the data center back into operation. The action plan must demonstrate the actions and timeline under which the data center will be brought back online within 12 months of the date the action plan was submitted. If no action plan is submitted the data center is deemed abandoned, the applicant, owner, or operator shall implement, at its expense, a plan for end of use or site restoration. The County may allow a longer period of non-use or temporary suspension before site restoration or alternative use if the permittee, owner, or operator of the data center demonstrates a reasonable plan for future reuse, reactivation, or rede-

velopment of the site. Any change in use is subject to an amendment to the conditional use permit.

2. Structures and foundations shall be disposed in compliance with state law.
3. The applicant shall provide a decommissioning plan which shall include provisions for removal of all structures and foundations and restoration of soil and vegetative resources in coordination with the Natural Resource Conservation Service.
4. Provide bond or other financial assurance as required by the Mercer County Board of Commissioners.

I. Compliance and Enforcement

Failure to adhere to these regulations will result in penalties, which may include fines, or performing corrective measures. Failure to perform corrective measures will result in suspension of operations by the County.

J. Project Reporting

After operation of the data center has begun, the data center owner/operator shall provide a report on an annual basis to the Planning and Zoning Commission, noting the following:

1. Update on the status of the phasing plan (if part of the conditional use permit), including an update on timing until the next phase of construction. Any changes to the phasing plan requires an amendment to the conditional use permit.

2. Any plans for expansion of the data center footprint, including the subject property, specific site, or structures. An amendment to the conditional use permit must be approved for any such expansion outside of the phasing plan exceeding 5% percent of the gross floor area of any approved structure or any increase in the number of structures. Any expansion of the approved project boundary requires an amendment to the conditional use permit.

3. Reported electrical power use over the past year and if any changes are anticipated over the following year. An amendment to the conditional use permit is required for changes in the data center that result in requirements above the approved maximum demand.

4. Confirmation of no changes to the cooling technology. Any changes to the cooling technology that increases maximum water demand or maximum electrical power demand requires an amendment to the conditional use permit.

(07-23-2026)(07-30-2026)