Ordinance No. _____ Introduced November 17, 2026

AN ORDINANCE TO CREATE ARTICLE 1365 OF THE PLANNING AND ZONING CODE OF THE CODIFIED ORDINANCES OF THE CITY OF WHEELING, TO INCLUDE REGULATIONS ON DATA CENTERS IN INDUSTRIAL DISTRICTS, AND TO ESTABLISH THE APPLICATION PROCESS, REQUIREMENTS AND DEVELOPMENT AND PERFORMANCE STANDARDS REGULATING ELECTRICAL POWER DEMAND, WATER CONSUMPTION, WATER REUSE AND CLOSED-LOOP COOLING SYSTEMS, WASTEWATER, NOISE, AIR EMISSIONS, AND OTHER POTENTIAL IMPACTS, ETC. ASSOCIATED WITH DATA CENTER FACILITIES.

WHEREAS, the City of Wheeling recognizes the importance of encouraging responsible economic development, technological innovation, investment, and job creation within the City; and

WHEREAS, the City desires to establish reasonable and appropriate standards to ensure that data centers are developed and operated in a manner that protects the public health, safety, and welfare, preserves the City's utility infrastructure, protects municipal water resources, and minimizes adverse impacts upon surrounding properties and neighborhoods; and

WHEREAS, the City intends that all data center facilities comply with all applicable federal, state, and local laws, rules, regulations, permits, and requirements relating to air quality, emissions, noise, water quality, wastewater discharge, stormwater management, electrical service, fire protection, and public health and safety; and

WHEREAS, the City of Wheeling is authorized under applicable law to regulate the use and development of land within the City and to establish reasonable standards promoting the public health, safety, and general welfare and the orderly development of land;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WHEELING, WEST VIRGINIA, creates Article 1365 of the Planning and Zoning Code of the Codified Ordinances of the City of Wheeling, as follows:

ARTICLE 1365

Data Centers and Facilities Regulatory Authority

1365.01 **Purpose and legislative intent.**

1365.02 **Title.**

1365.03 **Severability.**

DRAFT

1365.04 **Definitions.**

1365.05 **Overall policy and desired goals for special use permits for Data Centers and Facilities.**

1365.06 **Data Center Development and Performance Standards.**

1365.07 **Location of Data Centers and Facilities.**

1365.08 **Retention of expert assistance and reimbursement by applicant.**

1365.09 **Public hearing and notification requirements.**

1365.10 **Action on an application for a special use permit for Data Centers and Facilities.**

1365.11 **Extent and parameters of special use permit for Data Center.**

1365.12 **Application fee.**

1365.13 **Performance security.**

1365.14 **Reservation of authority to inspect Data Centers and Facilities.**

1365.15 **Liability insurance.**

1365.16 **Fines.**

1365.17 **Relief.**

1365.18 **Periodic regulatory review by the City.**

1365.19 **Adherence to State and/or Federal rules and regulations.**

1365.20 **Conflict with other laws.**

1365.21 **Authority.**

1365.22 **Effective date.**

CROSS REFERENCES

HB 2014 (Acts 2025 c. 112, effective July 11, 2025)
WV Code 11-6N-2
WV Code 5B-2-21a
WV Code 5G-1-3
See Generally- Codified Ordinances- Part Thirteen Planning and Zoning Code (P.&Z.)
Industrial Districts- See P.&Z. Articles1331 and 1343

DRAFT

Industrial Districts 1343.05 Required Performance Standards.
See Also Table 1343.05(A) entitled- Noise Restrictions and
Table 1343.05(B) entitled- Noise Measurement Corrections.
Site Plan Review- See P.&Z. Article 1373
Special Use Permits- See P.&Z. Article 1371
Administration and Enforcement- See P.&Z. Article 1377

1365.01 PURPOSE AND LEGISLATIVE INTENT.

(a) The State of West Virginia has limited the City of Wheeling's authority concerning a Data Center. The City of Wheeling finds that such Data Center may pose significant concerns to the health, safety, public welfare, character and environment of the City and its inhabitants. The City also recognizes that facilitating the development of Data Center service technology can be an economic development asset to the City and of significant benefit to the City and its residents. In order to ensure that the placement, construction or modification proposals of Data Center Facilities is consistent with the City's land use policies, the City is adopting a single, comprehensive, Data Center Facilities application and permit process, establishment of regulations, development and performance standards of electrical power demand, water consumption and reuse, cooling system, water waste, noise, air emissions and other potential impacts associated with Data Center Facilities.

(b) The intent of this Local Ordinance is to minimize impact of Data Center Facilities, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the City of Wheeling.

1365.02 TITLE.

This Ordinance shall be known and cited as the Data Center and Facilities Regulatory Authority Ordinance for the City of Wheeling.

1365.03 SEVERABILITY.

(a) If any word, phrase, sentence, part, section, subsection, or other portion of this Ordinance or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed Application thereof, shall be severable, and the remaining provisions of

DRAFT

this Ordinance, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

(b) Any Special Use Permit issued under this Ordinance shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the Permit shall be void in total, upon determination by the City.

1365.04 DEFINITIONS.

For purposes of this Ordinance, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

(a) **"Applicant"** means any Data Center service provider submitting an application for a Special Use Permit for Data Center Facilities.

(b) **"Application"** means all necessary and appropriate documentation that an Applicant submits in order to receive a Special Use Permit for Data Center Facilities.

(c) **"Closed-Loop Cooling System"** means a cooling system in which cooling water or other cooling fluid is continuously recirculated within a contained system and is not routinely discharged to a municipal water supply, sanitary sewer system, or stormwater system, except for necessary maintenance, treatment, or permitted discharge.

(d) **"Completed Application"** means an Application that contains all information and/or data necessary to enable an informed decision to be made with respect to an Application.

(e) **"Council"** means the City Council of the City of Wheeling, West Virginia.

(f) **"Data Center"** shall mean a facility or group of facilities designed and operated primarily for the housing, operation, storage, processing, management, or distribution of computer systems, servers, networking equipment, telecommunications equipment, digital information, or related technology infrastructure, together with accessory equipment and infrastructure necessary for the operation of such facility, including electrical substations, transformers, backup power

DRAFT

systems, generators, cooling systems, mechanical equipment, security facilities, and related utility infrastructure.

Data Center may include associated administrative and operational offices, loading areas, parking facilities, electrical infrastructure, emergency power generation equipment, cooling equipment, telecommunications infrastructure, and other accessory uses customarily incidental to the operation of the facility.
For purposes of this Section Data Center does not include or apply to a High Impact Data Center pursuant to the provisions of West Virginia HB 2014 (effective July 11, 2025) W.Va Code §11-6N-2(b) (6) and W.Va Code §5B-2-21a.

(g) **"Facility or Structure"** means an facility or structure serving or being used in conjunction with Data Center Facilities, and located on the same property or lot as the Data Center Facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.

(h) **"Person"** means any individual, corporation, estate, trust, partnership, joint stock Company, association of two (2) or more persons having a joint common interest, or any other entity.

(i) **"Potable Municipal Water"** means water supplied by the City's public water system that is treated and intended for human consumption or other potable uses.

(j) **"Special Use Permit"** means the official document or permit by which an Applicant is allowed to file for a building permit to construct and use Data Center Facilities as granted or issued by the City.

(k) **"State"** means the State of West Virginia.

(l) **"Water Reuse System"** means a system designed to collect, treat, and reuse water for non-potable purposes, including cooling, irrigation, or other approved uses.

1363.05 OVERALL POLICY AND DESIRED GOALS FOR SPECIAL USE PERMITS FOR DATA CENTER FACILITIES.

In order to ensure that the placement, construction, and modification of Data Center Facilities protects the City's health, safety, public welfare, environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this Ordinance, the City hereby adopts an overall policy with respect to a Special Use Permit for Data Center Facilities for the express purpose of achieving the goals included herein. In addition to the uses otherwise permitted within an Industrial District under this Article, Data Centers are subject to all applicable provisions of this Code and the standards established in this Article.

DRAFT

1365.06 DATA CENTER DEVELOPMENT AND PERFORMANCE STANDARDS.

Any Data Center established or expanded within an Industrial District shall comply with the following requirements, in addition to all other applicable provisions of the Codified Ordinances of the City of Wheeling:

(a) GENERAL COMPLIANCE.

All Data Centers shall be designed, constructed, maintained, and operated in compliance with all applicable federal, state, and local laws, ordinances, rules, regulations, permits, and requirements, including, but not limited to, requirements governing zoning, building construction, fire protection, electrical systems, air quality, emissions, water quality, wastewater, stormwater, noise, hazardous materials, and public health and safety.

Where a federal or state agency has jurisdiction over a particular activity, permit, emission, discharge, or operational standard, compliance with the applicable federal or state requirement shall be required. *See Generally: Codified Ordinance- Part Thirteen- Planning and Zoning Code*

(b) SITE PLAN AND UTILITY IMPACT REVIEW.

Prior to construction, expansion, or substantial modification of a Data Center, the applicant shall submit a site plan and supporting documentation sufficient for the City to evaluate the anticipated impacts of the proposed facility on public infrastructure and surrounding properties.

The applicant shall provide, at a minimum:

(1) The anticipated electrical demand of the facility, including initial and ultimate projected peak demand;

(2) Documentation demonstrating that adequate electrical service is available or will be provided without creating an unreasonable burden on existing City infrastructure or public utility systems;

(3) The anticipated daily and maximum water demand of the facility;

(4) The anticipated wastewater discharge, if any;

(5) A description of all proposed cooling systems and water conservation measures;

(6) The location and specifications of backup generators and other emergency power equipment;

(7) The anticipated noise-producing equipment and proposed noise mitigation measures;

(8) The anticipated air emissions from emergency generators or other combustion equipment and applicable permits or approvals;

(9) A description of proposed stormwater management facilities; and

DRAFT

(10) Any additional information reasonably necessary for the City to determine compliance with applicable City requirements. *See Generally- Site Plan Review- P.&Z. Article 1373*

(c) ELECTRICAL POWER DEMAND.

A Data Center shall be responsible for coordinating with the applicable electric utility provider regarding the availability and adequacy of electrical service required to serve the facility.

No Data Center shall be permitted to connect to or materially expand its use of electrical service in a manner that violates applicable utility requirements, causes unsafe conditions, or creates an unreasonable burden on public utility infrastructure.

The applicant shall provide documentation from the applicable electric utility provider, when required by the City, demonstrating that the proposed electrical load can be adequately served. *(As an example, a "Load Study" document, etc.)*

All electrical substations, transformers, transmission infrastructure, and other electrical equipment associated with a Data Center shall comply with applicable federal, state, utility, and City requirements and shall be located and screened in accordance with applicable zoning and site plan requirements.

(d) WATER USE AND WATER CONSERVATION.

Data Centers shall be designed and operated to minimize reliance upon potable municipal water supplies for cooling purposes.

To the maximum extent practicable, Data Centers shall utilize water-efficient cooling technologies, including closed-loop cooling systems, air cooling, dry cooling, or other technologies that substantially reduce potable water consumption.

The use of potable municipal water for cooling shall be limited to the amount necessary for the safe and efficient operation of the facility and shall be subject to the capacity and operational requirements of the City's water system.

The City may require the applicant to provide a water demand analysis demonstrating that the proposed facility's water use will not unreasonably impair the City's ability to provide adequate water service to existing residential, commercial, industrial, and public customers.

(e) CLOSED-LOOP COOLING AND WATER REUSE.

Any Data Center utilizing water-based cooling systems shall, to the maximum extent practicable, utilize a closed-loop cooling system or other water reuse technology designed to minimize the withdrawal of potable municipal water.

DRAFT

Cooling systems shall be designed to maximize recirculation and reuse of process water and shall minimize water loss through evaporation, blowdown, discharge, or other processes.

Where technically and economically feasible, non-potable water sources, reclaimed water, captured rainwater, or other approved alternative water sources shall be considered for cooling purposes.

The applicant shall provide documentation describing the proposed cooling system and anticipated water consumption as part of the site plan and approval process.

(f) PROTECTION OF MUNICIPAL WATER SUPPLIES.

No Data Center shall be designed, constructed, or operated in a manner that causes the City's municipal water system to be overloaded, depleted, contaminated, or otherwise adversely affected.

No process water, cooling water, chemicals, treatment compounds, or other substances associated with the operation of a Data Center shall be discharged into the City's potable water system.

All connections to the City's water system shall comply with applicable City requirements, cross-connection control requirements, backflow prevention requirements, and applicable federal and state regulations.

The City may require additional water conservation, storage, treatment, or infrastructure improvements when necessary to protect the City's water supply and water distribution system.

(g) WASTEWATER AND DISCHARGE.

No Data Center shall discharge wastewater, cooling water, process water, chemicals, or other substances into the City's sanitary sewer system or stormwater system except in accordance with applicable federal, state, and local laws, regulations, permits, and City requirements.

Any discharge to the municipal sanitary sewer system shall be subject to the City's applicable sewer use requirements and any required pretreatment or discharge permit.

The City may require the applicant to demonstrate that proposed wastewater discharges will not exceed the capacity of the City's wastewater treatment system or adversely affect the operation of the City's wastewater collection or treatment infrastructure.

(h) NOISE.

All Data Center facilities, including mechanical equipment, cooling systems, transformers, generators, fans, pumps, and other equipment, shall comply with all applicable City noise regulations and any applicable federal or state requirements.

DRAFT

The facility shall be designed and operated to minimize noise impacts on adjoining properties and surrounding neighborhoods.

Where reasonably necessary to demonstrate compliance, the City may require the applicant to submit a professional acoustical analysis identifying anticipated noise levels, noise sources, and proposed mitigation measures.

Noise mitigation measures may include, but are not limited to, acoustic enclosures, sound barriers, equipment placement, building design, landscaping, and other reasonable measures.

Emergency generators and other backup power equipment shall be operated in accordance with applicable laws and permits and shall not be routinely operated for purposes unrelated to testing, maintenance, emergency response and such emergency generators are only to be used during power outages. See Section (J) below. *See Generally for Cross References.*

(i) AIR QUALITY AND EMISSIONS.

All Data Centers shall comply with all applicable federal and state air quality and emissions laws, regulations, permits, and requirements.

Emergency generators, backup power systems, boilers, combustion equipment, and other emission sources shall be designed, installed, operated, and maintained in accordance with all applicable requirements of the United States Environmental Protection Agency, the West Virginia Department of Environmental Protection, and any other agency having jurisdiction.

Prior to operation, the applicant shall obtain all permits and approvals required by applicable law.

Nothing in this Article shall be construed to establish emission standards that conflict with or are preempted by applicable federal or state law.

(j) EMERGENCY GENERATORS AND BACKUP POWER.

Backup generators and other emergency power systems shall be located, screened, and operated in accordance with applicable zoning, building, fire, noise, and air quality requirements.

The applicant shall provide information regarding the type, number, fuel source, capacity, and anticipated operating schedule of all proposed generators and backup power equipment.

The City may require appropriate screening, enclosure, setbacks, or noise mitigation measures for such equipment to minimize impacts on surrounding properties.

(k) STORMWATER AND SITE DRAINAGE.

All Data Centers shall comply with applicable federal, state, and local stormwater management requirements.

DRAFT

The applicant shall demonstrate that stormwater runoff from the site will be appropriately managed and will not cause flooding, erosion, pollution, or unreasonable adverse impacts to adjoining properties or public infrastructure.

(l) HAZARDOUS MATERIALS.

The storage, handling, transportation, and disposal of fuels, lubricants, coolants, batteries, chemicals, and other hazardous materials associated with the operation of a Data Center shall comply with all applicable federal, state, and local laws and regulations.

Appropriate spill prevention, containment, emergency response, and fire protection measures shall be provided as required by applicable law.

(m) INFRASTRUCTURE COSTS.

Where a Data Center requires the construction, expansion, relocation, or improvement of public utility infrastructure or other public infrastructure beyond the capacity or availability of existing infrastructure, the City may require the applicant to coordinate with the applicable utility provider or governmental entity regarding necessary improvements, subject to applicable law and any requirements established by the responsible utility or governmental entity.

(n) ONGOING COMPLIANCE.

The owner and operator of a Data Center shall remain responsible for maintaining compliance with all applicable federal, state, and local requirements throughout the life of the facility.

Any substantial expansion or modification that materially increases the facility's electrical demand, water consumption, wastewater discharge, noise, emissions, or other regulated impacts shall be subject to review under the applicable provisions of this Article and the City's zoning and development regulations.

1365.07 LOCATION OF DATA CENTER FACILITIES.

(a) Applicants for Data Center Facilities shall locate site and construct Data Center in accordance with the requirements as set forth as follows:

Properties in areas zoned as I-1 Light Industrial Use.
Properties in areas zoned for I-2 General Industrial Use.

Data Centers are to comply with all lot size, set back and land use requirements that pertain to the particular Industrial Zone. Wherein the Data Center is proposed to be located.

DRAFT

1365.08 RETENTION OF EXPERT ASSISTANCE AND REIMBURSEMENT BY APPLICANT.

(a) The City may hire any consultant and/or expert necessary to assist the City in reviewing and evaluating the Application, including the construction and modification of the site, once permitted, and any site inspections. For purposes of Retention of Expert Assistance, the City will follow the guidelines set forth in the West Virginia Code §5G for outside expert consultants to assist City Staff with review of application materials required for a Data Center, the process stated is clear, consistent and adaptable. See Generally WV Code §5G-1-3 for the Process of Requests for Proposals for consulting services as an analogy.

(b) An Applicant shall deposit with the City escrow funds sufficient to reimburse the City for all costs of the City's consultant in providing expert evaluation and consultation to any agency of the City in connection with the review of any Application, including where applicable, the lease negotiation, the pre -approval evaluation, and the construction and modification of the site, once permitted. The initial deposit shall be $20,000.00. The placement of the $20,000.00 with the City shall precede the pre-application meeting. The City will maintain a separate escrow account for all such funds. The City's consultants/experts shall invoice the City for its services related to the Application. If at any time during the process this escrow account has a balance less than $2,500.00, the Applicant shall immediately, upon notification by the City, replenish said escrow account so that it has a balance of at least $5,000.00. Such additional escrow funds shall be deposited with the City before any further action or consideration is taken on the Application. In the event that the amount held in escrow by the City is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall, upon request of the Applicant, be promptly refunded to the Applicant. If notified by the City that additional escrow is required, the Applicant may request copies of Consultants' and/or experts' invoices. If the Applicant finds errors in those invoices, Applicant may ask the City to audit those specific items for reasonableness and may request relief there from if not deemed reasonable by the City.

(c) Notwithstanding the above, there shall be a fee cap of $40,000.00 as to the total consultant can increase fees to be charged to applicant in a case. The foregoing does not prohibit the City from imposing additional reasonable and cost-based fees for costs incurred should an applicant amend or change its application and the fee cap shall not apply as to any fees which the City determines to be attributable to the dilatory or otherwise bad faith actions of Applicant in providing a complete application or in proceeding with a public hearing.

(d) The total amount of the funds needed as set forth in subsection (b) of this section may vary with the scope of review and complexity of the project, the completeness of the Application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.

DRAFT

1365.09 PUBLIC HEARING AND NOTIFICATION REQUIREMENTS.

(a) Prior to the approval of any Application for a Special Use Permit for Data Center Facilities, a Public Hearing shall be held by the City's Planning Commission, notice of which shall be published in the newspaper general circulation in the City no less than ten (10) calendar days prior to the scheduled date of the Public Hearing. In order that the City may notify nearby landowners, the Application shall contain the names and address of all landowners whose property is located within fifteen hundred (1,500) feet of any property line of the lot or parcel on which the Data Center Facilities are proposed to be located. See Special Use Permit- P.&Z. Article 1371.

1365.10 ACTION ON AN APPLICATION FOR A SPECIAL USE PERMIT FOR DATA CENTER FACILITIES.

(a) The City pursuant to Special Use Permits- Article 1371, will undertake a review of an Application pursuant to this Article in a timely fashion, consistent with its responsibilities, and shall act within a reasonable period of time given the relative complexity of the Application and the circumstances, with due regard for the public's interest and need to be involved, and the Applicant's desire for a timely resolution.

(b) The City may refer any Application or part thereof to any advisory, other committee or commission for a non-binding recommendation.

(c) After the Public Hearing and after formally considering the Application, the City may approve, approve with conditions, or deny a Special Use Permit. Its decision shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the granting of the Permit shall always be upon the Applicant.

(d) If the City approves the Special Use Permit for Data Center Facilities, then the Applicant shall be notified of such approval in writing within ten (10) calendar days of the City's action, and the Special Use Permit shall be issued within thirty (30) days after such approval. Except for necessary building permits, and subsequent Certificates of Compliance, once a Special Use Permit has been granted hereunder, no additional permits or approvals from the City, such as site

DRAFT

plan or zoning approvals, shall be required by the City for the Data Center Facilities covered by the Special Use Permit.

(e) If the City denies the Special Use Permit for Data Center Facilities, then the Applicant shall be notified of such denial in writing within ten (10) calendar days of the City's action.

1365.11 EXTENT AND PARAMETERS OF SPECIAL USE PERMIT FOR DATA CENTER FACILITIES.

The extent and parameters of a Special Use Permit for Data Center Facilities shall be as follows:

(a) Such Special Use Permit shall not be assigned, transferred or conveyed without the express prior written notification to the City.

(b) Such Special Use Permit may, following a hearing held by the Planning Commission upon due prior notice to the Applicant. The Planning Commission shall make a recommendation to the City Council that the Special Use Permit be revoked, canceled, or terminated for a violation of the conditions and provisions of the Special Use Permit, or for a material violation of this Ordinance after prior written notice to the holder of the Special Use Permit and the City Council shall have the final decision to accept such recommendation, reject such or modify such.

1365.12 APPLICATION FEE.

At the time that a Person submits an Application for a Special Use Permit, such Person shall pay a non-refundable application fee of $5,000.00 to the City.

1365.13 PERFORMANCE SECURITY.

The Applicant and the owner of record of any proposed Data Center Facilities property site shall, at its cost and expense, be jointly required to execute and file with the City a bond, or other form of security acceptable to the City as to type of security and the form and manner of execution, in an amount of at least $75,000.00 for a Data Center facility and $25,000.00 for other structure and with such sureties as are deemed sufficient by the City to assure the faithful performance of the terms and conditions of this Ordinance and conditions of any Special Use Permit issued pursuant to this Ordinance. The full amount of the bond or security shall remain in

DRAFT

full force and effect throughout the term of the Special Use Permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the original Special Use Permit.

1365.14 RESERVATION OF AUTHORITY TO INSPECT DATA CENTER FACILITIES.

In order to verify that the holder of a Special Use Permit for Data Center Facilities and any and all lessees, renters, and/or licensees of Data Center Facilities, place and construct such facilities, in accordance with all applicable technical, safety, fire, building, and zoning codes, Laws, Ordinances and regulations and other applicable requirements, the City may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, the Data Center itself and buildings or other structures constructed or located on the permitted site.

1365.15 LIABILITY INSURANCE.

(a) A holder of a Special Use Permit for Data Center Facilities shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the Special Use Permit in amounts as set forth below:

(1) Commercial General Liability covering personal injuries, death and property damage: $1,000,000 per occurrence/$2,000,000 aggregate;

(2) Automobile Coverage: $1,000,000 per occurrence/ $2,000,000 aggregate;

(3) Workers Compensation and Disability: Statutory amounts.

1365.16 FINES.

(a) In the event of a violation of this Ordinance or any Special Use Permit issued pursuant to this Ordinance, the City may impose and collect, and the holder of the Special Use Permit for Data Center Facilities shall pay to the City, fines or penalties as set forth below.

(b) The holder of a Special Use Permits failure to comply with provisions of this Ordinance shall constitute a violation of this Ordinance and shall subject the Applicant to the code enforcement provisions and procedures as provided in Section 1377 of the City of Wheeling's Code of Ordinances.

DRAFT

(c) Notwithstanding anything in this Ordinance, the holder of the Special Use Permit for Data Center Facilities may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this Ordinance or any section of this Ordinance. An attempt to do so shall subject the holder of the Special Use Permit to termination and revocation of the Special Use Permit. The City may also seek injunctive relief to prevent the continued violation of this Ordinance, without limiting other remedies available to the City.

1365.17 RELIEF.

Any Applicant desiring relief, waiver or exemption from any aspect or requirement of this Ordinance may request such, provided that the relief or exemption is contained in the submitted Application for either a Special Use Permit, or in the case of an existing or previously granted Special Use Permit a request for modification of its Data Center and/or facilities. Such relief may be temporary or permanent, partial or complete. However, the burden of proving the need for the requested relief, waiver or exemption is solely on the Applicant to prove. The Applicant shall bear all costs of the City in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the Applicant demonstrates by clear and convincing evidence that, if granted the relief, waiver or exemption will have no significant effect on the health, safety and welfare of the City, its residents and other service providers and after a hearing process pursuant to the provisions of Article 1371 of the Planning and Zoning Code is conducted such Relief sought.

1365.18 PERIODIC REGULATORY REVIEW BY THE CITY.

(a) The City may at any time conduct a review and examination of this entire Ordinance.

(b) If after such a periodic review and examination of this Ordinance, the City determines that one or more provisions of this Ordinance should be amended, repealed, revised, clarified, or deleted, then the City may take whatever measures are necessary in accordance with applicable Law in order to accomplish the same. It is noted that where warranted, and in the best interests of the City, the City may repeal this entire Ordinance at any time.

(c) Notwithstanding the provisions of subsections (a) and (b) of this Section, the City may at any time and in any manner (to the extent permitted by Federal, State, or local law), amend, add, repeal, and/or delete one or more provisions of this Ordinance.

1365.19 ADHERENCE TO STATE AND/OR FEDERAL RULES AND REGULATIONS.

(a) To the extent that the holder of a Special Use Permit for Data Center Facilities has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or

DRAFT

regulations, then the holder of such a Special Use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency.

(b) To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, and specifically including any rules and regulations regarding are modified during the duration of a Special Use Permit for Data Center Facilities, then the holder of such a Special Use Permit shall conform to the permitted Facilities to the applicable changed and/or modified rule, regulation, standard, or provision.

1365.20 CONFLICT WITH OTHER LAWS.

Where this Ordinance differs or conflicts with other Laws, rules and regulations, unless the right to do so is preempted or prohibited by the City, State or Federal government, this Ordinance shall apply. *See Generally WV Code 11-6N-2; 5 B-2-21a and HB 2014.*

1365.21 AUTHORITY.

This local Ordinance is enacted pursuant to applicable authority granted by the State and federal government.

1365.22 EFFECTIVE DATE.

This Ordinance shall be effective immediately upon passage, pursuant to applicable legal and procedural requirements.

DRAFT