

ORDINANCE NO. 5987ORDINANCE TO ADOPT ZONING AMENDMENTS TO THE UNIFIED
DEVELOPMENT CODE RELATIVE TO DATA CENTERS

WHEREAS, the Council has received citizen requests for the Council to take appropriate and lawful measures to regulate the location and operations of Data Centers in the City;

WHEREAS Council members have introduced several proposed ordinances to either adopt a moratorium on new Data Centers until further study could be made or adopt ordinances to provide guidance and frameworks for potential zoning ordinances;

WHEREAS the ultimate goal of the Council is to adopt zoning amendments to the UDC that will regulate siting, site review and permitting for Data Centers through an open and transparent process through the Planning process before DPD, LUCB and the Council.

NOW, THEREFORE, BE IT ORDAINED BY THE MEMPHIS CITY COUNCIL AS FOLLOWS:

The Zoning Ordinance Amendments ("Zoning Amendments") attached hereto are hereby adopted, subject to the Council receiving a recommendation from the Land Use Control Board prior to final adoption.

The Zoning Amendments shall become effective after final adoption as provided by law and the Division of Property Development shall in due course undertake to codify the Amendments in the Unified Development Code for operation in the City of Memphis.

Sponsor:

Warren
Canale
Spinoza
Carlisle
White

JANA SWEARENGEN-WASHINGTON
CHAIRMAN

DATA CENTER INDUSTRIAL DISTRICTS

§ _____ *STATEMENT OF PURPOSE.*

(A) The industrial districts established in this section for Small Data Centers are designed to promote and protect the health, safety, morals, convenience, order, prosperity and other aspects of the general welfare.

(B) These general goals include, among others, the following more specific purposes:

(1) To provide sufficient space in appropriate locations to meet the needs for industrial expansion within the City;

(2) To encourage industrial development which is free from hazards to the public health and which is environmentally safe and non-polluting;

(3) To protect industrial activities against congestion, encroachment from incompatible land uses and other adverse characteristics;

(4) To protect adjacent residential and commercial areas from offensive influences; and

(5) To promote the most efficient and desirable use of land.

§ _____ *LDC- DATA CENTER LIGHT INDUSTRIAL DISTRICT.*

(A) Purpose and intent. These districts are designed to provide space for small to medium data center industrial and related uses which conform to a high level of performance standards and have the least objectionable characteristics. It is required that all operation of such establishments be carried on within completely enclosed buildings, thus preventing any adverse characteristics from affecting neighboring properties. These districts may provide a buffer between other districts and other industrial activities which have more objectionable influences. Residential uses are excluded from these districts.

(B) Uses and structures.

(1) Principal permitted uses and structures. For specific permitted uses allowed in this zoning district, refer to § _____.

(2) Permitted accessory uses and structures.

(a) Accessory off-street parking and loading facilities as required in §§ _____.

(b) Accessory facilities and buildings customarily incidental to a permitted use as regulated by § _____.

(3) Conditional uses. For specific conditional uses allowed in this zoning district, refer to § _____.

(4) Prohibited uses. The use of self-supplied or behind-the-meter facilities or separate stand-alone energy production facilities are prohibited in the DC Light Industrial District.

(C) Bulk regulations. For bulk regulations, which include minimum lot area, minimum lot width at the building line, and maximum height, refer to § _____.

(D) Yard requirements.

(1) General provisions. General provisions applicable to all industrial districts concerning visibility at intersections, permitted obstructions in required yards, obstructions prohibited at street intersections, exceptions to these provisions and other regulations are contained in § _____.

(2) Basic provisions. For yard requirements, which include setbacks for front, side, and rear yards, refer to § _____.

(E) Use of required yard areas. The following uses may be made of yard areas in the DC Light Industrial Districts.

(1) Landscaping. All yards not occupied by driveways and sidewalks shall be devoted to landscaping as defined in § _____.

(2) Driveways and accessory off-street parking. No driveways or parking area shall occupy more than one-half of any required yard.

(F) Site plan review process. The site plan review and approval process is outlined in § _____.

(G) Enclosure requirements. All uses shall be conducted within completely enclosed buildings except for parking and loading, exterior and other accessory uses, as regulated by § _____, which by their nature must exist outside a building.

§ _____ *HDC-DATA CENTER HEAVY INDUSTRIAL DISTRICT*

(A) Purpose and intent. These districts are designed to provide space for Large Data Center industrial and related uses which by reasons of size and scale of operation, type of structures required or other similar characteristics require locations relatively well segregated from nonindustrial uses. Residential uses are excluded from these districts.

(B) Uses and structures.

(1) Permitted uses. For specific permitted uses allowed in this zoning district, refer to § _____.

(2) Permitted accessory uses and structures.

(a) Accessory off-street parking and loading facilities as required in §§ _____.

(b) Accessory facilities and buildings customarily incidental to a permitted use as regulated by § _____.

(3) Conditional uses. Use of self-supplied or behind-the-meter facilities or separate stand-alone energy production facilities require a Conditional Use Permit.

(4) Prohibited uses. Any use not allowed by right, by accessory use or by conditional use is prohibited in the DC Heavy Industrial District.

(C) Bulk regulations. For bulk regulations, which include minimum lot area, minimum lot width at the building line, and maximum height, refer to the table in § _____.

(D) Basic Yard requirements. For yard requirements, which include setbacks for front, side, and rear yards, refer to the table in § _____.

(E) Use of required yard areas. The following uses may be made of yard areas in the Heavy Industrial Districts.

(1) Landscaping. All yards not occupied by driveways and sidewalks shall be devoted to landscaping as defined in § _____.

(2) Driveways and accessory off-street parking. No driveways or parking area shall occupy more than one-half of any required yard.

(F) Site plan review process. The site plan review and approval process is outlined in § _____.

(G) Enclosure requirements. All uses shall be conducted within completely enclosed buildings except for (i) parking and loading, exterior and other accessory uses, which by their nature must exist outside a building and (ii) self-supplied or behind-the-meter facilities or separate stand-alone energy production facilities as expressly approved in a Conditional Use Permit.

§ _____ SITE PLAN REVIEW-DATA CENTERS.

1.01 Purpose and scope.

The purpose of the site plan review procedure is to ensure compliance with the City's development requirements and its land use guidelines and to encourage quality development reflective of the guiding principles of the City's land use plan. Building permits shall not be issued, nor shall any site preparation commence for uses requiring site plan review until the site plan is approved pursuant to this section. There are established submittal requirements and procedures for the review and approval of preliminary and final site plans for data centers by the City as defined in § _____. Data Center site plans will be classified as minor or major in this section; all plans will be subject to a non-discretionary review by the Development Director, Land Use Control Board ("LUCB") and/or the Memphis City Council ("City Council") as set forth in this section. The procedures and requirements set forth within this section shall provide for the timely and effective review of development proposals for data centers by the City Council, City government and various boards and commissions involved in the site plan review process.

2.01 Definitions.

(A) "Data Center" means any building, structure, or collection of buildings and associated infrastructure dedicated and used for the housing, operation, storage, processing, management, transmission, or distribution of digital information through electronic computing equipment, including servers, computer systems, artificial-intelligence computing equipment, telecommunications equipment, network equipment, data-storage equipment, environmental control systems, electrical systems, substations, backup generators and power systems, cooling systems, battery storage, mechanical equipment and related infrastructure. A facility shall be considered a Data Center regardless of whether the Data Center, its associated infrastructure and equipment is operated by the owner of the real property, a tenant, contractor, affiliate, subsidiary, or other entity.

(B) A Data Center shall also mean and include any building, structure, or collection of buildings and associated infrastructure dedicated and used for high-density computing, artificial intelligence processing, cryptocurrency mining, commercial server farming, or other computing activities requiring substantial electrical demand or specialized computing equipment.

(C) "Large Data Center" or HyperScale Data Center" shall mean a Data Center that has a projected electrical demand of twenty (20) megawatts or greater or is designed or intended to increase electrical demand to twenty (20) megawatts or greater within ten (10) years of initial occupancy and will include large-scale cooling plants, substations, backup power.

(D) "Land Use Permits" shall mean

- Rezoning ordinances;
- Planned Development ordinances;
- Conditional use permits;
- Building permits;
- Grading permits;
- Land disturbance permits

(E) "Maximum Site Electrical Demand" or "MSED" means the greatest projected coincident electrical demand of the complete Facility or campus, as certified by MLGW during its first five years after initial operation, whether supplied by MLGW, TVA-connected service, an independent power producer, behind-the-meter generation, onsite generation, storage, or any combination. MSED is measured before subtracting onsite generation or storage.

(F) "Utility Requested Load" means the maximum firm or interruptible electric demand the applicant has requested from MLGW, excluding generation not supplied by MLGW.

3.01 Initiation.

A request for site plan approval of a Data Center may be initiated by the owner or entities having a contractual interest in the property or by the authorized agent of such owner or entities as a part of any application for a Land Use Permit for such facilities.

4.01 Applicability.

The following shall require site plan review and approval:

(1) All new Data Center buildings and building additions to be constructed for properties zoned IH or proposed for properties to be rezoned IH or to be subjected to a planned development regime.

(2) All manufactured buildings or major stand-alone equipment for use in Data Center operations to be moved or located to properties zoned IH or proposed for properties to be rezoned IH or to be subjected to a planned development regime.

(3) All Large Data Centers

(4) Site alterations, including the grading, construction of driveways, loading areas and parking areas on properties zoned IH or proposed for properties to be rezoned IH or to be subjected to a planned development regime in connection with Data Center buildings and operations.

(5) Exemptions. The following shall be exempted from site plan review:

- a. Lawfully operating data centers in existence at the adoption of this ordinance or internal construction, routine maintenance, repair, replacement, or modernization of existing data center facilities and equipment that does not materially increase the building footprint or impacts on parking, off-site traffic, City rights of way, storm water or sewer or wastewater infrastructure as certified by the City Engineer;
- b. A Data Center computing facility does not include computer servers, data storage equipment, networking equipment, telecommunications equipment, or related computing infrastructure that is accessory or incidental to another lawful principal use of the property and primarily serves the operational

needs of that principal use. This exclusion includes, without limitation, computing infrastructure accessory to hospitals and healthcare facilities, financial institutions, educational institutions, governmental facilities, offices, retail establishments, manufacturing facilities, telecommunications facilities, and similar principal uses with Data Center computing facilities containing not more than 100,000 square feet of floor area or a MSED of twenty (20) megawatts or less.

5.01 Site plan levels.

Site plans require two (2) different levels of approval depending on the intensity and type of project, which are Minor Site Plans and Major Site Plans.

(1). Minor Site Plans are:

(a) Plans that propose 100,000 gross square feet or less of new, non-residential building area on an undeveloped site and a MSED of twenty (20) megawatts or less.

(b) Plans that propose to expand the total area of an existing Data Center facility to no more than 100,000 gross square feet and a MSED of twenty (20) megawatts or less.

(2). Major Site Plans are:

(a) Plans that propose more than 100,000 gross square feet of new, non-residential building area on an undeveloped site and a MSED of twenty (20) megawatts or more.

(b) Plans that propose to expand the total area of an existing Data Center facility to more than 100,000 gross square feet and increase its MSED twenty (20) megawatts or more.

6.01 Site Plan Review Process for Minor Site Plans

Minor Site Plans are subject only to administrative staff review by DPD and approval by the Development Director.

(1) Minor Data Center Site Plans shall be processed administratively through DPD and consists of a one step process (a final site plan).

(2) The site plan shall contain the information in accordance with the site plan review requirements in Sub part (Q). The site plan review will be reviewed internally by the ART and ultimately approved by the Development Director.

(3) Upon final approval of a Minor Data Center site plan, the applicant shall apply for a development agreement with the Engineering Division. Upon approval of the development agreement by the applicant and the City Engineer, the Development Director shall place the development agreement on the next available City Council agenda for approval.

7.01 Site Plan Review Process for Major Site Plans

Major Site Plans are subject to non-discretionary review by the Development Director, Land Use Control Board and/or the Memphis City Council.

(1). Major Data Center Site Plans shall be processed formally through DPD under the direction of the Development Director, Land Use Control Board ("LUCB") and/or the Memphis City Council ("City Council"), and consist of a two-step process (a preliminary site plan and a final site plan).

(2). The preliminary site plan shall contain the information in accordance with the site plan review requirements in division (Q). The preliminary site plan will be subject to a non-discretionary review by the DPD under the direction of the Development Director, Land Use Control Board ("LUCB") and/or the Memphis City Council ("City Council").

(3). After the preliminary site plan is approved by the CITY COUNCIL, the applicant shall revise the site plan in accordance with conditions of approval imposed through the review process. Upon completion of those revisions, the applicant shall submit a final site

plan to the Development Director which will be reviewed internally by the ART and ultimately approved by the Development Director provided that it does not substantially deviate from the approved preliminary site plan. Should the final plan deviate substantially from the approved preliminary site plan, the site plan will be forwarded to the Land Use Control Board ("LUCB") and/or the Memphis City Council for final review. For the purpose of this section, non-substantial deviations shall include minor shifts in building footprint locations, parking lot aisles, spaces, and landscaping islands, minor changes to pond designs, and minor changes to building facades or signage; all of which are expected as the project moves into construction ready civil or architectural drawings. During the review of the final site plan, the applicant shall apply for a development agreement with the Engineering Division. Upon approval of the final site plan, the Development Director shall place the development agreement on the next available City Council agenda for approval.

8.01 Deviations from Site Review Classification.

(1). The Director shall change and process a project from a Major Site Plan classification to a Minor Site Plan if:

(a) The project is located in direct proximity to residential neighborhoods and in proximity to public parks and facilities where there is potential that the project could have adverse impacts on neighborhood traffic flow, public safety, noise, odor, waste, or other factors that could be detrimental to a residential area or public facilities, except when such potential impacts have not already been vetted through a permitting process under the jurisdiction of federal, state or local boards or agencies in which residents of residential neighborhoods in direct proximity to the project were given notice by such boards or agencies and the opportunity to review and comment on the issue(s) to be regulated by such boards or agencies in a public forum;

(b) The project is located on or near environmentally sensitive areas, or those that have the potential to have an adverse impact on natural resources;

(c) The project is located on or near areas in which there is a known potential for the presence of historical resources; or

(2). The Director may change and process a project from a Major Site Plan classification to a Minor Site Plan if:

(a) The project is located within the boundaries of a planned development for a Large Data Center which has been approved or amended within the past three years;

(b) The project is located in a heavy industrial area that is relatively well segregated from nonindustrial uses and there is minimal potential for neighborhood impacts; or

(c) Plans for projects using, state or federal grants, or similar economic development tools.

9.01 Development Director responsibilities.

The Development Director or designee has the authority to approve, approve with conditions, or disapprove Minor Data Center Site Plans as referenced below. Such action shall be based upon the review comments from the City Engineer and the Administrative Review Team. The Development Director shall provide written notice of the decision to the applicant, along with the reasons for the decision within 30 working days. The Development Director shall have the authority to promulgate and publish standards and policies for the review of Minor Data Center Site Plans by DPD as needed. The Development Director shall also on a monthly basis provide updates on any administrative approvals to the Mayor and the City Council.

10.01 Administrative Review Team responsibilities.

The Administrative Review Team (ART) serves as the City's staff for technical review of site plans; both minor and major. The ART is composed of designated representatives from the following departments and divisions: Development Director, DPD administrative staff (Building, Codes, and Planning), Fire (Fire Marshal), Parks, Police and Public Services. The ART shall meet as needed to review site plan applications in an internal staff meeting, (not a public meeting) conducted by the Development Director, or designee. The ART shall

have the authority to promulgate internal administrative rules and deadlines for the its administrative review of Minor Data Center site plans.

11.01 Appeal of site plan decisions.

(1) For Minor Data Center site plans, an applicant may appeal the Development Director's decision, or the conditions imposed by the Development Director, to the Land Use Control Board by filing a written notice of appeal to the Development Director within 30 days of the Development Director's decision. The Development Director shall schedule the appeal on the next available Land Use Control Board agenda.

(2) For Major Data Center site plans, an applicant may appeal the recommendation or the conditions imposed by the LUCB, to the City Council by filing with the Development Director a written notice of appeal to the City Council within 30 days of the decision by the LUCB. The Development Director shall schedule the appeal on the next available meeting of the City Council.

12.01 Site plan review procedure summary.

(1) Step 1 - pre-application conference.

(a) Unless waived, the applicant shall supply preliminary information in a form established by DPD. Such information shall be submitted at least three business days prior to the pre-application conference.

(b) The purpose of the pre-application meeting shall be to review the draft site plan with the DPD to identify any initial conflicts between the draft site plan and City codes.

(2) Step 2 - site plan application.

(a) The applicant shall submit an application containing the information in accordance with the site plan review requirements in division (Q). The application shall be made within 120 days of the pre-application meeting conference (step 1), if applicable.

(3) Step 3 - DPD review and recommendation on the site plan.

(a) The DPD shall schedule a meeting of the DPD to review the site plan application pursuant to the standards in this subsection and the schedules maintained by the DPD.

(b) The HDC shall act on any necessary certificate of appropriateness prior to the final decision on a site plan if located in the Historic District.

(c) The DPD shall transmit, in writing, all comments and recommendations from the DPD to the applicant.

(d) From the date of receipt of the DPD comments, the applicant shall have until the deadline established by the DPD to address the comments and submit a revised site plan.

(4) Step 4 - decision on the site plan.

(a) For site plan applications that are decided by the Development Director, upon submittal of a revised site plan, the DPD in conjunction with the DPD shall prepare a final review, and make a decision to approve, approve with conditions, or disapprove the site plan application in accordance with the ordinance codified herein and state law.

(b) For site plan applications decided by the CITY COUNCIL, the Land Use Control Board shall hold public meetings by the date established by the DPD and shall make a recommendation to approve, approve with conditions, or disapprove the site plan application in accordance with the ordinance codified herein and state law.

13.01 Development agreement required.

Where public improvements or private site improvements are required as part of site plan approval or where fees or costs are to be assessed by the City in relation to a development project to cover impacts of the Development on the City's rights of way, sewers and storm water systems, the developer(s) shall enter into a development agreement with the City for all required public improvements, costs and/or fees assessed for development of a project.

(1) Such an agreement shall conform to a particular development proposal and shall be approved as to form and content by the City Attorney.

(2) The Development Director shall confirm the developer(s) have agreed to the development agreement prior to the development agreement being placed on the CITY COUNCIL agenda, unless the developer(s) disagree with any conditions or terms in the development agreement.

(3) Development agreements associated with site plans may be executed by the Mayor and need not be placed on the CITY COUNCIL agenda as full CITY COUNCIL authorization is not required except in the following circumstances:

- a. The applicant is in disagreement with any conditions or terms in the standard development agreement;
- b. Waivers or exceptions from standards where the CITY COUNCIL has the final decision are requested by the developer(s);
- c. Fees in lieu of construction are requested;
- d. A traffic study beyond daily trip generation was required (e.g. traffic impacts warrant a Level II or III Traffic Impact Study);
- e. Development is proposed within the limits of the floodplain (i.e. floodway or floodway fringe);
- f. A nonresidential site plan of over 50,000 square feet of new building area that has not received previous preliminary site plan, planned development, or conditional use permit (CUP) approval from the CITY COUNCIL;
- g. The CITY COUNCIL has applied a condition to a previous approval (preliminary site plan, planned development, or conditional use permit) stating that a

development agreement approved by the CITY COUNCIL is needed; or

- h. If, in the opinion of the Development Director, the development could potentially cause an adverse change in the internal function of the site or create an adverse off-site impact.

(4) The development agreement may also include provisions relevant to any required private improvements given consideration as part of the approval of the site plan, including such surety as may be required to guarantee such improvements are installed accordingly.

(5) All development agreements shall cover 100% of the required public improvements by the developer(s) and shall include any and all fees associated with the development project as well as a surety such as an irrevocable letter of credit or a cashier's check for such improvements.

(6) After the Development Director confirms that the final site plan meets the City's zoning regulations, guidelines, and any conditions of preliminary site plan approval, the Mayor may execute the development agreement between the City and the applicant. The date of the Mayor's execution of the development agreement begins the two-year time period that both the development agreement and the final site plan remain valid. The applicant shall commence construction on the subject property within three (3) years of the Mayor's execution of the development agreement. Failure of the applicant to commence construction within the prescribed three-year period shall nullify and void both the site plan and the development agreement. In the event the approval of the development agreement expires, the applicant may reapply in writing to the mayor or CITY COUNCIL, as appropriate, for an extension of both the development agreement and site plan for approval of the site plan and development agreement.

14.01 Effective period of preliminary site plan approval.

The CITY COUNCIL's approval of a preliminary site plan shall expire after three years if the applicant fails to obtain approval of the related final site plan and development agreement.

15.01 Effective period of final site plan approval.

A final site plan (minor) shall expire after three years from approval of the development agreement, or approval by the Development Director if a development agreement is not required, if the applicant has not commenced construction as defined in § _____. A final site plan (major) shall expire five years from the CITY COUNCIL's approval of the preliminary site plan if the applicant has not commenced construction as defined in § _____.

16.01 Final site plan documentation.

A final, approved site plan set shall be sealed by the engineer and other designers as may be applicable. Each sheet shall be denoted by the City's official approval stamp and dated to coincide with the development agreement approval date. Multiple stamped plan sets shall be required, with the specific number to be determined by the Development Director or designee. At least one stamped plan set shall be kept on the job site at all times during construction and at least one stamped plan set shall be retained at City Hall in perpetuity and also provided in electronic format. Sealed, as-built drawings shall also be required (in paper and electronic format) upon completion of construction depicting changes between the site plan and the actual construction. The conditions of approval from the various boards and commissions and City officials involved in the review and approval of the site plan and related design elements shall also be retained in the form of the public meeting minutes or as a report in the official file.

17.01 Approval criteria.

Recommendations and decisions on a site plan shall be based on consideration of the following criteria:

(1) That the proposed development is consistent with all the requirements of the UDC zoning ordinance, and other related codes and ordinances enforced by the City; and

(2) That the proposed development is in compliance with the applicable base district and overlay districts;

(3) That the proposed development meets all the requirements or conditions of any applicable development approvals (e.g., outline plan, or modification of development standards as permitted and approved within a planned development);

(4) That all permits, licenses, agreements and approvals necessary for the lawful operation of the proposed development have been obtained.

18.01 Site plan submittal requirements.

(1). A written application for a site plan shall be filed with the DPD along with payment of an application fee as established by the DPD as approved by the Mayor and City Council that contains the information listed in this Section.

(2). Major Data Center Site Plans. Pursuant to Tennessee Code Annotated 13-4-310(e) and 13-3-413(e), as applicable, a Major Data Center Site Plan application shall include:

- a. legal site control and parcel identification;
- b. ownership, control, end-user, and affiliate disclosure;
- c. a full-campus conceptual plan and phase schedule;
- d. MSED and Utility Requested Load;
- e. an Energy Supply and Operations Plan disclosing all utility, independent-power, onsite, backup, storage, fuel, and hybrid components;
- f. wastewater projections and cooling technology;
- g. noise, air, fuel, battery, fire, emergency, and decommissioning projections and plans;
- h. A plan for the mitigation of impacts of sound, lighting and vibrations from the operation of the Data Center on neighboring non-industrial properties through measures such as building design setbacks and landscape buffering;

- i. an assessment of potential impacts on the City's stormwater, sewer, and rights of way in form and content required by the City Engineer, including traffic study beyond daily trip generation if traffic impacts warrant a Level II or III Traffic Impact Study.
- j. written evidence of financial capacity to complete all public improvements required by DPD and/or the City Engineer;
- k. written evidence that satisfactory arrangements for all public utilities necessary for the project have been secured by binding agreements with the public entities providing such utilities; and
- l. Such other documents that DPD may request in its published application requirements.

(3). Minor Data Center Site Plans are required to file an application that includes the information set forth in Items (a) through (e) and in Item (l) in the preceding subpart (2).

CONDITIONAL USE PERMITS DATA CENTER ACCESSORY ENERGY PRODUCTION FACILITIES

PURPOSE AND SCOPE. An accessory use that would not be appropriate generally in a zoning district due to potential adverse impacts on the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity or general welfare may be permitted in Data Center Industrial zoning districts as conditional uses, if the specific conditions for such use in this section are made by the applicant. Conditional uses typically meet the purpose and intent of the zoning district but require the approval of the appropriate review bodies to ensure that any adverse impacts on adjacent uses, structures, or public services and facilities are mitigated, and any special requirements unique to that use are addressed.

1.01 DEFINITIONS

(1). Data Center means:

(A) Any building, structure, or collection of buildings and associated infrastructure dedicated and used for the housing, operation, storage, processing, management, transmission, or distribution of digital information through electronic computing equipment, including servers, computer systems, artificial-intelligence computing equipment, telecommunications equipment, network equipment, data-storage equipment, environmental control systems, electrical systems, substations, backup generators and power systems, cooling systems, battery storage, mechanical equipment and related infrastructure. A facility shall be considered a Data Center regardless of whether the Data Center, its associated infrastructure and equipment is operated by the owner of the real property, a tenant, contractor, affiliate, subsidiary, or other entity.

(B) Any building, structure, or collection of buildings and associated infrastructure dedicated and used for high-density

computing, artificial intelligence processing, cryptocurrency mining, commercial server farming, or other computing activities requiring substantial electrical demand or specialized computing equipment.

(C) A “Large Data Center” or HyperScale Data Center” that has a projected electrical demand of twenty (20) megawatts or greater or is designed or intended to increase electrical demand to twenty (20) megawatts or greater within ten (10) years of initial occupancy and will include large-scale cooling plants, substations, backup power.

(2). Self-Supplied or Behind-The-Meter Facilities. Data Center facilities that provide onsite self-supplied power generation or power supplied by an independent power producer for a Data Center instead of or in addition to electric power supplied by MLGW solely through its facilities.

(3). Energy Production Facility. These facilities convert forms of energy, such as water power (i.e., hydroelectric), fossil fuels, nuclear power, gas turbines and solar power, into electrical energy for use in data centers or other industrial uses. An electrical substation, PV Cells, battery storage, gas turbines, solar panels, wind turbines and related facilities are considered accessory uses/structures for principal industrial and commercial uses in a zoning district.

(4). Site Plan (Preliminary and Final Site Plan). A scaled graphic schematic of a development site indicating the location of buildings, walkways, parking, signs, lighting fixtures, grading, utilities, drainage facilities, topography and landscaping as they are to appear upon the completion of development. SITE PLANS may be required to contain such other information as may be deemed necessary by the City to ensure proper development of the site.

(5). Substation, Electrical. A facility that transforms high-voltage electricity from power plants into lower-voltage levels suitable for

distribution to homes and businesses through power lines. Battery storage and related offices are considered customary accessory uses/structures for an electric production facility.

2.01 STANDARDS FOR ACCESSORY ENERGY PRODUCTION FACILITIES

All Data Center stand-alone Energy Production Facilities and Electric Substations shall be considered accessory uses or structures to the main Data Center Facility and shall:

- (1). Directly serve the principal use or structure;
- (2). Be accessory and clearly incidental to the principal use or structure;
- (3). Be clearly subordinate in area, extent, and purpose to the principal use or structure;
- (4). Be owned or operated by the same person as the principal use or structure;
- (5). Be located on the same lot as the principal use or structure;
- (6). Not exceed the height of the principal structure, except for those structures exempt from the height requirements of this ordinance;
- (7). Be located at least five feet from any other structures (except fences, walls, or open-air arbors);
- (8). Not take place within required front or side yards or project beyond the front building line of the principal structure);
- (9). Not be located within platted or recorded easements or over underground utilities;

(10). Not violate the bulk, density, parking, landscaping, or open space standards of this ordinance when taken together with the principal use or structure;

(11). Not be constructed or established prior to the time the principal use or structure is constructed or established; and

(12). Except for fences, walls, or hedges, no accessory structure may be constructed except on a lot with a principal building.

3.01 CONDITIONAL USE PERMIT CRITERIA.

Conditional use permits shall be considered based on the following criteria and findings of fact as to whether the proposed use:

- (1). Conforms to all applicable provisions of the zoning district in which it is to be located, unless modified as part of the conditional use application under this section.
- (2). Will not materially adversely affect other property in the in the immediate vicinity of the subject property and the area in which it is located.
- (3). Will be adequately served by public utilities and infrastructure intended to serve the subject property.
- (4). Will not generate noise, odors, dust, or vibrations that can be detected from the closest public right-of-way or nearest residential areas .
- (5). Special conditions and specific standards for a Data Center Energy Production Facility.
- (6). Electric production facilities are preferred that use photovoltaic (PV) cells or other forms of renewable energy (wind, geothermal, or biomass) to convert sunlight and natural resources directly into electricity. Other forms of energy

production, such as fossil fuel, hydroelectric, nuclear are discouraged.

(7). An electrical substation, battery storage, and related offices are permitted as a customary accessory uses/structures for an energy production facility provided they comply with § 151.025(C) of the Zoning Ordinance.

(8). The minimum lot size for an Energy Production Facility is 25 acres.

(9). Setbacks and buffering.

(a) Energy Production Facilities shall be no closer than 100 feet to any property line.

(b) A 75-foot-wide landscape buffer shall be provided around the entire facility. The buffer shall be used for the preservation of any existing trees or installation of new trees and fencing to screen the facility from off-site views.

(c) The applicant shall be responsible for establishing and maintaining all vegetation within the project area in good condition in perpetuity.

(10). Removal of Energy Production Facilities

(a) As part of the site plan review, the applicant shall submit a decommissioning plan for review and approval. The plan must outline the process and timeline for removal of all solar equipment, battery storage, foundations, and similar related energy production infrastructure upon cessation of operations.

(b) Evidence acceptable to the City that the property owner and the Energy Production Facilities owner shall remove, at the property owner's and the Energy

Production Facilities owner's cost and expense, the Energy Production Facilities and all equipment and restore the property to a condition substantially similar to that existing before the installation following abandonment of the facility or non-use for a period of 30 months. Such removal shall not, however, include removal of installed landscaping unless approved by the City.

- (c) Such evidence may be in the form of an executed agreement between the Energy Production Facilities owner and the property owner that is approved by the City Attorney. Such an agreement shall provide that the agreement may not be terminated without the City's written consent and the agreement shall be enforceable by the City against the property owner and the Energy Production Facilities owner.
- (d) Performance bond or security. Evidence that the Energy Production Facilities owner has obtained or secured a performance bond or other security ("performance guarantee") acceptable to the City Attorney in an amount of 120% of the estimated cost and expense of removing the telecommunications facility following abandonment of the facility or non-use of the facility for a period of 30 months. All performance guarantees shall authorize the City to obtain the funds secured by the guarantee upon the City's determination that the WCF is abandoned or no use of the facility has been made for a period of 30 months. The amount of such performance guarantee shall be based upon an estimate obtained by the Energy Production Facilities owner that shall be subject to review and approval of the City Engineer. In

the event that the City rejects an estimate as inaccurate, incomplete, or incorrect, the City may obtain, at its cost and expense, an estimate which shall be used for purposes of determining the amount of the performance guarantee. The Energy Production Facilities owner shall take all action necessary to keep such performance guarantee valid and in effect at all times. Expiration of a performance guarantee may, at the option of the City and following notice to the Energy Production Facilities owner, result in the expiration of the City's approval of the Energy Production Facilities facility.

- (e) Proof of insurance. The applicant shall provide proof of insurance to insure adjacent property owners and the public against personal and property damage resulting from negligent installation and/or damage caused by or arising from the operation and maintenance of the photovoltaic (PV) cells.

§ _____ *CONDITIONAL USE PERMITS PROCEDURE.*

(A) Authority. The City Council, with a recommendation from the Land Use Control Board, may hear and decide, in accordance with the provisions of this chapter, requests for conditional use permits. For the purpose of administration of this chapter, conditional uses shall be construed as synonymous with special exceptions, as such later term is used in Tenn. Code Ann. §§ 13-7-206 and 13-7-207.

(B) Procedure. The following procedure is established to integrate properly the conditional uses after consideration by the City Council, with a recommendation from the Land Use Control Board, with other uses located within the zoning classification. These uses shall be reviewed by the City Council and may be authorized, conditionally approved, or rejected utilizing the procedures set forth in this chapter.

(C) Application for conditional use permit; submission deadline and fee. A written application for a conditional use permit shall be filed along with payment of an application fee as prescribed DPD by the property owner or his or her designated agent on a form provided by DPD

(1) The application shall contain information and exhibits as may be required. An incomplete application or an application that fails to meet minimum submittal requirements shall be returned to the applicant by the City and shall include a written statement enumerating the deficiency(ies) in the application.

(2) The completed application or any proposed supplement thereto shall be submitted in compliance with the then existing required deadlines as set periodically by the Development Director.

(3) Neighborhood meeting required. A neighborhood meeting is mandatory after the submission of an application for a Conditional Use Permit and shall be conducted pursuant to § _____.

(4) Pre-application meeting required. Prior to filing an application for Conditional Use Permit, the prospective applicant shall request a pre-application conference with the DPD.

(D) Denial of a conditional use permit. The City Council, with a recommendation from the Land Use Control Board, may deny a conditional use permit where it is shown that approval does not conform with the grounds for issuance of a conditional use permit contained in § _____. If the City Council, with a recommendation from the Land Use Control Board, denies an application for a conditional use permit, a reapplication pertaining to the same property and requesting the same conditional use permit may not be filed within one year of the date the City Council took final action on the previous application, unless the DPD initiates such reapplication or unless the City Council authorizes such reapplication.

(E) Notice of public meeting. The notice of a public meeting of the Land Use Control Board or City Council to discuss a conditional use permit shall be provided pursuant to § _____.

(F) Requirements for conditional use permit. General requirements and specific standards are established in § _____ that shall apply to all applications for conditional use permits. The Board, with a recommendation from the Land Use Control Board, may impose additional conditions and restrictions upon the premises benefitted by a conditional use permit as may be necessary to comply with the provisions set forth in § _____ in order to reduce or minimize the injurious effect of such conditional use upon surrounding areas and insure compatibility with surrounding property and in the furtherance of the general purposes of this chapter. Such additional conditions and restrictions shall be limited as follows:

(1) No condition shall be less restrictive than the standards of the zoning district unless the LUCB finds an equivalent performance measure to be Alternative Equivalent Compliance (AEC).

(a) A finding of AEC allows an application to meet the development standards of the following sections in a way that is "equivalent" to the strict requirements, but not necessarily identical, when strict compliance is impractical or unreasonable due to site-specific or use-specific factors related to architecture, landscaping, or fencing;

(b) Unlike a variance or waiver, which may remove a requirement, the AEC process requires mitigation or, equivalent, performance measures to ensure the intent of the regulation is still met.

(2) No condition shall be made part of the application, or shall be attached to approval of the conditional use, which specifies the ownership status, race, religion, or character of the occupants of housing units, the minimum value of improvements or any other exclusionary device; or which states that the use of property will not be subject to regulations.

(3) If the LUCB places additional conditions upon a conditional use permit, it shall indicate the specific provisions from § _____ upon which the condition is based and shall state its findings beyond such generalities as in the interest of public health, safety and general welfare.

(G) Effective period of approval. The City Council approval shall become effective immediately, unless otherwise specified. The applicant may be required to submit an application for a site plan and/or obtain a building permit as a condition of approval.

(H) Validity of plans. All approved plans, conditions, restrictions and requirements made part of the approval by the City Council shall run with the land and the permitted conditional use of the land shall conform to the same at all times.

(I) Failure to establish conditional use. The applicant is required to fully establish the conditional use within three years of approval in conformance with all applicable provisions of the UDC and conditions of approval imposed by the City Council and other boards and commissions. Failure to establish the conditional use within the prescribed time period shall result in the voiding of approval of the conditional use permit. The applicant may request an extension from the City Council not to exceed two years.

(J) Appeal of decision of City Council on conditional use permit. Any person aggrieved by a decision of the City Council relative to a conditional use permit may appeal by certiorari to a court to competent jurisdiction. The judgment and findings of the City Council on all

questions of fact that may be involved in any appeal, cause, hearing or proceeding under this chapter shall be final and subject to review only for illegality or want of jurisdiction.