

WILLIAMS COUNTY BOARD OF COUNTY COMMISSIONERS

ORDINANCE NO. 2024-01-02

**TITLE: AN ORDINANCE AMENDING 2015 ZONING ORDINANCES: ADDING
REGULATIONS FOR DATA CENTERS**

WHEREAS, the Williams County Board of County Commissioners (hereinafter “the Board”), pursuant to the Williams County Home Rule Charter and North Dakota Century Code Chapter 11-33 and Chapter 11-33.2, adopted the Williams County Zoning Ordinance and Subdivision Regulations on September 15, 2015, and thereafter have adopted amendments thereto, with the most recent amendments having been adopted on August 2, 2022 (hereinafter “2015 Zoning Ordinance”);

WHEREAS, the 2015 Zoning Ordinance, Article 3, Chapter 3-6, authorizes the Board from time to time on its own motion, or on the recommendation of the Williams County Planning and Zoning Commission (“PZ Commission”) to amend, supplement, repeal or revise any provision of the 2015 Zoning Ordinance;

WHEREAS, the Board directed Williams County Planning and Zoning staff to draft, or cause to have drafted, regulations for data centers within Williams County;

WHEREAS, the proposed data centers regulations were presented to the PZ Commission for consideration at its meeting held on December 21, 2023, at which time the PZ Commission recommended adoption of the proposed data center regulations as presented;

WHEREAS, at its meeting held on January 2, 2024, the Board considered the proposed data center regulations presented to it, including the PZ Commission’s recommendation to adopt the data center regulations as presented; and

WHEREAS, a motion to adopt the proposed data center regulations as presented, having been made and seconded, was submitted to a roll call vote of the elected members of the Board and passed by majority roll call vote of the Board members present.

NOW, THEREFORE, BE IT ORDAINED, by majority roll call vote of the Williams County Board of County Commissioners present at the meeting on January 2, 2024, the following data center regulations are hereby adopted as amendments to the Williams County Zoning Ordinance and Subdivision Regulations adopted on September 15, 2015, as amended:

1. **Article 2, Chapter 2-8, Section 2-8-3(3)**: Section 2-8-3(3) (“Conditional Industrial Uses”) shall be amended to add a new subsection for Data centers as an additional Conditional Industrial Use under Section 2-8-3(3) as follows:

w. Data centers (See Ch. 6-16 for standards)

2. **Article 5, Chapter 5-3(14), Table 5-1:** Table 5-1 (“Parking and Loading – Loading Areas - Required Off Street Parking – Warehousing / Indoor Storage”) shall be amended to add Data centers as a new use requiring 1 per employee on shift, to be inserted in Table 5-1 after “Liquid, bulk gas, explosives and other hazardous material storage” as follows:

Data centers

3. **Article 6:** Article 6 (“Performance Standards for Specific Land Uses”) shall be amended to add a new chapter, identified as Chapter 6-16, to add Data Centers as an additional specific land use under Article 6 as follows:

Chapter 6-16: Data Centers

6-16-1 Purpose

Data centers are intensive land uses that can consume large quantities of water and electricity. Buildings often include industrial HVAC systems or water cooling/storage systems to prevent computer servers from overheating. Such systems commonly generate continuous sound that can spread across property lines. The low-frequency sounds emitted by data centers consist of long wavelengths that are not easily absorbed by the air or blocked by a sound barrier. Long-term exposure to noise impacts the health of Williams County residents. This Chapter is adopted to allow data centers in appropriate locations in Williams County and minimize the potential off-site impacts of development to protect public health, safety, and the general welfare of Williams County residents.

6-16-2 Permitting

The installation or construction of a data center, or any modification to a lawfully existing data center beyond routine maintenance, requires a Conditional Use Permit. Installation or construction of a data center, or any modifications to a lawfully existing data center beyond routine maintenance, also requires a Williams County Building Permit obtained from the County Building Division. Data centers may only be permitted in the Heavy Industrial (HI) District with a Conditional Use Permit.

6-12-3 Exemption

Data centers which are solely located on an oil and gas well site or underground gathering pipeline line facility and which are subject to the exclusive jurisdiction of the North Dakota Industrial Commission pursuant to N.D.C.C. Chapter 38-08, or any successor statute, are exempt from the provisions of this Chapter 6-16.

6-16-3 Application Requirements

The application for the installation or construction a data center, or for modifications to a lawfully existing data center beyond routine maintenance, shall follow the application procedures for Conditional Use Permits (Ch. 3-2) and any other procedures

as may be required by this Ordinance for data centers, such as zoning map amendments, platting, or variances. In addition, applications shall include the following:

1. Applicant name(s) and contact information. The applicant must also identify on the application, if different than the applicant, the record owner of the property, the occupant or lessee of the property, and the operator of the data center.
2. A narrative describing the proposed project, including a description of how the project meets market demand, the facility's processing capacity, and the facility's anticipated water and electricity needs.
3. A study prepared by an acoustical engineer that describes the anticipated noise level of the facility and any proposed mitigation efforts such as sound walls, baffles, ventilation silencers, etc.
4. A site plan, drawn to scale, showing the location and dimensions of all existing and proposed structures, screening, fencing, lighting, electrical connections, property lines, and roadway access.
5. A map of the project area showing all single-family and multi-family dwellings, schools, churches, synagogues, and other similar religious institution or structures, and public parks located within one (1) mile of the exterior boundaries of the property where the data center will be located.
6. All application fees, including the required fees for a Conditional Use Permit and building permits, in the amounts determined by the Board of County Commissioners.
7. Copies of signed permits or other documentation that indicates compliance with all applicable State and Federal laws, statutes, rules, regulatory standards, including but not limited to the North Dakota State Electrical Board and the North Dakota State Electrical Code, and any amendments thereto.
8. Copy of the signed electrical power purchase agreement.
9. Financial security for the following:
 - a. Financial security for maintenance of the data center, as fully constructed and operational or, if the project only involves modifications to a lawfully existing data center beyond routine maintenance as permitted by this Ordinance, financial security for maintenance of the lawfully existing data center as modified. The financial security shall be in the amount of 125% of the estimated cost to maintain the data center, as fully constructed and operational, or as modified, as determined by the applicant's engineer, who must be a State of North Dakota registered engineer, with such estimated costs subject to review and approval by the Williams County Engineer; and

- b. Financial security for reclamation and restoration of any data center and the property on which the data center is located or, if the project only involves modifications to a lawfully existing data center beyond routine maintenance as permitted by this Ordinance, financial security for reclamation and restoration of the property on which the data center as modified is located. Reclamation and restoration shall include, but is not limited to, the removal and disposal of all above-ground structures, underground structures, and utilities to depth of four feet, and the removal and disposal of all other facilities, structures, equipment, and materials on or under the property. The financial security shall be in the amount of 125% of the estimated cost to reclaim and restore property on which the data center, or the data center as modified, is located as determined by the applicant's engineer, who must be a State of North Dakota registered engineer, with such estimated costs subject to review and approval of the Williams County Engineer.

Any financial security provided by the applicant which is required by this Chapter shall be subject to review and approval by the County and be in the form of one or more of the following: (i) an irrevocable letter of credit issued by an FDIC insured financial institution authorized to do business in the State of North Dakota to be effective beginning on the date that installation and/or construction of, or the approved modifications to, the data center start and provides for annual automatic renewals continuing to the date when full reclamation and restoration is complete as approved by the County; (ii) a surety bond which is effective beginning on the date that installation and/or construction of, or the approved modifications to, the data center start and provides for annual automatic renewals continuing to the date when full reclamation and restoration is complete as approved by the County; and/or (iii) cash in escrow to be held in trust by Williams County effective beginning on the date that installation and/or construction of, or the approved modifications to, the data center start and continuing to the date when full reclamation and restoration is complete as approved by the County.

The financial security required above shall be provided to Williams County prior to commencement of any work to install and/or construct the data center, or to modify a lawfully existing data center beyond routine maintenance, but no later than the date determined by the Board of County Commissioners in approving the data center or in approving the modifications to a lawfully existing data center beyond routine maintenance.

10. Other relevant studies, reports, certifications, or approvals as may be required by Williams County to ensure compliance with this Chapter and this Ordinance.

6-16-4 Design Standards

1. **Separation from sensitive properties.** Data centers shall be set back at least one (1) mile from all single-family and multi-family dwellings, schools, churches, synagogues, and other similar religious institution or structures, and

public parks as measured from the nearest property line of any of these sensitive properties to the data center's exterior property lines.

2. **Separation from other data centers.** New data centers shall be set back at least three (3) miles from any lawfully existing data center.
3. **Height.** All buildings, structures, and appurtenances on the property where the data center will be located shall meet the height requirements of the Heavy Industrial (HI) district in this Ordinance.
4. **Electrical wiring.** All electrical wiring shall be buried underground, except where wiring is brought together for interconnection to system components or the local utility power grid, provided that all electrical wiring shall comply with the North Dakota State Electrical Board, and any of its rules and regulations.
5. **Security fencing.** A secured chain link or solid wood or masonry fence at least six (6) feet in height shall be constructed and maintained around the entire perimeter of the facility to prevent unauthorized entry onto the property or into the facility. Any fencing shall comply with Section 5-2-8 of the Development Standards in this Ordinance.
6. **Buffering and screening.** Landscaped buffers shall be required around the entire perimeter of the property where the data center is located in accordance with the requirements of Section 5-5-6 of the Landscaping Standards in this Ordinance.
7. **Exterior Lighting Standards.** Exterior lighting for the data center shall comply with Section 5-2-7 of the Development Standards in this Ordinance.
8. **Accessory structures and appurtenances.** All accessory structures or appurtenances, including those constructed for noise mitigation, shall be designed in a manner that is complementary with the primary building(s) and shall be finished in a non-obtrusive color.
9. **Roads.** All adjacent exterior access roads serving a data center shall conform to Sections 5-2-1 and 5-2-3 of the Development Standards in this Ordinance. Exterior road construction or improvements shall be subject to approval by the Williams County Highway Superintendent or their designee. A road maintenance agreement with any government entity having jurisdiction over the adjacent exterior access roads shall be required during installation or construction of the data center, or during modification of a lawfully existing data center beyond routine maintenance. All interior roads serving the data center shall be subject to review by the Williams County Fire Inspector to ensure safe and adequate access by emergency services personnel.
10. **Storm Drainage, Erosion Control, Grading, and Drainage.** The data center shall comply with the storm drainage, erosion control, grading, and drainage

requirements in Sections 5-1-8, 5-1-9, and 5-1-10 of the Development Standards in this Ordinance.

11. **Development Agreement.** The applicant and, if different than the applicant, the record owner of the property, the occupant or lessee of the property, and/or the operator of the data center and of the property on which the data center will be located, as determined appropriate by the County, must sign a development agreement which shall include provisions related to, but are not limited to, the posting and use of financial security, exterior and interior road construction or improvement, road maintenance, improvements related to storm drainage, erosion control, grading, and drainage, reclamation and restoration, and/or any other condition imposed by this Chapter, this Ordinance, or the Board of County Commissioners in approving installation of construction of the data center or modifications to a lawfully existing data center beyond routine maintenance.

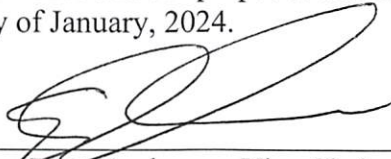
6-16-5 Abandonment or Ceasing Operations

It is the responsibility of the original applicant, or if different, the record owner of the property, the occupant or lessee of the property, and the operator of the data center to notify Williams County in writing, at least six (6) months in advance, of the intent to abandon or cease operations of the data center. Any data center that is not operated for a continuous period of six (6) months shall automatically be considered abandoned, and the County may require the original applicant, or if different, the record owner of the property, the occupant or lessee of the property, and the operator of the data center to reclaim and restore the property within ninety (90) days after written notice to reclaim and restore the property from the County. Any such reclamation and restoration shall include, but is not limited to, removal and disposal of all above-ground structures, underground structures, and utilities to depth of four feet, and removal and disposal of all other facilities, structures, equipment, and materials on or under the property. If the property is not fully reclaimed and restored as required by this Chapter and/or any Development Agreement within ninety (90) days after written notice from the County, the County may reclaim and restore the property, or cause the property to be reclaimed and restored, including, but not limited to, removal and disposal of all above-ground structures, underground structures, and utilities to depth of four feet, and removal and disposal of all other facilities, structures, equipment, and materials on or under the property and recover costs directly from the original applicant, or if different, the record owner of the property, the occupant or lessee of the property, and/or the operator of the data center. The County may also, in its discretion, recover such costs, by access to and use of the financial security provided and on file for the data center, or by lien or special assessment, or any other remedy, authorized by law or the Development Agreement entered into under this Chapter. Nothing in this Chapter is intended to impose, or imposes, a mandatory obligation on the County to reclaim and restore the property.

4. **Article 7:** Article 7 (“Definitions”) shall be amended to add “Data Center” as a word/phrase to be defined as follows:

Data center – A building, structure, complex or group of buildings and/or structures, facility, or dedicated space within a building, structure, complex, or facility that houses IT infrastructure, including, but not limited to, computer systems, networks, servers, applications, appliances, services, and other associated components or facilities used for the remote storage, processing, or transmission of digital data associated with those computer systems, networks, servers, applications, appliances, services, and other associated components or facilities. Associated components and facilities may also include air handlers, water cooling and storage facilities, utility substations, and other associated utility infrastructure to support operations. This definition also includes cryptocurrency mining, which involves the use of blockchain technology to verify and secure cryptocurrency transactions, as the terms “cryptocurrency”, “cryptocurrency mining”, “blockchain”, and “blockchain technology” are defined by any applicable State law or, if no applicable State law, by generally accepted industry standards.

5. **Incorporation of Amendments into 2015 Zoning Ordinance.** The amendments adopted as set forth in this Ordinance shall be immediately incorporated into the text of the Williams County Zoning Ordinance and Subdivision Regulations effective September 15, 2015, as amended.
6. **Effective Date.** This Ordinance and the proposed amendments as set forth herein shall be effective as of the 2nd day of January, 2024.


By: Beau Anderson, Vice Chairman
Williams County Board of County Commissioners

Dated: January 2 2024

ATTEST:


Brenda Johnson, Williams County Deputy Auditor

Dated: January 2 2024

First Publication: January 5, 2024

Second Publication: January 12, 2024