

# Ordinance Prohibiting Commercial Data Centers from Operating in Clay County

Ordinance No. 01.08.2026

**1. Authority:** Pursuant to NCGS 160D-701, the local governments are granted the power to adopt land development regulation ordinances for the purpose of promoting health, safety, and the general welfare of its citizens.

**2. Purpose:** To promote the health, safety, and the general welfare of Clay County citizens, this ordinance prohibits the establishment or operation of Commercial Data Centers (including those supporting artificial intelligence or otherwise) in Clay County, North Carolina.

**3. Jurisdiction:** This Ordinance shall apply to the unincorporated areas of Clay County outside the corporate limits or extraterritorial jurisdiction of any municipality. Municipalities within Clay County may elect to adopt this ordinance for application within their corporate limits and extraterritorial jurisdictions

## 4. Definitions:

**a.** “Commercial Data Center” means any facility, campus of facilities, or array of interconnected facilities that is used by a non-governmental entity or business enterprise to operate, manage, or maintain computers or organized assemblies of hardware and software for processing, storing, retrieving, or transmitting data, with a peak power demand of 2 megawatts or greater and which are required to obtain a building permit, an electrical permit and/or any other permits as are required by the North Carolina Building Code to operate.

**b. Exemptions.** This Ordinance shall not apply to the following:

1. Data processing or server facilities owned or operated exclusively by government entities (federal, state, county, municipal or public authorities) for public purposes only, including emergency management, public safety communications, disaster response, public utilities or essential government operations, provided these

facilities do not house facilities that are non-government, have no public utility data, or do not provide any essential public services and/or purposes.

2. Small-scale data facilities with peak demand below 2 megawatts.
3. Non-commercial or internal business data operations incidental to otherwise permitted principle uses.

**5. Findings of Fact:** The Clay County Board of Commissioners, upon review and recommendation of the Clay County Planning Board and consistent with the Clay County Comprehensive Plan, hereby finds as follows:

- a. Clay County is a rural, picturesque, and quiet community where quality of life, pastoral scenery, and agricultural character are core values and one of its greatest assets.
- b. Commercial data centers, including those supporting artificial intelligence, are intensive industrial uses characterized by high electricity and water consumption, continuous operation generating significant noise, large scale structures that are visually intrusive, create electronic waste, and potential green house gas emissions.
- c. Such facilities would fundamentally alter the rural character of the County, overburden limited public infrastructure (including electric grid capacity and roads), strain water resources, increase noise and light pollution, and negatively impact neighborhood demographics and environmental quality.
- d. Clay County's existing infrastructure and services cannot adequately support the demands of commercial data centers without substantial burden to taxpayers and residents.
- e. Commercial data centers are incompatible with the objectives of the Clay County Comprehensive Plan, which emphasize preserving rural character, quality of life, and sustainable development.

**6. Prohibition:** Commercial Data Centers, as defined herein, are hereby prohibited from establishing, constructing, expanding, or operating within the jurisdiction of this ordinance. No zoning district or land use classification (current or future) in Clay County shall permit Commercial Data Centers as a principle, accessory or conditional use.

**7. Permit Denial:** The Clay County Building Inspector and any other permitting authority shall not issue any building, electrical, zoning, or other permits for the establishment, construction, expansion, or operation of any Commercial Data Center within the jurisdiction of this Ordinance.

**8. Variances:** Variances from this ordinance may be considered only in extraordinary circumstances. Any request must:

- a. Be presented first to the Clay County Planning Board for review and recommendation;
- b. Demonstrate full compliance with all infrastructure and policy requirements established by the Planning Board and Board of Commissioners.
- c. Be the subject of a public hearing at a regularly scheduled meeting of the Board of County Commissioners; and
- d. Receive unanimous approval by vote of the Board of County Commissioners. No variance shall be granted unless it is clearly demonstrated that denial would result in unique and undue hardship not created by the applicant and that the variance is consistent with the public health, safety and welfare of Clay County.

WHEREAS, NOW THEREFORE, BASED UPON THE RECOMMENDATION OF THE CLAY COUNTY PLANNING BOARD, THE CLAY COUNTY BOARD OF COUNTY COMMISSIONERS DOES HEREBY ORDAIN:

1. That commercial data centers defined as any facility, campus of facilities, or array of interconnected facilities that is used by a non-governmental entity or business enterprise to operate, manage, or maintain computers or organized assemblies of hardware and software for processing, storing, retrieving, or transmitting data, with a peak power demand of 2 megawatts or greater and which are required to obtain a building permit, an electrical permit and/or any other permits as are required by the North Carolina Building Code to operate, **ARE PROHIBITED** from establishing, constructing, expanding and/or operating in Clay County, North Carolina effective this the 8 day of January, 2026;
2. That this Ordinance shall not apply to the following:
  - a. Data processing or server facilities owned or operated exclusively by government entities (federal, state, county, municipal or public authorities) for public purposes only, including emergency management, public safety communications, disaster response, public utilities or essential government operations, provided these facilities do not house facilities that are non-government, have no public utility data, or do not provide any essential public services and/or purposes.
  - b. Small-scale data facilities with peak demand below 2 megawatts.
  - c. Non-commercial or internal business data operations incidental to otherwise permitted principle uses.
3. That no zoning district or land use classification (current or future) in Clay County shall permit Commercial Data Centers as a principle, accessory or conditional use.

4. That the Clay County Building Inspector shall not issue any building permits, electrical permits and/or any permits of any kind for the establishment and/or operation of any commercial data centers, as defined herein, within the territorial jurisdiction of Clay County, North Carolina.

5. That the Clay County Board of County Commissioners further prohibits the dumping of any waste from any commercial data centers, regardless of where these commercial data centers are located, into the Clay County Transfer Station.

6. That the provisions of this Ordinance shall apply to the unincorporated areas of Clay County lying outside the corporate limits or extraterritorial jurisdiction of any incorporated town. Municipalities within Clay County may elect to adopt this ordinance to be effective within their corporate limits and extraterritorial jurisdictions.

7. Variances from this ordinance will be considered by the Board of County Commissioners, but only after the person or entity requesting the variance presents their proposal to the Clay County Planning Board first and fulfills the policy requirements as formulated by the Clay County Planning Board and the Board of County Commissioners. Upon complying with all of the requirements set forth in the policy adopted by the Clay County Planning Board and the Board of County Commissioners, the entity or person requesting the variance must hold a public hearing on the variance at a regularly scheduled Clay County Board of Commission Meeting. The Clay County Board of Commission will then consider the variance on whether to allow the variance or not and any action to approve the variance must be unanimous among the Board of County Commissioners before the variance will be granted. No variance shall be granted unless it is clearly demonstrated that denial would result in unique and undue hardship not created by the applicant and that the variance is consistent with the public health, safety and welfare of Clay County.

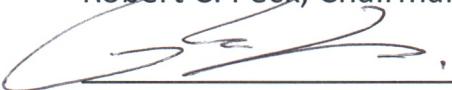
8. That this Ordinance shall become effective immediately upon its adoption.

Upon motion by Clay Logan and seconded by  
Randy Nichols, this ordinance passed by 5 for and 0  
against.

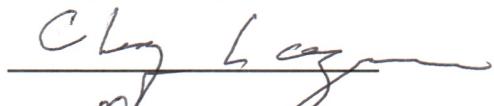
Effective upon its adoption this 8 day of January, 2026.



Robert C. Peck, Chairman of the Board



Randy Nichols, Vice Chairman



Clay Logan, Commissioner



Dwight Penland, Commissioner



Douglas Scott Penland, Commissioner

Attest:



Betty Bradley  
Clerk to the Board

