

SCOPE AND INTENDED EFFECT

To establish a timeline and standards for comprehensive review of data center facilities and planned construction consistent with the public interest in:

1. Fire safety
2. Water conservation
3. Energy conservation and affordability
4. Economic development and
5. Maintenance of public infrastructure

In addition, Bastrop County establishes a Data Center Safety and Compliance Review Period and permitting pause to reflect the stated policy of the state of Texas to protect ratepayers, water resources, and rural communities from the consequences of data center development.

This temporary permitting pause effectuates the public interest in the foregoing by establishing reasonable timelines for study and evaluation of safety risks and compliance with applicable county ordinances, and state and federal law. This policy achieves that goal by:

1. Establish a pause on county permitting to allow
 - a. The County Fire Marshal to evaluate risk and the appropriateness of data center locations in regard to county fire prevention, risk mitigation and response and report that information to the commissioners court.
 - b. County Fire Marshall receiving and approving a Data Center Safety and Compliance Review pursuant to state statutes consistent with existing county authority and delegated authority
 - c. Submission of adequate environmental studies to identify:
 - i. Land use and appropriateness for battery storage facilities
 - ii. Approval of all permits by TCEQ and study of water impact consistent with delegated authority
 - d. Evidence of compliance with existing law

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- i. Governor's Directive related to new energy sources and impact on rates
 - ii. National security directives related to the use of foreign technology
2. Establish a Data Center Advisory Committee
3. Provide the Commissioners Court Opportunity to Determine Additional Actions Regarding Public Health, Safety, and Environmental Concerns.

STATUTORY AND LEGAL AUTHORITY FOR DATA CENTER SAFETY AND COMPLIANCE REVIEW PERIOD

Bastrop County has legal authority to pause permitting for data centers to ensure fire safety and compliance with state law. While it is correct that counties lack general zoning authority and cannot directly ban the construction of data centers, Bastrop County retains authority to regulate fire safety, wastewater, energy storage, and the use of certain technology regulated by state law- as well as the authority to enforcement any law that is reasonably necessary to public health.

A county fire marshal may review the plans of a business for fire or life safety hazards and recover a fee associated with the review process if authorized by the commissioners court. Texas Local Government Code section 352.016.

The Texas Commission on Environmental Quality has designated Bastrop County as authorized agent for TCEQ concerning on-site sewage disposal pursuant to Texas Health and Safety Code section 366.031.

At the request of a municipality, a BESS operator must contract with an independent, licensed third party engineer to evaluate the design, safety, and installation the facility in accordance with Texas Utilities Code Chapter 187. Texas Utilities Code section 187.003.

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A battery operator must provide site-specific emergency operations plans to local first responders. Texas Utilities Code section 187.004(d)

A company may not enter into an agreement that “grant[s] direct or remote access to or control of critical infrastructure” to a company owned or controlled by citizens of certain foreign countries. Texas Business and Commerce Code Chapter 117.

A county commissioners court may enforce any law that is reasonably necessary to the public health. Texas Health and Safety Code section 121.003.

DEFINITIONS

"Battery Energy Storage Facility" has the meaning assigned by Texas Utilities Code § 187.001(1), and includes (A) a Battery Energy Storage Resource, and (B) any facility or equipment necessary to support the operation of a Battery Energy Storage Resource, other than a facility or equipment owned by an electric utility as defined by Section 31.002, Texas Utilities Code.

"Battery Energy Storage Resource" has the meaning assigned by Texas Utilities Code § 187.001(2), and means an electrochemical device, whether connected at the transmission or distribution level, that charges from the grid or a co-located generation resource and discharges that energy at a later time.

"Battery Energy Storage System" or "BESS" means a Battery Energy Storage Facility as defined, including all associated facilities and equipment necessary to support the operation of a Battery Energy Storage Resource, including but not limited to battery cells, battery modules, battery racks, battery management systems, inverters, transformers, substations, switchgear, SCADA systems, communications equipment, containment structures, fire suppression systems, cooling systems, foundations, fencing, and access roads.

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"Commissioners Court" means the Commissioners Court of Bastrop County, Texas, consisting of the County Judge and the four County Commissioners.

"Data Center Safety and Compliance Review"- the review described in section

"Construction" means any activity related to the commencement, building, installation, erection, assembly, or completion of a battery energy storage system or data center, including but not limited to site preparation, grading, foundation work, equipment installation, electrical interconnection, and testing or commissioning.

"Data Center" means a facility or group of facilities used primarily to house computer systems and associated components for the purpose of processing, storing, or distributing data, including but not limited to internet hosting, cloud computing, artificial intelligence computing, cryptocurrency mining, data storage, data transfer, and payment processing, together with all associated cooling systems, power generation equipment, backup power systems, substations, switchgear, and related infrastructure. For purposes of this Moratorium, a Data Center does not include a facility with less than 500 square feet of total floor area that is used solely for personal or residential purposes and is not operated as a commercial enterprise.

"County" means Bastrop County, Texas.

"County Fire Marshal" means the fire marshal appointed by the Commissioners Court of Bastrop County pursuant to Texas Local Government Code § 352.012, or such person's authorized designee.

"Developer" means any person, firm, corporation, partnership, limited liability company, joint venture, association, or other entity that proposes to construct, own, operate, or maintain a battery energy storage system or data center within the unincorporated areas of Bastrop County.

FINDINGS OF FACT

This section would need to be populated with findings of fact related to fire risks, environmental hazards, the effect on the natural and human environments, agriculture, and other relevant factors.

DATA CENTER DEVELOPMENT ZONE STUDY

- (a) The County Fire Marshal and County Engineer are hereby directed to conduct a study to determine the appropriate locations within Austin County for designating one or more Data Center Development Zones for the construction and development of Battery Energy Storage Systems and Data Center projects.
- (b) The study shall consider the following factors:
 - 1. Proximity to residences, schools, places of worship, health care facilities, parks, and other sensitive land uses;
 - 2. Impact on wildfire and catastrophic fire risk;
 - 3. Adequacy of road access for emergency response vehicles and heavy equipment transport;
 - 4. Availability of firefighting staff and water supply for fire suppression purposes;
 - 5. Proximity to existing electrical transmission and distribution infrastructure and energy infrastructure overall;
 - 6. Floodplain, sewage, and drainage considerations;
 - 7. Sound pollution and quality of life;
 - 8. Environmental impact, including groundwater protection and soil contamination risks;
 - 9. Compatibility with existing and planned land uses in the surrounding area;
 - 10. The battery chemistry and associated hazard profile of the proposed technology, including whether the system uses non-flammable electrolytes and is not subject to thermal runaway, which factors may support less restrictive siting criteria relative to lithium-ion systems; and

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11. Such other factors as the County deems relevant to the protection of public health, safety, and welfare.

(c) Upon completion of the study, the County Fire Marshal and County Engineer shall present their findings and recommendations to the Commissioners Court for consideration and action.

DATA CENTER SAFETY AND COMPLIANCE REVIEW

(a) Prior to the commencement of Construction of any Battery Energy Storage System or Data Center within the Unincorporated Areas of Bastrop County, the Developer or responsible party shall submit to the County a complete Data Center Safety and Compliance Review.

(b) The Data Center Safety and Compliance Review shall include, at a minimum:

1. A complete list of all equipment, components, battery cells, battery modules, inverters, battery management systems, SCADA systems, communications equipment, software, firmware, and hardware proposed for use in the project, including the manufacturer, country of origin, and parent company for each item;
2. A sworn certification by an authorized officer of the Developer or responsible party that no equipment, components, software, firmware, or communications systems from any manufacturer on the Governor's Prohibited Technologies List, or from any entity referenced in Chapter 117 of the Public Utilities Code, is planned for incorporation in the project, or will be incorporated into the project
3. Documentation sufficient to establish the complete supply chain for all battery cells, modules, and energy storage components; and
4. Such other documentation as the County may require to verify compliance with the Lone Star Infrastructure Protection Act, the

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Governor's Prohibited Technologies List, and applicable fire and life safety standards.

5. An independent third-party engineering evaluation of the design, safety, and installation of any proposed or existing Battery Energy Storage Facility proposed within Bastrop County. The cost of such evaluation shall be borne by the Developer or responsible party.

6. Additional information required by law to be provided in connection with permitting by state agencies

7. Information demonstrating compliance with directives issued by the governor of Texas

(c) The Commissioners Court by order may authorize to charge a reasonable fee to the Developer for the Data Center Safety and Compliance Review and any inspection conducted under this section, in an amount determined by the Commissioners Court to cover the cost of the review or inspection, as authorized by Texas Local Government Code § 352.016(c).

(d) Bastrop County shall review the Data Center Safety and Compliance Review to verify

1. that the proposed project does not incorporate equipment from any prohibited manufacturer or Foreign Adversary; and

2. compliance with the independent evaluation requirements contained in (b)(5) of this section.

(e) No Construction shall be approved until the County Fire Marshal has completed the Data Center Safety and Compliance Review and issued a written determination of compliance.

Approval or Denial of Data Center Safety and Compliance Review

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- (a) A Developer may submit Data Center Safety and Compliance Review to the County at any time. The County shall review the submission and issue a written determination of compliance or non-compliance within a reasonable time after receipt of a complete submission.
- (b) All county permits for a data center shall be paused until approval of the Data Center Safety and Compliance Review by the County Fire Marshal.
- (c) If the County Fire Marshal determines that a proposed project incorporates equipment from any manufacturer on the Governor's Prohibited Technologies List, or from any entity owned, controlled, or influenced by the Chinese Communist Party or other Foreign Adversary, the County shall deny the Data Center Safety and Compliance Review and the Developer shall not commence Construction until it has substituted all non-compliant equipment and submitted a revised Equipment Manufacturer Audit demonstrating compliance.
- (d) (Construction of a Battery Energy Storage System or Data Center without completion of the Data Center Safety and Compliance Review and written determination of compliance by the County shall constitute a violation of this Data Center Safety Review Policy and shall be subject to the enforcement and penalty provisions set forth in Section _____.
- (e) The Developer shall provide to the Bastrop County Fire Marshal and all local first responders a site-specific emergency operations plan for Battery Energy Storage Systems and as required by this Moratorium for Data Centers.

Data Center Advisory Committee

Consistent with county development policy, the Texas Open Meetings Act, and state statutes referenced above, Bastrop County shall establish Data Center Advisory Committee including public members, local officials, and subject matter experts. The public members shall include members of the community affected by proposed data center construction. The advisory committee shall:

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1. Receive information related to the Data Center Safety and Compliance Review and data center construction;
2. Advise the commissioners court concerning the impact of data center construction in Bastrop County;
3. Advise the commissioners court on tax abatements concerning data centers; and
4. Provide information to the public concerning items (1) through (3) of this section.