

PLANNING AND ZONING ORDINANCE 25-
MCPHERSON COUNTY
SOUTH DAKOTA

FIRST PUBLIC READING:
SECOND PUBLIC READING:
ADOPTED:

EFFECTIVE DATE:

ORDINANCE 2025-1
AN ORDINANCE AMENDING MCPHERSON COUNTY ORDINANCE 24-1, AN
ORDINANCE ESTABLISHING ZONING REGULATIONS FOR DATA PROCESSING
CENTERS IN MCPHERSON COUNTY

BE IT ORDAINED BY MCPHERSON COUNTY, SOUTH DAKOTA:

Article II, Definitions, of McPherson County Planning and Zoning Ordinance 24-1 shall be amended to include the following definition for Data Processing Center:

Data Processing Center. A building, dedicated space within a building, or group of structures used to house and maintain electronic hardware, computer systems and associated components, such as telecommunications and data processing systems, to be used for the remote storage, management, processing, or distribution of electronic data. Examples of such data include, but are not limited to, computationally-intensive applications such as blockchain technology, cryptocurrency mining, weather modeling, genome sequencing, etc. Such facilities may also include air handlers, power generators, water cooling and storage facilities, utility substations, and other associated utility infrastructure to support operations.

The definition for Data Processing Center shall be inserted after the definition for Convenience Store and before the definition for Decommissioning. All other portions of Article II shall remain the same.

Article IV, District Requirements, Chapter 4.01, Agricultural Land District, Section 4.01.03, Conditional Uses, of McPherson County Planning and Zoning Ordinance 24-1 shall be amended to include Data Processing Center as follows:

CHAPTER 4.01. "A" AGRICULTURAL LAND DISTRICT

Section 4.01.01. Permitted Uses:

1. Field crops and grasslands (exempt from building permit).
2. Fisheries services.
3. Game propagation areas.
4. Government grain storage sites.
5. Orchards and tree farms.
6. Public parks and recreation areas.
7. Truck gardening.
8. Botanical gardens (nurseries and greenhouses); without on-site retail sales.
9. Farm and Non-farm dwelling, to include modular home or for a manufactured home connected to an existing farmstead, but not within one (1) mile of a concentrated animal feeding operation unless a waiver of such setback is registered with the McPherson County Register of Deeds specifying the legal description of the farm dwelling or non-farm dwelling property.
10. Stables.
11. Grain bins.
12. Home occupations.
13. Bed and Breakfast provided they meet requirements of 5.20.
14. Agricultural activities and farm related buildings, including concentrated animal feeding operations that do not meet the minimum requirements of Chapter 5.08.
15. On-premise signs.
16. Accessory uses and buildings.
17. Temporary roadside stands for sales of agricultural products grown or produced on the premises.
18. Private Wind Energy Conversion System (PWECS). Provided they meet the requirements of Chapter 5.21.

19. Data Processing Centers. Provided the requirements of Article VII are met.

Article V, General Requirements, shall be amended to include Chapter 5.33, Data Processing Centers, as follows:

CHAPTER 5.33 DATA PROCESSING CENTERS.

Section 5.33.01. Siting Requirements.

1. Data processing centers shall comply with the following requirements:
 - a. Fencing: A six (6) foot sight obscuring screening fence shall be required along the entire perimeter of the facility. Such fence shall comply with all other requirements of McPherson County Zoning Ordinance.
 - b. All electrical generators shall be enclosed behind a solid wall made of concrete or another equivalent sound absorbing material a minimum of four (4) feet higher than the highest point on the generator. This requirement may be reduced, or eliminated if a noise mitigation plan is submitted in accordance with all other requirements of McPherson County Zoning Ordinance demonstrating that peak sound levels do not exceed those allowed in this Section.
 - c. Yard requirements: The entire perimeter of the facility shall be screened from adjoining properties by a buffer yard. The side and rear buffer yards shall be a minimum of fifty (50) feet and the minimum front buffer yard shall be one-hundred fifty (50) feet.
2. All equipment and structures shall be a minimum of fifty feet from the property boundary of the facility as delineated on the site plan and one mile (5,280 feet) from any church, school, or occupied residence.

Section 5.33.02. Utility Notification

1. No grid-connected data processing center shall be issued a permit until evidence has been provided by the operator that installation of the system has been approved by the electrical utility provider. Off-grid systems shall be exempt from this requirement. Written verification from the Electric Utility provider shall state the following:
 - a. Adequate capacity is available on the applicable supply lines and substation to ensure that the capacity available to serve the other needs of the planning area is consistent with the normal projected load growth envisioned by the data center.
 - b. Utility supply equipment and related electrical infrastructure are sufficiently sized and can safely accommodate the proposed use.

- c. The use will not cause electrical interference or fluctuations in line voltage on and off the operating premises.

Section 5.33.03. Noise.

1. All proposed data centers that are within one mile (5,280 feet) of a residence, church, or school shall submit a noise mitigation plan in accordance with the following:
 - a. Name and qualifications of the person who measured the decibel levels.
 - b. Equipment used.
 - c. Location of the noise measurements depicted on a scaled site plan. The points of measurement shall be at all property lines and other noise receptors (residences, etc.).
 - d. A list of all sound sources that contribute to the overall sound emissions from the site and the following for each source;
 - i. Peak sound levels, in decibels, emitted by each source; and,
 - ii. Sound levels, in decibels, for sound continuously emitted by each source for a duration exceeding thirty (30) minutes; and,
 - iii. The frequencies of the sound emissions from each source;
 - iv. A site diagram showing the location of each sound source.
 - e. A description of any and all methods, systems, devices or structures intended to be used to mitigate sound emissions, including technical specifications, descriptions of materials and/or engineering specifications.
 - f. A certification, signed by the preparer of the document, certifying the accuracy of the materials contained within the noise mitigation plan and that the plan will effectively reduce sound emissions to levels required by McPherson County.
 - g. The county reserves the right to require independent verification of noise measurements and/or to request additional measurements at different points on the property.
 - h. The maximum sound level allowed as measured from the receiving physical structure of any occupied residence, church or government building is fifty-five (55) dBA after any applicable adjustments provided for herein are applied.
 - i. Between the hours of 10:00 p.m. and 7:00 a.m. the maximum sound level allowed as measured from the receiving physical structure of any occupied residence, church or government building of forty-five (45) dBA after any applicable adjustments provided for herein are applied.

ii. At any hour of the day or night the applicable noise limitations in (h) and (i) above may be exceeded for any receiving property by no more than:

- 1) 5 dBA for a total of 15 minutes in any one-hour period; or
- 2) 10 dBA for a total of 5 minutes in any one-hour period; or
- 3) 15 dBA for a total of 1.5 minutes in any one-hour period.

Section 5.33.04. Signage.

1. No signage shall be permitted on the perimeter fence, with the exception of one (1) sign not to exceed thirty-two (32) square feet that displays the name, address and emergency contact information of the facility as well as appropriate warning signs.

Section 5.33.05. Structural Requirements.

1. The facility shall meet all requirements of the most current edition of the International Building Code (IBC). Any electric wiring shall be located underground, except where wiring is brought together for interconnection to system components and/or the local utility power grid.
2. The use of cargo containers, railroad cars, semi-truck trailers and other similar storage containers for any component of the operation is strictly prohibited.

Section 5.33.06. Access.

1. All roads shall be of sufficient width to accommodate emergency vehicle access as determined by the McPherson County Emergency Management Director.

Section 5.33.07. Discharge and Recycling.

1. Any hazardous material and/or discharge, including any contaminated water, coming from or being removed from the Data Processing Center shall be disposed of in/at a disposal site approved for such material.
2. Any electrical equipment, including computers, hard drives, servers, and components thereof, shall be disposed of at a certified recycling center.
3. The Data Processing Center Owner shall notify the McPherson County Director of Equalization at least twenty-four (24) hours in advance of any hazardous material and/or discharge being removed from the Data Processing Center.

Section 5.33.08. Emergency Response Plan.

1. The Data Processing Center Owner shall provide a copy of the project description, site plan, and any other pertinent documentation and/or information to the McPherson County Emergency Manger, local fire department(s), sheriff's office having jurisdiction, and any other local first responder organization(s). The Data Processing Center Owner shall coordinate with such local entities in the development of an Emergency Response Plan.
2. The Emergency Response Plan shall include a description of the numbers, locations, and training of personnel necessary to respond to a worst-case emergency in McPherson County. The plan shall also include all Material Safety Data Sheets for all hazardous material and/or substances that are located within the Data Processing Center.
3. All necessary training and equipment for a worst-case emergency in McPherson County for local fire departments, sheriff's office, first responder organizations, and the McPherson County Emergency Manager shall be paid for by the Data Processing Center Owner.
5. The Emergency Response Plan shall be submitted to the McPherson County Board of County Commissioners or its designee not less than sixty (60) days before construction is to begin.
6. The Emergency Response Plan shall include a list of all specialized response equipment; showing the type and capability of said equipment, as well as the equipment's location.
7. All response equipment shall be accessible by the McPherson County Emergency Manger, local fire department(s), sheriff's office having jurisdiction, and any other local first responder organization(s).

Section 5.33.09. Decommissioning, restoration, or Abandonment of a Data Processing Center.

1. The Owner and/or Operator of a Data Processing Center shall be responsible for decommissioning a Data Processing Center including all related facilities, and for all costs associated with decommissioning a Data Processing Center and for all related facilities.
2. At least thirty (30) days prior to construction, the Applicant shall provide a plan to the McPherson County Board of Adjustment regarding the action to be taken upon the decommissioning and removal of the Data Processing Center and all related facilities. Estimates of monetary costs and the site condition, including any land irretrievably committed, after decommissioning shall be included in the plan.
3. The McPherson County Board of Adjustment may require a bond, guarantee, insurance, or other requirement to provide funding for the decommissioning, restoration, and removal of the Data Processing Center and related facilities. The McPherson County Board of

Adjustment shall consider the size, location, and any other relevant information regarding the Data Processing Center, and the financial condition of the Applicant when determining whether to require some type of funding. The same criteria shall be used to determine the amount of any required funding.

4. All right and title in any bond, guarantee, insurance, or other requirement for the decommissioning of the Data Processing Center shall be controlled by McPherson County in accordance with the terms of the financial security agreement or instrument, until the commission by order releases the security. The financial security of the person required to provide it may not be cancelled, assigned, revoked, disbursed, replaced, or allowed to terminate without approval from the McPherson County Board of Adjustment.
5. Any bond, guarantee, insurance, or other requirement may not be pledged or used as security for any other obligation of the Applicant, Pipeline Owner, and/or the Pipeline Operator, and is exempt from attachment or mesne process, from levy or sale on execution, and from any other final process issued from any court on behalf of third-party creditors of the Applicant, Pipeline Owner, and/or Pipeline Operator.
6. Any bond, guarantee, insurance, or other requirement required under Section 5.33.09(3) shall be issued with McPherson County as the payee and payable to McPherson County in the event the Pipeline Owner abandons the Data Processing Center or fails to meet any and all local, state, or federal decommissioning requirements.
7. If the Data Processing Center Owner abandons the Data Processing Center, fails to meet local, state, or federal decommissioning requirements, or fails to meet the Reclamation Obligations hereinunder Section 5.33.11:
 - a. The bond, guarantee, insurance, or other requirement required under Section 5.33.09(3) shall be paid to McPherson County and shall be non-refundable;
 - b. McPherson County shall use this payment or payments for all costs McPherson County incurs for decommissioning on County property, rights-of-way, County highways, and any other costs incurred by McPherson County for decommissioning;
 - c. The remaining funds, if any, shall be used at the discretion of the McPherson County Board of County Commissioners.

8. If the bond, guarantee, insurance, or other requirement required under Section 5.33.09(3) is not sufficient for its intended purpose, McPherson County reserves the right to take any legal action to hold the Data Processing Owner responsible for any remaining decommissioning costs.
9. At least six (6) months prior to the commencement of decommissioning, Data Processing Center Owner shall give notice, in writing, to the McPherson County Board of Adjustment of the date decommissioning is to begin.
10. Data Processing Center Owner shall physically dismantle all below and above ground components of the Data Processing Center within three-hundred and sixty-five (365) days from the date decommissioning is to begin.
 - a. Such removal and dismantling period can be extended upon written agreement between Data Processing Center Owner and Property Owner. However, in no event can this period extend beyond two (2) years from the date decommissioning is to begin. Any agreement to extend removal and dismantling shall be filed at the McPherson County Registrar of Deeds office and a copy thereof shall be delivered by the Data Processing Center Owner to the McPherson County Board of County Commissioners or its designee.
11. A Data Processing Center shall be deemed abandoned if it is out of service or no longer in use for twenty-four (24) consecutive months.
12. If a Data Processing Center is deemed abandoned:
 - a. The McPherson County Board of Adjustment, or its designee, shall issue a written Notice of Abandonment by certified mail to the Data Processing Center's Owner. The Data Processing Center's Owner shall have the right to respond to the Notice of Abandonment within thirty (30) days from the date of receipt of such notice to present evidence that the Data Processing Center has not been abandoned.
 - b. The McPherson County Board of Adjustment shall review any such response to determine if the Pipeline has or has not been.
 - c. If it is determined the Data Processing Center has not been abandoned, the Notice of Abandonment shall be withdrawn and notice of same shall be provided to the Data Processing Center Owner.

- d. If, after review of Data Processing Centers Owner's response, it is determined that Data Processing Center has been abandoned, notice of such finding shall be provided by certified mail to the Data Processing Center's Owner.
- e. If the Data Processing Center is deemed to have been abandoned, the Data Processing Center's Owner shall have one hundred twenty (120) days from the date of receipt of such notice to dismantle all above and below ground components of the Data Processing Center. If the Data Processing Center's Owner fails to dismantle the Data Processing Center within the prescribed time period, such shall be considered a violation of this ordinance and shall be subject to any and all legal remedies.

Section 5.33.10. Construction Related Debris.

1. Construction related debris and material which is not an integral part of the Data Processing Center will be promptly removed from the Property Owner's property at the Data Processing Centers Owner's expense. Such material to be removed includes all litter generated by the Data Processing Center Owners employees, agents, contractors, or invitees, including construction crews. Following the completion of Data Processing Center, Owner's construction activities on the Property Owner's property, the Data Processing Centers Owner shall keep the Property Owner's property clean and free of all trash and litter which may have been produced or caused by the Data Processing Center's Owner or its employees, agents, contractors, invitees, or its operations on the property. Under no circumstances shall the Data Processing Center's Owner, or its employees, agents, contractors, or invitees bury or burn any trash, debris or foreign material of any nature on the Data Processing Center Owner's property.

Section 5.33.11. Reclamation Obligations.

1. Following the completion of the Data Processing Centers construction, or upon removal of the Data Processing Center, at the expiration, termination, abandonment, or surrender of the Data Processing Center, the Data Processing Center's Owner shall restore the area disturbed by construction as best as practicable to its original preconstruction topsoil, vegetation, elevation, and contour at the Data Processing Center's Owners expense.

Section 5.33.12. Submittal Requirements.

1. A narrative describing the proposed data processing facility including an overview of the project;
2. A site plan showing the proposed location and dimensions of all equipment, existing and proposed structures, screening, fencing, property lines, access roads, turnout locations, ancillary equipment, and the location of any church, school, or residence within one mile (5,280 feet) of the perimeter of the facility;
3. A study prepared by an acoustical engineer that describes the anticipated noise level of the facility and any proposed mitigation efforts such as sound walls, baffles, ventilation silencers, additional separation from surrounding uses, etc.;
4. Other relevant studies, reports, certifications, and approvals as may be reasonably requested by McPherson County to ensure compliance with this Article; and
5. Signature of the property owner(s) and the owner/operator of the facility (if different than the property owner)
6. The McPherson County Board of County Commissioners shall, by resolution, establish a Data Processing Center Permit Application fee. This fee shall be reviewed and may be adjusted on an annual basis. This fee shall be payable to the McPherson County Treasurer and paid at the time the Data Processing Center Permit Application is submitted. This fee shall be sufficient to offset county review of the application, organization, third-party consulting, holding of public hearings and other additional costs incurred by McPherson County related to the Data Processing Center project. Such payments are necessary and reasonable for the County to promote the health, convenience, order, and welfare of the present and future inhabitants of McPherson County including, but not limited to, providing adequate light and air, protecting the tax base, and protecting property against blight and depreciation.
7. The Data Processing Center Owner shall reimburse McPherson County for any and all reasonable expenses in excess of the Permit Application Fee for review of the Data Processing Center Permit Application, organization, third-party consulting, holding of public hearings and other additional costs incurred by the county related to the Data Processing Center Permit Application.

Dated this ____ day of _____, 2025.

Mark Opp
Chairman of the McPherson Co. Board of County Commissioners

ATTEST:

Lindley Howard
McPherson County Auditor

FIRST READING:
SECOND READING:
ADOPTED:
PUBLICATION DATE:
EFFECTIVE DATE: