ORDINANCE NO. _____

AN ORDINANCE TO ESTABLISH A FRAMEWORK FOR THE CREATION AND STATE APPROVAL OF A NONPROFIT COMMUNITY BENEFIT AGENCY; TO AUTHORIZE COORDINATION BETWEEN THE CITY OF MEMPHIS AND THE STATE OF TENNESSEE FOR THE LAWFUL RECEIPT, ADMINISTRATION, AND DISTRIBUTION OF DATA CENTER COMMUNITY-BENEFIT FUNDING; TO PROVIDE FOR COMMUNITY REPRESENTATION, FINANCIAL ACCOUNTABILITY, AND PUBLIC OVERSIGHT; AND TO PROVIDE FOR RELATED PURPOSES.

WHEREAS, the City of Memphis recognizes the significant economic development opportunities associated with the establishment, operation, and expansion of data centers and other large-scale technology infrastructure within the City; and

WHEREAS, the City recognizes the importance of ensuring that economic development associated with data centers produces measurable and sustained benefits for Memphis residents, neighborhoods, small businesses, and community-serving organizations; and

WHEREAS, the City seeks to establish a transparent and accountable framework through which eligible community-benefit contributions from data center operators and other participating entities may be received, administered, and distributed for authorized public and community purposes; and

WHEREAS, the City recognizes that the establishment and operation of a nonprofit community benefit agency, including its authority to receive, administer, or distribute public funds, must comply with applicable provisions of the Tennessee Constitution, the Charter of the City of Memphis, Tennessee law, and applicable federal law; and

WHEREAS, the City intends to coordinate with the State of Tennessee and other appropriate governmental authorities to determine the legal structure, approvals, registrations, and statutory authority necessary to establish and operate such an agency; and

WHEREAS, the City recognizes the importance of ensuring that community-benefit funding is administered in a manner that promotes transparency, equitable access, fiscal responsibility, meaningful community participation, and measurable public benefit; and

WHEREAS, the City Council finds that the development of a legally authorized Community Benefit Agency framework warrants formal evaluation and coordination among the City administration, the City Attorney, appropriate state authorities, data center operators, and affected communities;

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

SECTION 1. PURPOSE AND INTENT.

The purpose of this Ordinance is to establish a municipal framework for developing a nonprofit Community Benefit Agency to facilitate the lawful receipt, administration, management, and distribution of eligible community-benefit funding associated with data centers operating or proposed to operate within the City of Memphis.

The intent of this Ordinance is to:

(a) Establish a process for creating or designating an eligible nonprofit organization to serve as the Memphis Community Benefit Agency;

(b) Provide for coordination with the State of Tennessee to obtain any approvals, registrations, or additional statutory authorization required for the Agency's proposed functions;

(c) Establish a lawful mechanism through which eligible private contributions, grants, and other authorized funding may support community-benefit programs;

(d) Provide a framework for administering and distributing funding for approved community purposes;

(e) Establish appropriate financial controls, public reporting, community representation, and accountability requirements; and

(f) Ensure that the Agency operates within the authority granted by applicable law and any agreements approved by the City.

SECTION 2. PROPOSED ESTABLISHMENT OF THE MEMPHIS COMMUNITY BENEFIT AGENCY.

(a) The City of Memphis hereby authorizes the development of a framework for establishing a nonprofit organization to be known as the Memphis Community Benefit Agency, hereinafter referred to as the "Agency."

(b) The Agency shall be organized or designated under a legal structure approved by the appropriate authorities and determined to be permissible under Tennessee law.

(c) The Agency may be established as an independent nonprofit corporation or through another lawful organizational structure approved following review by the City Attorney and consultation with appropriate state authorities.

(d) The Agency shall not exercise governmental powers, impose mandatory assessments, collect municipal taxes, or control public funds except to the extent expressly authorized by applicable law and any duly approved agreement.

(e) Nothing in this Ordinance shall be construed to establish the Agency as a department, division, or instrumentality of the City unless such status is separately authorized by law and expressly established through the appropriate legal process.

SECTION 3. COORDINATION WITH THE STATE OF TENNESSEE.

(a) The Mayor, or the Mayor's designee, is hereby authorized and directed to coordinate with the City Attorney and appropriate state agencies to determine the legal requirements for establishing and operating the Agency.

(b) Such coordination shall include, as applicable:

1. Determining the requirements for incorporation or other lawful establishment of the Agency under Tennessee law;

2. Determining whether additional state authorization is required for the Agency to perform its proposed functions;

3. Determining the requirements applicable to the Agency's receipt and administration of private contributions, grants, and authorized public funds;

4. Determining whether the Agency may lawfully administer or distribute funds associated with existing or future municipal community-benefit programs;

5. Determining whether any proposed transfer, appropriation, grant, or contractual payment to the Agency requires additional legislative approval, public notice, reporting, or audit procedures; and

6. Identifying any additional state legislation or other governmental approvals necessary to implement the intended funding mechanism.

(c) If the City Attorney determines that the Agency's proposed functions require additional state legislation or authorization, the Mayor and appropriate City officials are authorized to prepare recommendations for consideration by the City Council and submission to the appropriate state authorities.

(d) Nothing in this Section shall be construed to represent that the State of Tennessee has approved the Agency or that any state approval is guaranteed.

SECTION 4. COMMUNITY-BENEFIT FUNDING SOURCES.

Subject to applicable law, the Agency may be authorized to receive or administer funding from the following sources:

(a) Voluntary financial contributions made by data center operators, owners, developers, or affiliated entities pursuant to written agreements;

(b) Corporate community investment contributions designated for eligible community-benefit purposes;

(c) Grants and contributions from foundations, charitable organizations, philanthropic entities, and other eligible private sources;

(d) Grants or other funding awarded by federal, state, county, or municipal governmental entities, where permitted by applicable law and the terms of the applicable award;

(e) Municipal appropriations, grants, or contractual payments that have been separately authorized and approved in accordance with applicable law; and

(f) Other lawful funding sources consistent with the Agency's approved purposes.

All funding arrangements shall identify the source of funds, permitted uses, applicable restrictions, reporting requirements, and any conditions governing disbursement.

No provision of this Ordinance shall be construed to impose a tax, fee, assessment, or mandatory financial contribution upon any data center operator without independent legal authority.

SECTION 5. MUNICIPAL COORDINATION AND AUTHORIZATION.

(a) The City is authorized to evaluate and develop lawful agreements with the Agency for the administration, implementation, or support of eligible community-benefit programs.

(b) Any agreement involving municipal funds, municipal property, public revenue, or the administration of a City program shall be subject to review by the City Attorney and approval by the officials or legislative body required under the City Charter and applicable law.

(c) The City shall determine whether existing community-benefit programs, grants, appropriations, or other authorized funding mechanisms may lawfully be administered in whole or in part through the Agency.

(d) No municipal funds shall be transferred to the Agency solely by virtue of this Ordinance. Any such transfer must be supported by an independent lawful funding mechanism and the necessary appropriation, agreement, approval, or other authorization.

(e) Where required by law, the City shall retain appropriate oversight over the expenditure of public funds and shall ensure that all applicable financial reporting, public inspection, and audit requirements are satisfied.

(f) Nothing in this Ordinance shall be interpreted as transferring taxing authority, governmental regulatory authority, or the City's legislative powers to the Agency.

SECTION 6. AUTHORIZED COMMUNITY-BENEFIT PURPOSES.

Subject to the terms of each funding source and applicable law, funds administered through the Agency may support the following purposes:

(a) Neighborhood revitalization and eligible community improvement projects;

(b) Workforce development, technical education, apprenticeships, and employment preparation;

(c) Small-business development, entrepreneurship, and access to economic opportunities;

(d) Youth development, educational programming, and technology training;

(e) Housing stability and eligible neighborhood stabilization initiatives;

(f) Environmental monitoring, environmental education, and eligible projects addressing community impacts associated with industrial and technology infrastructure;

(g) Public health education and eligible community health initiatives;

(h) Public safety and community resilience programs;

(i) Capacity building and operational support for eligible nonprofit organizations serving Memphis residents; and

(j) Other lawful charitable, educational, economic development, or community purposes approved in accordance with the Agency's governing documents and applicable funding requirements.

The Agency shall establish written eligibility standards and procedures for evaluating applications and selecting funded projects.

No applicant shall be guaranteed funding solely because the applicant operates within a particular neighborhood or geographic area.

SECTION 7. GOVERNANCE AND COMMUNITY REPRESENTATION.

(a) The Agency shall adopt governing documents establishing its mission, organizational structure, board responsibilities, decision-making procedures, and financial accountability requirements.

(b) To the extent permitted by its legal structure, the Agency shall provide for meaningful representation of Memphis communities affected by data center development.

(c) The Agency shall consider appropriate representation from community-based organizations, neighborhood leaders, workforce development organizations, small-business interests, and individuals with relevant financial, legal, environmental, or economic development expertise.

(d) Board members and officers shall comply with written conflict-of-interest policies and shall disclose material financial or organizational interests relating to proposed funding decisions.

(e) No board member, officer, employee, or related entity shall receive an improper personal benefit from the Agency's funding decisions.

(f) The Agency shall establish a process for public input concerning community priorities and proposed funding initiatives.

(g) The Agency's governance structure shall not displace the authority of the Memphis City Council or other governmental bodies established by law.

SECTION 8. FINANCIAL MANAGEMENT, REPORTING, AND AUDIT.

(a) The Agency shall maintain accurate books, records, and accounts documenting all receipts, expenditures, grants, contracts, and other financial transactions.

(b) Funds subject to specific donor, grant, contractual, or statutory restrictions shall be separately accounted for and used only for authorized purposes.

(c) The Agency shall prepare an annual report identifying, to the extent permitted by law and consistent with applicable privacy requirements:

1. The amount of funding received by source;

2. The amounts allocated and disbursed;

3. The programs and projects supported;

4. The organizations receiving grants or other assistance;

5. The administrative expenses incurred;

6. The outcomes and community benefits achieved; and

7. Any material findings arising from required audits or financial reviews.

(d) The Agency shall comply with all applicable audit, financial reporting, and public disclosure requirements.

(e) Any nonprofit organization receiving municipal financial assistance shall comply with applicable Tennessee law, including statutory reporting and audit requirements where applicable.

(f) The City may require additional reporting, financial controls, performance measures, or audit provisions through any agreement entered into with the Agency, to the extent permitted by law.

(g) The Agency shall maintain written procurement, grant-selection, record-retention, and financial approval procedures appropriate to the nature and amount of the funds it administers.

SECTION 9. IMPLEMENTATION PLAN.

(a) Within ninety (90) days after the effective date of this Ordinance, or within such additional time as may be reasonably necessary, the Mayor or the Mayor's designee shall coordinate with the City Attorney and appropriate City departments to prepare an implementation report.

(b) The implementation report shall address:

1. The proposed legal structure of the Agency;

2. Applicable state incorporation, registration, and authorization requirements;

3. Any federal tax-exempt recognition sought by the Agency;

4. The legal mechanisms available for receiving private data center contributions;

5. The legal mechanisms available for receiving or administering authorized public funds;

6. Potential agreements with data center operators and other funding partners;

7. Financial oversight, auditing, and reporting requirements;

8. A proposed governance and community representation structure;

9. Estimated administrative costs and potential funding sources; and

10. Any recommended amendments to this Ordinance or proposed state legislation.

(c) The implementation report shall be submitted to the Mayor and City Council for review and any further action deemed appropriate.

(d) The submission of the implementation report shall not itself authorize the transfer of public funds or the commencement of any activity requiring separate governmental approval.

SECTION 10. AGREEMENTS WITH DATA CENTER OPERATORS.

(a) Subject to applicable law, the City may evaluate agreements with data center operators, owners, developers, or affiliated entities concerning voluntary community-benefit contributions.

(b) Any such agreement shall identify the contributing entity, contribution amount or method of calculation, payment schedule, permitted uses, reporting requirements, and other material terms.

(c) Agreements involving public funds, municipal property, public incentives, or other governmental commitments shall receive the legal and administrative approvals required by applicable law.

(d) Nothing in this Section shall be construed to authorize the City to impose a contribution requirement that is otherwise prohibited by law.

(e) No agreement shall supersede applicable environmental, public safety, land use, utility, or other regulatory requirements.

SECTION 11. PUBLIC TRANSPARENCY AND COMMUNITY PARTICIPATION.

(a) The Agency shall establish a process for receiving public input concerning its funding priorities and community-benefit programs.

(b) The Agency shall publish its annual report and other information required by law or by agreement with the City.

(c) Where permitted by law, the Agency shall provide public access to information concerning funding awards, program outcomes, and financial accountability.

(d) The Agency shall establish procedures for receiving and reviewing complaints regarding funding decisions, financial management, conflicts of interest, or compliance with its governing documents.

(e) Nothing in this Section shall be construed to exempt any record, meeting, transaction, or entity from a public records, open meetings, or disclosure requirement that otherwise applies under law.

SECTION 12. NO AUTOMATIC APPROPRIATION OR TRANSFER OF PUBLIC FUNDS.

(a) This Ordinance does not, by itself, appropriate money from the City treasury or authorize the transfer of municipal tax revenue to the Agency.

(b) Any municipal appropriation or transfer shall be made only pursuant to applicable law, an approved budget or appropriation, and all required legislative and administrative approvals.

(c) The City shall determine whether any proposed appropriation or financial assistance is subject to Tennessee Code Annotated § 6-54-111 or any other applicable statutory requirements.

(d) No provision of this Ordinance shall be construed to alter the legal ownership, allocation, or disposition of existing tax revenue or other public funds.

(e) The Agency shall have no independent authority to levy or collect taxes or compulsory assessments.

SECTION 13. COMPLIANCE WITH APPLICABLE LAW.

The Agency and all agreements, grants, and transactions undertaken pursuant to this Ordinance shall comply with applicable federal law, Tennessee law, the Charter of the City of Memphis, applicable City ordinances, and any lawful conditions imposed upon the receipt or use of funds.

If any proposed function of the Agency requires additional statutory authority or governmental approval, that function shall not commence until the required authority or approval has been obtained.

SECTION 14. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or provision of this Ordinance is held invalid or unenforceable by a court of competent jurisdiction, such decision shall not affect the validity or enforceability of the remaining provisions, which shall remain in full force and effect.

SECTION 15. IMPLEMENTING AUTHORITY.

The Mayor, the City Attorney, and appropriate City departments are authorized to take administrative actions consistent with this Ordinance to evaluate, develop, and implement the proposed Community Benefit Agency framework, subject to applicable law and any additional approvals required by the City Charter or other governing authority.

Any agreement requiring City Council approval shall be submitted to the Council in accordance with applicable procedures.

SECTION 16. EFFECTIVE DATE.

BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that this Ordinance shall take effect from and after the date it has been passed by the Council, signed by the Chairman of the Council, certified and delivered to the Office of the Mayor in writing by the Comptroller, and become effective as otherwise provided by law.

SPONSOR(S): __Dr Jeff Warren, _____

CHAIRMAN OF THE COUNCIL: _____

MAYOR: _____

DATE OF PASSAGE: _____