Potential Development Moratorium for Data Centers

City Council Meeting

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Potential Development Moratorium for Data Centers

Key Takeaways

- Data Centers have been shown to produce intensive impacts on local electric and water utilities and may pose significant impacts to neighboring properties.
- The City currently lacks a definition for this land use as well as concrete policies, strategies and tools to effectively manage the impacts of these uses.
- Lack of direction resulting in uncertainty for developers, staff and community members.
- The City needs sufficient time to study this land use and zone for it appropriately.

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Potential Development Moratorium for Data Centers

Need

- To effectively respond and provide some level of certainty and to determine locations and special standards for this use, City needs to create a land use definition, enhance its land use policies, tools and strategies to better regulate this land use.

- Consideration of new data center development applications should be suspended to provide the time needed to determine impacts and remedies.

Potential Development Moratorium for Data Centers | Defining Data Centers

- This moratorium would apply to any new development, use, or change of use that would reasonably fall under NAICS Code 518210 (Data Processing, Hosting, and Related Services), or any facility functionally equivalent to such uses.

- This moratorium would not apply to data processing equipment or server rooms that are clearly incidental and subordinate to a permitted principal use so long as such data processing activities are not offered as a primary service to off-site users.

Legal Overview - Moratoriums in NC

North Carolina law allows cities such Asheville to place a temporary moratorium on certain development approvals required by law.

Ordinance Elements - N.C. General Statute §160D-107(a)

- Must have a valid purpose, and definition of the affected approvals.
- Duration must be reasonable, and may not exceed time needed to address the issue. Alternative courses of action are inadequate.
- Ordinance must show City's remediation schedule/actions.

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Valid Purpose / Definition

NCGS §160D-107(d)(1) - A moratorium ordinance must clearly state the reasons for the moratorium.

Asheville's Purpose

- To allow for development of regulations for this particular land use in order to mitigate unforeseen and disproportionate negative impacts of data centers.

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Duration

NCGS §160D-107(d)(3) - A moratorium ordinance must have a termination date and explain why duration is necessary to address the problem.

Limitation

- U.S. Supreme Court has suggested durations over a year will warrant skepticism.

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Moratorium Schedule/Actions to be taken

NCGS §160D-107(d)(4) - A moratorium ordinance must include the schedule of the actions to be taken to address the problem.

Staff Proposal

- PUD Staff propose a 4 phased approach resulting in new regulations for review and consideration by City Council and its advisory boards and committees.

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Process

- Initial review by the City Council PEDE Committee;
- Legal notices have already been published;
- Required City Council public hearing - June 23rd;
- Councill may act to adopt the ordinance at the same meeting;
- If adopted, it would be effective immediately.

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Development Moratoria

Legal Summary

- The City may impose a moratorium on data center development
- Duration should be 1 year or less
- Council must conduct a public hearing, and adopt an ordinance
- Time to be used to develop a policy for future data center applications
- Any data center with a pre-existing vested right will be unaffected

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Development Moratoria | Planned Actions

1

PHASE ONE 90 DAYS

RESEARCH & DEVELOPMENT

Scope of Activities:

Establish the official project team and compile a formal report with initial staff recommendations.

Milestones:

- Initial Report & Recommendations.
- Communications & Engagement Planning

2

PHASE TWO 120 DAYS

SELECTED ENGAGEMENT

Scope of Activities:

Deploy localized public outreach and targeted communications protocols.

Milestones:

Execute official C&E strategies and summarize centralized feedback.

3

PHASE THREE 65 DAYS

ORDINANCE DRAFTING

Scope of Activities:

Incorporate findings and feedback to create zoning requirements for Data Centers.

Milestones:

- Technical Review Committee (TRC)
- Formal Legislative Ordinances.

4

PHASE FOUR 90 DAYS

HEARINGS & ADOPTION

Scope of Activities:

Present complete regulatory drafts to required and appropriate City advisory boards.

Milestones:

Secure Planning & Zoning Recommendation final City Council adoption vote.

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Staff Recommendations for Council Consideration

Decisions for City Council	Staff Recommendations
Should the City implement the moratorium?	Yes, following the process recommended above
Moratorium scope (development category)?	Data Centers of All Types and Sizes (Primary uses that fall under NAICS Code 518210)
Alternative options inadequate?	Yes, more time is needed to develop a policy
Duration?	A one-year duration is recommended

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