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QUESTIONS

for Legally Defensible Data Center Regulations



Planning for the Future of
Lehigh and Northampton Counties

A national data center boom now includes several hyperscale centers proposed for the Lehigh Valley, forcing communities to move quickly to install regulations designed to mitigate the impacts. Dozens of municipalities have used the Lehigh County Industrial Land Use Guide to draft new data center ordinances, but as the landscape evolves quickly, constant vigilance and reeducation is needed.

The Pennsylvania Municipalities Planning Code (MPC) gives municipalities broad authority to regulate the local land use impacts of data centers through zoning and subdivision and land development ordinances. That authority, however, has limits. Municipal regulations are most defensible when they address measurable impacts, rely on objective standards, respond proportionally to local conditions and preserve the responsibilities of utilities and other regulatory agencies.

Use the following five questions to screen proposed ordinance requirements.

1

Are we regulating a land use impact?



Best Practice: Regulate the impact, not the industry.

The MPC (§603(b)) authorizes municipalities to regulate land uses, development density and intensity, and protect water supplies and natural resources. Appropriate zoning subjects include:

- ☐ Noise and lighting
- ☐ Building scale, height and setbacks
- ☐ Traffic and emergency access
- ☐ Water demand
- ☐ Landscaping and buffering
- ☐ Location of mechanical and electrical equipment
- ☐ Environmental and land use compatibility

Exercise caution when a requirement moves beyond measurable land use impacts and instead attempts to control market activity or internal business operations, determine electric rates or regional grid reliability, direct the design of regulated utility systems, or mandate particular technologies.

2

Does another regulator have primary responsibility?



Best Practice: Avoid duplicating or predetermining another regulator's decision.

The MPC (§603(b)) subjects zoning authority to federal or state law preemption. Determine whether the issue falls primarily within the jurisdiction of another entity, such as:

- ☐ Pennsylvania Public Utility Commission
- ☐ Pennsylvania Department of Environmental Protection
- ☐ Delaware River Basin Commission
- ☐ Pennsylvania Department of Transportation
- ☐ Pennsylvania, New Jersey and Maryland (PJM) Interconnection
- ☐ Uniform Construction Code officials
- ☐ U.S. Environmental Protection Agency
- ☐ Another state or federal agency

If any of the above has regulatory authority, it is unlikely that the local or county government can supercede the entities power. Local or county government may be able to comment or coordinate on a permit or plan, but not decide.

3

Is the standard objective and measurable?



Best Practice: Compliance can be identified before an application is submitted.

An applicant, municipal official and member of the public should be able to determine what constitutes compliance before an application is submitted.

For example, noise ordinance provisions specifying that “Maximum sound shall not exceed [noise level] dBA when measured at [specific location, such as property line]” and specify a particular methodology or industry standard to follow as appropriate.

Avoid relying solely on subjective or qualitative requirements, such as “The facility shall not adversely affect the community.” Conditional uses and special exceptions must be evaluated using express standards and criteria (§603(c)(2), §912.1, §913.2(a)). Generalized references to health, safety or community welfare may support an ordinance’s purpose, but they should not substitute for measurable approval standards.

4

Is the requirement proportional to the impact?



Best Practice: Evaluate if a requirement is or would be imposed on another land use creating the same impact.

The MPC directs zoning provisions to serve legitimate purposes and requires uniform regulation (§604, 605). Aspects of a specific land use should not necessarily be treated differently solely because it serves a data center. Different standards may be appropriate when data centers create meaningfully different impacts. The municipality should be able to identify that difference and explain how the requirement responds to it. Clearly defined zoning, subdivision and land development provisions support a fair and impartial process.

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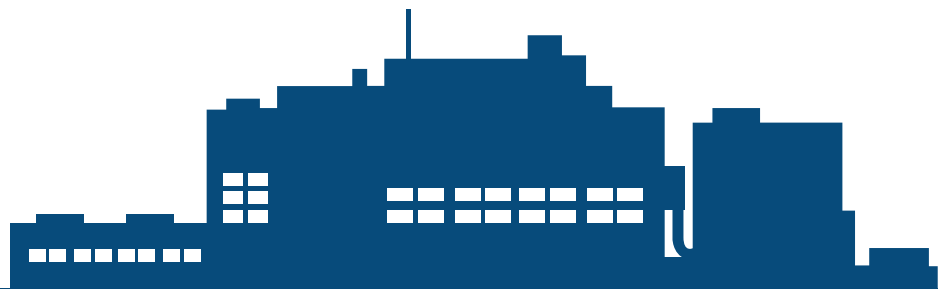
Does the ordinance leave a reasonable place for the use?



Best Practice: Map the standards before adopting them.

A data center may appear to be permitted through ordinance provisions while being effectively prohibited through the combined effect of:

- ☐ Minimum acreage
- ☐ Setbacks
- ☐ Sensitive receptor separation
- ☐ Height limits
- ☐ Utility requirements
- ☐ Environmental constraints
- ☐ District boundaries



Test all proposed requirements together against actual parcels and development conditions. Pennsylvania courts recognize de facto exclusion when an ordinance nominally permits a legitimate land use but makes the use impossible through its cumulative requirements.

Have a question? Need a resource or more information?



**615 Waterfront Dr Ste 201
Allentown, PA 18102
(610) 264-4544
Planning@lvpc.org**

LVPC.org

This is planning guidance, not a legal opinion, and proposed regulations should be reviewed by the municipal solicitor.