

ORDINANCE NO. _____
AMENDING FOUNTAIN COUNTY CODE

**MORATORIUM ON AI DATA CENTERS AND BATTERY ENERGY STORAGE
SYSTEMS**

WHEREAS, the General Assembly has granted Home Rule authority to Fountain County to exercise powers necessary for effective governance of local affairs including such powers necessary or desirable in the conduct of its affairs (IC 36-1-3);

WHEREAS, the County may regulate conduct or the use of property that might endanger the public health, safety, or welfare (IC 36-8-2-4);

WHEREAS, the County may promote economic development (IC 36-7-2-7);

WHEREAS, the County may plan for and regulate the use, improvement, and maintenance of real property and the location, condition, and maintenance of structures and other improvements including, without limitation, regulating AI Data Centers and Battery Energy Storage Systems (“BESS”) (IC 36-7-2-2);

WHEREAS, the County has adopted rules allowing, with restrictions regarding, AI Data Centers and BESS;

WHEREAS, community concerns have arisen as to the adequacy of the protections and restrictions available for the development of AI Data Centers and BESS in the County, including but not limited to, concerns about the impact of AI Data Centers and BESS and their construction on the local infrastructure, local water and energy consumption, drainage, runoff, and other health and environmental consequences, as well as impact to local economic development, and the agricultural capacity of the County and the adequacy of plans for decommissioning;

WHEREAS, Fountain County requires time to study and develop a regulatory structure to evaluate and mitigate such risks; and

WHEREAS, the County wishes to impose a moratorium on the review and development of such systems for a period of one year to allow the County to determine the best manner of balancing the rights of property owners with the public health and safety of the community;

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of Fountain County, Indiana, that a new Article(s) 10 and 11 be added to the Fountain County Zoning Code to read as follows:

Articles 10 and 11 MORATORIUM ON AI DATA CENTERS AND BATTERY ENERGY
STORAGE SYSTEMS

Section A Purpose. Community concerns have arisen as to the adequacy of the protections and restrictions available for the development of AI Data Centers and Battery Solar Energy Systems (“BESS”) in the County. These concerns include, but are not limited to, the impact of AI Data Centers and BESS and their construction on the local infrastructure, local water and energy consumption, drainage, runoff, and other health and environmental consequences, as well impact to local economic development and agricultural capacity of the County and the adequacy of plans for decommissioning; This moratorium is intended to provide the County with time to study and improve the regulatory structure to evaluate and mitigate such risks and to determine the best manner of balancing the rights of property owners with the public health and safety of the community.

Section B. Application. The provisions in this Chapter shall apply to unincorporated portions of Fountain County.

Section C. Moratorium on AI Data Centers and BESS.

(a) For a period beginning upon passage and ending December 31, 2026 (“moratorium period”), no person shall site, construct, install, permit, or deploy AI Data Centers or BESS in Fountain County except to the extent a jurisdiction has exempted itself; nor shall departments of Fountain County accept applications for permits from parties seeking leave to site, construct, install, permit, or deploy such systems.

(b) As used in this section, “AI Data Center” means “ A facility or system designed to house computing infrastructure, including servers, storage, and networking equipment, primarily for artificial intelligence processing, data storage, and related high-performance computing activities. This includes facilities with a nameplate power capacity of 500 kW or greater.”

(c) As used in this section, “Battery Energy Storage System (BESS)” means: “An electrochemical device or system capable of storing electrical energy from the grid or a power source and discharging it when needed. This includes, but is not limited to, lithium-ion, flow batteries, and other emerging technologies, but excludes small-scale systems with a nameplate capacity of less than 500 kW intended for private residential or on-site commercial use. This definition aligns with the scope of NFPA 855.”

(d) During the moratorium period, the County shall study and recommend to the Area Plan Commission potential improvements to the County’s solar regulatory rules.

Section D Stop Order and Injunctive Relief.

(a) Whenever work is being done contrary to the provisions of this chapter, the Board of Commissioners may order the work stopped by notice in writing, served on any person engaged in the doing or causing such work to be done, and any such persons shall forthwith stop such work until authorized by the Board of Commissioners to proceed with the work. All persons aggrieved by a stop order issued by the Board of Commissioners under this subdivision (a) shall have the right to have the order reviewed by the Board of Commissioners. The petition for review must be filed within 30 days of the order. Any decision of the Board of County

Commissioners pursuant to such a review petition may be appealed to the Circuit or Superior Courts of Fountain County.

(b) A person who is harmed by a violation of this Chapter may apply to the Circuit or Superior Courts of Fountain County for injunctive relief regardless of whether a stop order has been issued by the County.

Section E **Supplemental intent.** This chapter is intended to supplement regulations imposed by other legal authority. Nothing in this chapter is intended to preempt other applicable federal, state and local laws and regulations. Nor is anything intended to interfere with, abrogate, or annul any other ordinance, rule, or regulation, statute, or other provision of law. In the event that any provision of these regulations imposes restrictions different from any other ordinance, rule, regulation, statute, or provision of law, the provisions that are more restrictive or that impose higher standards shall govern.

Section F **Penalty.** In addition to the availability of injunctive relief, a person who violates this chapter shall be subject to a fine not exceeding \$2,500 per violation per parcel per day. A separate offense shall be deemed committed upon each day during which a violation occurs or continues.

BE IT FURTHER ORDAINED that if any section, subsection, paragraph, sentence, clause or phrase of this Ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this Ordinance which shall continue in full force and effect, and to this end the provisions of this Ordinance are hereby declared to be severable.

The prohibitions in this ordinance shall become effective upon passage and the penalties shall become effective upon passage and publication.

Presented to the Board of Commissioners of Fountain County, Indiana, and approved on first reading this ____ day of _____, 2025, by the following vote:

BOARD OF COMMISSIONERS OF
FOUNTAIN COUNTY

VOTE

Aaron Fruits, President

K.W. Rice, Vice President

Tim Shumaker, Secretary

ATTEST:

Kim, Johnson, Auditor of Fountain County

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on second reading this _____ day of _____, 2025, by the following vote:

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