



# **BURLEIGH COUNTY ZONING ORDINANCE**

**INCLUDES ALL AMENDMENTS THROUGH JANUARY 1, 2026**

- h. Roof-mounted solar systems shall not exceed the maximum allowed height in any zoning district.
- i. All exterior electrical and plumbing lines, batteries, and other appurtenant features serving a building-mounted accessory solar energy system shall be buried, screened or landscape buffered. This provision does not apply to a solar collector.
- j. The non-collecting side of a solar collector and other appurtenant features of any freestanding accessory solar energy system shall be screened from view of said public right-of-way with landscape buffer and/or fencing.
- k. Commercial rooftop systems shall be placed on the roof to limit visibility from the public right-of-way or to blend into the roof design, provided that minimizing visibility still allows the property owner to reasonably capture solar energy.
- l. Setbacks. All equipment and structures shall meet the setback and coverage limitations for the zoning district in which the system is located. No freestanding accessory solar energy system may extend into or over a legally recorded easement.
- m. Additional conditions or specific allowances to this ordinance may be considered in the review and approval of the Special Use Permit.

10. Fees:

The special use permit fee will be based on .001 x Total Project Cost. An application fee of \$1000 shall be payable at the time of application for a special use permit, with the remainder of the special use permit fee remitted by the applicant prior to commencement of construction. Or:

- a. \$300.00 whichever is greater.

**Section 30 - Data Center / AI Conversion Facilities**

This section is adopted to allow data centers/AI conversion facilities within Burleigh County and to minimize the potential off-site impacts of development and reduce long-term exposure that may impact the public safety, health and the general welfare of Burleigh County residents.

DEFINITIONS

The following words, terms and phrases, when used in this Article and Section, shall have the meaning provided herein, except where the context clearly indicates otherwise:

1. Blockchain- a digital record of all the transactions involving cryptocurrency. Copies of the blockchain are stored and maintained by computers around the world.
2. Cryptocurrency- a type of decentralized digital currency in which encryption techniques are used to regulate the generation of units of currency and verify the transfer of funds.

3. Cryptocurrency Data Center - Leased or owned boundaries of floor space devoted to the operating data processing equipment for Commercial Cryptocurrency Mining; excluded spaces for commercial offices, storage, shipping and receiving warehousing, or any other space that is not electronic processing.
4. Cryptocurrency Server Farm- Three or more interconnected computers held together in a single facility whose primary function is to perform cryptocurrency mining or associated data processing.
5. Data Center- a facility containing large amounts of computer systems, servers, networking equipment, and storage infrastructure primarily for the purpose of remote storage, processing, or distribution of large amounts of data. A typical data center may include functions such as cryptocurrency mining, cloud AI functions, hyperscale cloud functions, but are not limited to such examples. Any equipment requiring a High-Density Load Service, for a server farm or data center, will constitute a commercial cryptocurrency mining application.
6. Data Center/ AI Conversion Facility- a data center that is converted and used to support artificial intelligence.
7. Digital Asset Mining- means using computer hardware and software specifically designed or used for the purpose of validating data and securing a blockchain network.
8. Digital Asset Mining - Business - means an individual or company operating a digital asset mining facility that cumulatively draws more than one megawatt of power in the County.
9. High Density Load Service - The provision of electrical service where the requested load density has, for any monthly billing period, either an average power demand in excess of 300 kilowatts OR an average power density in excess of 250 kilowatt-hours per year per data center square foot, equivalent to 35.064 square feet per kilowatt, at 100% load factor.
10. Owner- Any person, agent, operator, entity, firm or corporation having any legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding an interest or title to the property; or otherwise having possession or control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.
11. Sensitive Properties - Buildings, amenity areas, or outdoor spaces where routine or normal activities occurring at reasonably expected times would experience one or more adverse effects from noise or contaminant discharges generated by a nearby facility.

## I. APPLICABILITY

These regulations are for Data Center Facilities on properties and structures under the jurisdiction of the Burleigh County Zoning Ordinance and are applicable to Data Centers

requiring consistent electric loads of 50MW or greater. The installation or construction of a data center, or any modification to a lawfully existing data center beyond routine maintenance, requires a Special Use Permit and also requires a Burleigh County Building Permit obtained from the Burleigh County Building, Planning and Zoning Department.

Data centers may only be permitted in an Industrial (I) District with a Special Use Permit.

- a. A landscape buffer of 50' shall be required as measured from the interior of all property lines.

1. Application Requirements:

The application for the installation or construction of a data center, or for modifications to a lawfully existing data center beyond routine maintenance, shall follow the application procedures for Special Use Permits Article 8 and any other procedures as may be required by this Ordinance for data centers, such as zoning map amendments, platting, or variances. In addition, applications shall include the following:

- a. Applicant name(s) and contact information. The applicant must also identify on the application, the owner/owners of record for the property.
- b. A description of the proposed project, including a description of how the project meets market demand, the facility's processing capacity, and the facility's anticipated water and electricity needs.
- c. A study prepared by an acoustical engineer that describes the anticipated noise level of the facility and any proposed mitigation efforts such as sound walls, baffles, ventilation silencers, etc.
- d. A preliminary site plan: a digital copy of site plan (pdf format, full size) at 1" = 20' or larger scale, if integral to request, for both existing and proposed conditions showing the location and dimensions of all existing and proposed structures, screening, fencing, a photometric plan that shows all exterior lighting, including any security lighting, electrical connections, property lines, and roadway access, including:
  - i. Date the site plan was prepared,
  - ii. North point indication,
  - iii. Section, township and range numbers,
  - iv. A location map inset showing the township(s) in which the project is located and the boundary of the proposed project,
  - v. Location of all existing public roads, dimensions and location of any utility easements and rights-of-way within five hundred (500) feet of proposed Data Center.
- e. A map of the project area showing all single-family and multi-family dwellings, schools, churches, synagogues, and other similar religious institution or structures,

and public parks located within one (1) mile of the exterior boundaries of the property where the data center will be located.

- f. Installation or construction of a data center, or any modifications to a lawfully existing data center beyond routine maintenance, also requires a building permit obtained from Burleigh County Building Department.
- g. Data centers may only be permitted in an I- Industrial District with a Special Use Permit.
- h. Fees:

The special use permit fee will be based on  $.001 \times \text{Total Project}$  up to a maximum permit fee of \$250,000. An application fee of \$1,000 shall be payable at the time of application for a special use permit, with the remainder of the special use permit fee remitted by the applicant prior to issuance of building permits and commencement of construction. Or: \$300.00 whichever is greater

- i. Copies of signed permits or other documentation that indicates compliance with all applicable State and Federal laws, statutes, rules, regulatory standards, including but not limited to the North Dakota State Electrical Board.
- j. Copy of the signed electrical power purchase agreement.
- k. Financial security for the following:
  - i. Financial security for maintenance of the data center, as fully constructed and operational or, if the project only involves modifications to a lawfully existing data center beyond routine maintenance as permitted by this Ordinance, financial security for maintenance of the lawfully existing data center as modified. The financial security shall be in the amount of 75% of the estimated cost to maintain the data center, as fully constructed and operational, or as modified, as determined by the applicant's ND State registered engineer, with such estimated costs subject to review and approval by the Burleigh County Building Department; and
  - ii. Financial security for reclamation and restoration of any data center and the property on which the data center is located or, if the project only involves modifications to a lawfully existing data center beyond routine maintenance as permitted by this Ordinance, financial security for reclamation and restoration of the property on which the data center as modified is located. Reclamation and restoration shall include, but is not limited to, the removal and disposal of all above-ground structures, underground structures, and utilities to depth of four feet, and the removal and disposal of all other facilities, structures, equipment, and materials on or under the property. The financial security shall be in the amount of 75% of the estimated cost to reclaim and restore property on which the data center, or the data center as modified, is located as determined by the applicant's ND State registered engineer, with such

estimated costs subject to review and approval of the Burleigh County Building Department.

- iii. Any financial security provided by the applicant which is required by this Chapter shall be subject to review and approval by the County and be in the form of one or more of the following:
  - a. An irrevocable letter of credit issued by an FDIC insured financial institution authorized to do business in the State of North Dakota to be effective beginning on the date that installation and/or construction of, or the approved modifications to, the data center start and provides for annual automatic renewals continuing to the date when full reclamation and restoration is complete as approved by the County;
  - b. A surety bond which is effective beginning on the date that installation and/or construction of, or the approved modifications to, the data center start and provides for annual automatic renewals continuing to the date when full reclamation and restoration is complete as approved by the County; and/or;
  - c. Cash in escrow to be held in trust by Burleigh County effective beginning on the date that installation and/or construction of, or the approved modifications to, the data center start and continuing to the date when full reclamation and restoration is complete as approved by the County.
- iv. The financial security required above shall be provided to Burleigh County prior to commencement of any work to install and/or construct the data center, or to modify a lawfully existing data center beyond routine maintenance, but no later than the date determined by the Board of County Commissioners in approving the data center or in approving the modifications to a lawfully existing data center beyond routine maintenance.

- I. Other relevant studies, reports, certifications, or approvals as may be required by the County to ensure compliance with this Chapter and this Ordinance.

## 2. Prohibitions:

The County prohibits data center facilities located within:

- a. All Floodplain Districts and Designated SFHA Areas.

## 3. Design Standards

1. Data Centers or Cryptocurrency Data Centers shall be set back at least one (1) mile to all sensitive properties, such as: single-family and multi-family dwellings, schools, churches, synagogues, and other similar religious institution or structures, and public

- parks as measured from the nearest property line of any of these sensitive properties to the data center's exterior property lines.
2. Height. All buildings, structures, and appurtenances on the property where the data center will be located shall meet the height requirements of the Industrial I District in this Ordinance.
  3. Electrical wiring. All electrical wiring shall comply with the standards of the North Dakota State Electrical Board, and any of its rules and regulations.
  4. Generator testing is limited to between 11:00 a.m. and 5:00 p.m.
  5. Generator use is limited to backup/emergency use only.
  6. Building Permit. At the time of SUP approval, a building permit for all proposed structures will be required. Permit information shall include: Applicant name(s) and contact. The applicant must also identify on the application contact information for the owner/owners of record for the property.
  7. The facility will be required to obtain an NDDEQ permit if they discharge water to surface waters.
  8. Written verification is submitted from the utility provider that sufficient capacity will be available to meet anticipated needs for electrical power.
  9. Security fencing: A secured chain link or solid wood or masonry fence at least six (6) feet in height shall be constructed and maintained around the entire perimeter of the facility to prevent unauthorized entry onto the property or into the facility. Any fencing shall comply with the Development Standards in this Ordinance.
  10. Buffering and screening: Landscaped buffers shall be required around the entire perimeter of the property where the data center is located in accordance with the requirements of this Ordinance.
  11. Sound: The operators shall not cause, allow, or permit the operation of any source of sound which creates at an occupied residential building or a defined sensitive property, as may exist at the time of the issuance of a certificate of occupancy, a sound level that exceeds a daytime continuous sound level of 50 dBA or a nighttime continuous sound level of 45 dBA, for any 15-minute measurement interval unless otherwise permitted.
    - a. The operators shall not cause, allow, or permit the operation of any source of sound which creates a pure tone where the one-third ( $\frac{1}{3}$ ) octave band sound pressure level in the band of interest exceeds the arithmetic average of the sound-pressure levels for the two adjacent one-third octave bands by the corresponding decibel (dB (Flat)) values as follows:
      - i. 5 db for center frequencies of 500 Hertz and above,
      - ii. 8 db for center frequencies between and including 160 and 400 Hertz,
      - iii. 15 db for center frequencies less than or equal to 125 Hertz iv.A pure tone shall be deemed present at measurement.
  12. Noises - Sound: The applicant shall provide written verification and documents prepared by a registered design professional in the form of a noise study as

- measured from the exterior property line of the subject parcel to the exterior property line of any defined sensitive properties as certified by a licensed acoustical engineer, including manufacturer specifications, anticipated noise level of the facility will not exceed the maximum auditory decibel level as stated in Section 11 of this article, and any data from comparable facilities or combination thereof.
13. A Data Center operation shall provide a 24-hour emergency contact signage visible at the access entrance. Signs shall include company name if applicable, owner/representative name, telephone number, and corresponding local power company.
  14. All outdoor light fixtures shall be installed in a manner intended to limit the amount of off-site impacts. Light fixtures located near adjacent properties may require special shielding devices to prevent light trespass.
  15. Accessory structures and appurtenances: All accessory structures or appurtenances, including those constructed for noise mitigation, shall be designed in a manner that is complementary with the primary building(s) and shall be finished in a non-obtrusive color.
  16. Roads: All adjacent exterior access roads serving a data center shall conform to the Development Standards in this Ordinance and Article 33. Exterior road construction or improvements shall be subject to approval by the Burleigh County Highway Engineer or their designee. A road maintenance agreement with any government entity having jurisdiction over the adjacent exterior access roads shall be required during installation or construction of the data center, or during modification of a lawfully existing data center beyond routine maintenance. All interior roads serving the data center shall be subject to review by the Burleigh County Fire Department to ensure safe and adequate access for emergency response vehicles.
  17. Storm Drainage, Erosion Control, Grading, Drainage and Stormwater Management Permit for the data center shall comply with the requirements in Article 33 of this Ordinance.
  18. Additional conditions or specific allowances to this ordinance may be considered in the review and approval of the Special Use Permit.
  19. Development Agreement: The owner of record of the property, or the owner's representative of the data center and of the property on which the data center will be located, as determined appropriate by Burleigh County, must sign a development agreement which shall include provisions related to, but are not limited to, the posting and use of financial security, exterior and interior road construction or improvement, road maintenance, improvements related to storm drainage, stormwater management plan, erosion control, grading, and drainage, reclamation and restoration, and/or any other condition imposed by this Chapter, this Ordinance, or the Board of County Commissioners in approving installation of construction of the data center or modifications to a lawfully existing data center beyond routine maintenance.

#### IV. Decommissioning Plan:

1. It is the responsibility of the original applicant, or if different, the owner of record of the property, to notify Burleigh County in writing, at least six (6) months in advance, of the intent to abandon or cease operations of the data center. Any data center that is not operated for a continuous period of six (6) months shall automatically be considered abandoned, and Burleigh County may require the original applicant, or if different, the record owner of the property, the occupant or lessee of the property, and the operator of the data center to reclaim and restore the property within ninety (90) days after written notice to reclaim and restore the property from Burleigh County. Any such reclamation and restoration shall include, but is not limited to, removal and disposal of all above-ground structures, underground structures, and utilities to depth of four feet, and removal and disposal of all other facilities, structures, equipment, and materials on or under the property. If the property is not fully reclaimed and restored as required by this Article within ninety (90) days after written notice from Burleigh County, the County may reclaim and restore the property, or cause the property to be reclaimed and restored, including, but not limited to, removal and disposal of all aboveground structures, underground structures, and utilities to depth of four feet, and removal and disposal of all other facilities, structures, equipment, and materials on or under the property and recover costs directly from the original applicant, or if different, the record owner of the property, the occupant or lessee of the property, and/or the operator of the data center. Burleigh County may also, in its discretion, recover such costs, by access to and use of the financial security provided and on file for the data center, or by lien or special assessment, or any other remedy, authorized by law or the Development Agreement entered into under this Article. Nothing in this Article is intended to impose a mandatory obligation on Burleigh County to reclaim and restore the property.

After a decommissioning process has been completed, the I-Industrial Zoning District of the property shall automatically be transferred back to the pre-existing zoning, prior to the issuance of the special use permit.

### **Section 31 - Agricultural Recreation**

Agricultural Recreation may be permitted in an Agricultural District as a special use. All persons, entities or organizations wishing to establish the use of Agricultural Recreation within Burleigh County must apply for a special use permit.

1. Definitions.