

IN THE SUPREME COURT OF OHIO

STATE OF OHIO ex rel.	:	
QUINTIN KOGER KIDD	:	
350 Grant St.,	:	Case No. _____
Wilmington, OH 45177	:	
	:	
and	:	Original Action
	:	Writ of Mandamus
STATE OF OHIO ex rel.	:	Peremptory Writ
SUSAN CROUTWATER	:	
1095 Peggy Ln.	:	Expedited Election Matter Pursuant to
Wilmington, OH 45177	:	S.Ct.Prac.R. 12.08
	:	
Relators,	:	
	:	
vs.	:	
	:	
CLINTON COUNTY BOARD OF	:	
ELECTIONS	:	
c/o Clinton County Prosecutor	:	
103 E. Main St.	:	
Wilmington, OH 45177	:	
	:	
and	:	
	:	
STEVE FRICKE, in his capacity as	:	
Chairman of the Clinton County Board of	:	
Elections	:	
c/o Clinton County Prosecutor	:	
103 E. Main St.	:	
Wilmington, OH 45177	:	
	:	
and	:	
	:	
TERRI THOBABEN, in his capacity as	:	
Member of the Clinton County Board of	:	
Elections	:	
c/o Clinton County Prosecutor	:	
103 E. Main St.	:	
Wilmington, OH 45177	:	
	:	
and	:	
	:	
	:	
	:	
	:	

JAY PETERSON, in his capacity as :
Member of the Clinton County Board of :
Elections :
c/o Clinton County Prosecutor :
103 E. Main St. :
Wilmington, OH 45177 :

and :

BARBARA SAVILLE, in her capacity as :
Member of the Clinton County Board of :
Elections :
c/o Clinton County Prosecutor :
103 E. Main St. :
Wilmington, OH 45177 :

and :

ANDREA TACORONTE, in her capacity :
as Director of the Clinton County Board of :
Elections :
c/o Clinton County Prosecutor :
103 E. Main St. :
Wilmington, OH 45177 :

Respondents. :

**RELATORS' VERIFIED COMPLAINT IN ORIGINAL ACTION FOR WRIT OF
MANDAMUS**

Austin Z. Baurichter* (0104539)

**Counsel of Record*

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Georgetown, OH 45121

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Counsel for Relators

NATURE OF THE CLAIM

1. Relators, Quintin Koger Kidd and Susan Croutwater (together, the “Relators”), seek a writ of mandamus to compel Respondents (as defined below) to comply with applicable law and certify the sufficiency and validity of an Initiative Petition for *An Ordinance Enacting Chapter 1161 of the Zoning Code of the City of Wilmington, Ohio, Regulating Data Centers and Data Center Campuses* (the “Initiative Petition”).

JURISDICTION

2. Relators incorporate the preceding allegations as if fully re-written herein.

3. Jurisdiction generally lies with this Court pursuant to Article IV, Section 2(B)(1)(b) and pursuant to R.C. 2731.02, which provides that a writ of mandamus “may be allowed by the supreme court, the court of appeals, or the court of common pleas and shall be issued by the clerk of the court in which the application is made.”

PARTIES

4. Relators incorporate the preceding allegations as if fully re-written herein.

5. Relator Quintin Koger Kidd is a citizen, resident, and elector of the City of Wilmington, Ohio, and a member of the committee that filed the Initiative Petition.

6. Relator Susan Croutwater is a citizen, resident, and elector of the City of Wilmington, Ohio, and a member of the committee that filed the Initiative Petition.

7. Respondent Clinton County Board of Elections is a county board of elections organized under Ohio law pursuant to R.C. 3501.06 and charged with the relevant administration of initiative petition matters in Clinton County, Ohio.

8. Respondents Steve Fricke, Terri Thobaben, Jay Peterson, Barbara Saville, and Andrea Tacoronte are the members and director, respectively, of the Clinton County Board of Elections

(together with the Clinton County Board of Elections sometimes collectively referred to as the “Board”) and are sued in their official capacities only to the extent necessary for complete relief.

FACTUAL BACKGROUND

9. Relators incorporate the preceding allegations as if fully re-written herein.

10. Relators prepared the Initiative Petition. A true and accurate copy of the Initiative Petition is attached hereto as **Exhibit A**.

11. Prior to circulation of the Initiative Petition, on June 29, 2026, Relators caused to be submitted a certified copy of the Initiative Petition to the City of Wilmington’s Auditor or functional equivalent.

12. Thereafter, Relators obtained some five-hundred and thirty-six (536) signatures supporting the Initiative Petition.

13. Thereafter, on July 13, 2026, Relators duly submitted the Initiative Petition to the proper municipal authority under relevant Ohio law, which includes the subsequent signature review and validation process conducted by the Board.

14. Thereafter, on July 28, 2026 the Board produced a signature attestation and verification report, a true and accurate copy of which is attached here as **Exhibit B**.

15. The attestation and verification report reflected the following assessment of the 536 signatures obtained for the Initiative Petition:

- a. 425 valid signatures;
- b. 111 invalid signatures; and
- c. 32 valid part-petitions.

16. The number of valid signatures obtained satisfies the requirement of R.C. 731.28.

17. On July 30, 2026, the City of Wilmington, by and through its Law Director, Desmond J.

Cullimore, issued a correspondence to Respondent Andrea Tacoronte, Director of the Board. A true and accurate copy of this correspondence is attached hereto as **Exhibit C**.

18. This correspondence functioned as, among other things, a combined legal opinion setting forth the position that the Initiative Petition was wholly invalid because it creates a “new private cause of action” and request that the Board specifically review that aspect of the Initiative Petition.

19. On August 4, 2026, Mary Kay Vance, the Wilmington City Auditor, issued a letter to the Board wherein she certified the sufficiency and validity of the Initiative Petition to the Board and “transmitt[ed] the initiative petitions and related materials to the Clinton County Board of Elections for such further review and action as may be required by law. A true and accurate copy of this correspondence is attached hereto as **Exhibit D**.

20. On August 12, 2026, the Board held a special meeting regarding the certification of the Initiative Petition to the ballot for the November 3, 2026 general election.

21. At this meeting, the Board voted unanimously to **not** certify the Initiative Petition to the November 3, 2026 ballot.

22. On August 12, 2026, the Board, by and through Respondent Tacoronte, issued a “Notice of Determination of Initiative pursuant to RC 3501.38(M)(2)”. A copy of this Notice of Determination is attached hereto as **Exhibit E**.

23. The Notice of Determination, among other things, contained findings made by the Board, which included the Board’s functional adoption and recitation of an outside legal assessment that the Initiative Petition created a new private cause of action in Section 1161.25 and was therefore invalid.

24. The Notice of Determination also set forth the following determinations of the Board:

- a. Because the Initiative Petition created a new private right of action, it was outside the scope of the initiative power;
- b. The Board had the power and the right to make this determination; and
- c. The Initiative Petition would not be certified to the November 3, 2026 ballot.

25. Thereafter, Relator Koger Kidd requested that the Board hold a hearing to reconsider its determinations.

26. The Board duly held a hearing on August 26, 2026 at which Relator Koger Kidd presented evidence and argued the position that the Initiative Petition should be certified to the November 3, 2026 ballot.

27. At the hearing, the Board ultimately reaffirmed its determinations as previously set forth and reiterated its decision not to certify the Initiative Petition to the November 3, 2026 ballot.

28. Thereafter, Relators sought counsel in connection with bringing the instant action.

29. Relators, pursuant to the laws of the State of Ohio, have a clear legal right to the certification of the Initiative Petition to the November 3, 2026 ballot because the Initiative Petition is valid and sufficient in all respects.

30. Respondents, pursuant to the laws of the State of Ohio, have a legal duty to, at this juncture, certify the Initiative Petition for the November 3, 2026 general election so that it may appear before the electors of the City of Wilmington for approval or rejection.

31. Respondents have failed and/or refused to perform this legal duty.

32. Relators have no adequate remedy in the ordinary course of law.

33. Accordingly, Respondents are subject to a Writ of Mandamus from this Court.

LEGAL BACKGROUND

34. Relators incorporate the preceding allegations as if fully re-written herein.

35. R.C. 731.28 provides that “[o]rdinances and other measures providing for the exercise of any powers of government granted by the constitution or delegated to any municipal corporation by the general assembly may be proposed by initiative petition.”

36. The Initiative Petition is such an ordinance.

37. The Initiative Petition contained signatures of not less than ten per cent of the number of electors who voted for governor at the most recent general election for the office of governor in the municipal corporation.

38. The Initiative Petition was filed with the proper municipal authority and then duly transmitted to the Board.

39. The Board examined the signatures on the petition to determine the number of valid signatures and returned a signature attestation and verification report indicating that a sufficient number of validated signatures were obtained for the Initiative Petition to the Wilmington City Auditor.

40. The Wilmington City Auditor thereafter certified the sufficiency and validity of the Initiative Petition back to the Board.

41. After this step, R.C. 731.28 states that “[t]he board shall submit such proposed ordinance or measure for the approval or rejection of the electors of the municipal corporation at the next general election occurring subsequent to ninety days after the auditor or clerk certifies the sufficiency and validity of the initiative petition to the board of elections.”

42. In the midst of this process, the City of Wilmington objected to the Initiative Petition and requested that the Board – in addition to determining the sufficiency and validity of the signatures – examine the Initiative Petition and determine that it be invalid because it creates a “new private cause of action” and that such creation is outside the purview of the initiative power.

43. As previously set forth, the Board then conducted that examination and concluded that the Initiative Petition was not fit for the ballot for the reasons previously stated.

44. The Board, in support of its examination and determination, cited R.C. 3501.11(K)(2), which provides in relevant part that, as part of its duties, a board of elections shall “[e]xamine each initiative petition...received by the board to determine whether the petition falls within the scope of authority to enact via initiative and whether the petition satisfies the statutory prerequisites to place the issue on the ballot, as described in division (M) of Section 3501.38 of the Revised Code. The petition shall be invalid if any portion of the petition is not within the initiative power.”

45. R.C. 3501.11(K)(2) is unconstitutional because, in vesting a board of elections with the power to make substantive, pre-enactment legal evaluations – like whether a petition falls within the scope of authority to enact via initiative – it violates the separation-of-powers doctrine.

46. “[B]oards of elections...do not have authority to sit as arbiters of the legality or constitutionality of a ballot measure’s substantive terms. An unconstitutional amendment may be a proper item for referendum or initiative.” *State ex rel. Youngstown v. Mahoning Cty. Bd. of Elections*, 2015-Ohio-3761, ¶11.

47. To the extent that R.C. 3501.11(K)(1), which provides that a board of election shall “[r]eview, examine, and certify the sufficiency and validity of petitions and nomination papers, and, after circulation, return to the secretary of state all petitions and nomination papers that the secretary of state forwarded to the board” and existed prior to the language employed in R.C. 3501.11(K)(2), vests or has been interpreted by this Court to vest board of elections with the power to make substantive, pre-enactment legal evaluations, R.C. 3501.11(K)(1) should likewise be held unconstitutional or such interpretation should be remediated.

48. R.C. 3501.11(K)(2) is also unconstitutional because the provision that “[t]he petition shall be invalid if any portion of the petition is not within the initiative power” has a chilling and burdening effect on citizens’ free speech rights, including the core political speech of circulating petitions, without a compelling government interest.

49. R.C. 3501.11(K)(2) is also unconstitutional because the provision that “[t]he petition shall be invalid if any portion of the petition is not within the initiative power,” without a rational basis, contravenes established Ohio law which presumes severability and which framework citizens like Relators here have a right to rely (see, R.C. 1.50; *see also*, *Geiger v. Geiger*, 117 Ohio St. 451, 160 N.E. 28 (1927)).

50. As such, any provision of the proposed ordinance advanced by the Initiative Petition that is held to be unlawful or unconstitutional should be severed in accordance with Ohio law and with Section 6 of the Initiative Petition itself.

51. R.C. 3501.11(K)(2), the City of Wilmington’s objection letter, and the Board’s Notice of Determination all reference R.C. 3501.38(M)(1)(a) in support of the Board’s determination.

52. R.C. 3501.38(M)(1)(a) has previously been held unconstitutional by this Court. *See, State ex rel. Espen v. Wood Cty. Bd. of Elections*, 2017-Ohio-8223, ¶15 (“[t]o the extent that R.C. 3501.38(M)(1)(a) authorizes and requires boards of elections to make substantive, preenactment legal evaluations, it violates the separation-of-powers doctrine and is unconstitutional.”).

53. For this reason, R.C.3501.11(K)(2) should be declared unconstitutional also because its embrace of R.C. 3501.38(M)(1)(a), which forms the core of the statute, is inherently unconstitutional.

54. The City of Wilmington’s objection letter and the Board’s Notice of Determination each also cite R.C. 3501.39(A)(3) for support.

55. R.C. 3501.39(A)(3), to the extent that it vests a board of elections with the power to make substantive, pre-enactment legal evaluations, is unconstitutional for the same reasons set forth in paragraphs 44, 45, and 49.

56. Assuming *arguendo* that these statutory provisions are unconstitutional, the Board, in refusing to certify the Initiative Petition to the November 3, 2026 ballot, exercised authority that it does not have and is, rather, obligated to certify the Initiative Petition.

57. Even if, assuming *arguendo*, the Board's examination and determination were constitutional, the Board abused its discretion in determining that Section 1161.25 of the Initiative Petition created a new private right of action.

58. The City of Wilmington's objection letter and the Board's Notice of Determination lean on *State ex rel. Bolzenius v. Preisse*, 2018-Ohio-3708, ¶¶8-13 for support on this issue.

59. Section 1161.25 of the Initiative Petition is readily distinguishable from the offending proposed ordinance in *Bolzenius*.

60. The proposed ordinance considered in *Bolzenius* (i) created a full, standalone "Community Bill of Rights"; (ii) created a first-degree misdemeanor for a violation of the proposed ordinance; and (iii) provided that "any resident of the City of Columbus may enforce the rights and prohibitions of this Community Bill of Rights through an action brought in any court possessing jurisdiction over activities occurring within the City." *Id.* at ¶3 (internal citations omitted).

61. Section 1161.25 of the Initiative Petition does not purport to create a full, standalone bill of rights; does not purport to create criminal liability whatsoever; and does not purport to grant a blanket enforcement ability to any resident of the city.

62. Moreover, this Court recognized in *Bolzenius's* predecessor that, as opposed to the "straightforward determination" involved when considering the creation of criminal liability,

“whether a municipality has the authority to create a private cause of action – has not been previously ruled upon by this court.” *State ex rel. Flak v. Betras*, 2017-Ohio-8109, ¶36 (Fischer, J., dissenting).

63. *Bolzenius*, in its bare, conclusive reference to *Flak* does not provide the substantive analysis on this issue to meaningfully carry *Flak*’s authority forward.

64. Finally, Section 1161.25 of the Initiative Petition, unlike the generative nature of the offending provisions in *Bolzenius* and *Flak*, can and should be determined to do nothing more than to embrace and encompass the ***existing causes of action*** available to the proper parties under 33 U.S.C. §1365; 42 U.S.C. §7604; R.C. 713.13; and Wilmington Codified Ordinances §1135.14.

65. Assuming *arguendo* that the Board has the constitutional power to determine, it was within the Board’s discretion to determine that Section 1161.25 of the Initiative Petition did not create a new cause of action, but simply embraced ***existing*** causes of action and therefore warranted certification to the November 3, 2026 ballot.

66. If nothing else, whether Section 1161.25 creates a new cause of action or embraces existing causes of action is a conclusion upon which reasonable minds can differ.

67. Data center developments, both in the State of Ohio and the United States as a whole, have emerged as a uniquely critical issue encompassing significant societal debates such as (i) water and other natural resource consumption; (ii) real estate ownership and management; (iii) artificial intelligence and related issues; (iv) data privacy and surveillance; and (v) direct democracy.

68. Overwhelmingly, American citizens oppose data center developments.
<https://news.gallup.com/poll/709772/americans-oppose-data-centers-area.aspx>.

69. At the core of the United States Constitution and the Ohio Constitution is the right of the people to self-governance.

70. Thus, the policy issues currently underlying data center developments are of tantamount importance.

71. This unique and significant context, coupled with the core democratic principles of citizens' right to self-governance through, in part, the rights of initiative and referendum, should have dictated exercise of the Board's discretion in favor of certifying the Initiative Petition to the ballot.

72. To exercise its discretion in the other direction, as the Board did here, constitutes an abuse of that discretion.

CLAIM FOR RELIEF: WRIT OF MANDAMUS

73. Relators incorporate the preceding allegations as if fully re-written herein.

74. A writ of mandamus requires "(1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the Respondent to provide it, and (3) the lack of an adequate remedy in the ordinary course of law." *State ex rel. Waters v. Spaeth*, 2012-Ohio-69, ¶6.

75. Relators' Initiative Petition is valid and sufficient in all respects.

76. Relators have a legal right pursuant to R.C. 731.28 to have the valid and sufficient Initiative Petition certified by the Clinton County Board of Elections for the submission to the City of Wilmington electors for their approval or rejection at the November 3, 2026 general election.

77. Respondents, in turn, have a clear legal duty to certify the Initiative Petition for the reasons set forth above.

78. The Referendum Petition is valid and sufficient, and Respondents' determination that it should not be certified was improper for the reasons set forth above.

79. Therefore, Respondents are refusing to carry out their legal duty.

80. Relators have no adequate remedy in the ordinary course of law aside from a writ of mandamus because Relators' sole remedy – having the valid and sufficient Initiative Petition submitted to the electors of the City of Wilmington for their approval or rejection at the November 3, 2026 general election – hinges on Respondents' carrying out of their respective legal duty, and Respondents, upon information and belief, will only carry out their respective legal duty pursuant to a writ of mandamus issued by this Court.

PRAYER FOR RELIEF

WHEREFORE, Relators respectfully pray this Court grant the following relief:

- A. Issue a Peremptory Writ, Alternative Writ, or Writ of Mandamus to compel Respondents to each forthwith certify the sufficiency and validity of the Initiative Petition such that the proposed ordinance advanced by the Initiative Petition get submitted to the electors of the City of Wilmington for their approval or rejection at the November 3, 2026 general election;
- B. Assess the costs of this action against Respondents; and
- C. Award such other and additional relief as may be appropriate.

Respectfully submitted,

/s/ Austin Z. Baurichter

Austin Z. Baurichter (0104539)

BAURICHTER LAW LLC

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Georgetown, OH 45121

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Counsel for Relators

VERIFICATION

STATE OF OHIO

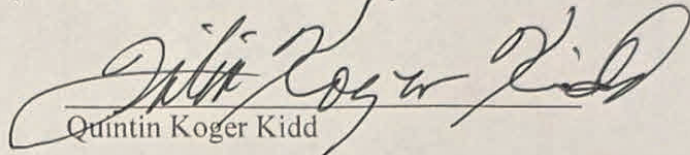
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COUNTY OF CLINTON

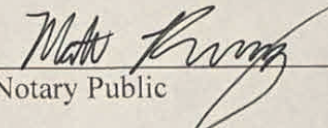
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I, Quintin Koger Kidd, being first duly sworn, depose and state that I am at least eighteen years of age and competent to testify to all matters stated in this verification, that I have personal knowledge of the factual allegations in this Complaint and such allegations are true and accurate, and that all attached exhibits to this Complaint are true and accurate copies.


Quintin Koger Kidd

Sworn to and subscribed before me by Quintin Koger Kidd this 31st day of August, 2026.




Notary Public

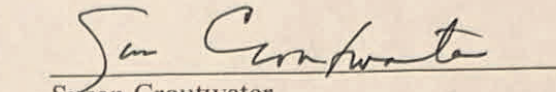
VERIFICATION

STATE OF OHIO

)
)SS:
)

COUNTY OF CLINTON

I, Susan Croutwater, being first duly sworn, depose and state that I am at least eighteen years of age and competent to testify to all matters stated in this verification, that I have personal knowledge of the factual allegations in this Complaint and such allegations are true and accurate, and that all attached exhibits to this Complaint are true and accurate copies.



Susan Croutwater

Sworn to and subscribed before me by Susan Croutwater this 31st day of August, 2026.





Notary Public

EXHIBIT A

Circulator ID: _____

Initiative Petition Municipality or Home Rule Township

NOTE: Prior to circulation of an initiative petition proposing an ordinance or measure, a certified copy of such ordinance or measure must be filed with the City Auditor, Village Clerk or Township Fiscal Officer (home rule township). This petition must be signed by ten percent of the number of electors in the city, village or unincorporated area of the township who voted for governor at the preceding gubernatorial election and must be filed with the City Auditor, Village Clerk or Township Fiscal Officer.

(NOTE – The below notice must be printed in red.)

NOTICE – Whoever knowingly signs this petition more than once, signs a name other than his own, or signs when not a legal voter is liable to prosecution.

To the City Auditor of the City
(City Auditor, Village Clerk or Township Fiscal Officer) (City, Village or Township)

of Wilmington, Ohio :
(Name of City, Village or Township)

We, the undersigned, electors of the City of Wilmington,
(City, Village or Township) (Name of City, Village or Township)

Ohio respectfully propose to the electors of such city, village or township for their approval or rejection at the general election to be held on the 3rd day of November, 2026, the following Ordinance:

The following is a full and correct copy of the title and text of the proposed Ordinance:

**An Ordinance Enacting Chapter 1161 of the Zoning Code of the City of Wilmington, Ohio,
Regulating Data Centers and Data Center Campuses.**

[Full text of proposed Chapter 1161 attached hereto and made a part of this petition paper, pursuant to R.C. § 731.31.]

We hereby designate the following petitioners as a committee to be regarded as filing this petition or its circulation:

NAME	RESIDENCE
Quintin Koger Kidd	350 Grant St., Wilmington, OH 45177
Jessica Sharp	442 Red Maple Ln, Wilmington, OH 45177
Susan Croutwater	1095 Peggy Ln, Wilmington, OH 45177

Signatures on this petition must be from only one county and must be written in ink.

Signature (Print name if signature is unclear)	Voting Residence, Street Number and Address	City, Village or Township	County	Date of Signing
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
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16.				
17.				
18.				
19.				
20.				

Signature (Print name if signature is unclear)	Voting Residence, Street Number and Address	City, Village or Township	County	Date of Signing
21.				
22.				
23.				
24.				
25.				

Circulator Statement

Must be completed and signed by the circulator.

I, _____,
Printed Name of Circulator

declare under penalty of election falsification that I reside at the address appearing below my signature; that I am the circulator of the foregoing petition containing _____ signatures; that I witnessed the affixing of every signature; that all signers were to the best of my knowledge and belief qualified to sign; and that every signature is to the best of my knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code.

Permanent Residence Address

Number _____ Street _____
City or Village _____ State _____ Zip Code _____

Signature of Circulator: _____

WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE

The City _____ of Wilmington _____,
(City, Village or Township) *(Name of City, Village or Township)*

Initiative Petition ORDINANCE

Filed _____, 2026

City Auditor, Village Clerk or Township Fiscal Officer

Keep open for inspection for ten days

INITIATIVE MEASURE — PROPOSED ORDINANCE

AN INITIATIVE TO ENACT CHAPTER 1161 OF THE ZONING CODE OF THE CITY OF WILMINGTON, OHIO, REGULATING DATA CENTERS AND DATA CENTER CAMPUSES.

Submitted to the electors of the City of Wilmington, Ohio, by initiative petition under Article II, Section 1f of the Ohio Constitution and R.C. 731.28 et seq.

SINGLE SUBJECT AND PURPOSE

Single subject. This measure embraces a single subject: the regulation of data centers and data center campuses within the City of Wilmington. Every provision of this measure relates to that single subject — where data centers may be located, the standards they must meet, their impacts on water, health, safety, and the environment, the public's right to information about them, and the means of enforcing this measure. No provision regulates any use other than data centers, except as necessary to regulate data centers.

Purpose. The people of the City of Wilmington find that data centers, and hyperscale data center campuses in particular, present substantial and documented impacts to residential neighborhoods, sensitive receptors (as defined in 1161.02), public infrastructure, water resources — including, on some sites, waters draining to a public drinking-water source or to a State or National Scenic River, as determined under the site-specific assessment required by 1161.27(B) — air quality, and the visual and acoustic environment, and that these impacts are not adequately regulated under existing City law.

FINDINGS — STANDARDS-BASED REGULATION

Direct contrast. The people of the City of Wilmington find that permitting data centers as a conditional use WITHOUT enforceable standards would leave residents, water resources, and public services unprotected against the documented impacts of these facilities. This measure does not prohibit data centers. It permits them as a conditional use SUBJECT TO enforceable standards that protect public health, safety, water, and the environment, and that guarantee public transparency. The people find that standards-based regulation of data centers — rather than approval of data centers as a conditional use with no standards — is necessary to protect the public health, safety, and welfare of the City and of the communities downstream within the Little Miami watershed.

Authority. This measure is enacted by the people pursuant to the initiative power reserved under Article II, Section 1f of the Ohio Constitution and R.C. 731.28 et seq., and as an exercise of the City's authority under R.C. Chapter 713 and its police powers.

ENACTMENT

BE IT ORDAINED BY THE PEOPLE OF THE CITY OF WILMINGTON, OHIO:

The Zoning Code of the City of Wilmington, Ohio is hereby amended to enact the following Chapter 1161 and the accompanying amendments to the district use regulations, as set forth below, together with the ministerial Zoning Map annotation directive in Section 5.

RECITALS AND LEGISLATIVE FINDINGS

WHEREAS, the City of Wilmington, Ohio has experienced and reasonably anticipates proposals for large-scale data center and data center campus development within its jurisdiction; and

WHEREAS, data centers, and hyperscale data center campuses in particular, present unique and substantial impacts to residential neighborhoods, sensitive receptors, public infrastructure, air quality, water resources, and the visual and acoustic environment that are not adequately regulated by existing zoning provisions; and

WHEREAS, the people find that unregulated or inadequately regulated data center development poses the following documented risks:

- Continuous broadband and low-frequency noise from cooling systems, generators, and mechanical equipment, including infrasound and tonal components not captured by A-weighted measurements alone;
- Air quality degradation from emergency diesel generators operating during testing, outages, and non-emergency events, including cumulative particulate matter and NOx emissions from large fleets of generators;
- Adverse visual impacts from large-scale industrial structures, mechanical yards, and generator compounds visible from residential neighborhoods;
- Excessive water consumption, including net consumptive use from evaporative cooling that affects public supply reliability during drought;
- Severe construction-period impacts from pile driving, heavy equipment, and haul truck traffic on residential streets and sensitive receptors;
- Inadequate setbacks and buffering under existing standards for structures with industrial-scale mechanical equipment;
- Cumulative and phased development creating impacts not predictable from Phase 1 review alone;
- Decommissioning and site restoration obligations not secured by existing code; and

WHEREAS, in support of the noise standards established herein, the people rely upon recognized health-based noise guidance, including the U.S. EPA “Levels Document” (EPA 550/9-74-004) and the World Health Organization Night Noise Guidelines for Europe, and finds that nighttime and sensitive-receptor noise limits are necessary to protect public health; and

WHEREAS, in support of the air-quality standards established herein, the people rely upon the National Ambient Air Quality Standards (NAAQS) and applicable Ohio Environmental Protection Agency ambient air quality standards as recognized health-based benchmarks; and

WHEREAS, the people find that protecting public health, safety, and welfare requires standards that are measured at the receptor, applied under worst-case operating conditions, and enforced on a cumulative basis across all phases and nearby sources; and

WHEREAS, this Chapter is adopted pursuant to the City’s authority under Ohio Revised Code §§ 713.01 et seq., and as an exercise of the City’s home-rule and police powers;

NOW, THEREFORE, BE IT ORDAINED by the people of the City of Wilmington, Ohio as follows:

SECTION 1. NEW CHAPTER CREATED

A. New Chapter. The Zoning Code of the City of Wilmington, Ohio is hereby amended to add a new Chapter, set forth in this Section, consisting of Sections 1161.01 through 1161.29.

B. Applicability; No Independent Development Right. This Ordinance regulates data centers and data center campuses only to the extent, and only where, such use is otherwise permitted by right or as a conditional use under the Wilmington Zoning Code, as the same may be amended, or as established through a zoning map amendment, conditional use permit, or other land-use approval that is valid and in effect. This Ordinance does not itself authorize, entitle, permit, or convey any right to develop, construct, or operate a data center or data center

campus on any parcel. Nothing in this Ordinance shall be construed as an independent or standalone zoning authorization, and this Ordinance confers no land-use right that does not otherwise exist under the Zoning Code and applicable law. Where the zoning classification, conditional use authorization, or other approval permitting a data center on a given parcel is invalidated, repealed, vacated, or otherwise rendered ineffective by judicial decision, administrative action, or subsequent legislative action, this Ordinance shall not operate to revive, substitute for, or independently establish that permission, and the requirements of this Chapter shall apply only if and when such permission is lawfully reestablished. Regardless of whether a data center or data center campus is, at any given time, permitted by right or as a conditional use under Section 1141.02 of the Zoning Code, the standards of this Chapter apply to that use in any district where it is permitted, and this Chapter's effect does not depend on the use-table notation in Section 1141.02 specifically citing this Chapter by number.

1161.01 PURPOSE AND INTENT

The purpose of this Chapter is to regulate data centers and data center campuses in a manner that fully protects public health, safety, and welfare by preventing adverse impacts to residential uses, sensitive receptors, public infrastructure, water resources, air quality, and the natural and visual environment. Where this Chapter establishes noise or air-quality standards, those standards are intended to be read together with, and to incorporate by reference, recognized external benchmarks (NAAQS and Ohio EPA standards for air quality; the health-based noise guidance cited in the recitals for noise), so that each numerical threshold rests on an identifiable health or regulatory basis. This Chapter is intended to:

1. Prevent broadband noise impacts, including low-frequency, tonal, impulsive, and cumulative noise, at all residential and sensitive receptor locations;
2. Prevent air quality degradation from emergency generators and associated emissions sources;
3. Prevent visual, thermal, and land use incompatibility with surrounding residential and agricultural uses;
4. Ensure that all impacts are evaluated under worst-case operating conditions at full buildout;
5. Ensure that cumulative impacts from multiple phases, multiple buildings, and nearby facilities are controlled and not circumvented by incremental review;
6. Establish enforceable standards measured at conditions experienced by affected receptors, not at source or property line alone;
7. Provide ongoing compliance monitoring, complaint-based enforcement, and adaptive management authority;
8. Secure adequate financial assurance for decommissioning and site restoration.

1161.02 DEFINITIONS

For purposes of this Chapter, the following words or terms shall have the meanings ascribed to them. Where terms are not defined herein, definitions from Chapter 1179 (Definitions) of this Code shall apply. Where conflicts exist, this Chapter controls.

Affiliated Applicant. With respect to a data center or data center campus application, any person or entity that, regardless of formal corporate separation from the applicant: (1) shares a common parent company, common majority ownership, or common controlling interest with the applicant; (2) has entered into any option, right of first refusal, ground lease, easement, or other agreement with the applicant or a common counterparty concerning a contiguous or adjacent parcel; (3) shares, or is reasonably anticipated to share, a common electrical interconnection point, substation, water or wastewater connection, access road, or other site infrastructure with a facility proposed or operated by the applicant; or (4) is identified in the same financing, marketing, or development materials as part of a common project, campus, or phased buildout with the applicant's facility.

Air Quality Impact. Any measurable increase in regulated air pollutant concentrations at a sensitive receptor attributable to facility operations, including cumulative contributions from multiple generators or sources.

Backup Generator. A stationary internal combustion engine used to produce electricity during loss of primary utility power.

Campus / Data Center Campus. A development consisting of two or more data center buildings, or a single building with associated generator compounds, substations, or mechanical yards, planned, phased, or operated as a coordinated facility on one or more contiguous or adjacent parcels. Coordination under this definition does not depend on common legal ownership, and the use of separate legal entities, subsidiaries, parent companies, or affiliates to hold title to or operate different buildings or parcels does not, by itself, defeat a determination that those buildings or parcels constitute a single Campus.

Construction Management Plan (CMP). A document approved prior to the issuance of any grading or building permits, specifying all construction logistics, timing, traffic management, noise mitigation, dust control, and complaint response procedures.

Cooling System. Any equipment used to remove heat from a data center facility, including but not limited to evaporative cooling towers, chillers, dry coolers, adiabatic systems, heat exchangers, and associated fans and pumps.

Critical Backup Power System. The totality of emergency power infrastructure at a facility, including generators, automatic transfer switches, uninterruptible power supply systems, and fuel supply systems.

Data Center. A facility, or portion of a facility, primarily used to house computer systems, servers, networking equipment, storage systems, cooling equipment, electrical and power equipment, and associated support systems for the purpose of data storage, processing, or transmission, operated by or for one or more tenants or owners. This use includes, without limitation, cryptocurrency mining, blockchain transaction processing, server farms, general computing, and artificial intelligence (AI) computing, so that no such use may avoid this Chapter by labeling.

Demobilization. The complete removal of all above-ground and subsurface structures, equipment, utilities, foundations, paving, and infrastructure associated with a data center or data center campus following cessation of operations, and the restoration of the site to a state suitable for beneficial reuse.

Emergency Generator. A diesel, natural gas, propane, or other fuel-powered internal combustion engine-driven generator used to supply backup electrical power in the event of a utility outage or emergency.

Extended Test. Any non-emergency generator operation exceeding sixty (60) minutes in duration.

Generator Compound / Generator Yard. The area of a data center site where emergency generators, fuel storage tanks, day tanks, transfer switches, and associated equipment are located.

Generator Testing. Any operation of an emergency generator for the purpose of maintenance, load testing, exercising, commissioning, or verification, whether under load or unloaded, excluding only genuine emergency response.

Hyperscale Data Center. A data center or campus with an aggregate design IT load capacity exceeding 25 megawatts (MW), a total floor area exceeding 150,000 square feet, or consisting of three or more buildings on a campus, whichever is most inclusive.

Industrial-Intensity Use. A use characterized by large-scale mechanical equipment, continuous or near-continuous equipment operation, substantial water and electrical demand, heavy-vehicle traffic, and structures or site improvements typical of industrial rather than commercial or residential development.

Integrated System Test. A coordinated test of generators and associated systems (including transfer switches, UPS systems, and cooling systems) simulating loss of utility power.

IT Load. The total electrical power consumed by information technology equipment within a data center, expressed in watts or megawatts, excluding power used by cooling, lighting, or building systems.

Load Bank. A device used to apply artificial electrical load to a generator for testing purposes.

Low-Frequency Noise. Sound energy with dominant spectral content in the frequency range of 10 to 200 Hz, including infrasound (below 20 Hz) and low-frequency sound (20 to 200 Hz), which is often perceived as rumble, pressure, or vibration and is not adequately characterized by A-weighting alone.

Mechanical Yard. The area of a data center site where large-scale mechanical equipment is located outdoors or in open enclosures, including but not limited to cooling towers, chillers, dry coolers, rooftop units, exhaust fans, and associated piping and electrical equipment.

Multi-Generator Facility. Any site with three (3) or more backup generators.

Net Water Consumption. The volume of water that is evaporated, transpired, or otherwise lost from a facility through consumptive use, calculated as withdrawal volume minus return flow volume, expressed as daily and annual averages and peak demand.

Non-Essential Testing. Any testing or operation that exceeds the minimum frequency or duration required by applicable law, manufacturer specifications, insurance requirements, or recognized industry standards.

Routine Test. A regularly scheduled generator run conducted to verify operability and compliance with applicable codes.

Sensitive Receptor. Residences, schools, licensed daycare centers, parks, libraries, nursing homes, assisted living facilities, hospitals, places of worship, and other locations where people are present for extended periods and may reasonably expect protection from noise, air quality impacts, and other environmental stressors.

Substation. An electrical substation constructed on or adjacent to a data center site to provide utility-scale power supply, including transformers, switchgear, and associated equipment.

Tier 1 Data Center. A data center with an IT load capacity below 5 MW and a total floor area below 50,000 square feet.

Tier 2 Data Center. A data center with an IT load capacity between 5 and 25 MW or a total floor area between 50,000 and 150,000 square feet.

Tier 3 / Hyperscale Data Center. A data center or campus meeting the definition of Hyperscale Data Center above.

Tonal Noise. Sound that has a discrete frequency component perceptible as a tone or hum, identified where a one-third octave band level exceeds the average of adjacent bands by 5 dB or more.

Water Use Effectiveness (WUE). A metric expressing the ratio of water used for facility cooling and support operations to IT load, expressed in liters per kilowatt-hour.

Worst-Case Operating Conditions. The combination of load, weather, and operational parameters that produces the maximum adverse impacts at any receptor, including simultaneous operation of all generators,

simultaneous operation of all cooling systems, startup conditions, and high-wind or temperature inversion meteorological conditions.

Cooling-Water Chemical. Any chemical introduced into a cooling, makeup-water, blowdown, water-treatment, corrosion- or scale-control, biocide/biofouling-control, refrigerant, coolant, or process or wastewater-treatment system, identified by Chemical Abstracts Service (CAS) number.

Direct Discharge. Any release of wastewater, blowdown, cooling water, or contact stormwater to a stream, ditch, wetland, or other water of the state, rather than to the publicly owned treatment works.

POTW (Publicly Owned Treatment Works). The City's wastewater treatment plant and collection system, as that term is used under the federal pretreatment program (40 CFR Part 403).

Pass Through / Interference. Have the meanings given in 40 CFR § 403.3 — a discharge that passes through the POTW to the receiving water in violation of the POTW's NPDES permit, or that inhibits or disrupts the POTW, its treatment processes, or its biosolids use or disposal.

Neutral Assessor Selection Process. Where this Chapter requires an independent assessor selected through a neutral selection process, the following shall apply: (1) upon application for conditional use approval, the relevant City official shall request from the applicable professional society (e.g., ACEC Ohio, Ohio Society of Professional Engineers, or the relevant discipline-specific state society) a panel of not fewer than three qualified candidates, each independent of the applicant and the City; (2) the applicant shall strike one candidate from the panel; (3) the Community Benefits Advisory Body established under 1161.19, acting on behalf of residents within the separation distances established in 1161.04, shall strike one candidate from the panel; (4) the remaining candidate shall serve as the independent assessor; and (5) if the Community Benefits Advisory Body has not yet been convened at the time an assessor must be selected, the City Auditor or Clerk shall convene a temporary three-member resident panel, drawn from electors who own or occupy real property within the separation distances established in 1161.04, for the sole purpose of exercising the strike under clause (3). The assessor selected through this process shall not be the BZA or the Planning Commission, given their respective roles in approving the conditional use and the site plan, and shall be independent of both the applicant and the City.

Unbuildable. With respect to a parcel, rendered incapable of supporting a permitted structure in compliance with applicable setback, yard, lot-coverage, or other zoning standards, as a result of a separation distance, buffer, or setback imposed by this Chapter.

1161.03 APPLICABILITY AND USE PERMISSIONS

1. This Chapter applies to all data centers, data center campuses, and expansions of existing data center facilities, regardless of whether the expansion adds new buildings or increases the capacity or footprint of existing buildings.
2. Data centers of any tier are permitted only as Conditional Uses, subject to the requirements of this Chapter and the general conditional use criteria of this Code.
3. No data center shall be permitted as a use-by-right or accessory use in any district, except that a server room or accessory data closet occupying less than 2,500 square feet within a primary building of a non-data-center use shall be exempt, and provided further that such accessory server rooms shall be reviewed administratively rather than as a conditional use, to avoid an undue permitting burden on ordinary businesses.
4. All standards of this Chapter shall be met under worst-case operating conditions and cumulative impact conditions as defined herein. No compliance demonstration based on average, typical, or best-case conditions shall be accepted.

5. Where any provision of this Chapter conflicts with another provision of this Code or any other City ordinance, the most restrictive provision shall apply.

6. All submissions, studies, and demonstrations required by this Chapter shall be prepared by qualified licensed professionals with demonstrated expertise in the applicable discipline. Where a study is prepared by the applicant's consultant, the City may, at the applicant's expense, either (i) retain its own qualified consultant to peer-review the study, or (ii) commission the study directly through a City-selected consultant in lieu of peer review. The selection of any City consultant shall be at the City's sole discretion, and the applicant shall have no veto over selection.

1161.03(A) Review Tiers

Tier 1 (< 5 MW IT load AND < 50,000 sq ft): Administrative Conditional Use — Zoning Administrator approval with notice to adjacent owners; appeal to the Board of Zoning Appeals ("BZA").

Tier 2 (5–25 MW IT load OR 50,000–150,000 sq ft): Planning Commission site plan review under 1135.05, with public notice and hearing as required by 1161.24(E); BZA conditional use approval under 1133.02(c).

Tier 3 / Hyperscale (> 25 MW IT load OR > 150,000 sq ft OR campus of 3+ buildings): Full Planning Commission site plan hearing under 1135.05, with public notice and hearing as required by 1161.24(E); BZA conditional use approval under 1133.02(c); independent consultant review at applicant's expense; Campus Master Plan required; Development Agreement required, subject to City Council approval under 1161.19(A)(J).

All tiers are subject to the same substantive standards. Tier classification affects the review process only. A Tier 1 facility that later expands into Tier 2 or Tier 3 thresholds must obtain a new conditional use approval subject to all standards applicable to the higher tier.

1161.03(B) Permitted Zoning Districts

This subsection amends the use regulations of the Wilmington Zoning Code (Part 11, Title 9) to specify the districts in which data centers may be sited. Data centers are an industrial-intensity use (as defined in 1161.02) and are permitted only in the district(s) identified below, only as a Conditional Use, and only subject to every standard of this Chapter. The accompanying amendments to the use tables of the affected districts, and the related ministerial Zoning Map annotation directive, are set out in Section 5 of this Ordinance. This Section does not rezone, and does not alter the boundaries of, any zoning district; it amends only the permitted-use status of data centers within the existing boundaries of the LI and GI districts.

1. Districts where data centers are a Conditional Use. Data centers of any tier are permitted only as a Conditional Use in the LI (Light Industrial) and GI (General Industrial) district(s), subject to the review tiers of 1161.03(A) and all standards of this Chapter. Within those district(s), the use tables of Section 1141.02 are amended to change the existing "Data Centers" entry from "P" (permitted by right) to "C" (Conditional Use), with a cross-reference to this Chapter 1161, supplementing the existing standards of Section 1141.03(j). If Section 1141.02 has already been amended, by ordinance or otherwise, to designate Data Centers as a Conditional Use in the LI and GI Districts before the effective date of this Chapter, this paragraph confirms and continues that designation rather than re-enacting it, and shall not be construed to suggest that the use remained a permitted use by right in the interim.

2. Districts where data centers are prohibited. Data centers are NOT permitted, as a use by right, accessory use, or conditional use, in any residential, agricultural, suburban neighborhood, suburban commercial, downtown/historic, or other non-industrial district, except for the small accessory server-room exemption in 1161.03(3). Where any district's use table might otherwise be read to allow a data center, telecommunications use, "utility," "warehouse," "data processing," or similar use as a vehicle for a data center, this Chapter controls and the use is prohibited outside the district(s) identified in paragraph 1.

3. No rezoning to circumvent. A data center may not be established by spot rezoning of an individual parcel into an industrial district where such rezoning would be inconsistent with the City's comprehensive plan or would render a residentially zoned neighboring parcel unbuildable. Any rezoning request submitted to enable a data center shall disclose that purpose and shall be reviewed together with a concept-level demonstration of compliance with this Chapter.

4. Overlay option. In the alternative, and at the City's election, the district(s) in paragraph 1 may be implemented as a Data Center Overlay applied only to mapped industrial parcels meeting the separation requirements of 1161.04, so that the underlying district standards continue to apply except as supplemented by this Chapter. The Zoning Administrator, who reports to the Service Director, shall create and maintain a current map of the Data Center Overlay, delineating each parcel that meets the separation requirements of 1161.04, and shall update that map without unreasonable delay whenever a parcel's status under 1161.04 changes. The map shall be posted on the City website, including the project website maintained under 1161.24, and made available for public inspection. No change to the boundaries of the Data Center Overlay, including the addition or removal of a parcel, shall take effect until the Zoning Administrator has published notice of the proposed change not less than thirty (30) days in advance, on the City website and by any other method the City customarily uses for zoning notices. This subsection's notice requirement is in addition to, and does not substitute for, any notice or hearing otherwise required by law for a zoning map or boundary change, including under R.C. 713.12.

1161.03(C) Anti-Segmentation; Aggregation of Affiliated Applications

1. **Presumption.** Where a proposed data center is located on a parcel contiguous or adjacent to a parcel on which an Affiliated Applicant has proposed, is constructing, or operates a data center, it shall be presumed that the two facilities constitute a single Campus for purposes of Tier classification under 1161.02 and this Chapter, including aggregation of IT load capacity, floor area, and building count.

2. **Rebuttal.** The applicant may rebut this presumption only by clear and convincing evidence that the facilities are not planned, phased, financed, or operated as a coordinated development, considering the factors identified in the definition of Affiliated Applicant.

3. **Effect of Aggregation.** Where the presumption is not rebutted, the aggregated facilities shall be classified and regulated as a single Campus at the Tier corresponding to their combined IT load capacity, floor area, and building count, and a single Campus Master Plan, Development Agreement, and Community Benefit Agreement shall be required under 1161.18 and 1161.19, regardless of the number of separate conditional-use applications filed.

4. **No Evasion by Sequential Filing.** An application shall not avoid this subsection by being filed at a different time than an Affiliated Applicant's application; the BZA may stay, consolidate, or jointly review applications it determines are subject to this subsection.

5. **Disclosure Obligation.** Every conditional-use application shall include a sworn disclosure identifying any Affiliated Applicant known to the applicant after reasonable inquiry, and any known proposal, option, or agreement concerning a contiguous or adjacent parcel. A material omission or misrepresentation in this disclosure is a violation subject to the enforcement remedies of 1161.23 and grounds for revocation under 1161.21.

1161.04 LOCATION AND SEPARATION REQUIREMENTS

The following minimum separation distances are required, measured from the nearest point of the applicable structure, equipment, or compound to the nearest point of the protected use or boundary:

(a) Any data center principal structure — 1,000 feet from a residential zoning district boundary; 1,250 feet from any existing residence; 1,500 feet from any sensitive receptor (school, daycare, park, library, hospital, nursing home).

(b) Generator compound, mechanical yard, substation, or fuel storage — 1,500 feet from a residential zoning district boundary and 1,500 feet from any existing residence.

(c) Generator exhaust stacks — 1,500 feet from a residential zoning district boundary.

(d) Cooling towers or evaporative cooling equipment — 1,250 feet from any existing residence.

(e) Any data center structure or equipment — 2,000 feet from a public water supply intake or wellhead protection area, or as required by state agency, whichever is greater.

In addition: data centers shall not be located within any flood hazard area, wetland, or FEMA-designated Special Flood Hazard Area without fully engineered mitigation and the approval of the Federal Emergency Management Agency ("FEMA"), which determines and maps Special Flood Hazard Areas, and of any other agency with jurisdiction over the specific flood hazard area or wetland; shall not be the first use requiring extension of utilities into an unserved area unless the applicant constructs and dedicates full infrastructure at its sole expense and without incentive; and shall not be located on a parcel that would render a residentially zoned neighboring parcel unbuildable due to setback encroachment.

1161.05 SETBACKS, BUFFERS, AND HEIGHT-MATCHED SCREENING

1161.05(A) Minimum Yard Setbacks

Front yard 150 feet from any public right-of-way; side yard 100 feet; rear yard 150 feet; perimeter landscaped buffer 75 feet (adjacent to non-industrial); enhanced buffer 150 feet (adjacent to residential or sensitive receptor); generator compound / mechanical yard 200 feet from any property line.

1161.05(B) Height-Matched Visual Screening

Where any portion of a data center, including any principal structure, generator compound, mechanical yard, cooling equipment, substation, or fuel storage, is visible from any residential use or sensitive receptor from any elevation, and except as provided in subsection (C),:

The combined height of the screening assembly — earthen berm, masonry or solid fence or wall, and evergreen vegetation — shall equal or exceed the full height of the tallest visible structure or equipment element, measured from the elevation of the off-site receptor.

Minimum baseline requirements regardless of structure height: earthen berm 10–12 feet with slopes no steeper than 3:1, planted and stabilized; masonry wall or solid fence 12–15 feet, opaque, durable materials; evergreen screening 12–14 feet at installation, in at least three staggered rows at maximum 8-foot spacing.

The screening assembly shall achieve 100% opacity year-round within three (3) years of installation; temporary opaque panels installed immediately upon ground disturbance until permanent screening matures.

If screening cannot achieve full opacity due to grade, topography, or setback constraints, the application shall be denied unless the applicant demonstrates, through verified visual simulation by a licensed landscape architect, that no significant visual impact will occur at any residential receptor.

No generator, substation, cooling equipment, or mechanical equipment shall be located within any required buffer or screening area; all loading docks, service, fuel delivery, and utility entry points shall be screened from rights-of-way and residential/sensitive receptor views; screening maintained at all times, dead vegetation replaced next planting season, damaged sections repaired within 30 days.

1161.05(C) Design-Excellence Alternative

In lieu of full-height opaque screening of the principal building, an applicant may demonstrate, through verified visual simulation prepared by a licensed landscape architect or architect, that (i) the structure housing the data center is of high-quality architectural design integrated with the surrounding context; (ii) all mechanical equipment, generator compounds, fuel storage, and mechanical yards are fully screened in accordance with subsection (B); and (iii) the facility meets all noise, lighting, and thermal standards of this Chapter at every receptor. Where these showings are made, the City may approve reduced screening of the principal building. This alternative does not relieve the applicant of screening obligations for mechanical, generator, fuel, or substation equipment.

1161.06 HEIGHT, MASSING, AND ARCHITECTURAL STANDARDS

Maximum building height: 45 feet. Conditional use approval may permit up to 65 feet only if the applicant demonstrates, through verified viewshed analysis and visual simulation, that no portion of the structure is visible from any residential use, or that any visible portion satisfies the design-excellence alternative of 1161.05(C).

Mechanical penthouses and rooftop equipment may extend above the height limit only if fully screened on all sides to a height exceeding the equipment by at least 5 feet and achieving 100% opacity.

No uninterrupted facade shall exceed 150 feet without facade modulation including a minimum 5-foot plane change and a material or color variation. All facades facing a right-of-way or visible from a residential area shall incorporate architectural treatment including varied materials, window or panel elements, and at least 15% variation in surface plane. Blank walls are prohibited on any elevation facing a residential use or public street. These architectural standards shall be read consistently with the design-excellence alternative of 1161.05(C); a building approved under that alternative must still meet these architectural standards. Where the City has adopted Design or Architectural Guidelines, those guidelines are incorporated by reference.

1161.07 NOISE REGULATION — FULLY INTEGRATED STANDARD

All noise limits in this Section apply to the TOTAL COMBINED sound from ALL contributing sources simultaneously, including all buildings, all phases, all mechanical equipment, and all nearby data center facilities within the acoustic impact area. Compliance shall not be demonstrated on a per-source or per-phase basis. Each numerical limit in this Section is supported by the health-based noise guidance cited in the recitals and, where applicable, by the City's existing noise ordinance.

1161.07(A) General Standard

No data center or campus shall produce, emit, or contribute to sound levels that exceed the limits of this Section when measured at any residential property line; any sensitive receptor property line; the exterior wall of any residence at grade; or the interior of any residence. All standards are absolute; no variance, exception, or averaging shall reduce these limits.

1161.07(B) Measurement Protocol

Measurements shall use ANSI/ASA S1.4-2014 or IEC 61672-1:2013 Type 1 integrating-averaging meters; one-third octave band real-time analysis across 10 Hz–20,000 Hz; minimum 10-minute interval per point; wind speeds at or below 5 m/s; worst-case operating conditions with all equipment simultaneously at full load; and measurements at all receptor points simultaneously or by calibrated sequential methodology approved by the City's acoustic consultant.

1161.07(C) Broadband Limits (A-Weighted)

Daytime (7:00 AM–10:00 PM): **45 dBA Leq** at any residential property line or sensitive receptor.

Nighttime (10:00 PM–7:00 AM): 40 dBA Leq. Maximum instantaneous (any time): 50 dBA Lmax at any residential property line, not to be exceeded even momentarily.

1161.07(D) Low-Frequency Limits (C-Weighted)

Daytime 55 dBC Leq; nighttime 50 dBC Leq; absolute nighttime backstop 50 dBC at any residence at any time. Low-Frequency Dominance Rule: if measured dBC minus dBA $\geq$ 15 dB at any receptor, the sound is low-frequency dominant and constitutes a violation regardless of dBA compliance.

1161.07(E) One-Third Octave Band Limits (10 Hz–200 Hz)

Each band limit is independently enforceable; exceeding any single band at any receptor is a violation: 10–20 Hz — 65 dB (infrasound); 25 Hz — 55 dB; 31.5 Hz — 50 dB; 40 Hz — 45 dB; 50–63 Hz — 42 dB; 80–125 Hz — 40 dB; 160–200 Hz — 35 dB.

1161.07(F) Interior Nighttime Limits

Regardless of exterior compliance, no data center shall cause interior sound exceeding 30 dBA Leq or 45 dBC Leq during nighttime hours; interior exceedance is a violation requiring mitigation at the applicant's expense.

1161.07(G) Tonal and Amplitude Modulation Penalties

Tonal noise: +5 dB penalty (limit reduced 5 dB). Amplitude modulation $\geq$ 3 dB: +5 dB penalty. Both present: +10 dB penalty.

1161.07(H) Generator Noise

Combined simultaneous generator testing/operation shall not exceed 45 dBA Leq at any residential property line or sensitive receptor, in addition to all octave band limits; demonstrated prior to certificate of occupancy and re-verified on any capacity increase.

1161.07(I) Cumulative and Multi-Source Enforcement

All limits apply to total combined sound from all contributing sources. The City may require a multi-source cumulative acoustic model at the applicant's expense at any time. Verified persistent complaints may trigger independent testing, source identification, and mitigation at the applicant's expense.

1161.07(J) Required Acoustic Studies

The applicant shall submit the following with the conditional use application, so that City staff or the City's acoustic consultant may review them prior to any hearing. Each study shall be prepared by a licensed acoustical engineer with demonstrated data center project experience:

Pre-construction ambient sound survey over a minimum 72-hour period including weekday and weekend measurements, establishing baseline broadband and octave band levels at all receptors within 2,000 feet;

Acoustic model demonstrating compliance under worst-case operating conditions and full buildout of all phases;

Noise contour maps for daytime and nighttime overlaid on a site plan showing all receptors;

Low-frequency propagation model using one-third octave analysis;

Post-construction verification testing before issuance of any certificate of occupancy;

Ongoing retesting triggered by verified complaint, equipment change affecting acoustic output, any expansion, or at intervals not exceeding three (3) years;

Construction-noise analysis, including impulsive and low-frequency construction sources, with proposed construction-noise mitigation measures, cross-referenced to the construction-noise limits of 1161.11(B).

At the City's election and the applicant's expense, the City may either peer-review the applicant's acoustic studies or commission the studies directly through a City-selected consultant in lieu of peer review (see 1161.03 and 1161.20).

1161.08 LIGHTING AND DARK-SKY STANDARDS

The numerical thresholds in this Section (full cutoff/fully shielded fixture requirements, maximum color temperature, and maximum foot-candle spillover limits) are based on the Illuminating Engineering Society (IES) outdoor lighting recommended practices and the International Dark-Sky Association (IDA) / IES Model Lighting Ordinance, and are set at the most protective end of those recognized industry ranges to address the cumulative scale of data center exterior lighting.

33. All exterior lighting shall be full cutoff / fully shielded type. Zero percent (0%) uplight is permitted.

34. Maximum color temperature: 3,000 Kelvin (warm white). Higher color temperatures ("cool" or daylight spectrum) are prohibited.

35. No blinking, flashing, strobing, or moving lights are permitted except as required by FAA, safety, or emergency codes.

36. All fixtures shall be directed downward and inward. No fixture shall produce glare visible from a residential property.

37. Maximum illuminance at property lines:

- Adjacent to residential or agricultural use: 0.00 foot-candle (zero spillover);
- Adjacent to nonresidential use: 0.10 foot-candle;
- At any public street frontage: only as necessary for safety and security, not to exceed 0.10 foot-candle at the back of curb.

38. Required submissions:

- Photometric plan for initial phase and full buildout;
- Cumulative light spill analysis for all property lines;
- Documentation of fixture specifications, mounting heights, and aiming angles.

39. Automatic dimming or reduction to minimum necessary security levels shall be required during non-operational hours in non-essential areas.

40. Motion-activated security lighting is required in restricted-access generator and fuel storage compounds.

1161.09 WATER USE, CONSERVATION, AND DROUGHT PROTECTIONS

1161.09(A) Required Disclosures

Prior to conditional use approval and annually thereafter, the applicant shall disclose average daily water demand; peak daily demand; annual demand by source; net consumptive use; source of supply; cooling system type and recycling/reuse percentage; blowdown volume and disposal method; cooling-water treatment chemicals identified individually by Chemical Abstracts Service (CAS) number, function, storage volumes, and maximum discharge concentrations; and emergency curtailment procedures and triggers.

1161.09(B) Performance Standards

Applicant shall identify design WUE as a condition of approval and report actual annual WUE; non-potable sources used for cooling where reasonably available and technically approved; cooling system selection analysis comparing evaporative, dry-cooled, and hybrid alternatives justified on net-consumption grounds; the City may require air-cooled or hybrid cooling if the proposed system would materially affect public water supply reliability.

1161.09(C) Drought and Shortage Protections

Applicant shall submit a Water Contingency Plan specifying curtailment tiers, automatic triggers, and minimum reduction targets during declared drought, water shortage emergency, or utility-declared supply restriction; any utility capacity reservation shall be tied to disclosed buildout demand and non-transferable to higher demand without amended conditional use approval.

1161.09(D) Stormwater and Water Quality

Stormwater management plan for full buildout; secondary containment for all cooling chemicals, fuels, and transformer fluids; SPCC Plan for fuel storage above regulatory thresholds; all discharge to municipal storm system or surface waters shall comply with applicable state and federal requirements.

1161.09(E) Cooling-Water Chemical Disclosure; POTW Protection; Surface-Water Testing; Right to Audit Deliveries

This Section responds to the planning-review comment that discharge to the sanitary sewer must be analyzed to ensure heavy metals and other pollutants stay within regulated limits, and to the community concern that the City must know the chemistry of any discharge in order to treat or permit it safely.

A. Purpose. To ensure the City's POTW can safely and properly treat all wastewater the data center discharges; to prevent pass through and interference under the federal pretreatment program (40 CFR Part 403); to protect local streams and surface waters from any direct discharge; and to verify that chemical quantities delivered match those reported. This Section applies to ALL data center discharge regardless of where routed.

B. Pre-Approval Chemical Disclosure. Prior to conditional use approval, and as a condition of approval, the applicant shall submit a Chemical Management Disclosure identifying, for each Cooling-Water Chemical: (1) chemical/trade name, manufacturer, and CAS number; (2) a current Safety Data Sheet (SDS); (3) function/purpose; (4) maximum on-site quantity and typical monthly throughput; (5) maximum concentration in any discharge or blowdown stream and the receiving water or treatment works; and (6) identification of any chemical regulated as a hazardous substance or under the Safe Drinking Water Act, Clean Water Act, or Ohio EPA rules.

C. POTW Protection. Where any discharge is conveyed to the City's POTW: (1) Treatability Demonstration — prior to approval and prior to introducing any chemical not previously disclosed, the applicant shall demonstrate to the Service Director that the POTW can receive and treat the discharge without (i) pass through in violation of the POTW's NPDES permit, (ii) interference with treatment processes, (iii) contamination of biosolids/sludge or impairment of their beneficial reuse or land application, including from heavy metals, or (iv) a collection-system or worker-safety hazard. (2) Advance Notice — no chemical may be discharged to the POTW until disclosed and confirmed treatable in writing; the operator shall give not less than thirty (30) days' notice of any change in

chemical type, formulation, or concentration. (3) Local Limits — the Service Director may set local concentration or mass-loading limits, including for heavy metals, and may refuse any chemical the plant cannot safely treat; the operator shall pretreat on-site as necessary. (4) Coordination — the operator shall obtain and maintain any pretreatment or industrial-user permit the POTW requires and provide the POTW all required monitoring.

D. Direct Discharge to Streams or Surface Waters. Where any discharge is or may be released directly to a stream, ditch, wetland, or other water of the state: (1) NPDES Permit Required — no such discharge shall occur unless the applicant first obtains and maintains an NPDES permit from Ohio EPA under R.C. 6111 and OAC Chapter 3745-33, and provides the City the permit, application, and all Discharge Monitoring Reports (DMRs). (2) Local Discharge Testing — in addition to NPDES monitoring, the operator shall test each outfall, at its expense, through a certified independent laboratory, for: (a) every Cooling-Water Chemical by CAS number and its known breakdown products; (b) temperature, pH, total residual chlorine/oxidant, total dissolved solids, total suspended solids, and heavy metals; and (c) any constituent for which the receiving water is impaired or has a TMDL, plus any parameter the Service Director reasonably designates. Testing shall occur at least monthly and within forty-eight (48) hours after any chemical change, spill, or upset, sampled upstream, downstream, and at the point of discharge. (3) Reporting — all local test results and NPDES DMRs submitted to the City within fifteen (15) days and posted publicly. (4) Antidegradation / Local Limits — the City may set limits more protective than the NPDES permit to protect a high-quality or impaired water and may condition or deny approval where a direct discharge would cause or contribute to a water-quality-standard violation. (5) No Substitution — in addition to, and not a substitute for, any state or federal permit.

E. Ongoing Reporting. The operator shall report to the City and post publicly: (1) Quarterly — a CAS-numbered log of all chemicals used, with quantities consumed and maximum discharge concentrations; (2) Annually — a reconciliation of chemicals purchased, delivered, used, and disposed of; (3) Within twenty-four (24) hours — notice of any new undisclosed chemical or any spill, release, or exceedance, with an updated SDS.

F. Right to Audit Deliveries. The City, or an independent third-party expert retained at the applicant's expense, may, upon 24 hours' notice: (1) inspect and copy all delivery records, bills of lading, manifests, invoices, weight tickets, and supplier records for any disclosed chemical; (2) reconcile delivered quantities against reported usage and discharge data; (3) conduct unannounced inspections where there is a reasonable basis to believe reporting is inaccurate; and (4) require the operator to direct its chemical suppliers to confirm delivery quantities and dates directly to the City or its auditor. The operator shall preserve such records for not less than five (5) years and shall include in every chemical supply contract a clause obligating supplier cooperation with a City audit.

G. No Trade-Secret Shield. Consistent with the City's transparency provisions, chemical identities, quantities, SDS data, delivery records, test results, and discharge concentrations required under this Section shall be public records and shall not be withheld as confidential or trade secret.

H. Enforcement. Failure to disclose a chemical, discharge of an undisclosed or unapproved chemical to the POTW or a stream, discharge without a required NPDES permit, falsification of a delivery, usage, or test report, or refusal of a lawful audit is a violation subject to penalties of \$1,000 per day per chemical and may trigger suspension of the conditional use until compliance is achieved. Enforcement is cumulative with the POTW's pretreatment authority and Ohio EPA's NPDES authority.

1161.10 EMERGENCY GENERATORS, FUEL STORAGE, AND AIR QUALITY

This Section governs all stationary internal combustion generators used for emergency or standby power, including at data centers and at industrial or commercial facilities with three (3) or more generators. Testing standards apply to non-emergency operation only; emergency operation during actual outages and operation required to prevent imminent equipment failure posing a safety risk are exempt from testing time and frequency restrictions but not from emissions or siting standards.

1161.10(A) Required Pre-Approval Disclosures

For full buildout: total number of generators; nameplate capacity per unit; total installed MW; fuel type and source; aggregate bulk fuel storage volume; tank locations and secondary containment; stack height and location per generator; proposed testing schedule and estimated annual testing hours; all required state and federal air permits or basis for exemption.

1161.10(B) Siting Standards

Generator compound, bulk fuel storage tanks, and exhaust stacks: 1,500 feet from a residential zoning boundary and 1,500 feet from any existing residence. All fuel storage: secondary containment of at least 110% of the largest tank volume.

1161.10(C) Technology Requirements

All emergency generators shall meet or exceed the most stringent U.S. EPA emission standard applicable to nonroad or stationary diesel engines in effect at the time of installation or replacement (currently U.S. EPA Tier 4 Final, 40 CFR Part 60, Subpart IIII and 40 CFR Part 1039), and shall comply with any successor or higher-numbered tier the U.S. EPA or the California Air Resources Board subsequently adopts, automatically and without need for further amendment of this Chapter, as of that standard's applicable compliance date for new and replacement engines. In no event shall a generator be required to meet a standard less protective than Tier 4 Final. Generators shall be equipped with critical-grade silencers; ultra-low sulfur diesel (#2 ULSD) minimum, with cleaner alternative or dual-fuel systems where commercially available and technically feasible; selective catalytic reduction (SCR) or equivalent NO_x control and diesel particulate filters (DPF) or equivalent PM control for generators $\geq$ 500 kW.

1161.10(D) General Standard for Non-Emergency Operation

Non-emergency operation of backup generators shall be limited to the minimum frequency and duration necessary to comply with: applicable laws and regulations; manufacturer specifications; insurance requirements; and recognized industry standards, including NFPA 110. Non-Essential Testing is prohibited. No generator shall be operated for purposes not justified by one of the above categories.

1161.10(E) Frequency Limits (Non-Emergency Testing)

1. Routine Tests shall not exceed one (1) test per generator per calendar month.
2. Extended Tests shall not occur more than one (1) time per generator per calendar year.
3. Integrated System Tests shall not occur more than one (1) time per facility per calendar year, unless additional testing is documented as required under Subsection (J).

1161.10(F) Duration Limits (Non-Emergency Testing)

1. Routine Tests shall not exceed thirty (30) minutes under load.
2. Extended Tests and Integrated System Tests shall not exceed four (4) consecutive hours.
3. Generators shall not be operated for open-ended or undefined testing periods. Every testing event shall have a documented maximum duration established in advance.

1161.10(G) Time-of-Day Restrictions

1. Non-emergency generator operation shall occur only between 9:00 a.m. and 5:00 p.m., Monday through Friday.

2. Operation is prohibited on Sundays and legal holidays, and outside permitted hours.
3. This subsection shall not apply to emergency operation.

1161.10(H) Multi-Generator Facility Coordination

1. At Multi-Generator Facilities, routine testing shall be coordinated to minimize cumulative impacts.
2. No more than twenty-five percent (25%) of installed generators may be operated simultaneously during Routine Tests.
3. During Extended or Integrated System Tests, simultaneous operation shall be limited to the minimum necessary to conduct the required test.

1161.10(I) Load Bank Requirements

1. Where feasible, testing shall utilize Load Banks to achieve required loading levels.
2. Load Banks shall be equipped with noise attenuation where commercially available, and be positioned to minimize off-site impacts.
3. Reliance solely on building load is prohibited where it results in increased noise, duration, or emissions relative to Load Bank use.

1161.10(J) Documentation and Exceedances

1. Any testing exceeding the limits established in this Section shall be permitted only if required by applicable law, manufacturer specification, insurance requirement, or recognized industry standard.
2. The operator shall maintain written documentation demonstrating such requirement, including the specific standard or provision cited and an explanation of why lesser testing is insufficient.
3. Documentation shall be provided to the City Zoning Administrator within 48 hours of any testing event exceeding the limits of this Section. Records shall be retained for a minimum of five (5) years and made available for inspection upon request.

1161.10(K) Annual Testing Hours Cap

1. Maximum routine testing: 15 hours per generator per calendar year; 4 hours per generator per calendar month.
2. No generator shall be operated for peak shaving, demand response, economic dispatch, or any purpose other than emergency backup during actual utility outage or required code-compliance testing.
3. Where multiple generators are installed, testing shall be staggered to minimize cumulative acoustic and emissions impact.
4. Any non-emergency testing event exceeding 2 hours shall require advance written notice to the City Zoning Administrator and to all residential properties within 2,000 feet, no fewer than 72 hours in advance.

1161.10(L) Air Quality Performance Standard

No facility shall cause or contribute to any exceedance of National Ambient Air Quality Standards (NAAQS) or any applicable state or local ambient air quality standard, if in effect, at any receptor. All air quality analysis shall assume simultaneous operation of all generators at full load under startup conditions and worst-case meteorology. Dispersion modeling (AERMOD or equivalent, by a licensed air quality engineer) is required for all Tier 2 and Tier 3 facilities, accounting for per-generator stack parameters, simultaneous full-load operation, worst-case meteorological data over ≥ 5 years, cumulative contributions from all on-site and off-site data center generators within the impact radius, and background concentrations. No permit or certificate of occupancy shall issue where modeled plus background concentrations exceed any applicable NAAQS or state ambient standard at any receptor.

1161.10(M) Monitoring and Annual Reporting

Complete time-stamped runtime logs per generator (start event, duration, load, reason), retained five (5) years; annual compliance report to the Zoning Administrator and Fire Department by March 1; the City may require independent third-party emissions verification at the applicant's expense at any time.

1161.10(N) Safety and Hazardous Materials

1. Spill containment plans and fire suppression systems as required by adopted fire code and NFPA 30.
2. Emergency shutoff systems accessible to fire department from public road without entering secured areas.
3. Fuel delivery management plan submitted and approved prior to certificate of occupancy, specifying delivery hours, routes, spill response protocol, and driver communication requirements.
4. Hazardous materials inventory submitted annually to Fire Department and updated within 30 days of any material change in stored substances or volumes.
5. All above-ground fuel storage tanks shall be provided with secondary containment meeting or exceeding SPCC requirements.
6. Underground fuel storage is prohibited unless the applicant demonstrates it is the only technically feasible option and provides enhanced leak detection and containment measures approved by the City and Ohio EPA.
7. Battery Energy Storage Systems Accessory to a Data Center. Where a data center or data center campus regulated by this Chapter includes an accessory battery energy storage system used for backup power, load management, or grid buffering in connection with the facility's operation, that BESS shall comply with all of the following, in addition to NFPA 30, except to the extent the BESS is independently certificated by the Ohio Power Siting Board under R.C. Chapter 4906, in which case subsection (i) applies. This Section regulates only a BESS that is accessory to a data center use; it does not regulate a freestanding or grid-scale BESS that is not accessory to a data center, which remains governed by other applicable law. (a) Outdoor siting preference. BESS shall be sited outdoors unless the applicant demonstrates that indoor siting is necessary, given the documented safety advantages of outdoor siting (airflow, reduced thermal-runaway risk, and emergency-responder access) recognized in NFPA 855. Indoor BESS shall be located in a dedicated-use, noncombustible building used for no other purpose. (b) Installation standard. All BESS shall be installed in compliance with NFPA 855 (Standard for the Installation of Stationary Energy Storage Systems), the adopted fire code, and this Section, whichever is most protective. (c) Equipment certification. All battery modules, inverters, and power conversion systems shall be certified to UL 9540 (or successor), with battery cells or modules certified to UL 1973 (or successor) and inverters/power conversion systems certified to UL 1741 (or successor). Certification documentation shall be submitted prior to certificate of occupancy. (d) Large-scale fire testing. The applicant shall submit large-scale fire testing (LSFT) results conducted in accordance with UL 9540A (or successor), demonstrating that a fire in one BESS unit or enclosure will not propagate to an adjacent unit for a duration not less than the fire-resistance rating of any required separation. Testing shall be witnessed or reported by an approved independent testing laboratory and submitted to the fire authority for review prior to issuance of any construction permit. (e) Hazard Mitigation Analysis. The applicant shall submit a Hazard Mitigation Analysis (HMA), prepared by a qualified licensed

professional consistent with the standard of 1161.03(A)(6), identifying the risks of thermal runaway, explosion, and toxic gas emission specific to the proposed battery chemistry, configuration, and site conditions, and demonstrating that the proposed design, separation distances, and safety systems adequately mitigate those risks. The HMA shall be completed prior to issuance of any construction permit and shall inform the Emergency Response Plan required under subsection (f). (f) Emergency Response Plan. The applicant shall submit a preliminary Emergency Response Plan with the conditional-use application and a final Emergency Response Plan before commencement of operations. The plan shall be developed in consultation with, and reviewed by, the City's fire authority, and shall address equipment malfunction or failure, notification procedures with local emergency management, and shelter-in-place versus evacuation protocols. (g) Vegetation management. The applicant shall submit and maintain a vegetation management plan establishing a noncombustible clearance zone around all BESS enclosures sufficient to prevent fire spread to or from the BESS, consistent with the fire authority's requirements. (h) Decommissioning. Decommissioning and financial assurance for any BESS is governed by 1161.16. The Decommissioning Cost Estimate required by that Section shall separately itemize the cost of safely removing, transporting, and recycling or disposing of battery components, including any components damaged by fire or thermal event, consistent with applicable hazardous-materials handling requirements. (i) OPSB-Certificated BESS Disclosure. Where an accessory BESS described in this subsection is, or is expected to be, of a capacity subject to certification by the Ohio Power Siting Board under R.C. Chapter 4906, the applicant shall disclose that fact and the anticipated certification timeline at the time of the conditional-use application for the data center, regardless of whether the remainder of this subsection otherwise applies to that BESS.

1161.10(O) Portable and Mobile Generators

The siting, emissions, testing, and reporting requirements of this Section apply to all backup or standby generators, whether stationary or mobile, fixed or wheel-mounted, so that mobile or trailer-mounted units may not be used to avoid these standards.

1161.11 CONSTRUCTION MANAGEMENT

No grading, demolition, or building permit shall issue until a Construction Management Plan (CMP) is approved. The CMP shall address all of the following:

1161.11(A) Schedule and Hours

General construction (earthwork, framing, mechanical): 9:00 AM–5:00 PM, Monday–Saturday only. Interior, non-impactful work (defined as interior work that produces no noise, vibration, or light perceptible at any residential property line or sensitive receptor, and that does not involve vehicle or equipment traffic outside the building): 7:00 AM–7:00 PM, Monday–Saturday. Advance notice to the City is not required for interior, non-impactful work as defined above. Impulsive work (pile driving, blasting, impact demolition): 10:00 AM–4:00 PM, Monday–Friday only, advance notice required. Emergency work: any hour with immediate City notification. All other work prohibited. No work on Sundays or legal holidays except genuine emergency. Advance written notice of impulsive work to the Zoning Administrator and all residential properties within 1,500 feet at least 72 hours in advance.

1161.11(B) Construction Noise Limits

Maximum construction noise 65 dBA Leq at any residential property line; maximum instantaneous 75 dBA Lmax; all one-third octave band limits of 1161.07(E) apply to impulsive and low-frequency construction sources.

1161.11(C) Traffic and Haul Route Requirements

CMP shall designate approved haul routes; haul trucks prohibited on local residential streets; no queuing on public streets; contractor/worker parking on-site or at approved off-site locations with shuttle; pre-construction road condition documentation; Road Use Agreement with maintenance obligations and a repair bond or escrow of not less than \$500,000 or 2% of project cost, whichever is greater; post-construction road assessment against baseline with deficiencies restored at applicant's expense within 90 days.

1161.11(D) Dust Prevention and Soil Stabilization Plan

A Dust Prevention and Soil Stabilization Plan shall be submitted with, and approved as part of, the Construction Management Plan before any grading, demolition, or earth-disturbing permit is issued. The people find, consistent with the watershed and source-water findings of 1161.27, that converting large areas of friable agricultural or undeveloped soil adjacent to sensitive receptors, wetlands, and waters identified under the site-specific assessment required by 1161.27(B) increases the risk of sediment and dust migration to those resources, and that dust must therefore be prevented at the source rather than controlled only after it is generated. The Plan shall provide for all of the following:

1. Phased clearing and disturbance limits. Land shall be cleared and stripped only in phases corresponding to active construction. The maximum area of bare, disturbed soil exposed at any one time shall not exceed twenty-five (25) acres, and no area shall be stripped of vegetation more than fourteen (14) days before active grading or construction begins on that area.
2. Progressive and temporary stabilization. Any disturbed area that will remain inactive for more than fourteen (14) days shall be temporarily stabilized using seeding, mulch, rolled erosion-control products, tackifiers, or equivalent measures. Soil binders or tackifiers shall be PFAS-free and shall not contain constituents harmful to the protected waters identified in this Chapter.
3. Perimeter and receptor-side controls. Wind-barrier fencing, vegetative buffers, or equivalent perimeter measures shall be installed on the upwind and receptor-facing sides of the disturbed area, and along any boundary adjacent to a residence, sensitive receptor, wetland, or stream, before earth disturbance begins in that area.
4. Soil-moisture and watering protocol. A watering or surfactant protocol shall be maintained to keep exposed soils adequately moist to prevent wind entrainment, applied on a schedule tied to weather forecast and soil-moisture conditions rather than only to visible dust. Watering shall use non-potable or reclaimed water where available and shall not create off-site sediment runoff to any protected water.
5. Stockpile management. Soil and material stockpiles shall be located away from property lines, receptors, wetlands, streams, and drainage paths; shall be stabilized or covered when inactive; and shall be surrounded by perimeter sediment controls.
6. Haul-road and track-out control. Interior haul roads and access points shall be surfaced, watered, or treated to prevent dust; haul loads carrying soil or friable material shall be covered; and stabilized construction entrances with wheel-wash facilities shall be maintained at every exit to a public road.
7. High-wind operational limits. The Plan shall specify a forecast wind-speed threshold above which earth-disturbing and dust-generating activities are suspended, and shall require pre-stabilization of exposed friable agricultural soils in advance of forecast high-wind events. This is a preventive threshold, separate from and in addition to the wind-triggered stop-work requirement in subsection (E).
8. Seasonal sequencing. Where practicable, large-scale clearing of agricultural soils shall be sequenced to avoid periods of high wind and low soil moisture, and to minimize the duration any large area remains bare.
9. Responsible party and monitoring. The Plan shall designate a qualified person responsible for dust prevention, on-site during active earthwork, with authority to halt operations to prevent dust, and shall provide for soil-moisture and on-site wind monitoring sufficient to implement the protocols above.

The measures of this subsection are preventive and apply in addition to, and do not reduce, the dust-control and enforcement standards of subsection (E).

1161.11(E) Dust and Erosion Control

Approved dust control plan before any land disturbance; no visible dust crossing any property line; stabilized construction entrances and wheel washing; daily street sweeping upon evidence of mud or debris; inactive disturbed areas stabilized within 14 days; wind-triggered stop-work protocol when wind would cause off-site dust migration.

1161.12 TRAFFIC AND ROADWAY PROTECTION

Applicant shall submit a Construction Traffic Impact Study by a licensed traffic engineer evaluating peak truck trips by month, turning movements at affected intersections, sight distance and geometric adequacy of access points, and required off-site improvements; a Transportation Demand Management Plan for the operational phase; and all off-site improvements constructed prior to occupancy. As with the acoustic and other studies, the City may at the applicant's expense either peer-review the applicant's traffic study or commission the study through a City-selected consultant, to maintain objectivity and avoid bias.

1161.13 THERMAL DISCHARGE

Applicant shall submit heat plume modeling for all evaporative cooling systems demonstrating dispersion of waste heat at full buildout under worst-case meteorology; no measurable temperature increase attributable to facility operations at any residential or sensitive receptor; cooling towers sited and oriented to direct plumes away from residential areas and equipped with drift eliminators to minimize aerosol dispersion.

1161.14 ECOLOGICAL PROTECTION AND STORMWATER

Biological assessment including wetland delineation and tree survey prior to conditional use approval; protected wetlands, natural drainage features, and regulated trees preserved or mitigated per applicable state and federal requirements; tree removal replaced at not less than 3:1 caliper-equivalent, on-site or in City-approved off-site locations; stormwater designed for no increase in peak runoff rate or volume for the 100-year, 24-hour storm at full buildout, with design to the 500-year event required for Tier 3; low-impact development and on-site retention/infiltration to the maximum practicable extent.

1161.15 WORST-CASE OPERATION — GLOBAL REQUIREMENT

This Section operates as an overriding rule. No provision of this Chapter may be satisfied by demonstration of average, typical, Phase 1, or best-case conditions. All standards shall be met assuming simultaneously: maximum IT load at full buildout; simultaneous operation of all cooling, mechanical, and building systems at design capacity; simultaneous operation of all emergency generators at full nameplate load under startup/warm-up conditions; full buildout of all phases including phases not yet under construction; simultaneous operation of all nearby data center facilities within the identified impact zone; and worst-case meteorological conditions applicable to each impact category.

1161.16 DECOMMISSIONING AND SITE RESTORATION

Upon cessation of operations for any period exceeding 24 consecutive months, or upon permanent closure, the operator shall fully decommission the facility and restore the site, including removal of all structures, foundations, equipment, underground utilities, fuel storage systems, paving, and infrastructure to a depth of at least 4 feet below finish grade unless a reuse plan is approved; grading to natural contour, topsoil replacement, and vegetative cover. Prior to any building permit, the applicant shall provide a Decommissioning Cost Estimate by a licensed engineer and post financial assurance (bond, letter of credit, or cash escrow) equal to 125% of the estimated cost, adjusted every 5 years, naming the City as beneficiary. The Development Agreement shall specify decommissioning obligations and be recorded against title.

1161.17 EMERGENCY ACCESS AND PUBLIC SAFETY

All Tier 2 and Tier 3 facilities shall comply with the ingress/egress, fire lane, and Knox-box standards of 1161.26(B), and shall additionally provide: a preliminary fire flow analysis approved before conditional use approval, distinct from and in addition to the fire-flow capacity confirmation required under 1161.26(B)(5) before certificate of occupancy; an Emergency Access and Response Plan approved by fire, police, and EMS before certificate of occupancy; fire-code-compliant addressing and wayfinding; and, for aggregate fuel storage exceeding 5,000 gallons, a Hazardous Incident Response Plan coordinated with the fire department and updated annually.

1161.18 CAMPUS MASTER PLAN (TIER 3 REQUIRED)

All Tier 3 / Hyperscale facilities shall submit a Campus Master Plan prior to conditional use approval, binding on all future phases, including full build-out site plan; phasing schedule with MW, square footage, and generator count per phase; cumulative impact analysis for noise, air quality, water, traffic, and visual impacts at full buildout; all setback, buffer, and screening elements; utility infrastructure plan and capacity commitments; workforce housing strategy if peak construction exceeds 500 workers; and a Community Benefit Agreement negotiated as part of the Development Agreement.

1161.19 DEVELOPMENT AGREEMENT (TIER 2 AND TIER 3 REQUIRED)

All Tier 2 and Tier 3 facilities shall execute a Development Agreement before any land disturbance, addressing all conditions of approval made enforceable by contract; annual reporting obligations and format; financial assurance for road repair, decommissioning, and screening maintenance; third-party monitoring protocols; complaint response procedures and timelines; the City's right to reopen and modify approval under adaptive management; cumulative impact monitoring triggers; a Community Benefit Agreement negotiated with meaningful constituent involvement; and recordation against title.

1161.19(A) Community Benefits Process and Advisory Body

A. Purpose. The people find that the residents most affected by a data center — not the City Council alone — should have a direct, structured role in shaping the community benefits and mitigation associated with a project of this scale. This Section establishes a required, good-faith Community Benefits Process led by a representative Community Advisory Body. The City mandates the process and good-faith participation in it; it does not dictate the outcome, which remains the subject of negotiation and of the Development Agreement under 1161.19.

B. When Required. A Community Benefits Process shall be completed before the BZA acts on any conditional-use application, or City Council acts on the related Development Agreement, for a Tier 2 or Tier 3 facility. The applicant's good-faith participation is a condition of approval.

C. Community Advisory Body — Composition. A Community Advisory Body of eleven (11) voting members shall be constituted for each qualifying application, with members serving by stakeholder category rather than by political appointment, to ensure it represents the affected community rather than the Council:

1. Three (3) residents who own or occupy property within the separation distances established in 1161.04 of the facility; provided that if, after the public call required under subsection (D), fewer than three qualified applicants meeting that criterion apply, the remaining seat(s) shall be filled from residents of the Ward, established under Chapter 103, in which the facility is located; and provided further that if fewer than three qualified applicants are available even when the Ward pool is included, the remaining seat(s) shall be filled from residents of the City at large;
2. Two (2) at-large residents of the City;
3. One (1) representative of the Wilmington City School District;
4. One (1) representative of an agricultural landowner or the local farming community;

5. One (1) representative of a watershed, environmental, or conservation organization active in the Little Miami watershed;
6. One (1) representative with public-health or emergency-services expertise;
7. One (1) representative of local labor or the local business community; and
8. One (1) at-large member of the City.

No more than one (1) current elected official or City employee may participate, and shall serve ex officio and non-voting. Members shall serve without compensation.

D. Selection Process. The City shall publish an open call for Advisory Body applicants for not less than thirty (30) days, posted on the City website and the project website required under 1161.24. The five (5) resident seats (paragraphs C.1 and C.2) shall be filled by public, observable lottery from among qualified applicants — including, where the fallback provisions of paragraph C.1 apply, qualified Ward-resident or citywide-resident applicants, and confirmed by City Council; no single official, including the Mayor, shall select or veto resident members. The category seats (paragraphs C.3 through C.7) shall be filled by the relevant organizations' own designation. The at-large seat (paragraph C.8) shall be filled by the Mayor with the advice and consent of City Council. The selection process and the identity of all members shall be part of the public record.

E. Scope of the Process — Required Topics. The Community Benefits Process shall, at a minimum, address: local hiring, wages, and workforce commitments; water, environmental, and watershed commitments beyond the minimums of this Chapter; funding or in-kind support for emergency services, schools, roads, and other affected public services; host-community payments or community investment; mitigation of noise, traffic, visual, and other documented impacts; and any other subject the Advisory Body identifies as material to the affected community. Each topic shall be tied to a documented impact of the facility.

F. Good-Faith Engagement. The applicant shall participate in good faith, which includes: attending a reasonable number of scheduled meetings over a defined period of not less than sixty (60) days; designating a representative with authority to negotiate; providing the Advisory Body the same Land-Use Record disclosed to the public under 1161.24, plus any additional information the Body reasonably requests that is relevant to community impacts; and responding substantively to the Body's proposals. Good-faith participation is a process obligation; this Section does not require the applicant to agree to any particular term.

G. Advisory Body Report. At the conclusion of the process, the Advisory Body shall prepare a written report describing the topics addressed, the commitments the applicant has agreed to, the matters on which agreement was not reached, and the Body's recommendations. The report shall be delivered to the BZA, the Planning Commission, and City Council and made part of the public record not less than fifteen (15) days before any vote on the application. The BZA shall receive and consider the report before acting on the conditional use, and City Council shall receive and consider the report before acting on the Development Agreement, and shall state on the record how the community recommendations were addressed.

H. Memorialization and Enforcement. Any benefits or commitments the applicant agrees to through this process shall be incorporated into the Development Agreement required under 1161.19, made enforceable by contract, and recorded against the title to the property. The City's approval may be conditioned on inclusion of the agreed commitments in the Development Agreement.

I. Effect. Completion of the Community Benefits Process in good faith is a condition of approval. Failure of the applicant to participate in good faith is grounds to deem the application incomplete or to deny it. This Section does not require that a community benefits agreement be reached as a condition of approval, and the failure of the parties to reach full agreement, despite the applicant's good-faith participation, shall not by itself be grounds for denial.

J. Limitation on Negotiating and Approval Authority. (1) Negotiating Authority. Before the Mayor, or the Mayor's designee, may negotiate, commit to, or enter into any Development Agreement, Community Benefit Agreement, memorandum of understanding, side letter, term sheet, or other binding or non-binding commitment concerning community benefits or economic-development incentives addressed by this Section, where the value of the commitment — whether in cash, in-kind contribution, tax abatement, or other consideration, individually or cumulatively — exceeds the amount specified in R.C. 9.17, City Council must first authorize the negotiation by ordinance adopted in the manner required by paragraph (2). (2) No Emergency Authorization; No Waiver of Readings. Any ordinance authorizing negotiation under paragraph (1), and any ordinance approving the resulting agreement under paragraph (3), shall not be adopted as an emergency measure under R.C. 731.17 or any successor provision, and the requirement that an ordinance be read on three separate occasions before passage shall not be suspended or waived, notwithstanding any rule of Council or prior practice to the contrary. (3) Law Director and Council Approval Required. No agreement subject to this subsection shall take effect, bind the City, or be executed on the City's behalf unless it has been (a) reviewed and approved in writing, personally, by the sitting Director of Law — and not by any assistant, deputy, or other designee of that office — and (b) approved by ordinance of City Council, adopted in the manner required by paragraph (2). (4) Void as to the City. Any agreement negotiated, executed, or committed to in violation of this subsection is void and unenforceable as to the City and confers no rights against the City on any party, regardless of any apparent authority of the Mayor or the Mayor's designee. This subsection does not authorize, and shall not be construed to authorize, retroactive ratification of an agreement negotiated or executed in violation of paragraph (1).

1161.20 INDEPENDENT THIRD-PARTY REVIEW

The City shall retain independent expert consultants at the applicant's expense, escrowed in advance, for review of any technical submission; peer review of acoustic studies, air quality modeling, visual simulations, or engineering reports; preparation of any study in lieu of peer review where the City so elects under 1161.03 or 1161.07(J); compliance verification testing; investigation of verified complaints; and evaluation of any expansion or modification. Consultant selection is at the City's sole discretion with no applicant veto; funds are escrowed before review begins and unused funds returned.

1161.21 ADAPTIVE MANAGEMENT AND APPROVAL MODIFICATION

The BZA may reopen and modify any conditional use approval if impacts at any receptor exceed projected levels; new science or technology standards would require more protective measures; operations deviate materially from the approved application; or cumulative impacts from multiple facilities create conditions incompatible with residential uses. Modification proceedings provide notice and opportunity to be heard, with the burden of demonstrating continued compliance on the applicant; interim operational restrictions may be imposed pending outcome.

1161.21(A) Periodic Review. Because data centers are a relatively new and rapidly evolving use, every conditional use approval granted under this Chapter shall be subject to mandatory review by City staff and the BZA no later than three (3) and five (5) years after the certificate of occupancy, to confirm continued compliance and determine whether updated standards or conditions are warranted.

1161.22 CUMULATIVE IMPACT DENIAL AUTHORITY

The BZA shall have explicit authority to deny any application, or impose conditions more stringent than those stated herein, where the cumulative impacts of the proposed facility together with existing or approved facilities would result in any exceedance of any standard of this Chapter; would create conditions incompatible with the character, health, safety, or welfare of neighboring residential or agricultural areas; where compliance projections rely on assumptions found optimistic, incomplete, or inconsistent with documented performance of comparable facilities; or where prior violations at other facilities owned or operated by the applicant or its affiliates are documented.

1161.23 VIOLATIONS AND ENFORCEMENT

1161.23(A) Automatic Violations

Each of the following is an automatic, independently enforceable violation: any measured exceedance of any broadband, C-weighted, or octave band noise limit at any receptor; any interior noise exceedance at any residence; any low-frequency dominance event (dBC – dBA $\geq$ 15 dB); any NAAQS or state air-quality exceedance at any receptor from facility sources; any unauthorized generator operation; any generator testing event exceeding frequency, duration, or time-of-day limits without required documentation; any failure to submit required reports within deadlines; any verified persistent complaint not addressed within the required timeframe; any discharge of an undisclosed or unapproved chemical to the POTW or to a stream, or any direct discharge without a required NPDES permit (see 1161.09(E)); and any material deviation from the approved Campus Master Plan without amendment approval.

1161.23(B) Escalating Enforcement

Stage 1 — Notice of Violation: written notice; 15-day cure period for continuing violations. Stage 2 — Civil Fine: \$5,000 per day per violation; \$10,000 per day for repeat violations within 12 months. Stage 3 — Operational Restriction: the City may restrict generator testing, construction hours, or equipment operation pending mitigation.

Stage 4 — Suspension: the City may suspend a certificate of occupancy for non-cured violations after 30 days, provided that, before any such suspension, the City shall make written findings of adequate legal grounds and shall afford the operator notice and an opportunity to be heard, and the City Law Director shall confirm that suspension is authorized under Ohio law given the potential legal implications of CO suspension.

Stage 5 — Revocation: the BZA may revoke conditional use approval for egregious, willful, or persistent violations, following a duly noticed public hearing, consistent with the procedural requirements ordinarily applicable to revocation of a conditional use.

Nothing in this Section shall limit the City's authority to seek injunctive relief, civil penalties, or other legal remedies available under Ohio law.

1161.24 TRANSPARENCY, PUBLIC NOTICE, AND DISCLOSURE

Purpose and relationship to state law. The City finds that meaningful public participation in data center conditional-use decisions requires that the substantive materials supporting an application be publicly available, and reviewable, in advance of any hearing or vote. This Section establishes disclosure obligations within the City's land-use and zoning authority under R.C. Chapter 713 and the open-meetings requirements of R.C. 121.22. The materials required by this Section are submitted for, and as a condition of, a discretionary land-use entitlement, and are independent of any application for economic development assistance. Nothing in this Section requires the City or any official or employee to disclose information that R.C. 9.66(D) makes confidential; rather, this Section requires the applicant to generate and consent to the public availability of the land-use record described below.

A. Applicant Consent to Disclosure. As a condition of any conditional-use approval under this Chapter, the applicant shall execute a written consent providing that all studies, plans, disclosures, models, and supporting documentation submitted to satisfy this Chapter (the "Land-Use Record") are submitted in the land-use track, are not designated by the applicant as confidential, and may be made part of the public record and disclosed by the City. The applicant's consent under this subsection is voluntary consideration for a discretionary entitlement and operates as a waiver, by the applicant, of any confidentiality the applicant could otherwise assert over the Land-Use Record, including under R.C. 9.66(D). The City shall not be required to accept any application in which the applicant declines to provide this consent.

B. Thirty-Day Pre-Hearing Disclosure. No public meeting or hearing at which a data center conditional-use application, Campus Master Plan, or Development Agreement is to be considered, and no vote on any such matter, shall occur unless the complete Land-Use Record has been (i) filed with the City, (ii) posted on the City's website and the project website required by subsection (D), and (iii) made available for public inspection and

copying, for not less than thirty (30) calendar days before the meeting, hearing, or vote. Materials not posted for the full thirty (30) days shall not be relied upon at that meeting, and consideration shall be continued until the thirty-day period is satisfied.

C. Contents of the Land-Use Record. The Land-Use Record subject to this Section includes, at a minimum: the conditional-use application and site plans; the acoustic, air-quality, thermal, traffic, ecological, and visual studies required by this Chapter; the water disclosures and Water Contingency Plan; the cooling-water chemical disclosure, POTW treatability demonstration, and any direct-discharge testing plan under 1161.09(E); the generator and fuel disclosures; the Construction Management Plan; the Campus Master Plan (Tier 3); the proposed Development Agreement and any proposed Community Benefit Agreement; and any independent third-party reviews obtained under 1161.20. Reporting and monitoring information later required under this Chapter shall likewise be public and shall not be withheld as confidential or trade secret, consistent with 1161.09(E)(G).

D. Public Project Website. The applicant shall create and maintain a public project website, beginning not less than thirty (30) days before the first hearing and continuing through final action, providing a plain-language description of the proposed use; maps, renderings, and elevations; construction timelines and phasing; the dates of all public meetings; the status of all permits; and access to the Land-Use Record.

Notice of Website. Maintaining the public project website required by this subsection does not itself satisfy any independent public-notice requirement under R.C. 121.22, R.C. 713.12, or this Chapter. Where this Chapter or applicable law requires published notice, including newspaper publication or mailed notice to adjacent property owners, that notice shall additionally include the website's URL, but shall not be replaced by it.

E. Applicant Public Meeting. Prior to the first public hearing on the application, whether before the Planning Commission or the BZA, the applicant shall hold at least one public meeting to inform residents of the nature, location, scale, and general characteristics of the proposed development, with a representative able to answer questions. The meeting shall be advertised consistent with R.C. 121.22 and the City's notice requirements not less than thirty (30) days in advance. This meeting supplements, and does not replace, any hearing required by law.

F. NDAs Shall Not Limit the Land-Use Record. No nondisclosure, confidentiality, or similar agreement between the applicant and the City or any of its officials, employees, boards, or commissions shall operate to withhold any portion of the Land-Use Record from the public, to shorten the thirty-day disclosure period, or to excuse any requirement of this Section. An applicant's request to treat any Land-Use Record material as confidential shall be grounds to deem the application incomplete.

G. Effect of Noncompliance. Any approval granted at a meeting or vote held in violation of the thirty-day disclosure requirement of subsection (B) is voidable, and the City reserves the right to rescind or reconsider such approval. This subsection is in addition to any remedy available under R.C. 121.22.

1161.25 PRIVATE RIGHT OF ACTION AND CITIZEN ENFORCEMENT

Purpose. The people find that the protections of this Chapter run to the benefit of the residents and property owners of the City, and that public enforcement, while primary, may be incomplete. To ensure these protections are realized, the people, through the initiative power reserved under Article II, Section 1f of the Ohio Constitution and R.C. 731.28 et seq., exercise the City's authority under R.C. Chapter 713 and its home-rule and police powers to confer a private right of action on affected residents as a backstop to enforcement by the City. This Section is modeled on the citizen-suit provisions of the federal Clean Water Act (33 U.S.C. § 1365) and Clean Air Act (42 U.S.C. § 7604).

A. Who May Bring an Action. Any of the following may bring a civil action to enforce this Chapter against a data center operator, owner, or applicant alleged to be in violation: (1) any elector of the City who owns or occupies real property within the separation distances established in 1161.04 of the facility alleged to be in violation; or (2) any owner of real property located within those separation distances. The people find that a person so situated suffers a particularized injury from a violation of this Chapter — namely the loss of the noise, air-quality, water,

visual, and other protections this Chapter was enacted to provide — and intends by this Section to confer standing to the fullest extent permitted by law.

B. Pre-Suit Notice. At least sixty (60) days before commencing an action, the plaintiff shall give written notice of the alleged violation to the operator or owner, the Zoning Administrator, and the City Law Director. The notice shall identify the provision alleged to be violated, the facility, and the factual basis for the allegation.

C. City's Right to Act First. No action may be commenced under this Section if the City has commenced and is diligently prosecuting an enforcement action addressing the same violation, or has, within the sixty-day notice period, cured or caused the operator to cure the violation. This Section positions citizen enforcement as a supplement to, not a substitute for, enforcement by the City.

D. Time to Sue. An action under this Section shall be commenced within one (1) year of the date the plaintiff knew or reasonably should have known of the violation, but in no event more than three (3) years after the violation occurred. Because the Land-Use Record and reporting required under 1161.24 and 1161.09(E) are the means by which a resident discovers a violation, a violation is not deemed known until the relevant information is reasonably available to the public.

E. Remedies. A court may grant declaratory and injunctive relief, including a temporary restraining order or preliminary injunction during the pendency of the action, and a permanent order compelling compliance, suspending operations causing an ongoing violation, or requiring mitigation. The court may also order any civil penalty authorized by 1161.23, payable to the City.

F. Attorney's Fees and Costs. The court may award a prevailing or substantially prevailing plaintiff reasonable attorney's fees, expert fees, and costs. No fees or costs shall be assessed against a plaintiff who brought the action in good faith, except upon a finding that the action was frivolous or brought to harass. The people find that fee-shifting is necessary to make the protections of this Chapter enforceable by residents of ordinary means.

G. Relationship to Other Remedies. This Section is in addition to, and does not limit, the City's enforcement authority under 1161.23 or any other remedy available under law. Nothing in this Section limits any right a person may have to bring an action under Ohio common law or other statute.

H. No Liability for Good-Faith Enforcement. A resident who provides notice or brings an action under this Section in good faith shall not be liable to the operator or owner for doing so, and any provision in a development agreement, lease, or other instrument purporting to waive or penalize the exercise of rights under this Section is void as against public policy.

1161.26 EMERGENCY SERVICES CAPABILITY ASSESSMENT AND FUNDING

A. Findings and Purpose. The people find that data centers present emergency-response hazards that differ in kind and degree from ordinary development, including lithium-ion battery energy storage system (BESS) thermal-runaway fires, large-volume diesel and other fuel storage, high-voltage electrical and arc-flash hazards, hazardous cooling-water and coolant chemicals, and the risk that secured gates, extended internal drives, and campus layouts will delay emergency access. The people further find that the City's emergency services are administered by the City, and that an assessment of their readiness to respond to these hazards must therefore be performed by an assessor independent of both the City and the applicant to be credible. The purpose of this Section is to ensure that emergency services are able to respond safely and effectively to a data center before any certificate of occupancy is issued, and throughout its operation, and that the cost of any additional capability the facility requires is borne by the applicant rather than the public.

B. Emergency Access Standards. As a condition of approval and at all times during construction and operation: (1) the facility shall provide not fewer than two separate points of ingress and egress to the public road network, operable at all times, unless waived in writing by the fire authority; (2) all security gates shall be equipped to fail open on loss of power and to open remotely upon request of the emergency dispatch center, in addition to Knox-box or equivalent override at every gate; (3) internal roads, drive aisles, and fire lanes shall be designed and

maintained to the load, width, vertical clearance, and turning standards required for the largest responding fire apparatus, kept clear at all times, and passable during construction; (4) no fence, gate, bollard, landscaping, security measure, or operational practice shall be installed or maintained that would delay or obstruct timely emergency access, and the fire authority may order removal or modification of any such obstruction at the operator's expense; and (5) fire-flow capacity and hydrant placement adequate for full buildout shall be confirmed before any certificate of occupancy.

C. Independent Emergency Services Capability Assessment. Prior to issuance of any certificate of occupancy, an independent Emergency Services Capability Assessment shall be completed for the facility. (1) Independent assessor. The assessor shall be a qualified fire-protection or emergency-services professional, selected through the Neutral Assessor Selection Process defined in 1161.02, and independent of both the applicant and the City and its emergency services departments. The assessment shall be funded by the applicant through an escrow account controlled by the City, with any unused funds returned. (2) Scope. The assessment shall evaluate the staffing, training, equipment, apparatus, water supply, and mutual-aid resources required for safe and effective response to the specific hazards of the facility, including at a minimum: BESS and lithium-ion fire response; large-volume flammable and combustible liquid and fuel-storage response; high-voltage electrical and arc-flash hazards; hazardous-materials and coolant-chemical response, cross-referenced to the chemical disclosures required under 1161.09(E); confined-space and structural-collapse rescue; fire flow and water supply for full buildout; the capacity to manage a sustained or simultaneous incident; and the impact on response coverage of jurisdictions providing mutual aid. (3) Worst-case basis. The assessment shall evaluate need under the worst-case operating conditions defined in 1161.15 and at full buildout of all phases.

D. Applicant Funding Obligation. The applicant shall fund, at its sole expense, all staffing, training, equipment, and apparatus identified by the assessment as necessary to close the gap between existing capability and the capability required to respond to the facility, as follows: (1) Equipment and apparatus. All equipment and apparatus identified by the assessment shall be funded and delivered in full before any certificate of occupancy. (2) Training. Initial specialized training for responders shall be funded and completed before any certificate of occupancy; recurring and refresher training identified by the assessment shall be funded for the term specified in paragraph 4. (3) Staffing. Any incremental staffing identified by the assessment as attributable to the facility shall be funded by the applicant for the term specified in paragraph 4, in an amount equal to the documented incremental cost. (4) Term of recurring obligations. The applicant's obligation to fund recurring training and incremental staffing shall continue for a term equal to the longest of (i) the full duration of any tax abatement, exemption, CRA agreement, TIF, or other economic-development assistance benefiting the facility, including any extension or renewal; (ii) the life of the facility's operation, if the facility receives no such economic-development assistance; or (iii) not less than five (5) years from the certificate of occupancy. The people find it reasonable that, for as long as the facility receives public financial assistance, the facility shall bear the incremental public-safety cost it creates. (5) Proportionality. Each item funded under this subsection shall be tied to a documented need attributable to the facility as identified in the assessment. This Section does not require the applicant to fund general improvements to emergency services unrelated to the facility's impact.

E. Certificate of Occupancy Condition. No certificate of occupancy, temporary or permanent, shall be issued for any data center or phase until: (1) the Capability Assessment has been completed and accepted by the City; (2) all equipment, apparatus, and initial training required by subsection (D) are in place and confirmed by the fire authority; and (3) the recurring funding obligations of subsection (D) are secured as provided in subsection (G). For a phased project, this condition applies to each phase based on the cumulative hazards present at that phase.

F. Periodic Reassessment. The Capability Assessment shall be updated, at the applicant's expense and funded as provided in subsection (C), and by an independent assessor selected as provided in subsection (C): (1) upon any expansion or Capital Reinvestment; (2) upon introduction of any new hazard, including any new chemical disclosed under 1161.09(E) or any addition of or change to battery energy storage; and (3) at intervals not exceeding five (5) years. Funding obligations under subsection (D) shall be adjusted to reflect each updated assessment, and continued non-funding of an identified need shall be grounds for the enforcement remedies of 1161.23, including suspension under the safeguards stated there.

G. Development Agreement and Recordation. The recurring funding obligations of this Section shall be set out in the Development Agreement required under 1161.19 and recorded against the title to the property, so that they

bind the applicant and all successors in interest for the full term. Financial assurance acceptable to the City shall secure the recurring obligations.

H. Mutual Aid. Where the assessment finds that response to the facility will rely on or affect the emergency services of another jurisdiction, the City shall provide a copy of the assessment to that jurisdiction, and the applicant's funding obligation under subsection (D) shall extend to capability needs the assessment attributes to the facility in those jurisdictions.

1161.27 WATERSHED, SCENIC RIVER, AND SOURCE-WATER PROTECTION

A. Findings. The people find, based on the general body of evidence regarding data center development and the site-specific assessment required under subsection (B), that: (1) conversion of agricultural or undeveloped land to a data center campus typically eliminates wetlands and converts large areas to impervious surface, reducing groundwater recharge and altering runoff volume, timing, and temperature in ways that extend downstream beyond the property lines; (2) following *Sackett v. EPA* (2023), certain headwater wetlands and ephemeral streams may no longer receive federal Clean Water Act protection, creating a gap in protection that the City has authority and responsibility to address under R.C. Chapter 713 and its police powers; (3) where a site's drainage reaches a public drinking-water source or a State or National Scenic River or its tributary system, Ohio's antidegradation policy and the jurisdiction of the ODNR Scenic Rivers Program (R.C. 1517), Ohio EPA, and federal authorities are implicated, and source-water-grade protection is warranted; and (4) municipal wastewater treatment does not remove many compounds associated with data-center cooling water, including certain biocides, corrosion and scale inhibitors, microplastics, and PFAS-class compounds, and such compounds concentrate in biosolids.

B. Required Site-Specific Hydrology and Watershed Assessment. Before any earth-disturbing activity, the applicant shall retain a qualified professional, consistent with the standard of 1161.03(A)(6), at its expense, to prepare a Site-Specific Hydrology and Watershed Assessment for the proposed site, which shall: (1) formally delineate all wetlands and surface-water drainage subbasins on the site; (2) trace the downstream pathway of each subbasin and identify every named or unnamed stream, creek, or other water body the pathway reaches; (3) determine whether any subbasin drains, directly or via tributary, to (a) a current or designated public drinking-water source, or (b) a State or National Scenic River or its tributary system; and (4) identify the property-boundary points where the site's drainage leaves the parcel. The Assessment shall be part of the public Land-Use Record under 1161.24, confirmed before any earth-disturbing activity, and shall govern the application of subsections (C) through (G).

C. Protected Resource Designations. The following are designated priority protected resources: the on-site wetlands and subbasin headwaters identified under subsection (B); and a watershed buffer extending 300 feet from any wetland, perennial or intermittent stream, or subbasin discharge point identified under subsection (B).

D. Source-Water and Scenic-River Antidegradation Standard. Where the Assessment under subsection (B) determines that the site drains, directly or via tributary, to a public drinking-water source or to a State or National Scenic River or its tributary system, no data center shall cause or contribute to any degradation of water quality in any water body identified under subsection (B), or their downstream waters, below pre-development baseline conditions. Any increase above baseline in a regulated or disclosed constituent at a monitoring point established under subsection (F) shall be a violation unless expressly authorized as a condition of approval.

E. Hydrology, Baseflow, and Stormwater. (1) The applicant shall demonstrate no net reduction in groundwater recharge or in pre-development baseflow to any water body identified under subsection (B), calculated for each subbasin separately. (2) Stormwater shall be managed to replicate pre-development hydrology and to produce no increase in runoff rate, volume, temperature, or sediment transport leaving the site into any subbasin identified under subsection (B), designed to the standards of 1161.14 and to retain the first 1.5 inches of rainfall on site. (3) Where the project converts agricultural or undeveloped land to impervious surface, low-impact development practices (bioretention, permeable surfaces, preserved or restored recharge areas) shall be incorporated to the maximum practicable extent.

F. Surface-Water Monitoring at Property Boundary. In addition to any monitoring required under 1161.09(E), the applicant shall conduct baseline and ongoing surface-water monitoring, at its expense through a certified independent laboratory, at each property-boundary point identified under subsection (B) where the site's drainage leaves the parcel: (1) Drinking-water-source points. At any such point where the Assessment under subsection (B) determines the subbasin drains, directly or via tributary, to a public drinking-water source, monitoring shall include the full parameter list: every Cooling-Water Chemical disclosed under 1161.09(E) by CAS number and its known breakdown products; PFAS-class compounds; temperature, pH, total dissolved solids, total suspended solids, nutrients (nitrogen and phosphorus species), and heavy metals. (2) Other points. At every other point identified under subsection (B), monitoring shall include a stormwater-focused parameter set: PFAS-class compounds; total suspended solids and sediment; nutrients; temperature; and any chemical stored or used on site that could mobilize in runoff. (3) Baseline. Before any earth-disturbing activity, the applicant shall establish pre-construction baseline conditions at each point identified under subsection (B), with on-site or upstream reference sampling sufficient to attribute any later change to the facility. (4) Ongoing. Monitoring at each point shall occur not less than monthly and within forty-eight (48) hours after any spill, upset, or change in chemical use, on the schedule of 1161.09(E). Results shall be reported to the City within fifteen (15) days, posted publicly, and, where the point drains toward a Scenic River or its tributary system or a public drinking-water source, provided to the ODNR Scenic Rivers Program and Ohio EPA.

G. Downstream Pathway Monitoring. Where process wastewater is discharged to the City's POTW, and the Assessment under subsection (B) determines the site's drainage reaches a State or National Scenic River, its tributary system, or a public drinking-water source, the applicant shall additionally fund monitoring at three downstream points along the documented discharge pathway: (1) the POTW's discharge point; (2) a documented midpoint along the pathway; and (3) the point at which the pathway reaches the identified Scenic River, tributary system, or drinking-water source. Parameters shall include the disclosed Cooling-Water Chemicals and PFAS-class compounds. This subsection complements, and does not replace, the property-boundary monitoring of subsection (F).

H. Reclaimed-Water Requirement. Because effluent discharged to the watershed is represented to be of dischargeable quality, the applicant shall use reclaimed or non-potable water for cooling where reclaimed-water infrastructure exists or is being extended to serve the area. Potable water may be used for cooling only upon a demonstration, accepted by the City, that reclaimed water is technically infeasible or unavailable. Where wastewater infrastructure is being extended to serve the facility, the applicant shall design and install reclaimed-water ("purple pipe") delivery as part of that extension.

I. Biosolids and Residuals Impact. Because PFAS, heavy metals, and other constituents not removed by treatment concentrate in the POTW's biosolids and residuals, and because those residuals are land-applied, used as landfill cover, or otherwise disposed of: (1) the applicant shall characterize, as part of the POTW treatability demonstration under 1161.09(E)(C), the contribution its discharge would make to the constituent load in the POTW's biosolids, including PFAS and heavy metals; (2) no discharge shall be approved that would cause the POTW's biosolids to exceed any applicable standard for land application or disposal, impair the POTW's ability to lawfully use or dispose of its biosolids, or contaminate biosolids destined for agricultural land application, this standard implementing the "interference" prohibition of 40 CFR Part 403, which includes contamination of sludge use and disposal; and (3) the applicant shall disclose and the City may condition or refuse discharge based on the biosolids impact.

J. PFAS and Firefighting-Foam Prohibition. No data center shall use, store, or discharge PFAS-containing firefighting foam (AFFF) or PFAS-containing process or cooling chemicals within 500 feet of any wetland, stream, or subbasin discharge point identified under subsection (B). Fire-suppression systems shall use PFAS-free alternatives.

K. Agency Notification. The City shall provide the delineation, monitoring results, and discharge documentation required by this Section to the ODNR Scenic Rivers Program, Ohio EPA, the U.S. Army Corps of Engineers, and any public water system relying on a water body to which the site drains, as identified under subsection (B), and shall consider their comments before final action.

1161.28 FULL-TIME COMPLIANCE ENGINEER

A. Requirement. As a condition of approval, the applicant shall fund a full-time compliance engineer, dedicated to the facility, for the life of its operation. The compliance engineer shall monitor and document the facility's ongoing compliance with the noise, air, water, chemical-disclosure, generator, and other operational standards of this Chapter, and shall report any violation to the City within forty-eight (48) hours of discovery.

B. Reporting Line and Independence. The compliance engineer shall report to the Service Director, or the Service Director's designee, and not to the applicant, the facility operator, or any of their employees or contractors. The applicant shall have no authority to direct, edit, or suppress the substance of the compliance engineer's reporting to the Service Director.

C. Selection. The Service Director, or the Service Director's designee, shall select the compliance engineer, in consultation with the applicant solely as to scheduling and site access. The applicant shall have no authority to select, remove, or replace the compliance engineer.

D. Funding. The applicant shall fund the position, including salary, benefits, and reasonable expenses, through an escrow account administered by the City, for the full duration of the facility's operation, regardless of any change in ownership or operator.

E. Reports Are Public Records. All reports, findings, logs, and other records the compliance engineer prepares or submits under this Section are public records under R.C. 149.43, are not exempt as a trade secret, security record, or otherwise, and shall be made available to any person upon request without redaction except to the extent R.C. 149.43 expressly requires or permits. The City shall additionally post each quarterly report required under subsection (F) on the project website maintained under 1161.24 within five (5) business days of receipt.

F. Access and Reporting. The compliance engineer shall have unrestricted access to all monitoring data, chemical inventories, and operational records required by this Chapter, and shall submit a public quarterly report to the Service Director summarizing compliance status.

G. Not a Substitute. This Section supplements, and does not substitute for, the independent third-party review of 1161.20, the emergency-services assessment of 1161.26, or any City inspection or enforcement authority.

1161.29 INFRASTRUCTURE CAPACITY CERTIFICATION

A. Findings and Purpose. The people find that disclosure of a data center's projected demand for water, wastewater treatment, electrical capacity, roadway capacity, and stormwater conveyance, without independent verification that the supply-side systems serving the City can deliver that demand, leaves open the risk that a facility's committed capacity will degrade service, pressure, level of service, or reliability for existing residential and commercial customers and users, or will reveal pre-existing infrastructure deficiencies only after approval. The purpose of this Section is to require independent verification of available capacity before any conditional use is approved, and to ensure the cost of any required infrastructure upgrade is borne by the applicant rather than existing ratepayers or the public.

B. Independent Infrastructure Capacity Assessment. Prior to conditional use approval, an independent Infrastructure Capacity Assessment shall be completed for the facility. (1) Independent assessor(s). The assessor(s) shall be licensed professional engineers with relevant water, wastewater, electrical-utility, traffic, or civil/hydrology expertise as applicable to each system under assessment, selected through the Neutral Assessor Selection Process defined in 1161.02, and independent of both the applicant and the City's relevant departments. The assessment shall be funded by the applicant through an escrow account controlled by the City, with any unused funds returned. (2) Scope. The assessment shall evaluate, at a minimum: (a) Water supply. Raw water source and intake capacity, including pump station rated capacity versus current actual capacity; transmission main capacity from source to treatment plant; and treatment plant rated capacity versus currently available capacity, each evaluated under the worst-case operating conditions defined in 1161.15 and accounting for existing committed demand. (b) Wastewater. Sanitary sewer collection system capacity, including lift station capacity, between the facility and the POTW; and POTW hydraulic and organic-loading capacity, independent of the chemical-compatibility demonstration required under 1161.09(E). (c) Finished-water distribution. Distribution

system capacity and pressure adequate to serve the facility without reducing pressure or reliability to existing customers, including fire-flow capacity required under 1161.26(B). (d) Electrical grid. Substation and transmission interconnection capacity sufficient to serve the facility's full contracted load without degrading service to existing customers or requiring system upgrades the cost of which would be borne by ratepayers rather than the applicant. (e) Roads and traffic. Roadway and intersection capacity serving the facility, including construction-phase and operational traffic, sufficient to maintain acceptable level of service on affected public roads without degrading capacity or safety for existing users, consistent with the Campus Master Plan traffic analysis required under 1161.18 and the emergency access standards of 1161.26. (f) Stormwater conveyance. Downstream stormwater conveyance capacity — receiving ditches, culverts, and storm sewers — sufficient to accept the facility's contribution at full buildout without surcharging or flooding upstream or downstream of the site, independent of the on-site design standards required under 1161.14. (3) Existing-user protection finding. The assessment shall affirmatively find, for each system in subsection (2), either that sufficient capacity exists to serve the facility at full buildout without reduction in service, pressure, level of service, safety, or reliability to existing customers and users, or shall identify the specific infrastructure upgrade required to achieve that result. (4) No applicant-only studies. The assessment shall not rely solely on capacity studies commissioned or funded by the applicant; the independent assessor(s) may consider such studies but shall verify their conclusions independently.

C. Applicant Funding Obligation. The applicant shall fund, at its sole expense, any infrastructure upgrade identified by the assessment as necessary to achieve the existing-user protection finding under subsection (B)(3), including design, construction, and any capacity-reservation cost. No cost of such upgrade shall be passed to existing ratepayers or the public through rates, fees, or assessments.

D. Certificate of Occupancy Condition. No certificate of occupancy, temporary or permanent, shall be issued for any data center or phase until: (1) the Infrastructure Capacity Assessment has been completed and accepted by the City; and (2) any infrastructure upgrade identified under subsection (B)(3) is complete and confirmed by the relevant utility or roadway authority. For a phased project, this condition applies to each phase based on cumulative demand at that phase.

E. Relationship to Other Sections. This Section is in addition to, and does not replace, the water use and conservation disclosures required under 1161.09, the ecological and stormwater standards of 1161.14, the Campus Master Plan and traffic analysis required under 1161.18, the watershed and source-water protections of 1161.27, or the emergency services capability assessment required under 1161.26.

SECTION 5. AMENDMENTS TO DISTRICT USE REGULATIONS; MINISTERIAL ZONING MAP ANNOTATION

In addition to the creation of Chapter 1161, the Wilmington Zoning Code (Part 11, Title 9) is amended, and the Wilmington Zoning Map is directed to be ministerially annotated, as follows, to implement the district permissions of 1161.03(B):

1. Use-table amendment. The use regulations of the LI (Light Industrial) and GI (General Industrial) Districts (Chapter 1153) are amended. The existing "Data Centers" entry in the Table of Principal Uses by Zoning District (Section 1141.02), currently designated "P" (permitted by right) in the LI and GI columns, is amended to "C" (conditional use), followed by the notation "subject to Chapter 1161." The existing use-specific standards at Section 1141.03(j) remain in effect and apply in addition to, and as supplemented by, Chapter 1161; where Chapter 1161 establishes a more restrictive standard, Chapter 1161 controls. No other district's use table is amended to permit data centers. If Section 1141.02 has already been amended, by ordinance or otherwise, to designate Data Centers as a Conditional Use in the LI and GI Districts before the effective date of this Ordinance, this subsection confirms and continues that designation rather than re-enacting it, and shall not be construed to suggest that the use remained a permitted use by right in the interim.

2. Definitions cross-reference. The general definitions chapter of the Zoning Code (Chapter 1179) is amended to replace the existing definition of "Data centers" with a cross-reference to the definitions of "Data Center" and "Data Center Campus" in Section 1161.02, which control over the prior definition to the extent of any conflict.

3. Conditional-use criteria. The general conditional-use criteria and review procedure of the Zoning Code (Section 1135.06, Conditional use review, including the site plan review requirement of Section 1135.05) apply to

data center applications in addition to, and as supplemented by, the standards and review tiers of Chapter 1161. Where Chapter 1161 is more restrictive, it controls.

4. Zoning Map Annotation (Ministerial). This subsection directs a ministerial act, not a legislative amendment to district boundaries: the Zoning Administrator is directed to annotate the Zoning Map to reference Chapter 1161 for the district(s) in which data centers are a Conditional Use, recording the legislative text amendment made by paragraphs 1 through 3 of this Section without exercising independent discretion over zoning classification. If the overlay option of 1161.03(B)(4) is adopted, the Zoning Administrator shall create, maintain, and publish the Data Center Overlay map required by that subsection on the same ministerial basis. No static map exhibit is attached to this Ordinance because no district boundary is altered by it.

5. Conforming amendments. Any provision of the Zoning Code inconsistent with this Section is amended to conform, and any use-table entry that could be read to permit a data center outside the district(s) identified in 1161.03(B)(1) is hereby amended to exclude data centers, which remain governed exclusively by Chapter 1161.

Section 5(6). Comprehensive Plan Consistency Review for Rezoning Enabling Data Centers

A. Applicability. This subsection applies to any proposed amendment of the Zoning Map that would rezone an area greater than five (5) acres into any zoning district or category that permits a data center, whether as a use by right or as a conditional use, where the rezoning is not consistent with the City's most recently adopted comprehensive plan as defined in subsection (B).

B. Consistency Defined. A rezoning is "consistent" with the comprehensive plan for purposes of this subsection if the most intensive land use permitted in the proposed zoning category is the same as, or less intensive than, the most intensive land use contemplated by the most recently adopted comprehensive plan's designation for that area. A rezoning that would permit a more intensive land use than the comprehensive plan contemplates for the area — including, without limitation, a rezoning that enables a data center where the plan designates the area for agricultural, residential, conservation, or commercial use — is "not consistent" and is subject to the review required by this subsection.

C. Community Consistency Review Committee. Where this subsection applies, a Community Consistency Review Committee shall be constituted and selected in the same manner, with the same composition, stakeholder-category seats, lottery selection of resident seats, and advice-and-consent and anti-capture provisions as the Community Advisory Body established under 1161.19(A)(C) and (D). The same body may serve both functions where a rezoning and a conditional-use application proceed together.

D. Findings. The Committee shall review the proposed rezoning for consistency with the comprehensive plan as defined in subsection (B), and shall prepare written findings addressing: the comprehensive plan's designation and contemplated land-use intensity for the area; the land-use intensity permitted by the proposed zoning category; whether the rezoning is consistent or not consistent under subsection (B); the impacts of the increased land-use intensity on the surrounding area and on the resources protected by this Chapter; and the Committee's recommendation. The Committee may receive public input in preparing its findings.

E. Presentation to City Council. The Committee's written findings shall be delivered to the City Council and made part of the public record not less than fifteen (15) days before any vote on the rezoning. The City Council shall receive and consider the findings as part of the rezoning process and shall state on the record how the findings were addressed before acting on the rezoning. This subsection does not delegate the legislative decision on rezoning to the Committee; the rezoning decision remains with the City Council.

F. Relationship to Other Requirements. This consistency review is in addition to all other requirements applicable to a rezoning or to a data center under this Chapter and under applicable law, and does not substitute for the Community Benefits Process under 1161.19(A), the conditional-use review, or any notice or hearing required by law.

SECTION 6. INTEGRATION AND SEVERABILITY

The people enact this measure as a single, integrated, and interdependent whole, and find that each provision is essential to the others. It is the people's strong preference that this measure stand or fall in its entirety, and that no provision be enforced in a manner inconsistent with the whole.

Notwithstanding that preference, if any provision of this measure, or its application to any person or circumstance, is held invalid by a court of competent jurisdiction, the people intend that the measure be considered and enforced as a whole rather than in part, unless the court determines both that the remaining provisions can continue to operate in a manner consistent with the people's purpose in enacting this measure, and that severing the invalid provision, rather than invalidating the measure in its entirety, better serves the public interest the people sought to protect. Only where both conditions are met shall the remaining provisions, and the application of this measure to other persons or circumstances, remain in force.

This Section reflects the people's deliberate choice to adopt comprehensive, standards-based regulation of data centers as a unified package, and not a partial or piecemeal regulation, while recognizing that preserving as much of that protection as possible may, in some circumstances, better serve the people than the alternative of no regulation at all.

SECTION 7. CONFLICTS WITH EXISTING PROVISIONS

A. Repeal of Conflicting Provisions. All provisions of the Wilmington Zoning Code or other ordinances inconsistent with or in conflict with this Ordinance are hereby repealed to the extent of such inconsistency or conflict. Where any existing provision establishes a more stringent standard than this Ordinance, the more stringent standard shall remain in effect.

B. Supremacy Clause. Except as provided in subsection (A) for existing provisions that establish a more stringent standard, this Ordinance shall prevail over any other section, chapter, or provision of the Wilmington Municipal Code or Zoning Code with which it conflicts. In the event of any such conflict, the provision of this Ordinance shall control, and the conflicting provision shall be deemed amended or repealed to the extent of the conflict, without further action by the City Council.

SECTION 8. EFFECTIVE DATE

This Ordinance shall take effect and be in force from and after the earliest period allowed by applicable law following certification by the Clinton County Board of Elections that this measure was approved by a majority of the electors voting on it at the election at which it was submitted, pursuant to R.C. 731.28.

Election at which submitted: _____ Certified by Board of Elections: _____ Effective: _____

EXHIBIT B

CLINTON COUNTY BOARD OF ELECTIONS

111 S. Nelson Ave., Suite 4
Wilmington, OH 45177-2067
Phone: 937-382-3537
Clinton@ohiosos.gov



<https://www.boe.ohio.gov/clinton>

DATE: July 28, 2026
TO: Mary Kay Vance, Auditor
City of Wilmington
FROM: Andrea Tacoronte, Director
Clinton County Board of Elections
RE: Referendum Petition Signature Review

The Clinton County Board of Elections has completed signature examination for one (1) initiative petition re An Ordinance Enacting Chapter 1161 of the Zoning Code of the City of Wilmington, Ohio, Regulating Data Centers and Data Center Campuses

ATTESTATION OF PETITION SIGNATURES

Petition #	Description	Actual Signatures	Invalid Signatures	Valid Signatures
260700-1	Initiative Enacting Chapter 1161 of Wilmington Zoning Code	536	111	425

The Clinton County Board of Elections attests to the accuracy of the signature count listed above.

 Andrea Tacoronte, Director
Signature Printed Name, Title

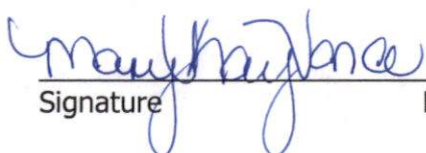
7-28-2026.
Date

The Clinton County Board of Elections is transmitting following items to the City of Wilmington Auditor's Office.

TRANSMITTAL LIST	Qty	BoE	CoW
Cover Page: Signature Attestation/Acknowledgement of Receipt	1	alt	MLV
Petition 260700-1: Initiative Enacting Chapter 1161 of Wilmington Zoning Code	32 parts	alt	MLV
One (1) Petition Signature Verification Report	1	alt	MLV
Certification of # Signatures Required for Initiative	1	alt	MLV

ACKNOWLEDGEMENT OF RECEIPT

The City of Wilmington acknowledges receipt of the documents in the Transmittal List.

 MARY KAY VANCE, AUDITOR
Signature Printed Name, Title

7/28/26
Date

EXHIBIT C



The City of Wilmington, Ohio
Legal Division

69 North South Street, Wilmington, Ohio 45177

July 30, 2026

SENT VIA EMAIL @ [clinton@ohiosos.gov]
AND CERTIFIED MAIL [9414 8362 0855 1304 4346 66]

Andrea Tacoronte, Director
Clinton County Board of Elections
111 S. Nelson Ave., Suite 4
Wilmington, OH 45177-2067

Subject: Wilmington Initiative Petition 260700 — R.C. 3501.38(M) Determination

Director Tacoronte:

The City acknowledges receipt of the Board's July 28, 2026, signature attestation and verification report concerning Petition 260700. The report reflects 425 valid signatures, 111 invalid signatures, and 32 valid part-petitions.

Please advise whether the Board has completed the examination required by R.C. 3501.38(M)(1)(a) concerning whether the proposed ordinance falls within the City's authority to enact by initiative and whether all portions of the proposed measure are within the municipal initiative power. The July 28th documents appear to address signature examination but do not include the determination or notice contemplated by R.C. 3501.38(M)(2).

Proposed Section 1161.25 creates a new private statutory cause of action through which designated residents and property owners may enforce proposed Chapter 1161 against data-center operators, owners, and applicants. It prescribes standing, a presuit-notice procedure, a limitations period, available claims and remedies, civil penalties, and an entitlement to seek attorney fees, expert fees, and costs.

Under *State ex rel. Bolzenius v. Preisse*, 155 Ohio St.3d 45, 2018-Ohio-3708, 119 N.E.3d 358, ¶ 13, municipalities lack legislative authority to create new private causes of action. The Board therefore must determine whether proposed Section 1161.25 places the petition outside Wilmington's initiative power.

Because R.C. 3501.38(M)(1)(a) provides that a petition is invalid if any portion lies outside the initiative power, the defect is not cured by severability language or by the fact that other provisions of proposed Chapter 1161 concern subjects generally within municipal zoning or police powers under R.C. 3501.38(M)(1)(a).

The following has been prepared to assist the Board in understanding the issue of legislative authority.

Relevant Provisions of the Proposal

Proposed Section 1161.25 is captioned “Private Right of Action and Citizen Enforcement.” Its stated purpose is to confer a private right of action on affected residents as a “backstop” to City enforcement. The section provides, among other things:

1. designated City electors and property owners “may bring a civil action to enforce this Chapter”;
2. the ordinance affirmatively intends to confer standing;
3. a plaintiff must provide 60 days’ presuit notice;
4. City enforcement may temporarily preclude a private action;
5. a one-year discovery limitations period and three-year repose period apply;
6. a court may grant declaratory and injunctive relief;
7. a court may suspend operations, compel compliance, or require mitigation;
8. a court may impose civil penalties authorized elsewhere in Chapter 1161;
9. prevailing plaintiffs may receive attorney fees, expert fees, and costs; and
10. private enforcement is expressly cumulative with City enforcement.

This is not merely language recognizing traditional standing or preserving existing common-law claims. Section 1161.25 affirmatively creates a new claim, identifies the authorized plaintiffs and defendants, prescribes procedural prerequisites, establishes a limitations period, specifies remedies, and authorizes fee shifting.

Governing Statutory Authority

R.C. 3501.11(K)(2) requires a board of elections to examine an initiative petition to determine whether it falls within the scope of authority to enact by initiative. R.C. 3501.38(M)(1)(a) requires the Board to determine whether the petition falls within the municipality’s initiative power and satisfies statutory ballot prerequisites. A petition is invalid if any portion is outside the initiative power.

R.C. 3501.39(A)(3) likewise provides that a board may reject an initiative petition when it falls outside the scope of authority to enact by initiative or fails a statutory prerequisite.

Bolzenius controls the Section 1161.25 issue.

In *State ex rel. Bolzenius v. Preisse*, Columbus electors proposed an ordinance that allowed any City resident to enforce the ordinance’s rights and prohibitions through a judicial action. The Franklin County Board of Elections excluded the measure because it exceeded Columbus’s legislative authority by creating new causes of action. The Supreme Court of Ohio upheld the Board’s decision. 155 Ohio St.3d 45, 2018-Ohio-3708, 119 N.E.3d 358, ¶¶ 1, 12-13.

The principal language appears at paragraph 13: “Like the proposal in *Flak*, the proposed ordinance here would create a new cause of action—something we have held municipalities lack the power to do.” *Id.* at ¶ 13.

The Court further held: “Because Columbus clearly lacks the power to enact the proposed ordinance, we hold that the board members did not abuse their discretion in keeping relators’ proposal off the ballot.” *Id.*

Bolzenius confirms the Board’s authority to conduct this review. Of particular relevance: R.C. 3501.11(K)(1) authorizes boards “to determine whether a ballot measure falls within the scope of the constitutional power of referendum or initiative.” *Id.* at ¶¶ 8, 10.

The petitioners attempted to characterize the provision as analogous to federal citizen-suit statutes. That comparison does not cure the defect. Congress may create federal causes of action under federal legislative authority. A municipality possesses only the legislative authority granted by the Ohio Constitution, its charter, and state law. *Bolzenius* holds that municipal legislative authority does not include creating a new private cause of action.

The City requests that the Board specifically evaluate proposed Section 1161.25, which purports to create a private civil cause of action, confer standing on residents and other persons, authorize civil penalties, and award attorney fees.

Accordingly, the City respectfully requests that the Board:

1. determine whether proposed Section 1161.25 creates a new private cause of action;
2. determine whether Wilmington has legislative authority to create that cause of action;
3. apply *State ex rel. Bolzenius v. Preisse*, 155 Ohio St.3d 45, 2018-Ohio-3708, 119 N.E.3d 358, ¶¶ 8-13;
4. determine whether the petition is invalid under R.C. 3501.38(M)(1)(a) and 3501.39(A)(3); and
5. provide written notice of the Board’s determination to the petitioners and the City.

Effect on the Entire Petition

Section 1161.25 cannot be treated merely as an enforceability question to be resolved after enactment. It presents the threshold question whether the proposed ordinance is within Wilmington’s legislative power.

R.C. 3501.38(M)(1)(a) states that the petition is invalid if any portion is outside the initiative power. Accordingly, the threshold issue is whether Section 1161.25 places the petition outside the municipal initiative power. If it does, R.C. 3501.38(M)(1)(a) provides that the petition is invalid.

Procedure and Notice

Please advise whether the Board has already made its determination under R.C. 3501.38(M)(1)(a). If it has not, please provide notice of the date and manner in which the Board will consider the issue, including any meeting or hearing at which the City and the petitioners may present their respective positions. Following its determination, the City requests the written notice required by R.C. 3501.38(M)(2).

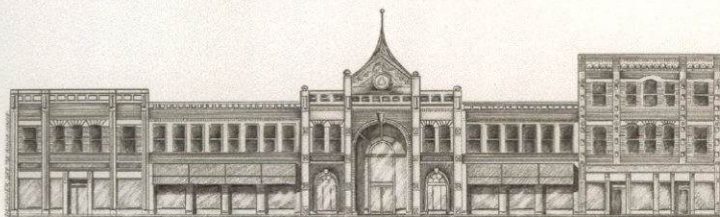
Any certification issued by the City Auditor pursuant to R.C. 731.28 addresses only the limited sufficiency-and-validity determination assigned to that office and should not be construed as a determination that the proposed ordinance falls within Wilmington's initiative power, nor as a waiver of any objection available under R.C. 3501.38(M), R.C. 3501.39, or applicable Ohio law.

Sincerely,

A handwritten signature in blue ink, appearing to read "Desmond J. Cullimore".

Desmond J. Cullimore
Law Director
City of Wilmington, Ohio

cc: Patrick Haley, Mayor
Mary Kay Vance, Auditor



69 North South Street, Wilmington, Ohio 45177
Telephone: 937-382-6604 Fax: 937-383-0169

Office of the City Auditor

City Auditor

Mary Kay Vance
(937) 382-6604
mvance@wilmingtonohio.gov

August 4, 2026

Deputy Auditor

Donyel Riley
(937) 382-6604
driley@wilmingtonohio.gov

To: Clinton County Board of Elections

From: Mary Kay Vance, Wilmington City Auditor

AUDITOR CERTIFICATION AND TRANSMITTAL

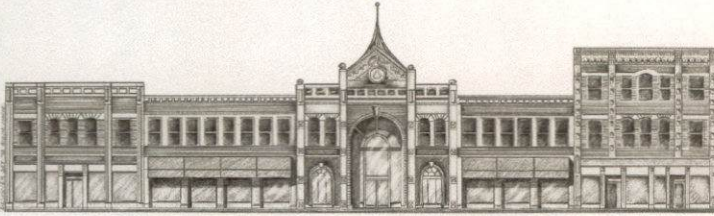
Petition #	Description	Actual Signatures	Invalid Signatures	Valid Signatures
260700-1	An Ordinance Enacting Chapter 1161 of the Zoning Code of the City of Wilmington, Ohio, Regulating Data Centers and Data Center Campuses	536	111	425

I, Mary Kay Vance, Auditor, City of Wilmington, received the petitions for initiative (listed above) from the Clinton County Board of Elections, on July 28, 2026. The Clinton County Board of Elections director, Andrea Tacoronte, has attested to the accuracy of the signature count.

I have completed my limited review of the above initiative petitions assigned to the City Auditor under R.C. 731.28 and certify the sufficiency and validity of the petitions pursuant to that statute and am transmitting the initiative petitions and related materials to the Clinton County Board of Elections for such further review and action as may be required by law.

Nothing in this transmittal should be construed as a determination by the City Auditor regarding whether the proposed measure falls within the municipal initiative power or otherwise satisfies requirements that are committed by law to the determination of the Clinton County Board of Elections.

AUG 4 2026 AM 10:40
FILED CLINTON CO BOE



69 North South Street, Wilmington, Ohio 45177
Telephone: 937-382-6604 Fax: 937-383-0169

Office of the City Auditor

City Auditor

Mary Kay Vance
(937) 382-6604

mvance@wilmingtonohio.gov

Deputy Auditor

Donyel Riley
(937) 382-6604

driley@wilmingtonohio.gov

I, Mary Kay Vance, Auditor for the City of Wilmington am transmitting the following items to the Clinton County Board of Elections:

TRANSMITTAL LIST	Qty	BoE	CoW
Cover Page: Auditor Certification/Acknowledgement of Receipt	1	<i>alb</i>	<i>msl</i>
Petition 260700-1: An Ordinance Enacting Chapter 1161 of the Zoning Code of the City of Wilmington, Ohio, Regulating Data Centers and Data Center Campuses	32 parts	<i>alb</i>	<i>msl</i>

ACKNOWLEDGEMENT OF RECEIPT

The Clinton County Board of Elections acknowledges receipt of the documents in the Transmittal List.

Andrea Tacoronte

Andrea Tacoronte, Director
Clinton County Board of Elections

8/4/2026

Date

Mary Kay Vance

Mary Kay Vance, Auditor, City of Wilmington

8/4/26

Date

AUG 4 2026 AM 10:39
FILED CLINTON CO BOE

EXHIBIT E

August 12, 2026



TO: Secretary of State, Elections Division
Law Director, City of Wilmington
Quintin Koger-Kidd, Petitioner
VIA: Email

RE: Notice of Determination of Initiative pursuant to RC 3501.38(M)(2)
An Initiative to Enact Chapter 1161 of the Zoning Code of the City of Wilmington, Ohio,
Regulating Data Centers and Data Center Campuses

To Whom It May Concern:

The Clinton County Board of Elections (BOE) met in special session at 9:00 a.m. on the 12th day of August 2026 in the Community Room at the Clinton County Annex Building, 111 S Nelson Ave, Wilmington, OH 45177, for the purpose of certifying questions and issues to the November 3, 2026, general election ballot. The following members were present:

Steve Fricke, Chairman – Present

Jay Peterson, Present

Terri Thobaben - Present

Barbara Saville, Present

There was presented a petition for an initiative “AN INITIATIVE TO ENACT CHAPTER 1161 OF THE ZONING CODE OF THE CITY OF WILMINGTON, OHIO, REGULATING DATA CENTERS AND DATA CENTER CAMPUSES.”

The board noted the following:

- The BOE staff reviewed the petition, examined the signatures, and determined there is a sufficient number of valid signatures.
- The BOE must “Examine each initiative petition...received by the board to determine whether the petition falls within the scope of authority to enact via initiative... the petition shall be invalid if any portion of the petition is not within the initiative power.” R.C. 3501.11 (K)(2).
- The proposed initiative would enact a detailed new chapter of the Wilmington Zoning Code regulating data centers. The Initiative addresses traditional zoning subjects, including permitted locations, setbacks, noise, water use, generators, traffic, environmental impacts, emergency planning, enforcement, and decommissioning.
- Section §1161.25, is captioned “Private Right of Action and Citizen Enforcement.” That section expressly states that it is intended to confer a private right of action. It authorizes designated residents and property owners the right to sue data-center applicants, owners, and operators; establishes pre-suit notice requirements; creates limitation and repose

periods; authorizes declaratory and injunctive relief, operational suspension, mitigation orders, and civil penalties; and permits attorney and expert-witness fees.

- On July 30, Wilmington Law Director Desmond Cullimore submitted a written objection to the initiative and requested the BOE:
 - Determine whether proposed Section 1161.25 creates a new private cause of action;
 - Determine whether Wilmington has legislative authority to create that cause of action;
 - Apply *State ex rel. Bolzenius v. Preisse*, 155 Ohio St.3d 45, 2018-Ohio-3708, 119 N.E.3d 358. ¶¶8-13;
 - Determine whether the petition is invalid under R.C. 3501.38(M)(1)(1) and 3501.39(A)(3); and
 - Provide written notice of the Board's determination to the petitioners and the City.
- Legal counsel provided by FBT Gibbons has advised the BOE that the Initiative (§1161.25) creates a new private civil cause of action that Wilmington lacks legislative authority to enact.

Jay Peterson moved the above initiative not be certified to appear on the ballot for the November 3, 2026, General Election. Terri Thobaben seconded the motion.

A discussion ensued, with the following points:

- The board has a responsibility to review the initiative on whether it falls within the scope of the city's authority to enact legislation.
- Any decision must be made independent of the topic of the initiative.
- The board recognizes the effort involved in drafting the initiative, acknowledges its good points, and respects the work involved in gathering the necessary signatures.

Roll call vote: Peterson, yes; Thobaben, yes; Saville, yes; Fricke, yes. Motion carried 4-0.

If you have any questions regarding this Notice of Determination, please do not hesitate to reach out to me at 937-382-3537 or by email at tacoronte.andrea@clinton.oh.gov.

Sincerely,



Andrea Tacoronte

Director