

Dear Councilmembers and Mr. County Executive,

I urge you to pause all data center permitting until the county has created a responsible regulatory framework for them.

The proposed ZTA 26-01 is a useful start in the process; however it is missing a number of key items and in many ways relies on vague, poorly defined language that allows significant wiggle room for noncompliance with the spirit of the ZTA. For example, when it comes to negative impacts, the bill uses the language “minimize to the maximum extent practicable.” Who determines what extent is practicable? The applicant? We would prefer a) “minimize to the maximum extent reasonably possible” for general nuisance clauses and b) requirements to avoid altogether emissions from the data center that could make surrounding areas uninhabitable for residents (as set out below).

In another example of this ZTA not being ready for passage, it does not deal at all with the critical question of primary power source for data centers.

I recommend the following amendments to the proposed legislative text. Section numbers below refer to the ZTA 26-01:

Section 3.1.6, as proposed:

- * The new category for Data Centers should be moved out of the communications facilities group and into its own standalone category, 3.6.10, which is the group for industrial uses.
- * Data centers should only be allowed as a conditional use only in the IH (heavy industrial) zone only (not all industrial zones).

Rationale:

There are currently three types of industrial zones in the zoning code: light (IL), moderate (IM), and heavy (IH), as set out in section 4.8.1. The definitions of light and moderate specifically disqualify data centers.

4.8.1.A sets out the definition of light industrial, which clearly does not match data centers:

“The IL zone is intended to provide land for industrial activities where major transportation

links are not typically necessary and noise, dust, vibration, glare, odors, and other adverse environmental impacts are usually minimal.” [emphasis added]

Data centers are widely recognized to create vibration and other adverse environmental impacts that are not minimal.

4.8.1.B sets out the definition of moderate industrial, which clearly does not match data centers:

“The IM zone is intended to provide land for industrial activities where major transportation links are not typically necessary and noise, dust, vibration, glare, odors, and other adverse environmental impacts are usually minimal.” [emphasis added]

4.8.1.C squarely fits the definition of a data center:

The IH zone is intended to provide land for industrial activities that usually need major transportation links to highways or rail and may create significant noise, dust, vibration, glare, odors, and other adverse environmental impacts. [emphasis added]

Property owners in areas surrounding IL and IM zones never expected to have heavy (IH) uses near their property. These property owners have a reliance interest on the existing zoning code and would be adversely affected – including without limitation their property values decreased – if the Council acts in a manner inconsistent with the zoning code.

section 3.5.2.B, as proposed:

Sec B.2

Conditional use hearings must be subject to a public OZAH process

Sec B.2.a

Minimum setback from a residential zone should be 3 miles

Rationale: vibration, sound, and infrasound reported at least 2.5 miles away from data centers. Therefore I propose 3 miles to reflect a safety margin.

Sec B.2.b.vi <http://b.2.b.vi/>

Add subparagraph vi with the following text:

Will not cause an increase in electromagnetic fields above baseline levels, between zero and 300 GHz, on properties

Sec B.2.d

Noise standards must include audible range (20 Hz-20 kHz) and sub-audible range (0-20 Hz).

Sec B.2.e

- * Label this section as “Energy Standards”.
- * Insert new subparagraph (i). Energy source. Require that data centers are not connected to the electric grid used by residential ratepayers. This requirement can be met either by having on-site electricity generation, or with off-site generation having dedicated transmission lines not shared by other users. These transmission lines should be buried to minimize impacts on surrounding residential areas, must be compliant with the National Electrical Safety Code, and must comply with the standards set out above in section 2.b.vi <http://2.b.vi/> , as proposed.
- * Make the current text subparagraph (ii), labeled Generator Standards.

Add Sec 3

3.a Ongoing monitoring and compliance

The data center owner/permittee should pay for measurement at baseline, post construction, and on an ongoing basis thereafter to ensure adherence with any representations made during the application process, including without limitation, the electromagnetic field conditions set out in section 2.b.vi <http://2.b.vi/> above and the noise standards in section 2.d (as proposed above). Permit applications should include a simulation of the expected electromagnetic field levels on the site and surrounding areas. All items from this paragraph will be posted online for public access.

Bill 4-26

If the Council decides to pass this bill alone, or in addition to the ZTA, we recommend the following amendments:

Sec 8-58.a.1.C should read:

potential environmental noise and electromagnetic impacts; and

8-59.c.8 and 9: one representative each, from a civic association and an environmental group, should be appointed by the Council and one by the County Executive

8-60.a.3

the potential environmental impact of data centers on air, water, the electromagnetic environment, and woodland quality and supply in the County, including recommended measures to mitigate negative impacts;

We note the following regarding both the ZTA and bill:

* Unlike cell towers that provide personal wireless services, data centers are not subject to federal preemption with respect to their electromagnetic radiation footprint. Therefore the County and the state of Maryland are free to regulate data centers on the basis of health effects of electromagnetic impacts.

* We are still formulating our position on this complex issue and may contribute additional comments as the text moves through the legislative process.

Data centers are an integral part of our modern life – transporting this very letter to the Council and providing the Internet content and services we rely on every day. They are not benign, however. Just as we rely on certain chemicals for everyday life, we would not locate a plant handling toxic chemicals in a residential zone. So too must we take care to locate data centers responsibly.

Montgomery County has little experience with data centers – communities with more experience around the country are rejecting them because they were not deployed responsibly. We urge the Council not to repeat these mistakes.

Sincerely,

Katherine Katzin