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June 29, 2026

Via email: Marina@milwaukee.gov

Aldерwoman Marina Dimitrijevic
Milwaukee Common Council
200 E. Wells Street, Room 205
Milwaukee, WI 53202

Re: Regulation and Potential Ban of Data Centers

Dear Alderwoman Dimitrijevic:

This responds to your June 22, 2026 request for an opinion from the City Attorney's Office regarding why the proposed substitute ordinance relating to the building of data centers (Common Council File No. 260142, proposed substitute A attached) is more advisable from a legal risk perspective than a ban on all data centers of any size in the city. We are pleased to respond to your request and offer the following analysis.

I. Applicable Law

The Common Council has broad authority to protect the health, safety, and welfare of the public and promote the good order of the city under the home rule statute, Wis. Stat. § 62.11(5) (made applicable by Ord. File #50790 in 1933). This is often referred to as the "police power." Wis. Stat. § 62.11(5) states in full:

Except as elsewhere in the statutes specifically provided, the council shall have the management and control of the city property, finances, highways, navigable waters, and the public service, and shall have power to act for the government and good order of the city, for its commercial benefit, and for the health, safety, and welfare of the public, and may carry out its powers by license, regulation, suppression, borrowing of money, tax levy, appropriation, fine, imprisonment, confiscation, and other necessary or



convenient means. The powers hereby conferred shall be in addition to all other grants, and shall be limited only by express language.

Zoning ordinances are enacted pursuant to a municipality's police power and, therefore, must bear a "substantial relationship to public purposes of health, safety or welfare." *Buhler v. Racine Cty.*, 33 Wis. 2d 137, 146, 146 N.W.2d 403 (1966); *see also* Wis. Stat. § 62.23(7)(am) (authorizing the Common Council to regulate the location and use of buildings through zoning ordinances "[f]or the purpose of promoting health, safety, morals or the general welfare of the community"). In addition to their other purposes, zoning ordinances are meant to "encourage the protection of groundwater resources" and "facilitate the adequate provision of...public requirements." Wis. Stat. § 62.23(7)(c).

Although ordinances enjoy a presumption of validity, the Common Council's authority is not limitless. To be a valid enactment, the underlying record must demonstrate that an ordinance is designed to accomplish a purpose within the scope of the police power (such as the health, safety, and welfare of the city's residents). *Caledonia v. Racine Limestone Co.*, 266 Wis. 475, 480-81, 63 N.W.2d 697 (1954); *Metro. Milwaukee Ass'n of Commerce, Inc. v. City of Milwaukee*, 2011 WI App 45, ¶ 51, 332 Wis. 2d 459, 798 N.W.2d 287. On the other hand, an ordinance will be found invalid if it treats a particular industry differently than a similar industry in similar circumstances and conditions. *Caledonia*, 266 Wis. at 480. For example, the town in *Caledonia* adopted an ordinance banning stone quarries from operating in an agricultural district. The Wisconsin Supreme Court found that the record on which the ordinance was based did not justify singling out stone quarries in agricultural districts while not applying to stone quarries in industrial districts or similar operations like sand pits, gravel pits, clay beds, or mineral mining in agricultural districts. *Id.* at 480-82. Thus, the Court held that the ordinance's classifications were not "conducive to the health, safety, welfare, and convenience of the public." *Id.* at 480. Although not directly raised in *Caledonia*, unjustified regulatory classifications may also violate constitutional guarantees of equal protection under the law.

A complete ban also invites an argument that the restriction is a regulatory taking by the city. Regulatory takings exist when the city goes "too far" with a regulation and require the city to pay compensation to the owner of the regulated property. *Tahoe-Sierra Pres. Council v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 326, 122 S. Ct. 1465 (2002). Determination of a regulatory takings claim requires a case-by-case balancing test that considers factors like the regulation's economic effect on the property owner, the extent to which the regulation interferes with reasonable investment-backed expectations, and the character of the government action. *Id.* at 315 n. 10. Even a temporary moratorium can, in some cases, constitute a regulatory taking. *Id.* at 315. The Supreme Court in *Tahoe-Sierra* stated that the acceptable duration of moratoria should be set by state legislatures and noted the two-year limitation on certain moratoria in Wis. Stat. § 62.23(7)(d). *Id.* at 342 n. 37. Ultimately, the regulatory takings analysis is similar to the analysis of the city's police and zoning powers – a regulation that makes reasonable classifications based upon a strong factual record is unlikely to be considered a taking.

II. Data Centers

Two particular attributes of data centers are essential to this analysis. First, the term “data center” does not account for scale – a closet with half a dozen servers or a warehouse with ten thousand are both equally “data centers” at their core. There are small data centers in a way that there are not small correctional facilities or material reclamation facilities, which are examples of uses in the city’s zoning code that are not permitted in any district. Second, some would argue that data centers above a certain scale draw large quantities of power, generate significant amounts of noise, and require cooling systems that can waste vast amounts of water. Further, unlike noise intensity, the impacts of excessive power and water usage cannot be mitigated by a distancing requirement. Because a “data center” includes uses so minor they could be freely done anywhere and so intense they might not be allowable anywhere in the city, regulation of data centers must reasonably account for both extremes, and its classifications must be supported by a record of reliable evidence.

Here, the proposed ordinance is less legally risky than a total ban for two reasons. First, as a practical matter, the proposed ordinance is less likely to attract a legal challenge because it provides an opportunity for development within established parameters instead of a complete prohibition.

Second, and more importantly, the proposed ordinance is more likely to withstand a legal challenge because it is tailored to address specific public welfare concerns that arise from the various types and sizes of data centers being regulated. A court is more likely to find that the regulations in the proposed ordinance are designed to actually accomplish a purpose within the scope of the city’s police power, as opposed to a wholesale ban which fails to distinguish between data centers that pose little risk to the health, safety, or welfare of the public, and those that pose greater risk (whether because of their size, noise, or energy use).

Although only a few municipalities across the country have enacted complete bans on data centers, a lawsuit filed March 31, 2026 in Tennessee federal court by ExoticRidge Crypto Company against Hawkins County provides some insight into potential legal claims in response to a complete ban. *ExoticRidge Crypto Company LLC v. Hawkins County, Tennessee*, Case No. 26-cv-64-DCLC-CRW (E.D. Tenn. NE Div.). ExoticRidge alleges that Hawkins County violated the constitution by banning all data centers and cryptocurrency mining *en masse*, without regard to the actual impact of any particular project. The text of the Hawkins County ban claims the massive amounts of electricity required to power cryptocurrency mining and large-scale data centers and the continuous industrial noise from the generators, cooling systems, and ventilation equipment are incompatible with the county’s rural character and the peaceful enjoyment of property by the county’s residents and that such operations typically create little to no sustainable economic benefit to the local community, employing minimal staff while imposing significant environmental and infrastructure burdens.

ExoticRidge's Bitcoin mining operation, however, according to ExoticRidge, is self-sufficient and does not use public utilities or infrastructure and has no discernable impact on others or the environment. ExoticRidge argues that Hawkins County's blanket ban on data centers and cryptocurrency mining, even if they do not rely on public utilities and cause no environmental harm, is an invalid exercise of the county's police power. ExoticRidge further alleges that targeting a single industry while leaving others with larger public impacts unregulated (including a glass manufacturing plant, an explosives manufacturing facility, and a large silica mining operation) underscores the ban's discriminatory nature.

ExoticRidge has asserted claims under 42 U.S.C. § 1983 for violation of its equal protection and due process rights under the Fourteenth Amendment to the U.S. Constitution, violations of the Tennessee constitution's protection to own, use, and enjoy private property and the right to equal protection under the law, infringement on vested rights under Tennessee law, exclusionary zoning under Tennessee law, and failure to comply with Tennessee's County Zoning Act, which prohibits counties from enacting zoning laws disguised as police power. This case is in its early stages, and the court has not decided the merits of any of ExoticRidge's claims.

Although a Tennessee county has different powers and authority than the City of Milwaukee, this case illustrates the range of legal challenges that may be asserted in response to a complete ban on data centers.

III. Conclusion

In conclusion, it is our opinion that a wholesale ban of data centers is more likely to invite a legal challenge alleging the ban is an invalid exercise of police power, violates equal protection, and is a taking, among other possible claims, and is less likely to withstand a legal challenge than the attached proposed substitute ordinance relating to the building of data centers (Common Council File No. 260142).

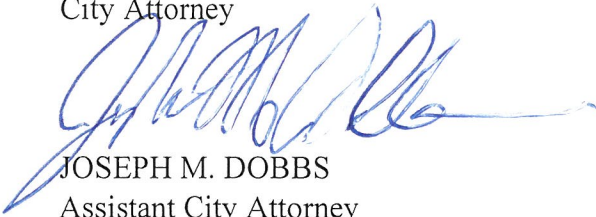
Alderwoman Marina Dimitrijevic
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We emphasize that the regulation of data centers, like any other regulation imposed by the city, should be supported by a strong factual record supporting its classifications and restrictions.

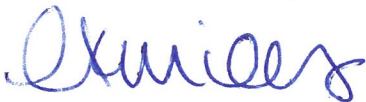
Very truly yours,

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City Attorney

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