

RESOLUTION

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia (“the Board”), on May 7, 2024, at which meeting a quorum was present, the following resolution was adopted:

WHEREAS, on March 23, 2021, the Board voted to repeal the 1978 Zoning Ordinance and replace it with a modernized Ordinance (“zMOD”), to take effect on July 1, 2021, as Chapter 112.1 of the Code of Fairfax County Virginia; and

WHEREAS, on March 23, 2023, the Supreme Court of Virginia issued an opinion declaring the zMOD Ordinance void *ab initio* because it was heard and adopted at Board meetings held via electronic means due to the COVID-19 pandemic, although those meetings were properly noticed, they were broadcast and streamed to the public in real time, and the public had opportunity to speak via telephone and prerecorded video—and in fact 70 persons actually testified; and

WHEREAS, on May 9, 2023, the Board of Supervisors readopted the modernized Zoning Ordinance—including all amendments approved since the 2021 adoption—codifying it as County Code Chapter 112.2; and

WHEREAS, in adopting Chapter 112.2, the Board also adopted an enactment clause providing that, for any period when Chapters 112.1 and 112.2 are both in effect, Chapter 112.1 will supersede Chapter 112.2 (also known as “the supersession clause”); and

WHEREAS the Virginia General Assembly passed legislation during the 2024 session, House Bill 816 (“HB 816”), to take effect July 1, 2024, declaring that Virginia Code § 2.2-3708.2 is declarative of existing law since March 20, 2020, with respect to the Governor’s declared state of emergency due to COVID-19; and

WHEREAS HB 816 validates action taken at meetings of a public body held by electronic means between March 20, 2020, and July 1, 2021, with respect to the Virginia Freedom of Information Act if the body provided public notice, public access, and opportunity for public comment as required by specified statutes; and

WHEREAS the Board provided the requisite public notice, public access, and opportunity for public comment before adopting the zMOD Ordinance during its electronic meetings on March 9 and 23, 2021, so the supersession clause dictates that Chapter 112.1 will supersede and be the governing Zoning Ordinance as of July 1, 2024; and

WHEREAS, on March 19, 2024, the Board adopted a resolution directing staff to prepare and advertise public hearings on an amendment to Chapter 112.2 to strengthen data center provisions, and the Board now seeks to do the same vis-à-vis Chapter 112.1; and

WHEREAS data centers can provide significant economic development opportunities and are important facilities to support the modern digital world; and

WHEREAS data centers are an evolving industry with unique characteristics; and

WHEREAS research has indicated the need to consider additions and revisions to strengthen the use standards and other Zoning Ordinance provisions for data centers; and

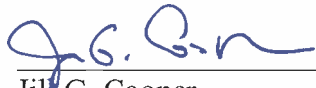
WHEREAS the Zoning Ordinance amendment would address the zoning districts, permissions, design, and compatibility with surrounding land uses; and

WHEREAS, by adoption of this Resolution, the Board directs staff to prepare and advertise public hearings on an amendment to Chapter 112.1 (Zoning Ordinance) of the County Code; and

WHEREAS, the public necessity, convenience, general welfare, and good zoning practice require consideration of proposed revisions to the Zoning Ordinance.

NOW THEREFORE BE IT RESOLVED, for the foregoing reasons and as articulated in the March 19, 2024, Data Centers Board Matter and motion, the Board of Supervisors authorizes the advertisement of public hearings during which the Planning Commission and the Board will consider the proposed amendment to the Zoning Ordinance, including Chapter 112.1 as well as Chapter 112.2.

A Copy Teste:



Jill G. Cooper

Clerk to the Board of Supervisors