

ORDINANCE O-26-03

ESTABLISHING A TEMPORARY ONE-YEAR MORATORIUM PROHIBITING DATA CENTERS AND DIRECT SUPPORTING INFRASTRUCTURE WITHIN THE UNINCORPORATED AREAS OF GRANT COUNTY

WHEREAS, NMSA 1978, Section 4-37-1(1975). provides that counties may adopt ordinances, not inconsistent with statutory or constitutional limitations placed on counties, to discharge those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of the county and its inhabitants; and,

WHEREAS, NMSA 1978, Section 4-38-18 (1876) provides that the Board of County Commissioners has the power to represent the county and have the care of county property and the management of the interests of the county in all cases where no other provision is made by law; and,

WHEREAS, NMSA 1978, Section 3-18-1 (1972), as applied to counties through NMSA 1978, Section 4-37-1 (1995), recognizes local governmental authority to protect generally the property of the county and its inhabitants and to preserve peace and order; and,

WHEREAS, Grant County currently does not maintain countywide zoning, does not issue general building permits, and does not license data centers; however, the County retains its general police powers under NMSA 1978, Section 4-37-1 (1975) its authority over county interests and county property under NMSA 1978, Section 4-38-18 (1876) and its existing authority to regulate subdivisions and related matters as provided by law; and,

WHEREAS, NMSA 1978, Section 3-53-2.1 (2007) authorizes a county or municipality, for the purpose of preserving and protecting water resources and providing an assured water supply for the community, to require site development standards to conserve water and minimize water loss, water harvesting and storage, low water use landscaping and plant materials, nonagricultural residential and commercial water use limitations, and recycling and reuse of water, provided such requirements are implemented consistent with State Engineer rules; and,

WHEREAS, water is a scarce, essential, and irreplaceable public resource in Grant County, and the Board finds that the preservation and protection of water resources are necessary to protect domestic wells, public water systems, acequias, agriculture, livestock, emergency services, public health, economic stability, and future development within the County; and,

WHEREAS, data centers may require substantial quantities of electricity, water, land, transmission capacity, cooling infrastructure, backup power, road access, wastewater handling, drainage controls, and public safety resources, and may create cumulative impacts on water

resources, aquifers, wells, public utilities, roads, fire protection, emergency response, neighboring properties, and the orderly development of the County; and,

WHEREAS, direct supporting infrastructure for data centers, including solar energy systems, other energy generating systems, battery energy storage systems, substations, transmission lines, backup generators, water supply systems, water storage systems, wastewater systems, cooling systems, telecommunications facilities, access roads, and utility corridors, may create impacts that are inseparable from, similar to, or greater than the impacts of the data center itself; and,

WHEREAS, because the County does not currently have comprehensive regulations specifically addressing data centers and direct supporting infrastructure, the Board finds it necessary to temporarily prohibit such uses while the County studies whether and how to regulate them; and,

WHEREAS, the purpose of this Ordinance is not to permanently ban data centers or direct supporting infrastructure, but to temporarily preserve the status quo for a limited period while the County studies, drafts, considers, and, if appropriate, implements regulations addressing water use, water rights, assured water supply, water conservation, energy infrastructure, emergency response, land use compatibility, environmental impacts, roads, drainage, fire protection, noise, light, security, decommissioning, financial assurance, and subdivision-related impacts; and,

WHEREAS, temporary moratoria is lawful when adopted for a legitimate public purpose, for a reasonable and limited duration, and to allow a governmental entity to study and consider appropriate regulations, but moratoria must be carefully limited to comply with constitutional protections, including due process and the Takings Clauses of the United States and New Mexico Constitutions; and,

WHEREAS, in *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002), the United States Supreme Court held that a temporary development moratorium adopted while a governmental entity studies and formulates land use policy is not automatically a per se taking and is generally evaluated under the fact-specific regulatory takings framework; and,

WHEREAS, in *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304 (1987), the United States Supreme Court recognized that if a temporary taking is found, compensation may be required for the period during which the taking was effective, underscoring the need for moratoria to be reasonable, justified, and limited; and,

WHEREAS, in *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978), the United States Supreme Court identified factors relevant to regulatory takings analysis, including the economic impact of the regulation, the extent of interference with reasonable investment-backed expectations, and the character of the governmental action; and,

WHEREAS, in *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), the United States Supreme Court recognized that a regulation that deprives property of all economically beneficial use may constitute a categorical taking unless the restricted use was already prohibited by background principles of property or nuisance law; and,

WHEREAS, the Board intends this Ordinance to be temporary, limited, prospective, and directed toward preserving the status quo while the County evaluates reasonable regulations, and further intends that this Ordinance does not deprive any property owner of all economically beneficial use of property; and,

WHEREAS, the Board finds that a one-year moratorium is a reasonable period for County staff, legal counsel, consultants, water resource professionals, utility providers, affected agencies, emergency services, members of the public, and the Board to evaluate whether regulations should be adopted for data centers and direct supporting infrastructure; and,

WHEREAS, the Board finds that immediate adoption of this temporary prohibition is necessary to protect the public health, safety, welfare, water resources, property, and orderly development of Grant County.

NOW, THEREFORE, BE IT ORDAINED by the Grant County Board of Commissioners as follows:

I. PURPOSE.

A. The purpose of this Ordinance is to establish a temporary, one-year moratorium prohibiting the establishment, construction, development, expansion, enlargement, operation, or commencement of any Data Center or Direct Supporting Infrastructure within the unincorporated areas of Grant County.

B. This Ordinance is adopted under the County's police powers to protect the health, safety, welfare, property, water resources, order, comfort, convenience, and prosperity of the County and its inhabitants. It is intended to preserve the status quo while Grant County evaluates whether to adopt regulations concerning Data Centers and Direct Supporting Infrastructure.

C. The County's study may include regulations addressing water use, water conservation, water loss, assured water supply, water harvesting, water storage, recycling and reuse of water, utility infrastructure, energy generation, emergency services, road impacts, drainage, fire protection, noise, lighting, security, decommissioning, financial assurance, and subdivision-related impacts.

II. DEFINITIONS.

A. Data Center

1. Data Center means a building, structure, facility, campus, compound, installation, modular unit, containerized facility, or group of buildings, structures, facilities, modular units, or installations used or proposed to be used primarily to house, operate, support, cool, power, or maintain computer servers, networking equipment, data storage systems, artificial intelligence computing systems, cryptocurrency mining equipment, blockchain validation equipment, cloud computing equipment, high-performance computing equipment, telecommunications switching equipment, or similar digital processing, data storage, or data transmission equipment.

2. The term includes facilities commonly described as data centers, server farms, artificial intelligence computing facilities, cloud computing facilities, high-performance computing facilities, colocation facilities, enterprise data centers, hyperscale data centers, modular data centers, containerized data centers, cryptocurrency mining facilities, blockchain mining facilities, or similar facilities.

3. The term does not include ordinary computer rooms, server closets, telecommunications rooms, or information technology equipment that is clearly incidental and accessory to a principal lawful use, such as an office, school, hospital, public building, agricultural operation, retail establishment, or small business, provided that such incidental equipment does not require separate high-capacity energy, water, cooling, utility, or direct supporting infrastructure beyond that ordinarily required for the principal use.

B. Direct Supporting Infrastructure

Direct Supporting Infrastructure means any facility, structure, improvement, system, equipment, land use, utility, or development that is constructed, installed, expanded, dedicated, operated, or proposed primarily to serve, power, cool, supply, connect, maintain, secure, access, or otherwise support a Data Center.

Direct Supporting Infrastructure includes, without limitation:

1. Solar energy generating systems, photovoltaic facilities, solar arrays, solar farms, or other solar power facilities intended primarily to serve a Data Center;

2. Wind, natural gas, diesel, hydrogen, geothermal, battery, fuel cell, or other energy generating systems intended primarily to serve a Data Center;

3. Battery energy storage systems, backup power systems, emergency generators, fuel storage systems, microgrids, substations, switchyards, transformers, transmission lines, distribution lines, and utility corridors intended primarily to serve a Data Center;

4. Water supply wells, water rights infrastructure, water lines, water storage tanks, reservoirs, pumping systems, treatment systems, cooling towers, evaporative cooling systems,

non-evaporative cooling systems, wastewater systems, recycling systems, reuse systems, and discharge systems intended primarily to serve a Data Center;

5. Fiber optic lines, telecommunications facilities, network interconnection facilities, switching facilities, and related communication infrastructure intended primarily to serve a Data Center;

6. Roads, access drives, security roads, fencing, walls, gates, security facilities, lighting, grading, drainage facilities, stormwater facilities, and other site improvements intended primarily to serve a Data Center; and

7. Any expansion, enlargement, reconstruction, replacement, or substantial modification of the foregoing.

C. Moratorium

Moratorium means the temporary prohibition imposed by this Ordinance on the establishment, construction, development, expansion, enlargement, operation, or commencement of any Data Center or Direct Supporting Infrastructure within the unincorporated areas of Grant County.

D. County

County means Grant County, New Mexico, established by NMSA 1978 Section 4-28-1 (1851-52) acting through the Board of County Commissioners, County Manager, County departments, County staff, or any County officer, employee, agent, board, committee, or commission.

III. TEMPORARY PROHIBITION.

A. For a period of one year from the effective date of this Ordinance, no person shall establish, construct, develop, expand, enlarge, operate, commence operation of, or materially modify any Data Center or Direct Supporting Infrastructure within the unincorporated areas of Grant County.

B. This prohibition applies regardless of whether the proposed Data Center or Direct Supporting Infrastructure would otherwise require a County permit, County license, County building approval, County zoning approval, or other County authorization.

IV. SUBDIVISION-RELATED APPLICATIONS.

A. During the moratorium period, the County shall not approve any subdivision, replat, lot split, plat amendment, vacation, variance, or other subdivision-related action if the purpose, effect, or reasonably foreseeable result of the action is to establish, construct, develop, expand, enlarge, operate, or support a Data Center or Direct Supporting Infrastructure.

B. Nothing in this Ordinance limits the County's existing authority to regulate subdivisions or to require information necessary to determine whether a subdivision-related application is intended to facilitate a Data Center or Direct Supporting Infrastructure.

V. DURATION.

A. This Ordinance and the moratorium established herein shall take effect thirty (30) days after adoption and recording pursuant to NMSA 1978, Section 4-37-9 (1997) and shall remain in effect for one year from the effective date.

B. The moratorium shall automatically expire one year after the effective date unless repealed earlier by the Board of County Commissioners.

C. Any extension of this moratorium shall require a separate ordinance adopted after notice and public hearing and supported by findings demonstrating the continued necessity, reasonableness, and constitutional validity of the extension.

VI. APPLICATION.

A. This Ordinance applies prospectively to all Data Centers and Direct Supporting Infrastructure not lawfully established and in actual operation before the effective date of this Ordinance.

B. This Ordinance applies to any proposed use, activity, construction, development, expansion, enlargement, or operation occurring on or after the effective date of this Ordinance, whether or not any application, inquiry, concept plan, subdivision-related request, utility request, or other communication was submitted to the County before the effective date.

C. Nothing in this Ordinance shall be construed to impair vested rights, if any, recognized under applicable federal or state law. Any person claiming a vested right may submit documentation to the County Manager or designee demonstrating the existence and scope of the claimed vested right.

VII. EXCEPTIONS.

This Ordinance shall not apply to:

- A. Ordinary repair and maintenance of existing lawful facilities, provided such repair or maintenance does not expand, enlarge, intensify, or materially modify a Data Center or Direct Supporting Infrastructure;
- B. Public emergency work necessary to protect life, health, safety, or property;
- C. County, state, or federal emergency communications infrastructure, public safety communications infrastructure, or ordinary governmental information technology systems that are not primarily operated as a commercial or industrial Data Center;
- D. Telecommunications, utility, or energy infrastructure that is not primarily constructed, installed, expanded, dedicated, operated, or proposed to serve a Data Center;
- E. Agricultural water users or agricultural water rights owners to the extent excluded by NMSA 1978, Section 3-53-2.1(C);
- F. Existing lawful uses that were fully established and in actual operation before the effective date of this Ordinance, provided that such uses are not expanded, enlarged, intensified, or materially modified during the moratorium period; or
- G. Any use, activity, or facility that the County is legally preempted from regulating under federal or state law.

VIII. WATER RESOURCE REVIEW DURING MORATORIUM.

During the moratorium period, the County may study, evaluate, prepare, and consider regulations requiring Data Centers and Direct Supporting Infrastructure to address water-related impacts, including but not limited to:

- A. Demonstration of an assured water supply;
- B. Identification of water rights, water sources, points of diversion, and places and purposes of use;
- C. Projected annual and peak water demand;
- D. Consumptive use, depletion, and aquifer impacts;
- E. Impacts to domestic wells, public water systems, acequias, agricultural users, livestock users, and existing water rights;
- F. Site development standards to conserve water and minimize water loss;
- G. Water harvesting and storage;
- H. Low water use landscaping and plant materials;

- I. Nonagricultural commercial water use limitations;
- J. Recycling and reuse of water;
- K. Cooling technology alternatives, including non-evaporative or reduced-water cooling systems;
- L. Wastewater treatment, discharge, reuse, and disposal;
- M. Drought contingency planning; and
- N. Consistency with State Engineer rules and applicable federal and state law.

IX. STUDY AND DEVELOPMENT OF REGULATIONS.

During the moratorium period, the County Manager, County Attorney, County staff, consultants, and other designated persons may study and prepare proposed regulations for consideration by the Board of County Commissioners. Such regulations may include, without limitation:

- A. Definitions and classifications for Data Centers and Direct Supporting Infrastructure;
- B. Whether Data Centers or Direct Supporting Infrastructure should be prohibited, restricted, conditionally allowed, or regulated;
- C. Water supply, conservation, reuse, and reporting requirements;
- D. Energy generation and utility infrastructure requirements;
- E. Subdivision-related standards and review criteria;
- F. Road, drainage, emergency access, and public safety standards;
- G. Fire protection and hazardous materials requirements;
- H. Noise, lighting, screening, setbacks, and compatibility standards;
- I. Environmental, cultural, and archaeological requirements;
- J. Decommissioning, site restoration, and financial assurance requirements;
- K. Public notice and hearing procedures;
- L. Application fees and third-party review fees where authorized by law;
- M. Coordination with the Office of the State Engineer, utility providers, fire districts, emergency services, agricultural representatives, affected landowners, and other affected agencies or stakeholders; and
- N. Enforcement mechanisms.

X. ENFORCEMENT.

1. Any person who violates this Ordinance, establishes, constructs, develops, expands, enlarges, operates, commences operation of, or materially modifies a Data Center or Direct Supporting Infrastructure in violation of this Ordinance, or knowingly submits false or misleading information regarding whether a proposed facility is a Data Center or Direct Supporting Infrastructure, shall be subject to enforcement as provided by law.
2. Each violation of this Ordinance shall be punishable by a fine of no more than three hundred dollars (\$300.00) pursuant to NMSA 1978, Section 4-37-3. Each day a violation continues shall constitute a separate violation.
3. The County may also seek any lawful civil, administrative, or equitable remedy available under federal or state law, including injunctive relief.

XI. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, definition, or provision of this Ordinance is for any reason held invalid, unlawful, or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, definition, and provision thereof irrespective of the fact that any one or more portions may be declared invalid, unlawful, or unconstitutional.

XII. NO PERMANENT BAN INTENDED.

This Ordinance is a temporary moratorium only. Nothing in this Ordinance shall be construed as a permanent prohibition on Data Centers or Direct Supporting Infrastructure. The County reserves the right to adopt, amend, repeal, or decline to adopt regulations during or after the moratorium period.

XIII. EFFECTIVE DATE.

This Ordinance shall become effective thirty days after adoption by the Board of County Commissioners and filing as required by NMSA 1978, Section 4-37-9 (1997).

ORDAINED, ADOPTED, AND PASSED on this ____ day of _____ 2026.

[seal]

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
GRANT COUNTY, NEW MEXICO**

Connie Holguin, Clerk

Chris Ponce, Chairman

Eloy Medina, Vice-Chair

Eddie Flores, Member

Thomas Shelley, Member

Nancy Stephens, Member