

SUBSTITUTE ORDINANCE NO. 5982

AN ORDINANCE DECLARING A TEMPORARY MORATORIUM ON THE ACCEPTANCE, PROCESSING, APPROVAL, AND ISSUANCE OF ZONING, LAND USE, BUILDING, AND OTHER ASSOCIATED INFRASTRUCTURE PERMITS FOR DATA CENTER DEVELOPMENTS WITHIN THE CITY OF MEMPHIS

WHEREAS, pursuant to Tennessee Code Annotated § 13-7-201, the Memphis City Council possesses the authority to regulate land use, zoning, and development to protect the public health, safety, and welfare of its citizens; and

WHEREAS, there has been substantial growth nationwide and throughout Tennessee in the development of large-scale data centers and high-density computing facilities supporting cloud computing, artificial intelligence, digital storage, cryptocurrency operations, and other advanced computing technologies; and

WHEREAS, modern data centers differ significantly from traditional commercial and industrial developments because they may require exceptionally high electrical loads, extensive backup generation systems, electrical substations, battery storage systems, mechanical cooling equipment, water resources, telecommunications infrastructure, and continuous twenty-four-hour operations; and

WHEREAS, such facilities may generate impacts relating to electrical infrastructure capacity, water consumption, wastewater management, stormwater runoff, emergency services, traffic, lighting, vibration, noise, air quality, fuel storage, public utilities, and surrounding neighborhoods; and

WHEREAS, the Memphis and Shelby County Unified Development Code does not presently classify or comprehensively regulate data center developments as a distinct land use and therefore does not specifically address their unique operational characteristics or potential community impacts; and

WHEREAS, additional study is necessary before permitting additional data center developments to ensure that appropriate zoning classifications, siting standards, buffering requirements, operational standards, utility protections, environmental safeguards, and community protections are established; and

WHEREAS, a temporary moratorium should serve as a defined planning and regulatory-development period and not as an indefinite or blanket prohibition, and should culminate in a transparent framework identifying where qualifying facilities may appropriately be located, what information applicants must submit, how proposed projects will be evaluated regardless of energy source, and how affected communities will participate in the process; and

WHEREAS, meaningful public participation should occur before the City designates preferred areas for future data center development so that neighborhood impacts, infrastructure needs, environmental concerns, economic opportunities, and community priorities may inform the final siting and regulatory framework; and

WHEREAS, a temporary moratorium is necessary to prevent applications from vesting under existing regulations while the City undertakes the community-engagement, study, siting, and permanent-regulation process established by this Ordinance.

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

SECTION 1. DEFINITIONS

For purposes of this Ordinance, the following terms shall have the meanings set forth below:

Affiliated Facility means a facility, phase, parcel, project entity, tenant, or power-supply arrangement under common ownership or control, developed pursuant to a common plan, sharing material infrastructure, or located on contiguous or proximate parcels.

Data Center means any building, structure, campus, or facility primarily designed for housing, operating, or maintaining computer servers, data storage equipment, networking equipment, telecommunications infrastructure, or other electronic systems used for processing, transmitting, or storing digital information, together with all associated cooling systems, backup generators, substations, battery storage, mechanical equipment, and supporting infrastructure.

High-Density Computing Facility means any facility engaged primarily in artificial intelligence processing, cryptocurrency mining, commercial server farming, or other computing activities requiring substantial electrical demand or specialized computing equipment.

Maximum Site Electrical Demand or MSED means the greatest projected coincident electrical demand of the complete facility or campus during its first five (5) years after initial operation, regardless of whether supplied by Memphis Light, Gas and Water (“MLGW”), a TVA-connected service, an independent power producer, behind-the-meter generation, onsite generation, storage, or any combination thereof, measured before subtracting onsite generation or storage.

Utility Requested Load means the maximum firm or interruptible electric demand an applicant requests from MLGW, excluding generation not supplied by MLGW.

Discretionary Public Development Value means a PILOT, public land sale or lease, option, grant, public financing, public infrastructure commitment not available as of right, expedited district position, or other discretionary City-controlled economic value. Ordinary permits and utility service available under generally applicable law and rates shall not constitute Discretionary Public Development Value.

Eligible Digital Infrastructure Expenditures means the purchase or lease price of servers, processors, accelerators, storage devices, networking and switching equipment, racks, qualified software, cooling equipment, backup or onsite generation equipment, and other capital equipment installed for the facility, excluding payroll, employee benefits, debt service, taxes, and land purchase price.

SECTION 2. TEMPORARY MORATORIUM

Beginning on the effective date of this Ordinance, the City of Memphis may continue to accept applications for the limited purposes of docketing and completeness review; provided, however, that no application subject to this Section shall be processed, scheduled, heard, approved, or issued during the moratorium.

All review deadlines otherwise applicable under state law, the Memphis and Shelby County Unified Development Code, or administrative rule shall be tolled to the extent permitted by law for the duration of the moratorium.

During the moratorium, the Memphis and Shelby County Division of Planning and Development shall not process any of the following for a new Data Center or High-Density Computing Facility located within the corporate limits of the City of Memphis:

1. Rezoning applications;
2. Planned development applications;
3. Special use permits;
4. Conditional use permits;
5. Site plan approvals;
6. Building permits;
7. Grading permits;
8. Land disturbance permits; or
9. Any other discretionary land-use approval.

No City department, board, commission, agency, or official shall approve any application subject to this Section during the moratorium except as expressly provided in Section 3 of this Ordinance.

SECTION 3. EXEMPTIONS

The moratorium established by this Ordinance shall **not** apply to:

A. Existing lawfully operating Data Centers or High-Density Computing Facilities that do not expand their building footprint, electrical demand, utility capacity, or operational intensity;

B. Applications legally vested pursuant to applicable state or local law prior to the introduction of this Ordinance;

C. Routine maintenance, repair, replacement, or modernization of an existing facility that does not materially increase operational impacts;

D. Accessory Computing Uses. Computer servers, data storage equipment, networking equipment, telecommunications equipment, or related computing infrastructure that is accessory or incidental to another lawful principal use of property and primarily serves the operational needs of such 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; and

E. A waiver granted by the Memphis City Council upon written findings that strict application of the moratorium would deny an applicant all economically viable use of the property. An applicant may initiate the waiver process through the Memphis and Shelby County Division of Planning and Development utilizing the applicable appeal process to the Council.

SECTION 4. STUDY AND PERMANENT REGULATORY DELIVERABLES

During the moratorium period, the Memphis and Shelby County Division of Planning and Development, working in coordination with MLGW, the Shelby County Health Department, Memphis Fire Department, Engineering Division, Public Works Division, EDGE/IDB, three mandatory spots for environmental organizations and community organizations, and such other departments, agencies, or entities as may be appropriate, shall prepare recommendations for comprehensive permanent zoning and development regulations governing Data Centers and High-Density Computing Facilities.

The study and recommendations shall evaluate, at a minimum:

1. Appropriate zoning districts and permitted locations;
2. Classification of facilities by size, MSFD, Utility Requested Load, water demand, and operational intensity;
3. Minimum separation distances and buffering from residential neighborhoods, schools, parks, hospitals, greenways, and other sensitive land uses;
4. Noise mitigation standards, including operational sound limits and acoustic studies;
5. Water consumption, cooling technologies, conservation measures, reclaimed-water alternatives, and protection of the Memphis Sand aquifer;
6. Wastewater discharge requirements;
7. Stormwater management standards;

8. Lighting and visual-screening requirements;
9. Emergency access and fire-protection requirements;
10. Backup generator operations, onsite generation, battery systems, and fuel storage;
11. Electrical infrastructure impacts, including substations and transmission improvements;
12. Allocation of infrastructure costs to developers to ensure that public utility customers are not responsible for costs attributable to new high-demand facilities;
13. Traffic impacts during construction and operation;
14. Environmental sustainability measures; including but not limited to renewable, clean and green energy.
15. Public notification and community engagement requirements;
16. A substantial-compliance checklist consistent with Section 7;
17. A source-neutral energy review framework consistent with Section 8;
18. A designated data center development area or areas consistent with Section 6; and
19. Any additional development standards reasonably necessary to ensure compatibility with surrounding land uses and protection of the public health, safety, and welfare.
20. The feasibility of a community benefits agreement for the long-term financial benefits of the community, including Section 9 of this ordinance.

The permanent regulatory recommendations shall be presented to the Memphis City Council no later than ninety (90) days following the effective date of this Ordinance, with monthly updates to the Council, unless the Council authorizes additional time based upon a written progress report demonstrating the need for such additional time.

SECTION 5. COMMUNITY ENGAGEMENT AND PUBLIC INPUT

A. The City Council, in conjunction with the Office of Comprehensive Planning, shall conduct a structured community-engagement process during the moratorium and prior to recommending or adopting any designated area for future Data Center or High-Density Computing Facility development.

B. The Memphis City Council, in conjunction with the Office of Comprehensive Planning, shall conduct no fewer than three (3) public community meetings. Such meetings shall be geographically distributed throughout the City of Memphis and shall include at least one (1) meeting held at a location reasonably accessible to residents of an area in which a Data Center or High-Density Computing Facility is located and operating as of the effective date of this Ordinance.

C. The community-engagement process shall solicit public input concerning, at a minimum:

1. Land-use compatibility;
2. Proximity to residential neighborhoods and sensitive land uses;
3. Water and energy impacts;
4. Air quality and noise;
5. Traffic and construction impacts;
6. Emergency services;
7. Environmental justice and cumulative impacts;
8. Infrastructure needs;
9. Workforce-development and contracting opportunities;
10. Community benefits; and
11. Appropriate uses of revenues or capital contributions associated with future projects.

D. The Office of Comprehensive Planning shall maintain a public-comment period of not fewer than thirty (30) days and shall make available to the public, to the extent permitted by law, non-confidential maps, criteria, studies, agency findings, and other materials used to evaluate potential candidate areas.

E. Following completion of the community-engagement process and prior to Council consideration of any permanent siting map, designated development area, or comprehensive permanent regulatory framework, the Office of Comprehensive Planning shall transmit to the Memphis City Council a final Community Engagement Report. The report shall summarize:

1. The meetings conducted;
2. Public comments received;
3. Principal community concerns and recommendations;
4. Responses from relevant City departments and agencies; and
5. Any material changes made or recommended to the proposed siting or regulatory framework as a result of public input.

SECTION 6. DESIGNATED DATA CENTER DEVELOPMENT AREA OR AREAS

A. Following completion of the community-engagement process required by Section 5, the Memphis and Shelby County Division of Planning and Development, in consultation with MLGW, Public Works, Engineering, the Memphis Fire Department, the Shelby County Health

Department, EDGE/IDB, and other appropriate agencies, shall identify and recommend to the Memphis City Council one or more areas in which future Data Centers and High-Density Computing Facilities may be permitted, subject to comprehensive permanent development standards.

B. The site-selection analysis shall consider, at a minimum:

1. Industrial compatibility;
2. Separation and buffering from residential neighborhoods and sensitive land uses;
3. Existing and planned electric and gas infrastructure;
4. MSED and utility deliverability;
5. Reclaimed water and wastewater potential;
6. Protection of the Memphis Sand aquifer;
7. Fiber availability;
8. Road capacity;
9. Emergency access;
10. Environmental baseline conditions;
11. Air and noise burdens;
12. Stormwater impacts;
13. Brownfield or previously industrial land opportunities;
14. The ability of a facility to expand without encroaching upon residential neighborhoods;
and
15. The cumulative impact of multiple facilities.

C. The Division of Planning and Development shall present to the Memphis City Council a proposed map, objective siting criteria, and any amendments to the Unified Development Code determined to be necessary. No area shall become a designated data center development area solely through administrative action. Final designation shall require approval by the Memphis City Council through the legally required land-use and ordinance process.

D. Designation of an area shall not guarantee approval of any individual project, reserve utility capacity, waive any permit or regulatory requirement, or create any vested right. Each future project shall remain subject to all applicable laws, permanent development standards, utility requirements, and project-specific review.

SECTION 7. SUBSTANTIAL COMPLIANCE CHECKLIST

A. To the extent applicable under Tennessee Code Annotated §§ 13-4-310(e) and 13-3-413(e), and as part of the permanent framework developed during the moratorium, an application for a qualifying Data Center or High-Density Computing Facility shall not be deemed substantially compliant unless it includes, at a minimum:

1. Legal site control and parcel identification;
2. Ownership, control, end-user, and affiliate disclosure;
3. A full-campus conceptual plan and phase schedule;
4. MSSED, Utility Requested Load, annual ramp, and interconnection assumptions;
5. An Energy Supply and Operations Plan disclosing all utility, independent-power, onsite, backup, storage, fuel, and hybrid components;
6. Potable, nonpotable, reclaimed, process, peak, drought-stage, and wastewater projections, cooling technology, and proposed water-use efficiency;
7. Noise, air, fuel, battery, fire, emergency, traffic, stormwater, and decommissioning concepts;
8. Evidence of financial capacity and payment of any lawfully required published study deposits;
9. A complete list of requested Discretionary Public Development Value; and
10. Certification under penalty of applicable law that no Affiliated Facility or material phase has been omitted.

B. The Division of Planning and Development shall publish the proposed checklist for public review before permanent regulations become operative and may recommend only objective, publicly posted technical requirements. No unpublished or open-ended standard shall determine substantial compliance.

C. Nothing contained in this Section shall authorize approval of a project during the moratorium. This Section establishes the minimum application framework to be incorporated into permanent regulations or otherwise implemented through the legally appropriate process before termination of the moratorium.

SECTION 8. TWO ENERGY PATHS; ONE FULL-SITE RECORD

A. Utility-Served and Hybrid Facilities. An applicant seeking MLGW electric service shall obtain the applicable MLGW study or readiness statement and comply with all applicable MLGW large-load service and capacity requirements. No City approval shall constitute or be construed as a reservation or guarantee of electric capacity.

B. Self-Supplied or Behind-the-Meter Facilities. An applicant proposing no MLGW electric service, or proposing onsite generation or an independent power producer, shall submit an Energy Supply and Operations Plan addressing full MSED, generation technology, fuel supply, expected operating hours, air emissions, noise, cooling and water requirements, electrical safety, islanding, interconnection, if applicable, emergency operation, fire protection, fuel storage, decommissioning, and construction phasing.

C. MLGW approval shall be required only to the extent required by applicable law, contract, utility service, interconnection, backup service, or safety requirements. The absence of MLGW jurisdiction over a private power arrangement shall not exempt a facility from applicable land-use, air, water, fire, building, noise, traffic, fiscal, or other lawful local requirements.

D. A hybrid facility shall disclose both MSED and Utility Requested Load. City review shall evaluate the complete facility and shall not treat a self-supplied campus as consuming no public or environmental resources solely because its Utility Requested Load is zero.

SECTION 9. STUDY OF A STRATEGIC DATA CENTER CAPITAL EXPENDITURE FUND

A. As part of the study required by Section 4, the City shall evaluate the feasibility and legality of establishing a Strategic Data Center Capital Expenditure Fund (the “proposed Fund”) to support lawful capital investments for the public good. The study shall identify permissible funding sources and uses, fiscal requirements, and any further Council action necessary to establish, fund, administer, and oversee the proposed Fund.

B. The study shall evaluate whether the proposed Fund could lawfully receive:

1. Memphis City Council appropriations;
2. Grants and intergovernmental transfers;
3. Proceeds dedicated by separate ordinance; and
4. Contractual capital contributions negotiated in connection with Discretionary Public Development Value, including a Strategic Development Agreement, PILOT, public land transaction, public infrastructure commitment, or other discretionary economic-development arrangement.

C. The study shall evaluate the legal authority and practical feasibility of negotiating recurring contractual capital contributions from a Data Center or High-Density Computing Facility receiving material Discretionary Public Development Value. The evaluation shall consider potential methods for calculating contributions, project economics, public return, and the circumstances under which a contribution would be appropriate.

The study shall distinguish contributions negotiated through a lawful contract, incentive agreement, land instrument, or other valid legal authority from charges imposed as a condition of an ordinary permit otherwise available as of right. This subsection does not impose a payment obligation or establish a negotiating floor.

D. The study shall evaluate the lawful capital purposes for which money in the proposed Fund could be used, including but not limited to: :

1. Shared utility and public infrastructure;
2. Water and wastewater infrastructure and water alternatives;
3. Road, drainage, and stormwater improvements;
4. Environmental-monitoring infrastructure;
5. Resilience and emergency response infrastructure;
6. Fiber or other public digital infrastructure;
7. Public-compute or research infrastructure;
8. Capital improvements in host or impacted communities, and
9. Other capital projects determined by the Memphis City Council to serve the public good, to the extent permitted by applicable law

The study shall further evaluate lawful ways to prioritize Memphis residents and businesses in employment, contracting, and projects supported by the proposed Fund, consistent with applicable procurement, funding, and other legal requirements.

The study shall also consider how to distinguish additional community benefits from ordinary taxes, legally required infrastructure costs, and compliance with generally applicable law.

E. The study shall recommend appropriate Council oversight and financial controls if the proposed Fund is established, including an annual report of receipts, contractual sources, expenditures, encumbrances, project purposes, and remaining balance. It shall also evaluate whether transfers to the General Fund may lawfully be prohibited or conditioned on a subsequent ordinance stating the purpose and amount of the transfer.

F. This Section directs further study only. It does not establish the proposed Fund, dedicate revenue, impose a contribution, authorize an expenditure, or restrict a transfer of existing City funds. Any such action shall require subsequent Council approval in accordance with applicable law.

SECTION 10. MORATORIUM EXIT FRAMEWORK AND PROGRESS REPORTS

A. The purpose of this moratorium is to establish a defined period for community engagement, study, siting analysis, and development of comprehensive permanent regulations governing Data Centers and High-Density Computing Facilities.

Accordingly, prior to termination of the moratorium pursuant to the permanent-regulation provisions of Section 11, the City shall, through the legally appropriate process:

1. Complete the community-engagement process required by Section 5 and transmit the final Community Engagement Report to the Memphis City Council;
2. Adopt or formally act upon a designated data center development area or areas and objective siting criteria pursuant to Section 6;
3. Publish and adopt, as legally appropriate, the substantial-compliance requirements contemplated by Section 7;
4. Adopt a source-neutral, full-site energy disclosure and review framework consistent with Section 8;
5. Establish the fiscal and administrative mechanisms necessary to receive and administer the Fund described in Section 9; and
6. Adopt comprehensive permanent zoning and development standards addressing the subjects identified in Section 4.

B. The Division of Planning and Development shall provide a written progress report to the Memphis City Council within ninety (90) days following the effective date of this Ordinance and every ninety (90) days thereafter for so long as the moratorium remains in effect.

Each progress report shall identify, at a minimum:

1. Tasks completed;
2. Tasks remaining;
3. Community engagement completed;
4. Candidate siting analysis undertaken;
5. Interagency coordination;
6. Draft regulatory provisions developed; and
7. Any legal, administrative, technical, or other obstacle that may delay adoption and operative implementation of the permanent regulatory framework.

SECTION 11. DURATION

A. Except as otherwise provided herein, the moratorium established by this Ordinance shall remain in full force and effect until the earliest to occur of the following:

1. Eighteen (18) months following the effective date of this Ordinance;
2. Following completion of the community engagement process and submission of the final Community Engagement Report required by Section 5, adoption and operative implementation by the Memphis City Council of comprehensive zoning and development regulations governing Data Centers and High-Density Computing Facilities, including the regulatory framework contemplated by Section 10 of this Ordinance; or
3. Repeal, modification, or termination of the moratorium by subsequent ordinance of the Memphis City Council.

B. For purposes of subsection A(2), completion of the community-engagement process or submission of the final Community Engagement Report, standing alone, shall not terminate the moratorium. Termination pursuant to subsection A(2) shall occur only after both:

1. Completion of the community-engagement and reporting requirements established by this Ordinance; and
2. Adoption and operative implementation of the comprehensive permanent zoning and development regulations contemplated by this Ordinance.

SECTION 12. SEVERABILITY

The provisions of this Ordinance are hereby declared severable. If any section, subsection, provision, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be unconstitutional, invalid, or otherwise unenforceable by a court of competent jurisdiction, such determination shall not affect the validity or enforceability of the remaining portions of this Ordinance, which shall remain in full force and effect.

SECTION 13. EFFECTIVE DATE

This Ordinance shall take effect from and after the date it shall have been passed by the Memphis City Council, signed by the Chair of the Council, certified and delivered to the Office of the Mayor in writing.

Sponsors:
JB Smiley, Jr.
Jana Swearengen-Washington
Jerri Green
Dr. Michalyn Easter-Thomas

Chairwoman
Jana Swearengen-Washington