

**COUNTY OF LOUDOUN
OFFICE OF THE COUNTY ATTORNEY
MEMORANDUM**

Date: September 8, 2026

To: Board of Supervisors

From: Leo P. Rogers, County Attorney *L.P.R.*
Carlos E. Teran, Senior Assistant County Attorney *CET*

Subject: Data Center Moratorium

**THIS MEMORANDUM IS PRIVILEGED ATTORNEY-CLIENT COMMUNICATION AND
IS PROTECTED FROM DISCLOSURE UNDER THE VIRGINIA FREEDOM OF
INFORMATION ACT. THIS MEMORANDUM IS NOT TO BE DISCLOSED WITHOUT
THE CONSENT OF THE BOARD OF SUPERVISORS.**

ISSUE:

Whether the Board of Supervisors can place a moratorium on the acceptance and approval of all land development applications for data center uses.

ANSWER:

No, it is prohibited by law.

ANALYSIS:

A “moratorium” refers to a temporary halt on accepting, processing, or approving applications. In a Supreme Court of Virginia case involving a site plan application, Fairfax County adopted a moratorium that paused rezonings, special exceptions, site plans, and subdivisions while the County completed its zoning-ordinance update. The Court held that Virginia law provides no authority for localities to stop accepting site plan or subdivision applications, and that the relevant Code provisions require these applications to be promptly approved or disapproved because such actions are non-discretionary.

Shortly afterward, the Attorney General issued an opinion addressing whether a locality may impose a moratorium on rezonings. The opinion concluded that no statutory authority exists for such a moratorium and that refusing even to consider a rezoning application contradicts the Virginia Code's requirements governing local zoning powers. The Attorney General further stated that denying a rezoning solely due to a moratorium would be arbitrary, and authority for arbitrary actions cannot be implied from a locality's general zoning authority.

Currently, all data centers must obtain a special exception prior to development. As noted above, a moratorium on site plan or subdivision applications for data-center uses is not permitted, and a moratorium on special-exception or rezoning applications is highly unlikely to be legally defensible. However, a locality may implement a process similar to a moratorium for rezonings and special exceptions. The Virginia Code requires rezonings to be approved or denied within a reasonable period that does not exceed twelve months. Loudoun County interprets this twelve-month period as beginning when the application is presented to the Planning Commission. Loudoun, as well as other Virginia localities, treat special exception applications the same as rezonings. So, the Board of Supervisors could defer final action to any date within that twelve-month window while continuing to accept and process rezoning and special exception applications, with the potential justification that such deferral would allow the Board to consider the new information and policies adopted with the Phase 2 Data Center Standards & Locations CPAM/ZOAM.

Although the requirement to act within a "reasonable time" could, in theory, be shorter than twelve months, it would likely take longer than twelve months to file suit and obtain a court order compelling the County to act. For that reason, challenges are improbable.

Site plan and subdivision applications are treated differently. The Virginia Code imposes strict, short review timelines measured in weeks. If a locality fails to meet these deadlines, the applicant may file a lawsuit that is prioritized by the Virginia Code. The Code also requires that all applicable comments be issued during the first review cycle, and any comments on later submissions must relate only to changes made after the initial review. Accordingly, site plan and subdivision applications for data-center development cannot be significantly delayed.

CONCLUSION:

It is not possible to do a moratorium on data center approvals. At most, the County could delay action on a data center rezoning or special exception for a year from the Planning Commission's public hearing of the application.