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August 7, 2026

Joseph Haberman, AICP
Planning & Design Manager
Via email

Re: 25 LDC 0014 Revised Text Amendment to Land Development Code For Data Centers

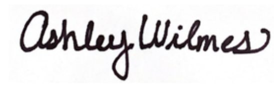
Dear Mr. Haberman:

Please find attached the comments and recommendations of Kentucky Resources Council, Inc. (KRC) regarding the proposed revised Louisville Metro Government Draft Data Center Land Development Code Text Amendment (Case No. 25-LDC-0014, July 20, 2026, Draft).

Although KRC continues to appreciate the time and effort that has been expended by staff in development of the proposed Text Amendments, we find that the revisions do not materially improve on the original draft, and the recommendations of KRC for a fundamental revision of the proposed code revisions remain largely unchanged. We continue to advocate for a framework more in line with our model ordinance and which sets clear standards, requires a demonstration that such standards will be achieved, and includes a new zoning classification coupled with a conditional use permit to maximize public involvement. We believe our proposed framework provides a more defensible ordinance grounded in full mitigation of anticipated off-site impacts with monitoring post-approval to assure compliance, and which is scaled so that at any size the full ambit of potential off-site impacts are identified, studied, and demonstrated to be prevented and mitigated as needed to assure compatibility.

Attached please find our recommendations, which are submitted for consideration and inclusion in the record for consideration by the Planning Commission:
Thank you in advance for your consideration of these comments, and please contact me if there are any questions.

Sincerely,



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KRC Recommended Revisions to Louisville Metro Revised Draft Data Center Text Amendments

This document presents the recommendations of Kentucky Resources Council concerning the revised Louisville Metro Government ("LMG") Draft Data Center Land Development Code Text Amendment (Case No. 25-LDC-0014, July 20, 2026, Draft).

Introduction

These recommendations are intended to ensure public notice and input, as well as a comprehensive and meaningful framework for regulating the location, operation, and decommissioning of all data centers. The recommendations continue to suggest inclusion of many of the provisions in the Kentucky Resources Council (KRC) Model Data Center Zoning Ordinance, with respect to strengthening the review process, the quality of information submitted in applications, and the standards of performance for data center construction and operation. Few of the recommendations on the initial draft were incorporated into the current draft, and it is hoped that with further reflection, more of these concerns will be addressed in order to assure that data center siting, location, operation, and decommissioning will be done, if at all, in order to fully mitigate impacts and to respect other land uses and values.

Recommendations

The July 20, 2026 revisions to the proposed Louisville Metro data center ordinance do not materially improve on the original draft, (and in some areas weaken the protections in the original draft), so that the recommendations of KRC for a fundamental revision of the proposed code revisions remain largely unchanged. KRC 's recommendations, updated to reflect the changes made from the original draft, are to:

1. **Eliminate tiered approach to data center regulation.**

The LMG text amendment takes a size-tiered approach, prohibiting data centers exceeding 500,000 square feet, requiring a conditional use permit for facilities between 250,001 and 500,000 square feet and treating smaller facilities as permitted uses with special standards in various industrial districts, subject only to registration with the Office of Planning and review by the Planning Director or designee, with no public notice or hearing opportunity.

With few exceptions, the LMG text amendment proposes the same standards and requirements for all tiers of data centers. Yet for data center proposals below 250,000 square feet, the review process is abridged and public notice and comment eliminated in almost all instances. KRC believes that the same standards and review process, including robust public involvement, should apply to all data centers that are subject to regulation, since those standards are self-differentiating and self-adjusting depending on the size, nature and intensity of the use.

2. **Remove the distinctions among and the prohibition of some data centers based on square-footage of floor area and apply rigorous standards and full public notice and opportunity to be heard for all data centers.**

The differentiation among data centers based on the square-footage of floor area is arbitrary, and results in abridged review of data centers with smaller floor area for which only a "registration" is required and for which no public notice, opportunity to be heard, or review by BOZA or the Planning Commission would be available. There is no necessary correlation between the square-footage of floor area and the potential for that data center to have significant off-site adverse impacts on private or public land uses.

Instead, the impacts of data centers are primarily a function of the intensity of the use – factors such as whether there are onsite generators, back-up power, waste heat, water usage, electric consumption, air emissions, hazardous chemical storage, fire or explosion potential, and noise. Additionally, the floor area square-footage does not represent the total footprint of a data center, which can and typically does include exterior areas for generators, waste management, storage of hazardous chemicals, and other exterior structures and activities.

The revised regulations propose to include the “white space” in the calculation of square footage for data centers of 250,001 – 500,000 square-footage, and for accessory data centers. The term is defined as the area that exclusively houses the IT equipment, and does not include the cooling equipment, generators, and other infrastructure associated with data centers, so that it excludes consideration of the infrastructure that has greatest potential for off-site impacts.

Finally, the flat prohibition on data centers of over 500,000 square-footage of floor area is of questionable legality, is arbitrary, and may provoke litigation. If the standards of performance are improved to be sufficiently protective of other land uses, and undergo careful scrutiny, there is no need for a size cap, particularly one based on square footage that is unrelated to the intensity of the land use, the quantity of energy or water used, or the type and amount of noise or other pollution generated. Such a cap may result in a clustering of multiple structures on the same or adjoining lots serving the same function but with more impacts than would a single, better-designed and better-controlled facility.

3. **Eliminate “registration” approvals without public scrutiny. Instead, in all cases create a new industrial category for data centers, require a rezoning, and require a conditional use permit issued by the Planning Commission.**

The LMG Draft Text Amendment allows data centers of up to 250,000 square-feet in floor area to be approved without public notice or an opportunity for the public to be heard. Rather than making such uses a conditional use in all cases, they are given “permitted use with ‘special standards’,” required only to register and be reviewed by the Planning Director or designee.

Rather than eliminating the use of registration approvals, the revised proposal instead <u>weakens</u> the initial LMG proposal further by <u>eliminating</u> the proposed conditional use permit requirement for telecommunications data centers except for those 50,001 to 250,000 that can't meet special standards. Otherwise, only registration is required for telecommunications data centers of up to 250,000 sq ft.

All registrations should be eliminated, and instead, a new “Industrial–Data Center” classification should be created; so that applicants would be required to seek rezoning and apply for a conditional use permit from the Planning

Commission for any new data center in Metro Louisville, with public notice, a hearing, and affirmative written findings. The new zoning classification would not apply to computers or telecommunications related equipment that is secondary and customarily incidental to an otherwise permitted use on the property, such as servers associated with an office building.

Requiring a rezoning to the new industrial classification would: (a) allow the Planning Commission to consider a Conditional Use Permit in conjunction with the rezoning, and (b) limit the scope of activities that can be conducted under the new industrial zoning classification to data centers of various types. And where a rezoning is required, the Conditional Use Permit would be issued by the Planning Commission rather than the Board of Zoning Adjustment.

4. **Revise definitions to broaden protected "sensitive uses" and express "Noise level" more broadly. Eliminate definitions of "prevailing wage," "construction work," and "data center, accessory."**

The LMG draft text amendment lacks several definitions that are key to a meaningful ordinance, including a sufficiently protective definition of "S*ensitive Uses"* in need of particular consideration in the siting of data centers*, "Data Center Energy Systems"* to recognize the energy systems often associated with data centers and a particular source of air emissions and noise, *"Prime Farmland* and *Farmland of Statewide Importance"* both of which should be considered and avoided in siting Data Centers, and *Noise Level,* which should be expressed to cover all potential nuisance noises. The Kentucky Resources Council (KRC) Model Data Center Ordinance provides definitions for each of these that should be adopted.

The definitions for "prevailing wage" and "construction work," should be removed. While KRC supports the intent, requiring as conditions of zoning approval that an applicant pay prevailing wage to construction workers and use hiring practices to favor local residents are of doubtful legality.

Finally, the definition of "data center accessory use" is so broad and vague as to allow wholesale avoidance of the standards and requirements that would otherwise apply to data centers under the LMG draft. The definition (and category) should be removed.

5. **Eliminate Category of "Data Center, Accessory."**

The category of data centers termed "Data Center, Accessory" is subject to much less rigorous standards. The use appears to be allowed in any zone and is not subject to any standards other than being accessory to a "principal use." There is no zoning classification limit, and no standards other than the generator standards that apply to the other classes of data centers.

It does not define, to what principal uses an accessory data center can be accessory, yet states it can "only provide data services ... to the business, institution, or organization associated with the principal use only."

The definition of "Data Center, Accessory" creates a loophole in the regulation of data centers. It appears a company could site a local branch to a national or international business and use the "accessory" data center to serve all of the company's national and international customers.

While the original proposal lacked any size limits, the revision attempts to impose a limit relative to the size of the principal use, but the limit is under-protective and ineffective. The revised proposal attempts to limit size of "accessory" data center by stating that the "Data Center White Space shall not exceed the lesser of 25,000 square feet or 49.9% of the total square footage associated with its Principal Use." This attempt to rein in the accessory data center use has two problems – first, it attempts to control size relative to the principal use by square footage rather than the intensity of the accessory use, and second, it defines "Data Center White Space" as only the "usable area within a data center specifically allocated for housing IT equipment." This means that the rest of the footprint of the Data Center, including generators, hazardous material storage, parking, cooling equipment, and other infrastructure of the accessory data center would <u>not</u> be counted in determining the 49% or 25,000 sq. ft. size limit.

6. **Eliminate separate category for telecommunications data center.**

Regardless of the nature of the data services they provide, all data centers should be regulated as data centers without unnecessary differentiations not keyed to the intensity of the land use and potential for adverse off-site consequences. The weakening of scrutiny and public input on telecommunications data centers of up to 250,000 sq. ft. by <u>eliminating</u> conditional use permit requirement for telecommunications data centers except for those 50,001 to 250,000 that can't meet special standards, is a significant step in the wrong direction.

7. Strengthen performance standards for data centers.

The following standards of performance for data centers need to be strengthened substantially to protect against off-site impacts and nuisance conditions:

- **Low Impact Site Design.** LMG's four-item list (minimize land disturbance, maximize tree preservation, minimize impervious surfaces, and minimize nuisance impacts) should remain mandatory for all data centers as proposed by LMG. The revised regulations weaken the draft by defining the terms "maximize" and "minimize" in percentage terms that will become the default targets, and the additions should be removed or strengthened to raise significantly tree retention, and to lower the percent of impervious surface.
- **Energy Efficiency.** LMG's eight-item list (passive cooling and daylight orientation, alternative energy sources, energy storage for off-peak usage, reclaimed water for cooling, limiting finite resources, water-efficient landscaping, LED lighting, and DOE Better Buildings and LEED practices) should remain mandatory for all data centers as proposed by LMG.
- **Emergency Contact Signage.** 24-hour contact signage at each access entrance, including company name, operator representative's name and telephone number, and the power company's number, should remain mandatory for all data centers as proposed by LMG.
- **Generator standards.** The LMG proposal for generator standards should narrow the testing window to <u>weekdays</u>, from noon–5 PM.
- **Cooling and water restrictions.** The use of closed-loop cooling systems should be required rather than merely encouraged.
- **Decommissioning plan and financial assurance.** A plan for decommissioning the data center, prepared by an engineer, with cost estimates and salvage valuation, and backed by a bond or letter of credit is needed. Without a requirement for a decommissioning plan, the abandonment risk falls on the public and particularly on nearby landowners.
- **Meaningful noise protections.** LMG's proposed single noise standard of 65 dBA at all hours remains wholly inadequate to protect off-site land

users against the full range of anticipated noise impacts. Standards to protect off-site neighbors must be strengthened to include:

  - Nighttime limits of 40 dBA night/45 dBA day
  - A C-weighted (dBC) limit addressing the low-frequency, cooling-fan hum that generates most data center complaints and that only using dBA measurement understates.
  - Vibration and infrasound control standards (ISO 2631/ANSI S2.71)
  - A baseline ambient noise assessment
  - A pre-construction acoustical study by a licensed engineer
  - Continuous real-time monitoring
  - Post-construction compliance testing

- **Enforceable waste heat standard.** LMG's ordinance should contain measurable and enforceable standards to prohibit any ambient temperature increase at the property line and require shielding and dispersal devices.
- **Design, lighting, and fencing standards.** Specific lighting and fencing standards should be adopted, including a 0.1 foot-candle maximum at the property line, 20-foot luminaire height limit, lighting curfews and dimming, façade articulation and at least 30% fenestration, loading dock orientation, ground-equipment placement restrictions, fencing material limits (no chain-link or razor wire), 80% year-round opacity screening, and berms.
- **Utility cost protection.** Written verification from providers of utility services should include assurance that serving the data center will not have current or future adverse effects on other customers, including service availability, reliability, quality, cost, and safety. Applicant-funded upgrades should be required to be in place before operation. The LMG requirement for a transmission study request should not let applicants substitute a self-prepared "consumption model" for the transmission study.
- **Nuisance-avoidance standard should be adopted.** A general nuisance-avoidance standard should be adopted to provide backup for the individual standards required of a facility.
- **Setbacks must be strengthened to protect sensitive uses and to protect all uses of adjoining lands, not merely existing uses.** LMG's revised proposal requires only a setback of 25/100/200 feet (depending on the tier) from residentially zoned property and structure-to-structure separations of 25/200/200 feet from dwellings, childcare

centers, nursing homes, hospitals, residential care facility, rehabilitation home, traditional housing, homeless shelter. and schools.

Setbacks should be significantly strengthened to require 500 feet from all perimeter property lines, 1,500 feet from any Sensitive Use or any Residential-, Commercial-, or Agricultural-district boundary, and 1,000 feet to 2,000 feet for any emission point or exhaust stack.

LMG's separations protect only structures *existing* at the time of approval, and its protected-use list still omits some Sensitive Uses: places of worship, parks, community centers, and agricultural operations. Reliance only on setbacks from existing features or structures on other properties, and limiting property line setbacks to only residentially zoned properties, fails to fully protect the range of uses for adjoining properties and effects an involuntary restriction on land uses of adjoining lands.

- **Strengthen Environmental Siting Prohibitions.** Development should not occur on slopes over 20%, karst-affected terrain, in floodplains, wetlands (and a 50-foot buffer), on prime farmland and farmland of statewide importance, or where threatened or endangered species or critical habitat would be affected. LMG does not prohibit placing buildings, generators, and substations on portions of a site mapped as environmental constraints under LDC 4.6.2.A, but instead, it merely imposes more strict development and mitigation requirements.
- **Addressing on-site and primary power generation**. The revised LMG draft has made improvements in clarifying that generators are for emergency use only, and that a power plant or alternative energy system needs to be separately permitted. These improvements should be retained, and LMG should also require emissions profiles and air permit applications, and consider diesel fuel delivery timing, secondary containment, and NFPA 855 compliance for battery storage.
- **Water protections should be strengthened**. Closed-loop cooling should be mandated and not just "encouraged." A Water and Wastewater Management Plan should be required with projected daily/peak demand disclosure. Siting within a wellhead protection area should be prohibited. LMG should include a best-available-technology water efficiency requirement, plus cooling discharge and pretreatment provisions. "Will Serve letters" from public utilities should confirm not just capacity but also address pretreatment requirements and any impacts on existing customers' water availability, quality, and rates.

- **Transparency.** The sworn ownership disclosure (parties in interest, under penalty of perjury) and disclosure of the primary user of the facility, should be retained from the LMG draft.

8. **Application for a conditional use permit should require plans demonstrating how each of the substantive standards will be met during construction and operation, and how that compliance will be measured and monitored.**

A key aspect missing from the LMG draft is any outline of the requirements for an application for a CUP. The applicant should be required to submit plans as part of the application, demonstrating how each of the substantive standards (noise, lighting, waste heat, water use, and waste management) will be met in the construction and operation of the data center.

Additionally, the lack of monitoring during construction and operation to validate the planning and mitigation projections and to demonstrate compliance, is a significant problem that should be addressed by requiring compliance demonstration monitoring and sampling.

9. **Application for a conditional use permit should require studies and assessments to demonstrate compliance with standards.**

LMG requires none of the following elements—a traffic study, one-mile property value appraisal, scenic compatibility evaluation, fire and explosion risks assessment with fire department capacity certification, a waste management plan (solid waste, e-waste, hazardous materials and cooling byproducts), and assessment of construction and operational emissions. All of these components should be required.

10. **Failure to identify standards for review and approval.**

Another key aspect wholly missing from the LMG draft is specific standards for approval or denial of a data center Conditional Use Permit. The lack of such standards is problematic. Without them, predictable and defensive outcomes in permit review and issuance become more unlikely, as does the assurance that permits will not be issued without adequate and sufficient findings of fact to support the decision to issue.

11. **Independent expert review should be commissioned at applicant expense.**

Provision should be made for the Planning Commission to retain a consultant to assist in Commission review of the application—at the applicant's expense. The study should be available for public review prior to the public comment/hearing.

12. **Offsetting any cumulative impact on surrounding neighborhoods should be a criteria for the conditional use permit.**

A Cumulative Impacts Analysis should be required as part of the CUP application, assessing the impact of the proposed facility on the environment and health of the surrounding neighborhoods and community in the context of existing sources of pollution and existing socioeconomic, environmental, and other community conditions. Provision should be made in the review criteria by which the conditional use permit is granted, denied, or conditioned, that no conditional use permit will be granted where the siting, location, and operation of the data center would contribute to a lowering of environmental quality or environmental health or would increase ambient noise, heat, or other pollution in the surrounding neighborhoods and community. In such cases, no data center could be approved unless an enforceable plan is submitted that fully offsets (either on-site or off-site through reduction of other sources of pollution) any such pollution and environmental and other impacts on the environmental quality and environmental health in surrounding neighborhoods and the community.