May 27, 2026

Honorable Council President Wardine Alexander
Members of the Birmingham City Council
Birmingham City Hall
710 20th Street North
Birmingham, Alabama 35203

Re: Public Comments on the Amended Draft Data Center Ordinance (Redlined 5/12/26) — Public Hearing of June 9, 2026

Dear Council President Alexander and Honorable Members of the Council:

Thank you for the opportunity to submit written comments on the amended draft Data Center Ordinance. I appreciate the Council's decision to pause and take additional public input before adopting permanent zoning regulations governing what may become some of the largest, most resource-intensive industrial uses ever sited within Birmingham's city limits. The decisions made in this ordinance will shape water availability, electricity rates, neighborhood character, public health, and municipal liability for decades.

The amended draft represents real progress. It establishes meaningful size categories, distinguishes accessory and micro uses from medium and hyperscale facilities, restricts on-site fossil-fuel generation to true emergency backup, requires closed-loop cooling for hyperscale uses, and addresses illicit stormwater connections. These are important steps. However, several provisions still leave the public, surrounding property owners, and the City itself exposed to risks that an ordinance of this scale should not leave unaddressed. The recommendations below are offered in that spirit — not to obstruct responsible development, but to ensure the framework is enforceable, transparent, and durable.

I. Top-Priority Changes Requested

A. Mandatory Public Notice and Public Hearing for Any Change in the Size or Scope of a Hyperscale Data Center

The single most important addition this ordinance needs is an unambiguous, enforceable requirement that no expansion, modification, or change in the size or scope of an approved hyperscale data center may occur without renewed public notice and a public hearing before the Council or Zoning Board of Adjustment.

Section 13 of the hyperscale conditions already states that any increase in gross floor area, electrical demand, water consumption, cooling capacity, backup power generation, or fuel storage capacity beyond initial approval is a "material change or expansion in use" and requires "a new review for compliance with conditions in this section." That language is a strong foundation, but it does not specify who reviews, what process applies, or what notice the public receives. As currently drafted, an administrative determination by staff could, in practice, authorize a substantial expansion without any opportunity for the surrounding community to be heard. Recent events involving the BHM01 project, where a single attorney's memo attempted to effectively reclassify critical infrastructure and attempted to bypass the special exception process, demonstrate exactly how quietly such administrative pathways can operate.

Recommended language to add to Section 13 (and a parallel section for Medium Data Centers):

"Any proposed increase in gross floor area, building footprint, aggregate electrical demand, water consumption, cooling capacity, backup power generation capacity, generator count, fuel storage capacity, substation capacity, or hours of operation beyond that approved in the original site development plan shall constitute a material change in use. No such change shall be approved administratively. The applicant shall submit a new application that:

- Is reviewed under the data center conditions of this Ordinance in effect at the time of the new application;
- Is subject to a duly noticed public hearing before the Zoning Board of Adjustment and, for hyperscale facilities, the City Council;
- Requires certified-mail notice to all property owners within five hundred (500) feet of the facility boundary, plus published notice in a newspaper of general circulation no fewer than fifteen (15) days before the hearing;
- Requires an updated water feasibility study, an updated utility capacity confirmation letter, and an updated noise and emissions study reflecting the proposed expansion;
- Requires posting of the application and all supporting materials on the City's website for not less than thirty (30) days prior to the hearing."

Without this language, the ordinance's setbacks, capacity limits, and disclosure requirements become a one-time check at initial siting, after which the facility can

grow indefinitely behind the fence line. That is not what the public has been told the ordinance does, and it is not what an industrial use of this magnitude warrants.

B. Restore the 1,000-Foot Residential Setback for Hyperscale Data Centers

The 500-foot setback in Section 1(a) for I-1, I-3, and MXD Use Group 3 districts is half of what the original planning staff draft proposed and half of what comparable cities are now adopting. Hyperscale facilities generate continuous low-frequency noise from cooling chillers, transformer hum, and periodic generator testing; they produce nighttime sky-glow; and they require substations and high-voltage interconnects that bring their own footprint. Five hundred feet is roughly the length of one and a half football fields — not a meaningful buffer for a 30-plus-megawatt industrial complex operating 24 hours a day.

The Southern Environmental Law Center, the Greater Birmingham Humane Society, and residents of Oxmoor Valley have all asked the Council to restore the 1,000-foot minimum that planning staff originally proposed. We respectfully join that request. The setback should be 1,000 feet in all zoning districts where hyperscale facilities are permitted, measured from any building or ancillary equipment to the nearest property line of a residential or urban neighborhood district.

C. Restore the Special Exception Requirement for All Hyperscale Data Centers

The amended draft lists hyperscale data centers as "Permitted with Conditions" in I-1, I-2, I-3, and MXD Use Group C-3, with Special Exception only in I-1 and MXD Use Group C-3. The original draft required Special Exception across the board. The Council should restore that requirement.

The Special Exception process is the principal mechanism by which Birmingham residents receive quasi-judicial notice, the right to appear, the right to present evidence, and the right to cross-examine. A 300-megawatt or larger facility, sited next to a hospital campus, an animal shelter, a residential neighborhood, or a transit station, should never be approved as a routine "permitted" use. Special Exception is the appropriate procedural protection for an industrial use of this scale, regardless of the underlying district.

II. Substantive Provisions That Should Be Strengthened or Added

A. No Approval Without a Confirmed Operational Design ("Wildcatter" Protection)

The ordinance should prohibit conditional-use or special-exception approval of a hyperscale facility proposed without a confirmed, identified tenant or tenant category, or proposed with placeholder figures for power, water, generator count, or cooling. A speculative developer who acquires land, secures maximum allocations, and obtains zoning approval before any operator is identified leaves the City regulating against a moving target. The conditions of approval should be tied to a documented operational design, and that design should be binding. No future buildout should be authorized in the abstract.

B. Independent Pre-Construction Baseline Testing and Ongoing Monitoring

The draft addresses water-feasibility studies and stormwater compliance, but contains no requirement for pre-construction baseline data on air, water, soil, or groundwater conditions. Without that baseline, neither the City nor surrounding property owners will be able to attribute future contamination, well drawdown, or air-quality changes to the facility — which is precisely the position operators benefit from. The ordinance should require:

- Independent, applicant-funded baseline testing of air, surface water, soil, and all private wells within one mile of the facility boundary, conducted by a qualified third party selected by the City and not by the developer.
- PFAS, heavy metals, and pH included in the baseline panel and in ongoing monitoring.
- Quarterly independent monitoring of water withdrawals, cooling-tower discharge composition, and ambient noise at the residential property line, with results posted publicly on the City's website.
- Authority for adjacent property owners to engage an independent geologist or environmental engineer at the applicant's expense if impacts are reasonably suspected.

C. Decommissioning Bond and Site-Restoration Financial Assurance

A hyperscale facility is a multi-hundred-million-dollar industrial complex containing substations, transformers, fuel storage, lithium battery systems, refrigerants, and cooling chemistry. When such a facility ceases operations — whether at end-of-life,

after acquisition, or in bankruptcy — the cost of demolition, equipment removal, and environmental remediation can easily exceed eight figures. The ordinance currently contains no financial assurance requirement. That gap should be closed.

The ordinance should require, as a condition of approval:

- A decommissioning bond, surety, or irrevocable letter of credit posted before any site clearing begins, in an amount equal to 110% of an engineer-certified full-site decommissioning cost.
- The City of Birmingham designated as payee.
- Reassessment and updating of the bond amount every five (5) years.
- Landowner secondary liability if the operator fails to perform.
- The bond cannot be waived, deferred, or substituted by parent-company guarantee without independent financial review.

D. Enforceable Noise, Emissions, and Generator Standards

The draft restricts routine generator testing to "daytime hours" but does not define the term. The draft also requires pre-construction and post-construction noise studies but sets no numerical standard against which compliance is measured. Without enforceable numbers, a noise study is a paperwork exercise. The ordinance should:

- Define "daytime" generator testing as weekdays between 9:00 a.m. and 5:00 p.m. only, with no weekend or holiday testing except in genuine emergencies, and require forty-eight (48) hours of advance public notice (e.g., posting on the City website and email notice to property owners within 500 feet) for any scheduled testing.
- Cap routine testing at a maximum of fifteen (15) minutes per generator per week and a cumulative total at the facility.
- Establish numerical noise limits enforceable at the nearest residential or urban-neighborhood property line: a maximum of 55 dBA daytime and 45 dBA nighttime, measured with C-weighted readings to capture low-frequency content, with octave-band analysis required.
- Require all backup generators to meet, at minimum, EPA Tier 4 Final emissions standards or successor standards as they are adopted.
- Require disclosure of generator count, individual generator nameplate capacity, aggregate generator capacity, fuel type, fuel storage volume, secondary containment specifications, and emissions control equipment — all

bound as enforceable conditions of approval rather than merely "provided" to the City.

- Confirm that noise limits remain in force during utility outages, when generator activity is highest and surrounding residents most need the protection.

E. Protection of Birmingham Ratepayers from Cost-Shifting

A hyperscale facility may require new substations, transmission upgrades, distribution improvements, and dedicated interconnection studies. Under existing utility tariff structures, the cost of such upgrades can be socialized across the broader ratepayer base unless the ordinance affirmatively requires otherwise. The ordinance should require, as a condition of approval:

- A developer-funded, independent interconnection study conducted by the serving electric utility before zoning approval.
- A binding commitment that the developer pays 100% of all transmission upgrades, substation expansions, and distribution improvements directly attributable to the facility.
- Written certification from the serving utility that residential and small-commercial ratepayers will not bear the cost of infrastructure serving the data center, either through rate base recovery or rider charges.
- Disclosure of any known or anticipated impact on electric-rate availability or reliability for other customers, with that disclosure made part of the public record before any public hearing.

F. Cumulative Impact Analysis

The ordinance evaluates each facility in isolation. As Birmingham and surrounding jurisdictions see additional proposals, the cumulative draw on regional water, the cumulative grid load, the cumulative emergency-response burden, and the cumulative road impact will exceed what any single project's study captures. No hyperscale facility should be approved without a cumulative-impact analysis evaluating water demand, grid strain, road degradation, air quality, and emergency-response capacity, taking into account all approved or proposed data-center development within a thirty (30) mile radius.

G. Fire and Emergency-Response Capacity

Section 12 requires battery-storage emergency-response plans subject to Fire Department review, which is a good start. It should go further. The ordinance should require an independent emergency-response capacity assessment, funded by the applicant, evaluating: lithium-ion thermal-runaway risk; large-volume diesel-fuel fire scenarios; suppression-water demand; on-shift staffing capability; and mutual-aid limitations. The developer should fund specialized training, protective equipment, and any necessary apparatus for Birmingham Fire and Rescue and any responding mutual-aid departments before operations begin, and should fund biennial refresher training for the life of the project.

H. Consolidated Enforcement, Permit Revocation, and Sunset Provisions

The ordinance currently relies on the general public-nuisance framework of Chapter 4 of the City Code. That is insufficient for an industrial use of this scale. The ordinance should add a consolidated enforcement section containing:

- Clear corrective-action deadlines tied to specific violation categories.
- Escalating daily fines (a minimum of $500 and maximum of $1,000 per day per section violated, with simultaneous violations stacking independently).
- Express authority for the Council or Zoning Board of Adjustment to suspend or revoke approvals after notice and an opportunity to cure, for repeated or material violations of any permit condition — not only for noise or water exceedances.
- Authority for the City to require operational modifications when necessary to protect surrounding communities.
- A sunset provision: if construction has not commenced within three (3) years of approval, the approval expires automatically and the project must reapply under the ordinance standards in effect at that time.

I. Brownfield Preference

Before any greenfield agricultural, conservation, or residentially adjacent land is converted to hyperscale data-center use, the applicant should be required to demonstrate that no suitable previously disturbed industrial or brownfield site exists within a reasonable radius. Birmingham has significant former industrial acreage that is better suited to this use than land bordering established neighborhoods.

J. Expanded Certified-Mail Notice Radius

Section 20 requires certified-mail notice to property owners within 500 feet of the subject property. Given the noise carry, sky-glow, and traffic impacts of a hyperscale facility, the notice radius should be expanded to one-half mile (2,640 feet) for hyperscale uses, and the notice obligation should attach not only to new facilities but also to any material change in size or scope under Section II.A above.

III. Drafting and Clarity Recommendations

- Section 1(b) Medium Data Center definition. The disjunctive "and/or" test (square footage and/or megawatt threshold) can produce ambiguous results. A facility under 10,000 sq. ft. with 5 MW of demand would qualify as both Micro (by footprint) and Medium (by load). Clarify that the more restrictive category governs.
- Aggregate Electrical Demand definition. The phrase "regardless of phasing, ownership structure, or timing of construction" is exactly right and should be referenced anywhere the megawatt thresholds are applied, to prevent gaming through legal-entity separation or phased filings.
- Section 10(d) and 10(b) of Medium and Section 10 of Hyperscale (on-site power generation). The carve-out for "solar and/or fuel cells" as primary power should be clarified: are fuel cells limited to hydrogen and similar low-carbon sources, or does it include natural-gas-reformed fuel cells, which are functionally equivalent to fossil-fuel generation? If the intent is to exclude fossil-derived fuel cells from the carve-out, say so expressly.
- Section 19 (Lighting). The 3000 K CCT cap and the lux-based light-trespass standards are excellent. Consider adding a "dark-sky compliant" certification requirement for hyperscale facilities and an obligation to use motion- or schedule-based dimming for non-essential exterior lighting between 10:00 p.m. and 6:00 a.m.
- Fiber Hut definition. Confirm the prohibition on "data storage, data processing, or server hosting" in Section 5 of the Fiber Hut conditions is enforceable against later equipment additions. Consider requiring an annual self-certification by the operator that the facility continues to qualify as a Fiber Hut rather than a Micro Data Center.

IV. Summary of Requested Changes

In priority order, we respectfully request that the Council:

1. Add an express requirement that any change in the size or scope of a hyperscale (or medium) data center triggers renewed public notice, certified-mail notice within 500 feet (one-half mile for hyperscale), and a public hearing before the Zoning Board of Adjustment and Council.
2. Restore the 1,000-foot residential setback in all districts where hyperscale facilities are permitted.
3. Restore the Special Exception requirement for all hyperscale data centers.
4. Prohibit approval of speculative hyperscale projects without a confirmed tenant and bound operational design.
5. Require independent, applicant-funded baseline testing and quarterly ongoing monitoring of air, water, soil, and groundwater.
6. Require a decommissioning bond at 110% of certified site-restoration cost, updated every five years.
7. Adopt enforceable numerical noise limits (55 dBA day / 45 dBA night, C-weighted) and Tier 4 Final generator emissions; define "daytime" testing as weekday 9 a.m.–5 p.m.
8. Require developer funding of 100% of attributable utility infrastructure and written certification that residential ratepayers will not subsidize the facility.
9. Require cumulative-impact analysis within a 15-mile radius.
10. Add consolidated enforcement language with corrective-action deadlines, daily fines, revocation authority, and a three-year sunset on unused approvals.
11. Add a brownfield-preference requirement.
12. Clarify the Medium/Micro overlap, the fuel-cell carve-out, and the Fiber Hut self-certification.

Birmingham has an opportunity to set a regional standard. The choice is between an ordinance that meaningfully governs hyperscale industrial development and an ordinance that, in practice, will not. I urge the Council to choose the former.

Respectfully submitted,

Madelyn Greene

David Butler

cc: Mayor Randall Woodfin