

Memorandum

To: Data Center Advocates

From: Steven A. Andersson

Re: **Local Controls to Govern Data Centers in Illinois**

Date: January 7th 2026

Prefatory notes:

1) This memorandum is not legal advice. It is a survey of general land development principles that can serve as options should a municipality or county wish to regulate data centers. Nothing herein is mandated. All of the choices herein are optional to a county or municipality. Further depending on the circumstances, not all choices may be applicable to every particular situation. Should you wish specific legal advice about a specific property at issue, you are urged to consult with legal counsel licensed in the jurisdiction in which the issue arises.

2) Nothing in this memo should be unknown or a surprise to attorneys who work in the municipal practice area. The purpose of the memo is for advocates to be able to inquire whether the options herein have been explored by a municipality or county in their decision making process.

Municipal powers

1) Consider a Moratorium

Illinois law allows municipalities to enact a moratorium on a particular use or uses, in order to carefully consider where such a use is best located (or permitted at all¹). This could include determining if the use should be permitted, special, or a subject of a Planned Unit Development (PUD).

However, a municipality must tailor any such moratorium to a reasonably short period of time. The time is reasonable if it conforms with how long any good faith investigation and research on a particular use might take. We would suggest that a 6-12 month period is generally reasonable. The more narrowly tailored such a moratorium is, the more likely it will withstand judicial scrutiny.

Moreover the process for declaring a moratorium should adhere to existing zoning/land use procedures and ordinances. Remember that for a period time (e.g. 6 months) a moratorium has effectively banned what may otherwise be a lawful use. Banning a use requires a change to the zoning code of the municipality. In order to do this, one should consider this as an amendment to the zoning code. As such, public notice, a public hearing, findings of fact and an ordinance amending the zoning code of a municipality must be complied with. It may be advisable to also include exceptions. Failing to take these steps might cause a municipality's moratorium to be successfully challenged in court.

Once enacted, diligence should be utilized in making the analysis of where a use might fit (if at all).

¹ Whipple v. Village of North Utica, 2017 IL App (3d) 150547

One side note: There is a concept of vested rights (estoppel) for land owners². If a land owner, prior to any change of zoning, has a right to develop their property in a given way (e.g. data centers are presently permitted) and that landowner has expended substantial sums in reliance on that zoning law, a moratorium (or other change to zoning may not apply to their specific property. The question of what is “reliance on zoning” and “expended substantial sums” is a question of fact for a court to determine on a case by case basis.

2) Can a municipality outright ban a use in within its jurisdiction?

This depends on its status as a home rule versus non-home rule municipality.

a) Home Rule

A home rule municipality derives its zoning authority from Article VII, § 6(a) of the Illinois Constitution of 1970 which authorizes a home rule unit to “exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare...”

Unless one can find a denial of a power to ban uses, (which this author is not aware of except in specific circumstance), a home rule municipality should be able to outright ban a particular use.

While there are exceptions, most communities above 25,000 in population are home rule.

b) Non-Home Rule

Non-home rule municipality derives its zoning authority from the Illinois Municipal Code which provides in pertinent part “. . . the corporate authorities in each municipality have the . . . power[] . . . to classify, regulate and restrict the location of trades and industries and the location of buildings designed for specified industrial, business, residential, and other uses.”³

What is interesting about this code section is that it allows a municipality “to prohibit uses, buildings, or structures incompatible with the character of such districts;”⁴ So a municipality clearly has the power to prohibit a use in a given district, the larger question though is whether they could also ban it in every district? That is unclear under Illinois law.

While there are exceptions, most communities below 25,000 in population are non-home rule.

3) Special Uses/Conditional Use/Planned Unit developments (PUD):

A municipality may place a particular use (e.g. Data Centers) as a special use, conditional use, or a PUD.

In each of these cases, the municipality may condition approval on compliance with certain requirements specific to the impact of use which may have a unique, special or unusual impact upon the use or enjoyment of neighboring property⁵.

² Tim Thompson, Inc. v. Village of Hinsdale, 247 Ill. App. 3d 863, 617 N.E.2d 1227 (1993)

³ 65 ILCS 5/11-13-1.

⁴ 65 ILCS 5/11-13-1(7)

⁵ 65 ILCS 11-13-11.1

This is an opportunity to classify data centers as such a special use, conditional use, or a PUD. We think it is virtually inarguable that such uses have a unique impact on a municipality and the neighbors around such a use. Impacts such as enormous uses of electricity and water are only the most basic of two such unique uses. There are likely others, involving fire/safety protection, traffic, and storm water detention for large facilities.

Also, it should be noted that a decision to deny a special use, conditional use or PUD are appealable to circuit courts in Illinois and as such, may be challenged.

4) Annexation Agreements.

At times, the property sought to be developed is contiguous (connected) to a municipality but not actually within a municipality. It is permissible to annex such property and bring it into the municipality if certain conditions are met. The fundamental condition is that it is contiguous (substantially connected) to the current boundary. There are exceptions.

If an annexation occurs by a simple annexation ordinance and a zoning ordinance, no additional regulatory powers are gained under Illinois law. However, a municipality is authorized to enter into an annexation agreement with a landowner (also called a “pre-annexation agreement because it generally occurs prior to being annexed). The agreements can last up to 20 years from execution. An annexation agreement is one of the most powerful tools a municipality has to regulate the use of that property. Such agreement allows the property to be treated differently than the rest of the municipality. Illinois case law on the power of an annexation agreement has held that a municipality can impose virtually any conditions on such a property. The power is virtually unlimited. This power could substantially impact how a data center could be built and operated on such a property subject to an annexation agreement (for 20 years at least)⁶.

Also, it is important to note that except for certain very rare circumstances, no municipality may be compelled to annex property. This gives a community great leverage in the negotiation should the developer need something from the municipality.

5) Developing outside a municipality.

While this memo will also address county powers, it is an important caveat that if a municipality refuses to annex a property, they may run the risk of the developer finding a different way to develop outside the municipality and therefore the municipality may have little say in that properties development⁷. A developer may be able to sink their own well and acquire electricity without the help of the municipality. As such, outright refusal to annex may be read as a cautionary tale.

Note: Other factors may still regulate develop of such a property such a county regulations (discussed later in this memo), water districts (which may expand beyond a municipalities borders), or sanitary districts which may also expend beyond municipal borders.

6) Utility Controls

⁶ 65 ILCS 5/11-15.1-2 (f)

⁷ A municipality may regulate some regulations outside of its boundaries by 1 ½ miles, though these powers are not nearly as comprehensive as property within a village.

Municipalities have the power to regulate those utilities it controls, this could include water, sewer and electrify (sometimes). As long as the regulations imposed reasonably relate to the use/consumption of a resource, generally speaking, the municipality may limit withdrawal of a resource and charge different rates depending on both a volumetric and a use basis. E.g. water rates may be different based on different types of uses⁸.

These broad powers can allow municipalities to impose conditions on a particular use and should be considered anytime a use has a disproportionate impact on a given resource or resources.

However, the fundamental common law principle in municipal rate-making is that rates must be reasonable and nondiscriminatory⁹.

7) Can a municipality distinguish a data center from a similar sized use with similar demands on a municipality?

Yes. Under Illinois law a municipality is authorized to “classify, regulate and restrict the location of trades and industries and the location of buildings designed for specified industrial, business, residential, and other uses¹⁰”

A good example would be logistics facilities. One could argue that a data center is similar in size and scope as a data center, and does not generate any more traffic (possibly less) than a logistics facilities. If that were the whole of the analysis, it might be difficult to distinguish legally between the use (i.e. allow one but not the other). However, the factual information suggests that data centers consume electricity and water at rates unlike any logistics facility or any other use. As such, we believe the Illinois statutes allow for a distinct use labeled “Data Centers.” Practice tip. Make sure to define the term data center sufficiently broadly to anticipate changes in technology.

8) County Powers distinct from municipal powers

Generally speaking counties possess similar powers to enact regulation governing zoning and land use powers¹¹. This includes zoning a county into different districts for different uses and allowing for special uses and PUD’s. This includes moratoria (except for certain uses like wind power).

Unlike municipalities, counties (except Cook County) are not home rule counties. As such they are limited by only what is authorized in statute.

The powers of a county do not extend to annexation agreements as all property is already included in a the county boundaries and therefore is already “annexed”

Utility controls may also be less powerful s not all counties provide utility services.

Beyond those distinctions, the county regulatory scheme is similar to the municipal scheme.

⁸ 65 ILCS 5/11-139-8 (et seq.)

⁹ Village of Niles v. City of Chicago, 82 Ill.App.3d 60, 401 N.E.2d 1235, 37 Ill. Dec. 142 (1st Dist. 1980)

¹⁰ 65 ILCS 5/11-13-1(4)

¹¹ 55 ILCS 5/5-12001 and 65 ILCS 5/5-120009.5

Conclusion

Municipalities, and (to a lesser extent) counties have many tools to regulate particular uses. However, nothing requires them to do so. They may simply allow a use in a given district as permitted and nothing more must be done. We would caution against such an approach as significant unforeseen consequences could occur. Municipalities and Counties have a great number of tools available to them to insure that if allowed, data centers impacts are mitigated.