

ORDINANCE 24-0-----

AN ORDINANCE TO AMEND AND RE-ENACT ARTICLE 8 OF THE 1972 AMENDED ZONING ORDINANCE OF BURLEIGH COUNTY, NORTH DAKOTA RELATING TO SECTION 30 DATA CENTERS

Section 1. **Amendment** Article 8 of the Zoning Ordinance is hereby amended and re-enacted as follows:

SECTION 30 Data Center AI Conversion Facilities

This section is adopted to allow data centers/AI conversion facilities within Burleigh County and to minimize the potential off-site impacts of development and reduce long-term exposure that may impact the public safety, health and the general welfare of Burleigh County residents.

DEFINITIONS

The following words, terms and phrases, when used in this Article and Section, shall have the meaning provided herein, except where the context clearly indicates otherwise:

1. **Data Center-** a commercial /industrial 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 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. Facilities may also include air handlers, water cooling and storage, utility substations to support operations.
2. **Data Center/ AI Conversion Facility-** a data center that is converted and used to support artificial intelligence
3. **Cryptocurrency-** a type of decentralized digital currency that investors can buy and sell along the blockchain. Unlike banknotes or minted coins that have a tangible physical form, cryptocurrencies can only be accessed using computers and other electronic devices.
4. **Blockchain-** a digital record of all the transactions involving cryptocurrency. Copies of the blockchain are stored and maintained by computers around the world.

I. APPLICABILITY

These regulations are for Data Center Facilities on properties and structures under the jurisdiction of the Burleigh County Zoning Ordinance. The installation or construction of a data center, or any modification to a lawfully existing data center beyond routine maintenance, requires a Special Use Permit and also requires a Burleigh County Building

Permit obtained from the Burleigh County Building, Planning and Zoning Department.
Data centers may only be permitted in an Industrial (I) District with a Special Use Permit.

1. Application Requirements

The application for the installation or construction of a data center, or for modifications to a lawfully existing data center beyond routine maintenance, shall follow the application procedures for Special Use Permits Article 8 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:

- a. Applicant name(s) and contact information. The applicant must also identify on the application, the owner/owners of record for the property, the occupant or lessee of the property, and the operator of the data center.
- b. A description of 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.
- c. 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.
- d. 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.
- e. 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.
- f. Installation or construction of a data center, or any modifications to a lawfully existing data center beyond routine maintenance, also requires a building permit obtained from Burleigh County Building Department.
- g. Data centers may only be permitted in an I- Industrial District with a Special Use Permit.
- h. All application fees, including the required fees for a Special Use Permit and building permits, in the amounts determined by the Board of County Commissioners.
- i. 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.
- j. Copy of the signed electrical power purchase agreement.
- k. Financial security for the following:
 - i. 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 ND State registered engineer, with such estimated costs subject to review and approval by the Burleigh County Building Department and

- ii. 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 ND State registered engineer, with such estimated costs subject to review and approval of the Burleigh County Building Department. 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:
 - iii. 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;
 - iv. 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;
 - i. Cash in escrow to be held in trust by Burleigh 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 Burleigh 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.

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

II. Prohibitions:

The County prohibits data center facilities located within:

- a. All Floodplain Districts and Designated SFHA Areas.

III. Design Standards

1. Data centers shall be set back at least one half (1/2) mile to 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. Height. All buildings, structures, and appurtenances on the property where the data center will be located shall meet the height requirements of the Industrial I District in this Ordinance.
3. 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.
4. Written verification is submitted from the utility provider that sufficient capacity will be available to meet anticipated needs for electrical power.
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 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 this Ordinance.
7. Noises. A maximum auditory decibel level of 75 dB. shall be met and maintained during all hours of operation, as measured from the property line of the subject parcel. Verification may be in the form of a noise study by a licensed acoustical engineer, including manufacturer specifications, data from comparable facilities or combination thereof.
8. All outdoor light fixtures shall be installed in a manner intended to limit the amount of off-site impacts. Light fixtures located near adjacent properties may require special shielding devices to prevent light trespass.
9. 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.
10. Roads. All adjacent exterior access roads serving a data center shall conform to the Development Standards in this Ordinance and Article 33. Exterior road construction or

improvements shall be subject to approval by the Burleigh County Highway Engineer 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 Burleigh County Fire Department to ensure safe and adequate access for emergency response vehicles.

11. Storm Drainage, Erosion Control, Grading, Drainage and Stormwater Management Permit for the data center shall comply with the requirements in Article 33 of this Ordinance.
12. Additional conditions or specific allowances to this ordinance may be considered in the review and approval of the Special Use Permit.
13. Development Agreement. The owner of record of the property, or the owner's representative of the data center and of the property on which the data center will be located, as determined appropriate by Burleigh 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.

IV. Decommissioning Plan:

1. It is the responsibility of the original applicant, or if different, the owner of record of the property, the occupant or lessee of the property, and the operator of the data center to notify Burleigh 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 Burleigh 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 Burleigh 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 Article within ninety (90) days after written notice from Burleigh 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. Burleigh 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 Article. Nothing in this Article is intended to impose a mandatory obligation on Burleigh County to reclaim and restore the property.

2. After a decommissioning process has been completed, the I District Industrial Zoning of the property shall automatically be transferred back to the original zoning, prior to the issuance of the special use permit.

Article 18, I-Industrial Zoning District, the following regulations shall apply:

1. Special Uses Permitted. The following Special Uses are allowed as per Article 8 Section 30 hereof:
 - a. Data Center Facilities
 - b. Any change of use within an existing permitted Data Center, i.e.: AI Conversion Center, shall require a new special use permit review and approval.

Section 2. **Repeal.** All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 3. **Severability.** If any section provision or part of this ordinance shall be adjudged invalid or unconstitutional such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

Section 4. **Effective Date.** This ordinance shall take effect after final passage, adoption and publication as provided by law.

First Reading Passed: _____

Passed and adopted this _____ day of _____, 2024

Brian Bitner, Chairperson

Final passage and adoption:

I, Mark Splonskowski, do hereby certify that I am the duly elected auditor of the County of Burleigh, State of North Dakota, and that the foregoing is a full, true and correct copy of an ordinance adopted by the Board of Burleigh County Commissioners at its regular meeting of _____ day of _____, 2024

IN WITNESS WHEREOF: I have hereto set my hand and seal of Burleigh County this _____ day of _____, 2024

Mark Splonskowski, Burleigh County Auditor/Treasurer