

ORDINANCE NO. _____
KINGSBURY COUNTY, SOUTH DAKOTA

AN ORDINANCE AMENDING THE KINGSBURY COUNTY ZONING ORDINANCE (ORDINANCE #45) TO ADD A DEFINITION OF DATA PROCESSING CENTER (DATA CENTER) TO ARTICLE II; TO ALLOW DATA PROCESSING CENTERS AS A CONDITIONAL USE IN THE “A” AGRICULTURAL LAND DISTRICT AND THE “CI” COMMERCIAL/INDUSTRIAL DISTRICT; AND TO ADD CHAPTER 5.39 (DATA CENTERS) ESTABLISHING SITING, NOISE, AND OTHER PERFORMANCE STANDARDS GOVERNING DATA PROCESSING CENTERS.

PURPOSE AND INTENT

The Kingsbury County Planning Commission recommends approval of the following amendment to the Kingsbury County Zoning Ordinance to the Board of County Commissioners for the unincorporated jurisdictional areas of Kingsbury County, South Dakota. Kingsbury County presently has no ordinance regulating data centers or data processing centers. The purpose of this Ordinance is to permit such facilities as a conditional use while protecting public health, safety, and the quality of life of County residents through siting, setback, noise, utility, and decommissioning standards. The Board of County Commissioners may amend this Ordinance in the future as circumstances warrant.

BE IT ORDAINED by the Board of County Commissioners of Kingsbury County, South Dakota:

Section 1. Amendment of Article II (Definitions).

Article II (Definitions) of the Kingsbury County Zoning Ordinance is hereby amended to add the following definitions in proper alphabetical order:

Data Processing Center (Data Center). A building, dedicated space within a building, or group of structures, primarily used to house and maintain electronic hardware, computer systems and associated components, such as telecommunications and data processing systems, to be used for the remote storage, management, processing or distribution of electronic data. Examples of such data include, but are not limited to, computationally intensive applications such as blockchain technology, cryptocurrency mining, weather modeling, genome sequencing, and the like. Such facilities may also include air handlers, power generators, water cooling and storage facilities, utility substations and other associated utility infrastructure to support operations. A Data Processing Center includes any such facility regardless of whether it is also characterized, operated, or marketed as a service establishment, commercial service, utility, or other use.

Current Draft - Data Processing Center. A building, dedicated space within a building, or group of structures used to house a and maintain electronic hardware, computer systems and associated components, such as telecommunications and data processing systems, to be used for the remote storage, management, processing, or distribution of electronic data. Examples of such data include, but are not limited to, computationally-intensive applications such as blockchain technology, cryptocurrency mining, weather modeling, genome sequencing, etc. Such facilities may also include air handlers, power generators, water cooling and storage facilities, utility substations, and other associated utility infrastructure to support operations.

Sensitive Receptor(s). Schools, preschools, day care centers, in-home daycares, health facilities such as hospitals, long term care facilities, retirement and nursing homes, community centers, government buildings, places of worship, playgrounds, parks (excluding trails), campgrounds, dormitories, and any single-family or multi-family dwellings.

Unnecessary as residences, churches and schools are listed as receptors

Service Establishment. An establishment primarily engaged in providing a service to the general public or to other businesses, including but not limited to the services described within the definition of “Retail Sales and Trade.” A Data Processing Center (Data Center) is not a Service Establishment and is regulated exclusively under Chapter 5.39.

Unnecessary as the use is defined and is specified as a listed CUP in the AG and Commercial/Industrial zoning districts

The definition of “Retail Sales and Trade” in Article II is amended to add the following sentence at the end:

“This category does not include a Data Processing Center (Data Center), which is regulated exclusively under Chapter 5.39.”

Unnecessary as the use is defined and is specified as a listed CUP in the AG and Commercial/Industrial zoning districts

Section 2. Amendment of Section 4.01.02 (“A” Agricultural Land District — Conditional Uses).

Section 4.01.02 of the Kingsbury County Zoning Ordinance is hereby amended to add the following conditional use:

37. Data Processing Center (Data Center), provided it meets the requirements of Chapter 5.39.

Addressed in current draft

Section 3. Amendment of Section 4.02.02 (“CI” Commercial/Industrial District — Conditional Uses).

Section 4.02.02 of the Kingsbury County Zoning Ordinance is hereby amended to add the following conditional use:

32. Data Processing Center (Data Center), provided it meets the requirements of Chapter 5.39.

Addressed in current draft

Section 4. Adoption of Chapter 5.39 (Data Centers).

Article V of the Kingsbury County Zoning Ordinance is hereby amended by adding a new Chapter 5.39, to read as follows:

Addressed in current draft

CHAPTER 5.39. DATA CENTERS

Section 5.39.01. Intent.

The purpose of this Chapter is to guide the siting and operation of data centers in Kingsbury County in a manner that balances the benefits they bring with the need to protect public health, safety, and the overall quality of life for residents.

Section 5.39.02. Classification; Anti-Circumvention.

Any facility, building, dedicated space within a building, or group of structures that meets the definition of a Data Processing Center (Data Center) in Article II shall be regulated as a Data Processing Center under this Chapter and may be established, constructed, or expanded only as a conditional use in a district in which Data Processing Centers are listed as a conditional use, and only upon compliance with this Chapter — notwithstanding that the facility might also be characterized as a Service Establishment, Retail Sales and Trade use, commercial service, light manufacturing use, public or private utility, essential public service, or any other permitted, accessory, or conditional use under this Ordinance. No Data Processing Center shall be permitted, established, or expanded under any such alternative use classification in a manner that avoids the requirements of this Chapter.

Addressed in other sections of existing zoning ordinance

Section 5.39.03. Permitting.

The installation or construction of a Data Center, or any modification to a lawfully existing Data Center beyond routine maintenance, requires a Conditional Use Permit. Installation or construction of a Data Center, or any modification to a lawfully existing Data Center beyond routine maintenance, also requires a Kingsbury County building permit, issued by the Zoning Officer in accordance with Chapter 6.01. A Conditional Use Permit issued under this Chapter, together with all conditions attached to it, runs with the land and is binding on the permittees and their successors, lessees, and assigns. Failure to comply with any provision of this Chapter, or with any condition of the Conditional Use Permit, is a violation of the Kingsbury County Zoning Ordinance and is grounds for revocation, suspension, or modification of the Conditional Use Permit by the Board of Adjustment after notice and hearing, in addition to any other remedy available to the County.

Addressed in other sections of existing zoning ordinance

Section 5.39.04. Siting Requirements.

1. Data Processing Centers shall comply with the following requirements:
 - a. Generators. All electrical generators shall be enclosed behind a solid wall made of concrete or another equivalent sound-absorbing material a minimum of four (4) feet higher than the highest point on the generator. This requirement may be reduced or eliminated if the noise mitigation plan required by Section 5.39.07 demonstrates that sound levels attributable to the generators will not exceed the maximum permitted sound levels of Section 5.39.07.

- b. 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. Such fence shall comply with all other requirements of the Kingsbury County Zoning Ordinance.
 - c. Yard Requirements. The entire perimeter of the facility shall be separated from adjoining properties by a buffer yard and screening as determined by the Board of Adjustment. The front buffer yard shall be a minimum of one hundred fifty (150) feet, and the side and rear buffer yards shall each be a minimum of fifty (50) feet, measured from the property line, regardless of the district in which the Data Center is located.
 - d. Lighting. All exterior lighting shall be fully shielded and downcast, shall be directed away from adjoining properties and public rights-of-way, and shall be limited to the minimum intensity necessary for the safety and security of the facility. No exterior lighting shall cast direct glare onto any adjoining property.
 - e. Negative Impacts. Any use or activity producing air, dust, smoke, glare, exhaust, heat, or humidity in any form shall be carried on in such a manner that it is not perceptible at or beyond the property line of the Data Center.
2. Data Centers and all equipment and structures shall be set back at least one-half (1/2) mile (2,640 feet) from all Sensitive Receptors, as measured from the nearest point of any Data Center structure or equipment to the nearest property line of the parcel on which the Sensitive Receptor is located.
- a. Waiver from Distance / Variance. When an engineered, stamped design shows that the sound attributable to the proposed Data Center will comply with all maximum permitted sound levels of Section 5.39.07 (A-weighted, C-weighted, and Z-weighted) at every Sensitive Receptor and at every property line of the parcel on which the Data Center is located, the engineered, stamped design may be submitted to the Board of Adjustment requesting a waiver from distance / variance from the setback. Any waiver or variance granted shall be conditioned on continued compliance with Section 5.39.07 and shall not excuse compliance with any other requirement of this Chapter.

Current Draft Section 5.42.01. Siting Requirements

a. Data processing centers shall comply with the following:

- a. Fencing: A six (6) foot sight-obscuring fence shall be installed along the entire perimeter of the facility. Such fencing shall comply with all applicable requirements of the Kingsbury County Zoning Ordinance.

- b. Generator Enclosures: All electrical generators shall be enclosed by a solid wall constructed of concrete or an equivalent sound-absorbing material. The enclosure shall extend a minimum of four (4) feet above the highest point of the generator. This requirement may be reduced or waived if a noise mitigation plan is submitted in accordance with this Ordinance demonstrating compliance with applicable sound limits.
- c. Buffer Yards: The entire perimeter of the facility shall be screened from adjoining properties by a buffer yard.
 - i. Side and rear buffer yards: minimum fifty (50) feet
 - ii. Front buffer yard: minimum one hundred fifty (150) feet
- d. Setbacks: All equipment and structures shall be located
 - i. A minimum of fifty (50) feet from any property boundary; and
 - ii. A minimum setback of one-quarter ($\frac{1}{4}$) mile (1,320 feet) shall be maintained from any occupied residence, school, business, church and/or government building, measured from the property line of said structures to the nearest point of the proposed facility.

Section 5.42.09 Waiver/Exception: The Board of Adjustment may allow setback/separation distances and noise thresholds to be less than the requirements established in Sections 5.42.01 and 5.42.04 , if the affected owners of property agree to a lesser setback/separation distances and/or noise thresholds. If approved, such agreement is to be recorded and filed with the Kingsbury County Zoning Officer. Said agreement shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.

Section 5.39.05. Utility Notifications.

1. No grid-connected Data Processing Center shall be issued a permit until evidence has been provided by the operator that installation of the system has been approved by the electrical utility provider. Off-grid systems shall be exempt from this requirement. Written verification from the electric utility provider shall state the following:
 - a. Adequate capacity is available on the applicable supply lines and substation to serve the Data Center without impairing the capacity available to serve the other needs of the service area, consistent with normal projected load growth;
 - b. Utility supply equipment and related electrical infrastructure are sufficiently sized and can safely accommodate the proposed use;
 - c. The use will not cause electrical interference or fluctuations in line voltage on and off the operating premises;
 - d. Any system designed for cooling and operation of the facility (electricity, water, or other means) will be adequate and will not negatively impact the surrounding area;

- e. The energy storage capacity of the system used (if applicable) will be defined.
2. Within sixty (60) days of completion of construction, the owner or operator shall provide the County with written verification that the electrical work has passed a third-party final inspection.
3. The owner and/or operator of a grid-connected Data Center shall bear one hundred percent (100%) of all financial and legal responsibility for any and all public utility infrastructure upgrades including but not limited to electrical substations, transformers, high-capacity wiring, transmission lines, water mains, and wastewater system modifications required to safely accommodate the facility's operational load. The County shall not subsidize infrastructure expansions for Data Centers.

Current Draft Section 5.42.02. Electric Utility Notification

1. No grid-connected data processing center shall be issued a permit until the operator provides written verification from the applicable electric utility provider. Off-grid systems are exempt from this requirement.
2. The utility provider verification shall confirm:
 - a. Adequate capacity is available on supply lines and substations to serve the proposed facility while maintaining projected load growth for the service area;
 - b. Electrical infrastructure is properly sized and can safely accommodate the proposed use; and
 - c. The proposed use will not cause electrical interference or unacceptable voltage fluctuations on or off the site.

Section 5.39.06. Water.

1. The applicant shall demonstrate that the facility's anticipated water use and water runoff will not impair the water supply of, or cause pooling or contamination on, adjoining properties, in accordance with the submittal requirements of Section 5.39.12.
2. The applicant shall provide (a) evidence that the applicant has obtained, or has applied for, any water right permit required by state law from the South Dakota Department of Agriculture and Natural Resources (DANR) for the facility's anticipated water use; and (b) if the facility will be served by a rural water system, municipal system, or other water supplier, written verification from the supplier that adequate capacity is available to serve the facility without impairing service to existing customers.

Current Draft Section 5.42.03. Water Usage and Redundancy Requirements

1. Purpose. Data processing centers shall utilize water resources efficiently, minimize impacts on aquifers and water systems, and maintain operational resilience during service interruptions.
2. Applicability. This section applies to all new construction, expansion, or substantial modification of

data processing centers exceeding 10 megawatts of IT load

3. Water Efficiency Plan: All applicants shall submit a Water Efficiency Plan demonstrating:

- a. Estimated annual and peak water demand;
- b. Cooling system type and associated water consumption;
- c. Measures to minimize potable water use, including use of air-cooled or hybrid cooling systems, Closed-loop water systems (recycled water), or alternative non-potable sources where feasible.

4. Maximum Water Usage Requirements

- a. All data processing centers shall achieve and maintain a maximum annual Water Usage Effectiveness (WUE) of 0.05 gallons per kWh.

A minimum of 50% of the water used for cooling and mechanical systems shall be obtained from non-potable water sources such as reclaimed water or stormwater reuse unless the use of non-potable water is infeasible due to public health or technical constraints. This requirement may be reduced or eliminated upon submission and approval of a Water Use Mitigation Plan that, with the concurrence of the South Dakota Department of Agriculture and Natural Resources (DANR) and in accordance with all applicable requirements of the Kingsbury County Zoning Ordinance, demonstrates responsible water use and conservation practices.

- b. Use of potable water for cooling shall be minimized and may be restricted during drought or emergency conditions.
- c. Facilities must comply with all applicable drought restrictions and demonstrate operational adjustments under reduced water availability conditions.
- d. Data processing centers shall provide at least one of the following:
 - i. Dual independent water supply connections; or
 - ii. On-site water storage sufficient to maintain critical cooling operations for a minimum of [24–72] hours at peak load.

5. Monitoring and Reporting

- a. Operators shall install water metering systems capable of measuring:
 - i. Total facility water use;
 - ii. Cooling system water use; and
 - iii. Source type (potable vs. non-potable).
- b. An annual report shall be submitted to the county including:

- i. Total water consumption;
 - ii. Calculated WUE;
 - iii. Breakdown by source; and
 - iv. Measures taken to reduce water use.
 - v. Copy of annual SDDANR Surface Water Discharge Permit Report
- 6. Backup Cooling Capability. Facilities must be designed to maintain safe operating temperatures during water supply interruptions through:
 - a. Air-cooled backup systems;
 - b. Thermal storage systems; or
 - c. Equivalent approved technologies.
- 7. Emergency Operations Plan. Applicants shall submit an Emergency Water Supply and Cooling Plan including:
 - a. Procedures for water supply interruption;
 - b. Load shedding or operational scaling strategies;
 - c. Coordination with local utilities and emergency management.
- 8. Conditions of Approval. Approval of a data center may be conditioned upon:
 - a. Demonstration of long-term water availability;
 - b. Submission of a water conservation plan; and
 - c. Financial assurance to cover infrastructure impacts related to water supply.
 - d. Haul Road Agreements
- 9. Modifications. The Board of Adjustment may grant modifications where the applicant demonstrates:
 - a. Equivalent or superior water efficiency; and
 - b. No increased burden on municipal/rural water infrastructure or water resources.

Section 5.39.07. Noise.

1. Noise mitigation plan. All proposed Data Centers shall submit a noise mitigation plan in accordance with the following:
 - a. Name and qualifications of the person who measured the decibel levels;
 - b. Equipment used to establish the noise levels, and the applicable ANSI / IEC measurement standards used;
 - c. Location of the noise measurements depicted on a scaled site plan. The points of measurement shall be at all property lines and other noise receptors (Sensitive Receptors, etc.);
 - d. A list of all sound sources that contribute to the overall sound emissions from the site, and the following for each source:
 - i. Peak sound levels, in decibels, emitted by each source;
 - ii. Sound levels, in decibels, for sound continuously emitted by each source for a duration exceeding thirty (30) minutes;
 - iii. The frequencies of the sound emissions from each source, including any tonal or low-frequency components; and
 - iv. A site diagram showing the location of each sound source;
 - e. A description of any and all methods, systems, devices or structures intended to be used to mitigate sound emissions, including technical specifications, descriptions of materials and/or engineering specifications. The precise engineering specifications, height, materials, etc., for these sound dampening features must be detailed in the applicant's conditional use permit application;
 - f. A certification, signed by the preparer, certifying the accuracy of the materials contained within the noise mitigation plan and that the plan will effectively reduce sound emissions to the levels required by the County; and
 - g. The County reserves the right to require independent verification of noise measurements and/or to request additional measurements at different points on the property.
2. Maximum permitted sound levels. The sound attributable to the Data Center, measured as a one-hour equivalent continuous sound level ($L_{eq}(1h)$) at the physical structure of any Sensitive Receptor, shall not exceed the following limits, after any applicable adjustments provided for herein:
 - a. A-weighted level (dBA — overall audible sound): fifty-five (55) dBA between 7:00 a.m. and 10:00 p.m., and forty-five (45) dBA between 10:00 p.m. and 7:00 a.m.;
 - b. C-weighted level (dBC — low-frequency / tonal sound): seventy-five (75) dBC between 7:00 a.m. and 10:00 p.m., and sixty-five (65) dBC between 10:00 p.m. and 7:00 a.m.; and

- c. Z-weighted level (dBZ — unweighted / flat sound across all measured frequencies): eighty (80) dBZ between 7:00 a.m. and 10:00 p.m., and seventy (70) dBZ between 10:00 p.m. and 7:00 a.m.
- 3. Tonal and low-frequency noise. If, at any Sensitive Receptor, the C-weighted level (dBC) exceeds the A-weighted level (dBA) by more than twenty (20) decibels, a prominent low-frequency or tonal noise condition shall be deemed to exist, and the operator shall mitigate that condition regardless of compliance with the absolute limits in subsection 2.
- 4. Short-term sound level limits. Independent of compliance with the Leq(1h) limits in subsection 2, the sound attributable to the Data Center, measured at any Sensitive Receptor as a short-interval equivalent continuous sound level, shall not exceed the applicable A-weighted limit in subsection 2.a by more than: (a) 5 dBA when measured as a 15-minute Leq (Leq(15min)); (b) 10 dBA when measured as a 5-minute Leq (Leq(5min)); or (c) 15 dBA when measured as a 1.5-minute Leq (Leq(1.5min)). Compliance with this subsection does not excuse noncompliance with subsection 2, and compliance with subsection 2 does not excuse noncompliance with this subsection.
- 5. Post-construction compliance verification; complaints. Within ninety (90) days after commencement of operations, and following any material change to equipment or operations affecting sound emissions, the owner or operator shall submit to the County a post-construction sound study, prepared by a qualified acoustical engineer using the measurement standards of this Section, demonstrating compliance with subsection 2 at each Sensitive Receptor. Once each year, or upon receipt of a complaint, the County may require additional sound measurements, at the operator's expense, taken by a qualified acoustical engineer at the receptor(s) identified in the complaint or otherwise designated by the County. Compliance with the noise standards in this section is a continuous condition of operation. Any exceedance of the limits of this Section is a violation of this Chapter and of the Conditional Use Permit and shall be cured within sixty (60) days of written notice from the County; failure to timely cure is grounds for revocation, suspension, or modification of the Conditional Use Permit by the Board of Adjustment after notice and hearing.

Current Draft - Section 5.42.04. Noise.

1. Data processing centers located within one-quarter ($\frac{1}{4}$) mile (1,320 feet) of an occupied residence, school, business, church and/or government building, measured from the property line of said structures to the nearest point of the proposed facility, shall submit a noise mitigation plan including:
 - a. Name and qualifications of the person who measured the decibel levels.
 - b. Equipment used.
 - c. Noise measurement locations shown on a scaled site plan, including property lines and nearby receptors (occupied residences, schools, businesses, churches and government buildings);
 - d. A list of all sound sources that contribute to the overall sound emissions from the site and the following for each source;

- i. Peak sound levels, in decibels, emitted by each source; and,
 - ii. Continuous sound levels exceeding thirty (30) minutes;;
 - iii. The frequencies of the sound emissions from each source;
 - iv. A site diagram showing the location of each sound source.
- e. A description of any and all methods, systems, devices or structures intended to be used to mitigate sound emissions, including technical specifications, descriptions of materials and/or engineering specifications;
- f. Certification of accuracy by the preparer attesting to the accuracy of the materials contained within the noise mitigation plan and that the plan will effectively reduce sound emissions to levels required by Kingsbury County.

2. The County may require independent verification or additional measurements.

3. Noise Limits.

- a. Maximum sound level shall not exceed forty-five (45) dBA (A-weighted), including constructive interference, measured twenty-five (25) feet from any occupied residence, business, church or government building.
- b. The above limits may be exceeded as follows:
 - i. 5 dBA for a total of 15 minutes in any one-hour period; or
 - ii. 10 dBA for a total of 5 minutes in any one-hour period; or
 - iii. 15 dBA for a total of 1.5 minutes in any one-hour period.

Section 5.39.08. Signage.

- 1. No signage shall be permitted on the perimeter fence, with the exception of one (1) sign not to exceed thirty-two (32) square feet that displays the Data Center's 24-hour emergency contact information, including the company name (if applicable), the name and telephone number of the owner's/operator's representative, and the corresponding local power company's name and telephone number.

Current Draft

- 1. No signage shall be permitted on the perimeter fence, with the exception of one (1) sign not to exceed thirty-two (32) square feet that displays the name, address and emergency contact information of the facility as well as appropriate warning signs.

Section 5.39.09. Structural Requirements.

1. The facility shall meet all requirements of the most recently adopted edition of the International Building Code (IBC), in compliance with SDCL 11-10-6. Any electric wiring shall be located underground, except where wiring is brought together for interconnection to system components and/or the local utility power grid.
2. The use of cargo containers, railroad cars, semi-truck trailers, and other similar storage containers for any component of the operation is strictly prohibited.

Current draft - Section 5.42.06. Structural Requirements.

1. The facility shall meet all requirements of the most current edition of the International Building Code (IBC).
2. Electrical wiring shall be installed underground except where necessary for interconnection.
3. The use of cargo containers, railroad cars, semi-truck trailers and other similar storage containers for any component of the operation is strictly prohibited.

Section 5.39.10. Access.

1. All roads shall be of sufficient width to accommodate emergency vehicle access as determined by the County Emergency Management Director.

Current Draft Section 5.42.07. Access.

1. All access roads shall be of sufficient width and design to accommodate emergency vehicles, as determined by the Kingsbury County Emergency Management Director.

Section 5.39.11. Decommissioning / Restoration / Abandonment.

1. Decommissioning and Site Restoration Plan.
 - a. At least thirty (30) days prior to construction, the permittees shall submit to the County a decommissioning plan describing the manner in which the permittees anticipate decommissioning the project in accordance with the requirements of paragraph (b) below. The plan shall include a description of the manner in which the permittees will ensure that they have the financial capability to carry out these restoration requirements when they go into effect. The County may at any time request the permittees to file a report describing how the permittees are fulfilling this obligation.
 - b. Site Restoration. The decommissioning of the Data Center shall begin within eight (8) months of the termination of operation of the Data Center, and be completed within eighteen (18) months of the termination of operation. The permittees shall dismantle and remove from the site all generators, transformers, overhead and underground cables, foundations, buildings, and ancillary equipment. To the extent possible, the permittees shall restore and reclaim the site to its pre-project topography and topsoil quality. All access roads shall be

removed unless written approval is given by the affected landowner requesting that one or more roads, or portions thereof, be retained. Any agreement for removal to a lesser extent, or for no removal, shall be recorded with the County and shall show the locations of all such foundations. All such agreements between the permittees and the affected landowner shall be submitted to the County prior to completion of restoration activities.

- c. Cost Responsibility. The owner or operator of a Data Center is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities.
 - d. Financial Assurance. Prior to construction, the owner or operator of the Data Center shall file with the County a performance surety bond, an irrevocable letter of credit, or an escrow account in an amount equal to one hundred ten percent (110%) of the estimated cost of full site decommissioning and restoration, as verified by an independent and qualified professional engineer licensed in South Dakota. This bond shall secure the owner or operator's performance under this section.
 - e. Cost Re-Evaluation. To ensure the financial security remains sufficient against the effects of inflation, technological changes, and fluctuating salvage values, the decommissioning cost estimate and accompanying surety amount shall be re-evaluated every five (5) years from the date of the initial permit issuance. The owner or operator shall, at their sole cost and expense, retain an independent and qualified professional engineer licensed in South Dakota to conduct this re-evaluation and submit an updated, certified decommissioning cost report to the County.
 - f. Ongoing Assurance Responsibility. If the updated engineering report indicates that the cost of decommissioning has increased, the owner or operator shall increase the value of the surety bond, letter of credit, or escrow account to match one hundred ten percent (110%) of the newly established cost within sixty (60) days of the report's approval by the County.
 - g. Failure to Decommission. If the Data Center facility owner or operator does not complete decommissioning, the Board of Adjustment may take such action as may be necessary to complete decommissioning, including requiring forfeiture of the bond.
 - h. The Board of Adjustment may defer to the State of South Dakota if the State imposes decommissioning requirements.
2. Abandoned Data Centers. The permittees shall advise the County of any Data Centers that have been abandoned. The County may require the permittees to decommission any abandoned Data Centers.
- a. A facility shall be deemed abandoned if the operational data-processing activity ceases for a continuous period of twelve (12) months.
 - b. The Board of Adjustment, or its designee, shall issue a written Notice of Abandonment by certified mail to the owner and/or operator. The owner and/or operator shall have the right

to respond to the Notice of Abandonment within thirty (30) days from the date of receipt of such notice to present evidence that the Data Center has not been abandoned.

- c. The Board of Adjustment shall review any such response to determine if the Data Center has or has not been abandoned.
- d. If it is determined the Data Center has not been abandoned, the Notice of Abandonment shall be withdrawn and notice of the same shall be provided to the Data Center owner and/or operator.
- e. If, after review of the Data Center owner's and/or operator's response, it is determined that the Data Center has been abandoned, notice of such findings shall be provided by certified mail to the Data Center owner and/or operator.
- f. If the Data Center is deemed to have been abandoned, the Data Center's owner and/or operator shall commence decommissioning within one hundred twenty (120) days from the date of receipt of such notice and shall complete the removal of all above and below ground components of the Data Center and the Site Restoration work described in 5.39.11.1.b, above, within eighteen (18) months of the date of receipt of such notice. If the Data Center's owner and/or operator fails to dismantle the Data Center within the prescribed time period, such failure shall be considered a violation of this ordinance and shall be subject to all legal remedies, including but not limited to forfeiture of the surety bond, letter of credit, or escrow account.

Current Draft

Section 5.42.08. Decommissioning/Cessation of Operations Requirements

1. Decommissioning. Prior to construction, the Board may require the owner or operator of a Data Center to provide the County with a performance surety bond, irrevocable letter of credit, or escrow account in an amount equal to one hundred ten percent (110%) of the estimated cost of full site decommissioning and restoration. The Board may defer to any decommissioning requirements imposed by the State of South Dakota.
2. Upon permanent cessation of Data Center operations, the property owner shall decommission the Data Center facility and remove all equipment, structures, and improvements associated with the Data Center use that are no longer needed or intended for another permitted or conditional use. If the Data Center structure or improvements are not placed into another permitted or conditional use within two (2) years following the permanent cessation of operations, the property shall be restored to a safe and orderly condition in accordance with applicable County, State, and Federal requirements.
3. The owner or operator of the Data Center shall be responsible for completing decommissioning and for all costs associated with decommissioning the facility and associated improvements.
4. If the owner or operator fails to complete the required decommissioning, the Board may take such action as is necessary to complete the decommissioning, including drawing upon or requiring forfeiture of any required financial assurance.

Section 5.39.12. Submittal 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 Conditional Use Permits 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:

1. Applicant name(s) and contact information. The applicant must also identify on the application, if different than the applicant, the record owner of the property, the occupant or lessee of the property, and the operator of the Data Center.
2. A narrative describing 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.
3. A study prepared by an acoustical engineer describing the anticipated noise level of the facility (including A-, C-, and Z-weighted levels) and any proposed mitigation efforts such as sound walls, baffles, ventilation silencers, etc.
4. A plan provided by a certified engineer describing the anticipated water runoff and the mitigation efforts to prevent pooling of and/or contamination of the ground.
5. A site plan, drawn to scale, showing the location and dimensions of all existing and proposed structures, screening, fencing, lighting, electrical connections, property lines, and roadway access.
6. A map of the project area showing all Sensitive Receptors located within one (1) mile of the exterior boundaries of the property where the Data Center will be located.
7. A description of all backup power systems, on-site fuel storage, and any battery energy storage systems proposed for the facility, together with a fire protection and emergency response plan prepared in consultation with the County Emergency Management Director and the fire department(s) serving the site.
8. Other relevant studies, reports, certifications, and approvals as may be reasonably requested by Kingsbury County to ensure compliance with this Chapter 5.39.

Current Draft

1. A project narrative describing the proposed facility;
2. A site plan showing all structures, equipment, fencing, screening, property lines, access roads, and nearby occupied residences, schools, churches, businesses and/or government buildings within 1,320 feet of the perimeter of the facility;
3. An acoustical study prepared by a qualified engineer that describes the anticipated noise level of the facility and any proposed mitigation efforts such as sound walls, baffles, ventilation silencers, additional separation from surrounding uses, etc.;
4. Information required in Sections 5.42.02, 5.42.03 and 5.42.04;

5. Any additional studies or documentation reasonably required by the County; and

6. Signatures of the property owner(s) and facility operator (if different).

Section 5.39.13. Emergency Load Curtailment and Interruption

1. The County reserves the right to immediately require the suspension, interruption, or reduction of operations of any Data Center governed by this Ordinance in the event of an infrastructure emergency.
2. An infrastructure emergency is defined as any event or condition that threatens public utility operations, including but not limited to:
 - a. Imminent threat to electric system reliability;
 - b. Transformer overload;
 - c. Substation failure;
 - d. Declared utility emergency.

Section 5. Severability.

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance.

Addressed in other sections of existing zoning ordinance

Section 6. Repeal of Conflicting Ordinances.

All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of such conflict.

Addressed in other sections of existing zoning ordinance

Section 7. Effective Date.

This Ordinance shall be in full force and effect twenty (20) days after its passage and publication as required by law.

Addressed in other sections of existing zoning ordinance