

**SPENCER COUNTY, INDIANA
BOARD OF COMMISSIONERS**

ORDINANCE NO. 2026-07

**AN ORDINANCE AMENDING THE SPENCER COUNTY ZONING ORDINANCE
TO ESTABLISH STANDARDS AND SPECIAL EXCEPTION PROCEDURES
FOR DATA CENTER FACILITIES**

WHEREAS, the Board of Commissioners of Spencer County, Indiana (the "Board") is authorized under IC 36-7-4 to adopt and amend zoning ordinances regulating land use within the unincorporated areas of Spencer County; and

WHEREAS, data center facilities present substantial impacts on electrical infrastructure, water supply, noise levels, air quality, and community character that require site-specific review and performance standards to protect public health, safety, and welfare; and

WHEREAS, Spencer County contains significant existing power generation and transmission infrastructure, and the Board finds that data centers are most appropriately located where adequate power supply already exists on industrially zoned land, thereby avoiding the burden of new generation or transmission infrastructure on the surrounding community and existing ratepayers; and

WHEREAS, the Board has reviewed recommendations developed by jurisdictions with substantial experience in data center development, including the Loudoun County, Virginia white paper authored by Vice Chair Mike Turner; and

WHEREAS, the Indiana General Assembly has preempted local regulation of certain private electricity generation facilities under IC 36-7-4-1109.5 (effective July 1, 2025), but has not preempted county land use regulation of data centers themselves as primary uses; and

WHEREAS, the Board finds that amending the Spencer County Zoning Ordinance to address data centers serves the public interest;

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of Spencer County, Indiana, as follows:

SECTION 1. FINDINGS AND PURPOSE

The Board hereby finds and declares:

- (a) Data centers are large-scale industrial facilities that consume extraordinary amounts of electrical power, water, and land. Their impacts on public infrastructure, the environment, and neighboring properties are distinct from conventional industrial uses and require tailored standards.

- (b) Spencer County's existing industrial zones encompass parcels already served by or adjacent to substantial power generation and transmission infrastructure, most notably related to the Rockport Energy Center and associated transmission corridors along the Ohio River. Directing data centers to such locations reduces costs and burdens on the broader electrical grid and serves the County's planning goals.
- (c) The Board does not intend this ordinance to prohibit data centers outright, but to subject them to special exception review — ensuring that each facility is evaluated on its specific impacts — and to impose minimum performance standards that protect neighboring landowners and the public.
- (d) Nothing in this ordinance is intended to conflict with state law, including IC 36-7-4-1109.5 governing private electricity generation facilities. To the extent any provision of this ordinance is construed to regulate a use preempted by state law, that provision shall be severed and the remainder of this ordinance shall remain in full force and effect.

SECTION 2. AMENDMENTS TO PART II — DEFINITIONS (SECTION 2.1)

Section 2.1 of the Spencer County Zoning Ordinance is hereby amended to add the following definitions in appropriate alphabetical order:

"Data Center" means a facility, or a group of facilities on the same parcel or contiguous parcels under common ownership or control, primarily designed and used to house, operate, and maintain computer servers, networking equipment, data storage systems, and associated mechanical, electrical, and security infrastructure for the processing, storage, management, or distribution of electronic data. The term includes colocation facilities, hyperscale computing facilities, cloud computing facilities, and any facility in which the principal use is digital computation or data processing at commercial scale. The term does not include a single room or floor of a building otherwise devoted to a separate primary use, an ordinary business office equipped with servers incidental to that office use, or a telecommunications switching station regulated primarily as a utility.

"Power-Generating Industrial Parcel" means a parcel of land (1) currently zoned I-1 Light Industrial or I-2 Heavy Industrial under the Spencer County Zoning Ordinance; and (2) on which a power generation facility — including a coal, gas, nuclear, or renewable energy generating station — currently operates or has operated within the preceding ten (10) years and has not been fully decommissioned, OR on which a qualifying electric utility substation with transmission-level voltage (69 kV or above) is located or directly adjacent.

"Transmission-Level Power Infrastructure" means electrical transmission lines, substations, or related equipment operating at a voltage of 69 kilovolts (kV) or higher, whether owned by a regulated public utility, rural electric cooperative, or other authorized provider.

SECTION 3. AMENDMENTS TO TABLE 1 — SCHEDULE OF USES

Table 1 (Official Schedule of Uses) is hereby amended to classify "Data Center" as follows:

- A Agricultural Zone: Not Permitted
- R-1 One-Family Zone: Not Permitted
- R-2 Multi-Family Zone: Not Permitted
- B-1 Neighborhood Business Zone: Not Permitted
- B-2 Rural Business Zone: Not Permitted
- B-3 General Business Zone: Not Permitted
- I-1 Light Industrial Zone: Special Exception (subject to Section 5 of this Ordinance and the additional limitation that the subject parcel must qualify as a Power-Generating Industrial Parcel)
- I-2 Heavy Industrial Zone: Special Exception (subject to Section 5 of this Ordinance and the additional limitation that the subject parcel must qualify as a Power-Generating Industrial Parcel)

SECTION 4. AMENDMENTS TO PART VIII — INDUSTRIAL ZONE REGULATIONS

Part VIII of the Spencer County Zoning Ordinance is hereby amended by adding a new Section 8.3 to read as follows:

8.3 — DATA CENTER FACILITIES

8.3-1 Applicability.

This section governs the establishment, construction, expansion, and operation of any Data Center in Spencer County. Data Centers are not permitted by right in any zoning district. A Data Center may be approved only as a Special Exception in the I-1 or I-2 zone, subject to the eligibility requirements, performance standards, and procedures set forth herein.

8.3-2 Eligibility Requirement: Power-Generating Industrial Parcels Only.

No Special Exception for a Data Center shall be granted, and no Improvement Location Permit for a Data Center shall be issued, unless the subject parcel qualifies as a Power-Generating Industrial Parcel as defined in Section 2.1. An applicant shall submit written documentation establishing that the parcel meets this standard, including evidence of current or recent power generation operations or the presence of transmission-level power infrastructure, as part of the Special Exception application.

8.3-3 Special Exception Application Requirements.

In addition to the standard application materials required under the Spencer County Zoning Ordinance, a Special Exception application for a Data Center shall include all of the following:

- (e) A completed site plan drawn to scale showing the location of all proposed structures, access drives, stormwater facilities, screening, setbacks, and utility connections.

- (f) A pre-construction noise study, prepared by a qualified acoustical engineer, measuring both dBA (audible sound) and dBC (tonal or narrow-band low-frequency sound) levels at the property line of the subject parcel. The study shall document existing ambient noise conditions as a baseline.
- (g) Written documentation from the applicable electric utility specifying: (i) the maximum power demand requested by the Data Center, stated in megawatts; (ii) the voltage and routing by which the utility proposes to deliver that power; and (iii) the location, design, and ownership of any required substation.
- (h) Written documentation specifying the Data Center's projected annual water consumption, including the source of water (potable or reclaimed), the cooling system type (air cooling, open-loop water cooling, or closed-loop water cooling), the method of wastewater treatment and disposal, and confirmation from the responsible water utility or treatment facility that it can adequately process the anticipated wastewater.
- (i) A description of backup generator equipment, including generator type, tier rating, fuel source, emissions controls, and compliance with applicable state and federal air quality standards.
- (j) A description of energy storage systems proposed for the facility.
- (k) A landscape and screening plan showing proposed berms, vegetative screening, fencing, and fenestration (windows or architectural openings) on all principal facades.
- (l) A microgrid feasibility assessment addressing whether the proposed facility is designed to accommodate future microgrid integration.
- (m) No County officer, employee, board, commission, or agent shall enter into a non-disclosure agreement that limits the County's duties under the Indiana Access to Public Records Act or the Open Door Law. This provision does not require disclosure of records exempt from disclosure under state or federal law.

8.3-4 Performance Standards.

Every Data Center approved as a Special Exception shall comply with the following performance standards at all times during construction and operation:

(a) Noise.

1. Audible sound (dBA) emitted by the Data Center, including all mechanical equipment, cooling systems, generators, and ancillary systems, shall not exceed 50 dBA, measured as an equivalent continuous sound level (Leq) at the Data Center's property line. Where the pre-construction ambient level at the property line already exceeds 50 dBA, the Data Center shall not increase that ambient level.

2. Tonal or narrow-band low-frequency sound (dBC) attributable to the Data Center shall not exceed the pre-construction dBC ambient level measured at the Data Center's property line. Compliance shall be demonstrated through a post-construction noise study, conducted by a qualified acoustical engineer at the applicant's expense, within ninety (90) days after the commencement of operations.
3. The Board of Zoning Appeals may require additional noise monitoring at any time upon credible complaint from a neighboring landowner or county official.

(b) Power.

4. No Data Center shall exceed the maximum power demand specified in the utility documentation submitted under Section 8.3-3(c) without obtaining a new or amended Special Exception approval from the Board of Zoning Appeals.
5. No structure associated with a Data Center shall be constructed closer to an existing transmission line than twice the width of that line's right-of-way.
6. Any applicant-owned, customer-owned, or privately owned substation or similar electrical infrastructure constructed primarily to serve the Data Center shall be shown on the site plan and shall be subject to applicable zoning, setback, screening, stormwater, and improvement-location-permit requirements. Nothing in this section shall be construed to regulate the rates, service obligations, interconnection standards, routing decisions, ownership, or transmission planning of a public utility, rural electric membership corporation, electric cooperative, or other state- or federally regulated electric provider.
7. A material increase in maximum electric demand that materially changes the approved site plan, mechanical equipment, cooling systems, backup generation, substation footprint, noise profile, traffic, water use, wastewater discharge, or other land-use impact shall require amended Special Exception approval.
8. The County shall not sign, and no applicant shall request, a Non-Disclosure Agreement relating to the power arrangements, utility agreements, or infrastructure plans for a proposed Data Center.

(c) Water.

9. Prior to commencing operations, the operator shall file with the Spencer County Plan Commission an updated water use statement confirming actual annual water consumption, cooling system type, water source (potable or reclaimed), and wastewater treatment arrangements. Operator shall also provide evidence of registration with the Indiana Department of Natural Resources as a significant water withdrawal facility, if applicable, or a written statement explaining why such registration is not required. This statement shall be updated annually.

10. Where feasible, Data Centers are encouraged to use reclaimed or recycled water in lieu of potable water for cooling operations.
11. Nothing in this section shall be construed to require a County permit for water withdrawal where state law does not require one, to regulate water rights, or to supersede the jurisdiction of the Indiana Department of Natural Resources, the Indiana Department of Environmental Management, the Indiana Utility Regulatory Commission, or any water or wastewater utility. The County's review is limited to land-use compatibility, infrastructure capacity, public health and safety, and compliance with the zoning ordinance.

(d) Emissions.

12. Backup generation and related emissions-producing equipment shall comply with all applicable federal and state air-quality laws, permits, and approvals, including requirements administered by the Indiana Department of Environmental Management and the U.S. Environmental Protection Agency. As part of Special Exception review, the applicant shall identify the type, number, location, fuel source, testing schedule, expected hours of operation, and anticipated noise and off-site impacts of such equipment. The Board of Zoning Appeals may impose reasonable land-use conditions addressing location, screening, noise, testing hours, and other off-site impacts, provided such conditions do not conflict with applicable state or federal permits or approvals.
13. If natural gas turbines are used as primary or backup generation, they shall be equipped with SCR systems using ammonia as the catalyst, and shall meet all applicable state and federal air quality standards, including Indiana Department of Environmental Management permit requirements. The applicant shall acknowledge that SCR reduces NOx emissions but may increase particulate matter (PM2.5) emissions, and shall demonstrate compliance with applicable PM2.5 standards.

(e) Energy Storage.

14. On-site energy storage systems shall be long-duration systems providing a minimum of ten (10) hours of storage. Lithium-ion battery systems that do not meet the ten-hour minimum are disfavored and shall require the applicant to demonstrate fire suppression and safety plans meeting NFPA 855 standards.

(f) Setbacks.

15. All Data Center structures, including all associated mechanical equipment, cooling towers, and backup generators, shall be set back a minimum of five hundred (500) feet from any property line of the Data Center parcel that abuts or is adjacent to land zoned or used for residential purposes, or that abuts property in an Agricultural zone where a residential structure is present. A setback of one thousand (1,000) feet is recommended and shall be required where site conditions permit.

16. The setback distance required under this section is measured from the applicable property line of the Data Center parcel to the nearest point of any Data Center structure or mechanical equipment. The location of residential structures on neighboring parcels does not govern the measurement; the parcel-line standard applies uniformly.
17. Where an existing industrial parcel is bounded on one or more sides by residential uses or Agricultural-zoned properties with residences, the Board of Zoning Appeals shall require, as a condition of the Special Exception, that all mechanical equipment generating noise be sited on the side of the parcel farthest from such residential uses.

(g) Appearance and Screening.

18. All principal building facades visible from a public road or from a neighboring residential or agricultural parcel shall incorporate fenestration (windows, architectural openings, or equivalent façade treatment) consistent with the character of the surrounding area, as determined by the Board of Zoning Appeals.
19. A landscaped buffer, consisting of berms, mature evergreen plantings, or a combination thereof, shall be installed along all property lines abutting public roads and all property lines abutting residential or agricultural uses. The buffer shall achieve a visual screen of not less than twenty (20) feet in effective height at maturity.
20. Building height shall not exceed sixty (60) feet. The Board of Zoning Appeals may permit additional height upon a finding that the proposed height does not adversely impact neighboring properties, and subject to heightened setback and screening requirements.
21. Floor Area Ratio (FAR) shall not exceed 0.5, unless the Board of Zoning Appeals finds that a higher FAR is compatible with surrounding structures and land uses.
22. Outdoor lighting shall be directed inward and downward, shielded to prevent off-site light spillage or sky glow, and shall comply with any outdoor lighting standards adopted by Spencer County.

(h) Microgrid Design.

23. Data Center facilities are encouraged to incorporate microgrid infrastructure, including the integration of a baseload power source, backup generation, long-duration storage, and a grid connection, to enable future islanding capability and improve grid resilience.

SECTION 5. SPECIAL EXCEPTION PROCEDURE

Special Exception applications for Data Centers shall follow the procedures set forth in Section 2.11 of the Spencer County Zoning Ordinance, as supplemented by the following:

- (a) The Spencer County Plan Commission shall conduct a public hearing on the Special Exception application. Notice shall be provided in accordance with IC 36-7-4-604, including mailed notice to all property owners within 1,000 feet of the subject parcel's property line.
- (b) The Plan Commission shall evaluate the application against all applicable performance standards in Section 8.3-4 and the eligibility requirement in Section 8.3-2, and shall make a written recommendation to the Board of Zoning Appeals.
- (c) The Board of Zoning Appeals shall hold a public hearing and may grant, conditionally grant, or deny the Special Exception. The Board shall not grant a Special Exception unless it finds that: (i) the subject parcel qualifies as a Power-Generating Industrial Parcel; (ii) the proposed facility meets all performance standards of Section 8.3-4; and (iii) the proposed facility is consistent with the spirit and intent of the Spencer County Zoning Ordinance and the County's Comprehensive Plan.
- (d) The Board of Zoning Appeals may impose conditions as it deems necessary to protect neighboring landowners and the public, including but not limited to noise monitoring requirements, landscaping installation schedules, operational hour restrictions for construction, and bonding or financial assurance for compliance.
- (e) Any material change to an approved Special Exception — including expansion of floor area, increase in power demand, addition of backup generators, or alteration of setbacks — shall require a new or amended Special Exception approval.

SECTION 6. RELATIONSHIP TO STATE LAW

This ordinance is adopted pursuant to the County's planning and zoning authority under IC 36-7-4 and is intended to operate consistently with applicable state law. Specifically:

- (f) To the extent that a Data Center proposes to construct or operate private electricity generation facilities that qualify for protection under IC 36-7-4-1109.5, the County's authority to regulate such facilities is limited as provided by that statute. This ordinance does not purport to impose a prohibition on generation prohibited by IC 36-7-4-1109.5.
- (g) This ordinance governs the Data Center as a primary land use — including its siting, setbacks, noise, water use, appearance, and operating standards — independent of any associated electricity generation activity.
- (h) Data Centers qualifying for the Indiana gross retail and use tax exemption under IC 6-2.5-15 shall, before utilizing any specific transaction award certificate issued after June

30, 2026, enter into a written agreement with Spencer County addressing the County's share of the applicable sales tax savings, consistent with HEA 1210 (2026 Indiana General Assembly), if applicable.

SECTION 7. ENFORCEMENT AND PENALTIES

Violations of this ordinance, including the failure to obtain a Special Exception prior to commencing construction or operation of a Data Center, shall be subject to the enforcement provisions of Part XI of the Spencer County Zoning Ordinance, including civil and criminal penalties. Each day of a continuing violation constitutes a separate offense. The County may seek injunctive relief in addition to any penalty.

SECTION 8. SEVERABILITY

If any section, clause, sentence, or provision of this ordinance is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect any other section, clause, sentence, or provision of this ordinance, which shall remain in full force and effect.

SECTION 9. EFFECTIVE DATE

This ordinance shall take effect upon its adoption by the Board of Commissioners of Spencer County, Indiana, in accordance with applicable law.

PASSED AND ENACTED by the Board of Commissioners of Spencer County, Indiana, on the _____ day of _____, 20__.

THE BOARD OF COMMISSIONERS OF SPENCER COUNTY, INDIANA

Commissioner

Commissioner

Commissioner

ATTEST:

Spencer County Auditor

PREPARED BY:
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