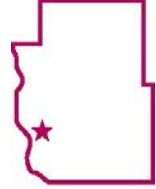




Burleigh County Planning and Zoning Commission Meeting Agenda

Tom Baker Meeting Room, City/County Building, 221 5th Street N,
Bismarck, ND



5:15pm

Attend in Person || Watch Live on Government Access Channels 2 or 602 || Stream on [Freetv.org](https://www.freetv.org) or
[Dakota Media Access Facebook Live](https://www.facebook.com/DakotaMediaAccess) || Replay Later from [Freetv.org](https://www.freetv.org)

AGENDA

February 12, 2025

1. Roll Call
2. Approval of the January 8, 2025 Minutes
3. Consent Agenda *(The following item(s) are request(s) for a public hearing)*

There are no items on the consent agenda
4. Public Hearing Agenda
 - 4-1 Article 8 – Special Uses – Solar Farms
 - 4-2 Article 8 – Special Uses – Data Centers
 - 4-3 Article 8 – Special Uses – Accessory Dwelling Units
5. Other Business:
6. Adjourn

– Next Meeting – March 12, 2025



Burleigh County Building, Planning & Zoning
PO Box 5518
Bismarck ND 58506

burleighcobuilding@nd.gov
701-221-3727

To: Burleigh County Planning Commission.
Re: Public Hearing to Amend Burleigh County Zoning Ordinances
Date: 1-29-2025
From: Mitch Flanagan, Burleigh County Planning Director. *MF*

ITEM 1

Amend Article 8 Solar Farms

It has become necessary to consider amending the current Article 8 to include Solar Farms i.e.: under a Special Use Permit. Sections dedicated to this application will allow for the development of onsite renewable energy systems such as an Accessory use in any District and Solar Farms within an Agricultural District.

Article 8 draft ordinance for Solar farms was presented to the Planning Commission on July 10th and September 11th with the first public hearing held on and November 13th of 2024. This is the final public hearing required for the amendment.

ACTION REQUESTED:

Consider motion to recommend approval of ordinance.

Attachments:

- Ex. 1- Article 8 Section 29 Special Use Permit.
- Ex. 2- Application and Standards for Solar Farms

ORDINANCE 25-0-----

AN ORDINANCE TO AMEND AND RE-ENACT ARTICLE 8 OF THE 1972 AMENDED ZONING ORDINANCE OF BURLEIGH COUNTY, NORTH DAKOTA RELATING TO SECTION 29 SOLAR FARMS

Section 1. Amendment Article 8 of the Zoning Ordinance is hereby amended and re-enacted as follows:

~~SECTION 29~~ **Section _____ Solar Energy System Facilities**

A solar energy system may be permitted in All Districts upon approval as a special use, provided the individual criteria and submittal requirements are met.

Burleigh County finds that it is in the public interest to encourage the use and development of renewable energy systems (including solar energy systems) that have a positive impact on energy conservation with limited adverse impact on nearby properties. ~~Burleigh County supports the use of solar collection systems and the development of solar energy farms.~~ Consistent with the Burleigh County Comprehensive Plan, it is the intent of the County with this Section to create standards for the reasonable capture and use, by households, businesses and property owners, of their solar energy resource and encourage the development and use of solar energy.

I. **DEFINITIONS**

The following words, terms and phrases, when used in this Article and Section, shall have the meaning provided herein, except where the context clearly indicates otherwise:

1. *Agrivoltaics*- The dual use of land for combining agriculture with solar energy production, typically, with raised co-located solar arrays above agricultural activity.
2. *Building-Integrated Solar System*- An active solar system that is an integral part of a principal or accessory building, rather than a separate mechanical device, replacing or substituting for an architectural or structural component of the building. Building integrated systems include, but are not limited to, photovoltaic or thermal solar systems that are contained within roofing materials, windows, skylights and awnings.

3. Community Solar Energy System- A solar-electric (photovoltaic) array that provides retail electric power, in accordance with definitions of electric public utilities and rural electric cooperatives per North Dakota Century Code 49-03-01, between 100kW and 10 MW (or a financial proxy for retail power) to multiple community members or businesses residing or located off-site from the location of the solar energy system.
4. Ground Mounted Panels- Freestanding solar panels mounted to the ground by use of stabilizers or similar apparatus.
5. Lot - The word "lot" when used alone shall mean, unless the context of the Article clearly indicates otherwise, a "zoning lot" as defined in Article 3- Definitions.
6. Photovoltaic System- An active solar energy system that converts solar energy directly into electricity.
7. Roof or Building Mounted SES- Solar Energy System (panels) that are mounted to the roof or building using brackets, stands or other apparatus.
8. Roof Pitch- The final exterior slope of a building roof calculated by the rise over the run, typically, but not exclusively, expressed in twelfths such as 3/12, 9/12, 12/12.
9. Solar Access- A view of the sun, from any point on the collector surface that is not obscured by any vegetation, building, or object located on parcels of land other than the parcel upon which the solar collector is located, between the hours of 9:00 AM and 3:00 PM Standard time on any day of the year.
10. Photovoltaic Panel System A system that incorporates discrete photovoltaic panels that convert solar radiation into electricity, including rack support systems.
11. Solar Collector- A device, structure or a part of a device or structure that the primary purpose is to transform solar radiant energy into thermal, mechanical, chemical or electrical energy.
12. Solar Energy- Radiant energy received from the sun that can be collected in the form of heat or light by a solar collector.

13. Solar Energy System (SES)- A system that converts solar radiation to usable energy, including photovoltaic panel systems and solar thermal systems.
An active solar energy system that collects or stores solar energy and transforms solar energy into another form of energy or transfers heat from a collector to another medium using mechanical, electrical, thermal or chemical means.
14. Solar Farm- A commercial facility that converts sunlight into electricity, whether by photovoltaics (PV), concentrating solar thermal devices (CST), or other conversion technology, for the primary purpose of wholesale sales of generated electricity. A solar farm is the primary land use for the parcel on which it is located.
15. Solar Thermal System. A system that converts solar radiation to thermal energy for use in heating or cooling.

II. APPLICABILITY

These regulations are for all solar energy systems and solar energy farms on properties and structures under the jurisdiction of the Burleigh County Zoning Ordinance except that Burleigh County requires the owner or operator of solar farms that would generate electricity greater than 50 megawatts of power to have approval for such a system from the North Dakota Public Service Commission.

Types of Solar Energy Systems.

1. Rooftop solar energy systems:

Accessory to the primary land use, designed to supply energy for the primary use:

- a. These systems are permitted accessory uses in all districts in which buildings are permitted. The owner or contractor shall receive a electrical, building and or a mechanical permit before installing a rooftop solar energy system.

2. Ground-mount solar energy systems:

Accessory to the primary land use, designed to supply energy for the primary use.

- a. Ground-mount systems are permitted accessory uses in all districts in which buildings are permitted.
- b. Ground-mount systems require a Burleigh County building permit and are subject to the accessory use standards for the district in which it is located, including setback. The height of a ground-mounted shall not exceed 10 feet

and shall not cover or encompass more than 10 percent of the total property area or lot size.

3. Community solar energy systems:

Roof or ground-mount solar energy systems, may be either accessory or primary use, designed to supply energy for off-site uses on the distribution grid, but not for export to the wholesale market or connection to the electric transmission grid.

These systems shall be subject to the following conditions:

- a. Rooftop community solar energy systems are permitted in AG districts in which buildings are permitted.
- b. Ground-mount community solar energy systems are an accessory use in all districts.
- c. All structures must meet the setback, height and coverage limitations for the district in which the system is located.
- d. Ground-mount systems must meet all required standards for structures in the district in which the system is located.
- e. Site Plan Required: The owner or operator shall submit to the County a detailed site plan for both existing and proposed conditions. These plans shall show north compass direction and the location of all areas where solar arrays would be placed, the existing and proposed structures, property lines, access points, fencing, landscaping, surface water drainage patterns, floodplains, wetlands, the ordinary high-water mark for all water bodies, any other protected resources, topography, electric equipment and all other characteristics requested by the County.
- f. Power and communication lines. Power and communication lines running between banks of solar panels and to electric substations or interconnections with buildings shall be buried underground. The Building Official or their designee may grant exemptions to this requirement in instances where shallow bedrock, water courses or other elements of the natural landscape interfere with the ability to bury lines.

4. Solar farms:

Ground-mount solar energy arrays that are the primary use on the lot or of a property, designed for providing energy to off-site uses or export to the wholesale

market. If a proposed solar farm generates electricity greater than 50 MW, it shall require siting review and approval by the North Dakota Public Service Commission.

- a. Solar farms are allowed under a special use permit in Agricultural (AG) zoning.
- b. Shall be on properties of at least 10 acres in size.
- c. Stormwater management and erosion and sediment control, if required, shall meet the design restrictions of the County.
- d. Foundations. If required, the manufacturer's engineer or a ND registered design professional shall certify that the foundation and design of the solar panels meet the accepted professional standards, given local soil and climate conditions.
- e. Other standards and codes. All solar farms shall meet all applicable local, state and federal regulatory standards, including the State of North Dakota Building Code and the National Electric Code.
- f. Power and communication lines. Power and communication lines running between banks of solar panels and to electric substations or interconnections with buildings shall be buried underground. The Building Official or their designee may grant exemptions to this requirement in instances where shallow bedrock, water courses or other elements of the natural landscape interfere with the ability to bury lines as reviewed by the manufacturer's engineer or a ND registered design professional.
- g. Site Plan Required. The owner or operator of the solar farm must submit to the County a digital copy of site plan (pdf format, full size) at 1" = 20' or larger scale, if integral to request, for both existing and proposed conditions. These plans shall show the location of all areas where solar arrays would be placed, proposed location and distances from the existing and proposed structures, property lines, access points to the site, fencing, landscaping, surface water drainage patterns, floodplains, wetlands, the ordinary high- water mark for all water bodies, any other protected resources, topography, electric equipment and all other characteristics requested by the County, including:
 - h. Date the site plan was prepared,
 - i. North point indication,
 - j. Section, township and range numbers,

- k. Topographic contours with a minimum contour interval of ten (10) feet, with indication of datum used,
- l. A location map inset showing the township(s) in which the project is located and the boundary of the proposed project,
- m. Location of all existing public roads, dimensions and location of any utility easements and rights-of-way within five hundred (500) feet of proposed solar farm,
- n. The County allows the installation of small operations, security and equipment buildings on the site of solar farms as permitted accessory uses to the solar farm,
- o. The owner or operator shall contain all unenclosed electrical conductors located above ground within structures that control access or they must be protected from entry by a six-foot-tall fence,

5. Accessory Solar Energy Systems:

- a. Solar Access: an applicant may obtain solar easements from the adjoining property owners to preserve direct access to sunlight, as authorized by Section 47-05-01.2 of the North Dakota Century Code. A permit granted by Burleigh County to install a solar energy system does not guarantee solar access.
- b. Accessory Use: Solar energy systems are permitted as an accessory use, subject to all requirements of Article 8 Section 30 and the building code requirements of Article 22 Section 1.
 - i. An accessory solar energy system must be located on the same lot or parcel of land as the primary use it is intended to serve.
 - ii. An accessory solar energy system is intended to produce energy primarily for on-site consumption but excess electrical power may be transferred to a power supply grid pursuant to utility company interconnection agreements.

6. Decommissioning Plan:

The County requires the owner or operator to submit a decommissioning plan for ground-mounted systems to ensure that the owner or operator properly removes the equipment and facilities upon the end of project life or after their useful life. The owner or operator shall decommission the solar panels in the event they are not

in use for twelve (12) consecutive months. The plan shall include provisions for the removal of all structures that are above ground and foundations, the restoration of soil and vegetation and a soundly-based plan ensuring financial resources will be available to fully decommission the site. The disposal of structures and/or foundations shall meet all County requirements and the requirements of the County Solid Waste Ordinance. The County also may require the owner or operator to post a bond, letter of credit or establish and escrow account to ensure property decommissioning.

7. Prohibitions:

The County prohibits community solar farms located within:

- a. All Floodplain Districts and Designated SFHA Areas.

8. Additional standards:

In addition to the requirements listed above, all solar energy systems shall meet the following standards.

- a. The owners or operators of electric solar energy systems that are connected to the electric distribution or transmission system, either directly or through the existing service of the primary use on the site, shall obtain an interconnection agreement with the electric utility in whose service territory the system is located. Off-grid systems are exempt from this requirement.
- b. Electric solar system components that are connected to a building electric system must have an Underwriters Laboratory (UL) listing.
- c. All solar energy systems shall meet the current standards of the North Dakota State Electrical Board, North Dakota State Building Code, National Electric Safety Code and National Electric Code.
- d. Solar farms shall control all Noxious Weeds according to NDCC Chapter 4.1-47.
- e. All electrical lines serving a freestanding accessory solar energy system shall be buried.
- f. Installation of all rooftop solar systems shall meet the standards of the North Dakota Building Code.
- g. All solar energy systems using a reflector to enhance solar production shall minimize glare from the reflector that affects adjacent or nearby properties.

Steps to minimize glare nuisance may include selective placement of the system, screening on the north side of the solar array, reducing use of the reflector system or other remedies that limit glare.

- h. Roof-mounted solar systems shall not exceed the maximum allowed height in any zoning district.
- i. All exterior electrical and plumbing lines, batteries, and other appurtenant features serving a building-mounted accessory solar energy system shall be buried, screened or landscape buffered. This provision does not apply to a solar collector.
- j. The non-collecting side of a solar collector and other appurtenant features of any freestanding accessory solar energy system shall be screened from view of said public right-of-way with landscape buffer and/or fencing.
- k. Commercial rooftop systems shall be placed on the roof to limit visibility from the public right-of-way or to blend into the roof design, provided that minimizing visibility still allows the property owner to reasonably capture solar energy.
- l. Setbacks. All equipment and structures shall meet the setback and coverage limitations for the zoning district in which the system is located. No freestanding accessory solar energy system may extend into or over a legally recorded easement

9. Fees:

The special use permit fee will be based on $.001 \times \text{Total Project Cost}$. An application fee of \$1000 shall be payable at the time of application for a special use permit, with the remainder of the special use permit fee remitted by the applicant prior to commencement of construction. Or:

- a. \$300.00 whichever is greater.

Section 2. **Repeal.** All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 3. **Severability.** If any section provision or part of this ordinance shall be adjudged invalid or unconstitutional such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

Section 4. Effective Date. This ordinance shall take effect after final passage, adoption and publication as provided by law.

First Reading Passed: _____

Passed and adopted this _____ day of _____, 2024

Brian Bitner, Chairperson

Final passage and adoption:

I, Mark Splonskowski, do hereby certify that I am the duly elected auditor of the County of Burleigh, State of North Dakota, and that the foregoing is a full, true and correct copy of an ordinance adopted by the Board of Burleigh County Commissioners at its regular meeting of _____ day of _____, 2024

IN WITNESS WHEREOF: I have hereto set my hand and seal of Burleigh County this _____ day of _____, 2024

Mark Splonskowski, Burleigh County Auditor/Treasurer

SOLAR

Information necessary to thoroughly evaluate the impacts of the project

Detailed site plan	Sec. II.4.g. - o.
Haul road plan (approved by County Engineer)	N/A
Traffic Impact Study	N/A
Emergency response plan (approved by County EM)	Developed by Owner
Manufacturer equipment specifications	Sec. II,8. b.c.
Noise Impact Study	N/A
Evidence of land control (lease agreements, sensitive info redacted)	N/A
Evidence of electric utility approval/signed power purchase agreement	Sec. II.8.a.
Impact of water and electricity needs	Sec. I.1.b

Siting & Performance Standards in Zoning Code

Allowable zones. Approval process.	Sec. 1 & II
Minimum setbacks from occupied residences, public assembly areas.	Sec. I & II
Road Use Agreement	N/A
Decommissioning plan, reclamation bonds: a) bond value = engineer's estimate x 2	Sec. II.6
Timeframe for substantial performance to begin	N/A
Shielded lighting/Glare	Sec. II.8.g.
Control of Noxious Weeds	Sec. II.8.d.
Vegetative screening/ Landscape buffers	Sec. I.3.e.

Tax Impacts

Equipment is personal property, not real property. Buildings are taxed, equipment is not.

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Burleigh County Building, Planning & Zoning
PO Box 5518
Bismarck ND 58506

burleighcobuilding@nd.gov
701-221-3727

To: Burleigh County Planning Commission.
Re: Public Hearing to Amend Burleigh County Zoning Ordinances
Date: 1-29-2025
From: Mitch Flanagan, Burleigh County Planning Director.

ITEM 1

Amend Article 8 Data Centers

It has become necessary to consider amending the current Article 8 to allow by Special Use Permit, Data Centers within I-Districts under a special use permit. A Data Center is a facility that houses IT infrastructure, including, but not limited to, computer systems, networks, servers, applications, appliances, services, and other associated components or facilities used for digital asset mining and the remote storage, processing, or transmission of digital data associated with those computer systems, networks, servers, applications, appliances, services and other associated components or facilities.

Article 8 draft ordinance for Data Centers was presented to the Planning Commission on July 10th and September 11th. The first public hearing was held on November 13th of 2024. This is the final public hearing required for the amendment.

ACTION REQUESTED:

Consider motion to recommend approval of Article 8 Data Center Ordinance.

Attachments:

- Ex. 1- Article 8 Data Center Special Use Permit.
- Ex. 2- Application and Standards for Data Centers
- Ex. 3- Purpose of SUP for Data Centers

ORDINANCE 25-0-----

AN ORDINANCE TO AMEND AND RE-ENACT ARTICLE 8 OF THE 1972 AMENDED ZONING ORDINANCE OF BURLEIGH COUNTY, NORTH DAKOTA RELATING TO SECTION 30 DATA CENTERS

Section 1. Amendment Article 8 of the Zoning Ordinance is hereby amended and re-enacted as follows:

SECTION [REDACTED] Data Center AI Conversion Facilities

This section is adopted to allow data centers/AI conversion facilities within Burleigh County and to minimize the potential off-site impacts of development and reduce long-term exposure that may impact the public safety, health and the general welfare of Burleigh County residents.

DEFINITIONS

The following words, terms and phrases, when used in this Article and Section, shall have the meaning provided herein, except where the context clearly indicates otherwise:

1. Blockchain- a digital record of all the transactions involving cryptocurrency. Copies of the blockchain are stored and maintained by computers around the world.
2. Cryptocurrency- a type of decentralized digital currency that investors can buy and sell along the blockchain. Unlike banknotes or minted coins that have a tangible physical form, cryptocurrencies can only be accessed using computers and other electronic devices.
3. Data Center- a commercial /industrial building, structure, complex or group of buildings and/or structures, facility, or dedicated space within a building, structure, complex, or facility that houses IT infrastructure, including, but not limited to, computer systems, networks, servers and other associated components or facilities used for the remote storage, processing, or transmission of digital data associated with those computer systems, networks, servers, applications, appliances, services, and other associated components or facilities. Facilities may also include air handlers, water cooling and storage, utility substations to support operations.
4. Data Center/ AI Conversion Facility- a data center that is converted and used to support artificial intelligence
5. Digital asset Mining- means using computer hardware and software specifically designed or used for the purpose of validating data and securing a blockchain network.
6. Digital Asset Mining- Business- means an individual or company operating a digital asset mining facility that cumulatively draws more than one megawatt of power in the County.

I. APPLICABILITY

These regulations are for Data Center Facilities on properties and structures under the jurisdiction of the Burleigh County Zoning Ordinance. The installation or construction of a data center, or any modification to a lawfully existing data center beyond routine maintenance, requires a Special Use Permit and also requires a Burleigh County Building Permit obtained from the Burleigh County Building, Planning and Zoning Department. Data centers may only be permitted in an Industrial (I) District with a Special Use Permit.

- a. A landscape buffer of 50' shall be required as measured from the interior of all property lines.

1. Application Requirements

The application for the installation or construction of a data center, or for modifications to a lawfully existing data center beyond routine maintenance, shall follow the application procedures for Special Use Permits Article 8 and any other procedures as may be required by this Ordinance for data centers, such as zoning map amendments, platting, or variances. In addition, applications shall include the following:

- a. Applicant name(s) and contact information. The applicant must also identify on the application, the owner/owners of record for the property, the occupant or lessee of the property, and the operator of the data center.
- b. A description of the proposed project, including a description of how the project meets market demand, the facility's processing capacity, and the facility's anticipated water and electricity needs.
- c. A study prepared by an acoustical engineer that describes the anticipated noise level of the facility and any proposed mitigation efforts such as sound walls, baffles, ventilation silencers, etc.
- d. A site plan: a digital copy of site plan (pdf format, full size) at 1" = 20' or larger scale, if integral to request, for both existing and proposed conditions, ~~drawn to scale~~, showing the location and dimensions of all existing and proposed structures, screening, fencing, lighting, electrical connections, property lines, and roadway access, including:
 - i. Date the site plan was prepared,
 - ii. North point indication,
 - iii. Section, township and range numbers,
 - iv. A location map inset showing the township(s) in which the project is located and the boundary of the proposed project,
 - v. Location of all existing public roads, dimensions and location of any utility easements and rights-of-way within five hundred (500) feet of proposed Data Center.
- e. A map of the project area showing all single-family and multi-family dwellings, schools, churches, synagogues, and other similar religious institution or structures, and public parks located within one (1) mile of the exterior boundaries of the property where the data center will be located.

f. Installation or construction of a data center, or any modifications to a lawfully existing data center beyond routine maintenance, also requires a building permit obtained from Burleigh County Building Department.

g. Data centers may only be permitted in an I- Industrial District with a Special Use Permit.

Fees:

~~All application fees, including the required fees for a Special Use Permit and building permits, in the amounts determined by the Board of County Commissioners.~~

h. Fees:

The special use permit fee will be based on $.001 \times \text{Total Project Cost}$. An application fee of \$1,000 shall be payable at the time of application for a special use permit, with the remainder of the special use permit fee remitted by the applicant prior to issuance of building permits and commencement of construction. Or:

i. \$300.00 whichever is greater.

i. Copies of signed permits or other documentation that indicates compliance with all applicable State and Federal laws, statutes, rules, regulatory standards, including but not limited to the North Dakota State Electrical Board.

j. Copy of the signed electrical power purchase agreement.

k. Financial security for the following:

i. Financial security for maintenance of the data center, as fully constructed and operational or, if the project only involves modifications to a lawfully existing data center beyond routine maintenance as permitted by this Ordinance, financial security for maintenance of the lawfully existing data center as modified. The financial security shall be in the amount of 125% of the estimated cost to maintain the data center, as fully constructed and operational, or as modified, as determined by the applicant's ND State registered engineer, with such estimated costs subject to review and approval by the Burleigh County Building Department and

ii. Financial security for reclamation and restoration of any data center and the property on which the data center is located or, if the project only involves modifications to a lawfully existing data center beyond routine maintenance as permitted by this Ordinance, financial security for reclamation and restoration of the property on which the data center as modified is located. Reclamation and restoration shall include, but is not limited to, the removal and disposal of all above-ground structures, underground structures, and utilities to depth of four feet, and the removal and disposal of all other facilities, structures, equipment, and materials on or under the property. The financial security shall be in the amount of 125% of the estimated cost to reclaim and restore property on which the data center, or the data center as modified, is located as

determined by the applicant's ND State registered engineer, with such estimated costs subject to review and approval of the Burleigh County Building Department. Any financial security provided by the applicant which is required by this Chapter shall be subject to review and approval by the County and be in the form of one or more of the following:

- iii. An irrevocable letter of credit issued by an FDIC insured financial institution authorized to do business in the State of North Dakota to be effective beginning on the date that installation and/or construction of, or the approved modifications to, the data center start and provides for annual automatic renewals continuing to the date when full reclamation and restoration is complete as approved by the County;
- iv. A surety bond which is effective beginning on the date that installation and/or construction of, or the approved modifications to, the data center start and provides for annual automatic renewals continuing to the date when full reclamation and restoration is complete as approved by the County; and/or;
 - i. Cash in escrow to be held in trust by Burleigh County effective beginning on the date that installation and/or construction of, or the approved modifications to, the data center start and continuing to the date when full reclamation and restoration is complete as approved by the County. The financial security required above shall be provided to Burleigh County prior to commencement of any work to install and/or construct the data center, or to modify a lawfully existing data center beyond routine maintenance, but no later than the date determined by the Board of County Commissioners in approving the data center or in approving the modifications to a lawfully existing data center beyond routine maintenance.
 - I. Other relevant studies, reports, certifications, or approvals as may be required by the County to ensure compliance with this Chapter and this Ordinance.

II. Prohibitions:

The County prohibits data center facilities located within:

- a. All Floodplain Districts and Designated SFHA Areas.

III. Design Standards

1. Data centers shall be set back at least **one half (1/2) mile** to all single-family and multi-family dwellings, schools, churches, synagogues, and other similar religious institution or structures, and public parks as measured from the nearest property line of any of these sensitive properties to the data center's exterior property lines.
2. Height. All buildings, structures, and appurtenances on the property where the data center will be located shall meet the height requirements of the Industrial I District in this Ordinance.

3. Electrical wiring. All electrical wiring shall be buried underground, except where wiring is brought together for interconnection to system components or the local utility power grid, provided that all electrical wiring shall comply with the North Dakota State Electrical Board, and any of its rules and regulations.
4. Written verification is submitted from the utility provider that sufficient capacity will be available to meet anticipated needs for electrical power.
5. Security fencing. A secured chain link or solid wood or masonry fence at least six (6) feet in height shall be constructed and maintained around the entire perimeter of the facility to prevent unauthorized entry onto the property or into the facility. Any fencing shall comply with the Development Standards in this Ordinance.
6. Buffering and screening. Landscaped buffers shall be required around the entire perimeter of the property where the data center is located in accordance with the requirements of this Ordinance.
7. ~~Noises.~~ **Sound:** A maximum auditory decibel level of ~~75 dB~~ **of the following** shall be met and maintained during all hours of operation, as measured from the property line of the subject parcel:

<u>Zoning District</u>	Day	Night
Agricultural	55	45
Residential: R1, R2, R3	55	45
Commercial: C	60	50
Industrial: I	65	60

The applicant shall provide written verification and documents prepared by a registered design professional ~~may be~~ in the form of a noise study as certified by a licensed acoustical engineer, including manufacturer specifications, anticipated noise level of the facility will not exceed the maximum auditory decibel level as stated in Section 7 and any data from comparable facilities or combination thereof.

8. All outdoor light fixtures shall be installed in a manner intended to limit the amount of off-site impacts. Light fixtures located near adjacent properties may require special shielding devices to prevent light trespass.
9. Accessory structures and appurtenances. All accessory structures or appurtenances, including those constructed for noise mitigation, shall be designed in a manner that is complementary with the primary building(s) and shall be finished in a non-obtrusive color.
10. Roads. All adjacent exterior access roads serving a data center shall conform to the Development Standards in this Ordinance and Article 33. Exterior road construction or improvements shall be subject to approval by the Burleigh County Highway Engineer or their designee. A road maintenance agreement with any government entity having jurisdiction over the adjacent exterior access roads shall be required during installation or construction of the data center, or during modification of a lawfully existing data

center beyond routine maintenance. All interior roads serving the data center shall be subject to review by the Burleigh County Fire Department to ensure safe and adequate access for emergency response vehicles.

11. Storm Drainage, Erosion Control, Grading, Drainage and Stormwater Management Permit for the data center shall comply with the requirements in Article 33 of this Ordinance.
12. Additional conditions or specific allowances to this ordinance may be considered in the review and approval of the Special Use Permit.
13. Development Agreement. The owner of record of the property, or the owner's representative of the data center and of the property on which the data center will be located, as determined appropriate by Burleigh County, must sign a development agreement which shall include provisions related to, but are not limited to, the posting and use of financial security, exterior and interior road construction or improvement, road maintenance, improvements related to storm drainage, **stormwater management plan**, erosion control, grading, and drainage, reclamation and restoration, and/or any other condition imposed by this Chapter, this Ordinance, or the Board of County Commissioners in approving installation of construction of the data center or modifications to a lawfully existing data center beyond routine maintenance.

IV. Decommissioning Plan:

1. It is the responsibility of the original applicant, or if different, the owner of record of the property, the occupant or lessee of the property, and the operator of the data center to notify Burleigh County in writing, at least six (6) months in advance, of the intent to abandon or cease operations of the data center. Any data center that is not operated for a continuous period of six (6) months shall automatically be considered abandoned, and Burleigh County may require the original applicant, or if different, the record owner of the property, the occupant or lessee of the property, and the operator of the data center to reclaim and restore the property within ninety (90) days after written notice to reclaim and restore the property from Burleigh County. Any such reclamation and restoration shall include, but is not limited to, removal and disposal of all above-ground structures, underground structures, and utilities to depth of four feet, and removal and disposal of all other facilities, structures, equipment, and materials on or under the property. If the property is not fully reclaimed and restored as required by this Article within ninety (90) days after written notice from Burleigh County, the County may reclaim and restore the property, or cause the property to be reclaimed and restored, including, but not limited to, removal and disposal of all above-ground structures, underground structures, and utilities to depth of four feet, and removal and disposal of all other facilities, structures, equipment, and materials on or under the property and recover costs directly from the original applicant, or if different, the record owner of the property, the occupant or lessee of the property, and/or the operator of the data center. Burleigh County may also, in its discretion, recover such costs, by access to and use of the financial security provided and on file for the data

center, or by lien or special assessment, or any other remedy, authorized by law or the Development Agreement entered into under this Article. Nothing in this Article is intended to impose a mandatory obligation on Burleigh County to reclaim and restore the property.

2. After a decommissioning process has been completed, the I District Industrial Zoning of the property shall automatically be transferred back to the original zoning, prior to the issuance of the special use permit.

V. Amend Article 18, I-Industrial Zoning District, the following regulations shall apply:

1. Special Uses Permitted. The following Special Uses are allowed as per Article 8 Section ~~30~~ hereof:
 - a. Data Center Facilities
 - b. Any change of use within an existing permitted Data Center, i.e.: AI Conversion Center, shall require a new special use permit review and approval.

Section 2. Repeal. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 3. Severability. If any section provision or part of this ordinance shall be adjudged invalid or unconstitutional such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

Section 4. Effective Date. This ordinance shall take effect after final passage, adoption and publication as provided by law.

First Reading Passed: _____

Passed and adopted this _____ day of _____, 2025

Brian Bitner, Chairperson

Final passage and adoption:

I, Mark Splonskowski, do hereby certify that I am the duly elected auditor of the County of Burleigh, State of North Dakota, and that the foregoing is a full, true and correct copy of an ordinance adopted by the Board of Burleigh County Commissioners at its regular meeting of _____ day of _____, 2025

IN WITNESS WHEREOF: I have hereto set my hand and seal of Burleigh County this _____ day
of _____, 2025

Mark Splonskowski, Burleigh County Auditor/Treasurer

DRAFT

DATA CENTERS

Information necessary to thoroughly evaluate the impacts of the project

Detailed site plan	Sec. I.1.d
Haul road plan (approved by County Engineer)	Sec. III. 10
Traffic impact study	TBD
Emergency response plan (approved by County EM)	By Owner
Noise/Sound impact study	Sec. III. 7
Evidence of land control (lease agreements, sensitive info redacted)	Sec. 1.1.a
Evidence of electric utility approval/signed power purchase agreement	Sec. I.1. j
Impact of water and electricity needs	Sec. I.1.b

Siting & Performance Standards in Zoning Code

Allowable zones. Approval process.	Sec. I- & I. 1.g
Minimum setbacks from occupied residences, public assembly areas.	Sec. III. 1
Road use agreement	Sec. III. 10
Decommissioning plan, reclamation bonds: a) bond value = engineer's estimate x 2	Sec. IV.1
Timeframe for substantial performance to begin	Art. 8 Sec. 1.13
Shielded lighting	Sec. III. 8
Vegetative screening/landscape buffers	Sec. I.1. a.

Permitting

- All data processing and storage is contained within a building constructed in compliance with the International Building Code and International Fire Code.
- Written verification is submitted from the utility provider that sufficient capacity will be available to meet anticipated needs for electrical power.
- Facilities are equipped with environmental controls to maintain the proper conditions for the operation of electronic equipment.
- Applicant must provide "any additional materials" determined to be relevant to the application
- The applicant verifies at the time of application that all req' of the Burleigh County Code of Ordinances will be met during operations, as measured from the property line of the subject parcel. Verification may be in the form of a noise study, manufacturer specifications, data from comparable facilities, or any combination thereof.

DATA CENTERS

Tax Impacts

Equipment is personal property, not real property. Buildings are taxed, equipment is not.

SUP MINIMUM REQUIREMENTS

1. The SUP will not adversely affect the public health, safety and general welfare
2. The SUP complies with all applicable provisions of the zoning and is consistent with the general intent and purpose;
3. The SUP is compatible with adjacent land uses and zoning;
4. Adequate public facilities and services are in place or would be provided at the time of development;
5. A SUP will not cause a negative cumulative effect, when considered in conjunction with other uses in the immediate vicinity;
6. Adequate measures have been or would be taken to minimize traffic congestion;
7. The SUP is consistent with Burleigh County Comprehensive Plan.

COMP PLAN APPLICABLE SECTIONS:

a. II. Government

Objective: # 5.4

Ensure that all developments are established with the safety of current and future users in mind.

b. VI. Business and Industry

Objective: #3

Promote the quality growth of manufacturing and industrial uses.

i. Policy: #1:

Encourage industry to locate in planned manufacturing and industrial parks.

#2:

Manufacturing and industrial uses should be located conveniently to transportation facilities.

#3:

Buffers shall be provided between manufacturing and industrial development and adjacent land uses.

#4:

Ensure that sufficient off-street parking and loading space is provided.

#5:

Encourage the screening of outside storage of material and equipment.

THE PLAN SHOULD BE USED AS A GUIDE WHEN DEVELOPING AND IMPLEMENTING THE COUNTY ZONING ORDINANCES

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Burleigh County Building, Planning & Zoning
PO Box 5518
Bismarck ND 58506

burleighcobuilding@nd.gov
701-221-3727

To: Burleigh County Planning Commission.
Re: Amend Burleigh County Zoning Ordinances
Date: 1-29-2025
From: Mitch Flanagan, Burleigh County Planning Director.

ITEM 1

Amend Article 8 Accessory Dwelling Units

It has become necessary to consider amending the current Article 8 in Burleigh County Zoning Ordinances to allow Accessory Dwellings. These type units are a separate and complete dwelling unit established in conjunction with and ancillary to, the principal single-family dwelling, whether within the same structure as the principal dwelling or within a detached accessory structure on the same lot or parcel. An accessory dwelling unit contains one bedroom, kitchen and bathroom facilities, and a separate exterior entrance.

Article 8 ADU draft ordinance was presented to the Planning Commission on July 10th and September 11th. The first public hearing was held on November 13th of 2024. This is the final public hearing required for the amendment.

ACTION REQUESTED:

Consider motion to recommendations to amend Article 8 to allow Accessory Units.

Attachments:

- Ex. 1- Article 8 Special Use Permit ADU draft ordinance.
- Ex. 2- Types of ADU's
- Ex. 3- Non-Conversion Agreement

ORDINANCE 24-0-----

AN ORDINANCE TO AMEND AND RE-ENACT ARTICLE 8 OF THE 1972
AMENDED ZONING ORDINANCE OF BURLEIGH COUNTY, NORTH
DAKOTA RELATING TO ~~SECTION 31~~ SECTION _____ ACCESSORY
DWELLING UNITS

Section 1. Amendment Article 8 of the Zoning Ordinance is hereby amended and re-enacted as follows:

Section ~~31~~ _____ Accessory Dwelling Units

To provide for a broader range of housing options, efficient use of existing infrastructure and housing stock, and preserve the character of existing single-family neighborhoods. accessory dwelling unit to a single-family dwelling is permitted as a special use within any R1 – Rural Residential, and A – Agricultural zoning district subject to all requirements of the Burleigh County Ordinances, unless otherwise stated within this section.

Definitions The following definitions represent the meanings of terms as they are used in these regulations:

Accessory Dwelling Unit: A separate and complete dwelling unit established in conjunction with and ancillary to, the principal single-family dwelling unit, whether within the same structure as the principal unit or within a detached accessory structure on the same lot or parcel of record. An accessory dwelling unit contains one bedroom, kitchen and bathroom facilities, and a separate exterior entrance.

Accessory Use: A use or structure that is clearly incidental to and customarily found in connection with a principal structure or use; is ancillary in purpose to the principal building or uses; contributes to the comfort, convenience or necessity of occupants of the principal use; and is located on the same lot as the principal structure.

Building-Accessory: A permanent, or semi-permanent, ancillary building or structure, the use of which is customarily incidental to that of a principal building on the same lot, including, without limitation, garages, storage sheds, playhouses, kennels, statuary, trellises, barbecue stoves, residential greenhouses, tent-like structures, or similar structures, storm or civil defense shelter, radio towers, satellite receiving or transmitting stations or antennas, and other structures, towers, antenna, ornaments or devices

Special Uses. In order to carry out the purposes of this section, the Board of Burleigh County Commissioners find it necessary to require that certain uses, because of unusual size, safety hazards, infrequent occurrence, effect on surrounding area, or other reasons, be reviewed by the Burleigh County Planning and Zoning Commission prior to the granting of a building permit or certificate of occupancy and that the Burleigh County Planning and Zoning Commission and the Zoning Administrator (where allowed) are hereby given limited discretionary powers relating to the granting of such a permit or certificate.

1. Applicability:

An accessory dwelling unit to a single-family dwelling is permitted as a special use within any R1 Rural Residential and A – Agricultural zoning district subject to all requirements of the Burleigh County Zoning Ordinances,

2. Requirements for All Accessory Dwelling Units. Prior to receiving a special use permit an applicant shall demonstrate that the following requirements will be met:

- a. No more than one accessory dwelling unit may be permitted on each lot or parcel.
- b. An accessory dwelling unit must be contained completely within the principal structure on the lot or parcel, or contained within an accessory structure that meets all requirements of this Code, including size and setback requirements of the underlying zoning district. The height of any accessory structure containing an accessory dwelling unit may be up to twenty-five (25) feet.
- c. The principal or accessory dwelling unit must be occupied by the owner of the subject parcel as a legal residence for more than six (6) months of any given year. The home may not be owned by a corporation, but the owner-occupant may be a benefited person in a private trust or life estate. The owner-occupancy requirement applies to the applicant as well as all subsequent owners of the property.
- d. At least one off-street parking space shall be provided for an accessory dwelling, in addition to any parking required for the principal dwelling unit on the lot. However, in such cases where existing conditions render additional parking infeasible, the applicant may submit a parking plan to demonstrate how on-street facilities or other methods are sufficient to meet anticipated parking demand, such as the dwelling unit being reserved for a class or individual who does not need to store a personal vehicle on-site.

3. Size requirements.

- a. No accessory dwelling unit may include more than one (1) bedroom.
- b. Units within Principal Structure: The floor area of an accessory dwelling unit may not exceed forty percent (40%) of the gross floor area of the principal structure,

excluding any attached garage, and may not be greater than 900 square feet or less than 300 square feet.

- c. Units within Accessory Structure: The floor area of an accessory dwelling unit may not be greater than 900 square feet or less than 300 square feet on any lot or parcel five (5) acres in area or less.
 - d. The sq./ft. floor area of an accessory dwelling unit may be up to 1,500 square feet on any lot or parcel that is greater than five (5) acres in area:
 - i. May be determined by the lot size.
 - e. An accessory dwelling unit on any lot or parcel that does not conform to the minimum lot size requirement of the underlying zoning district may only be permitted inside the principal building.
 - f. To protect the privacy of neighbors, rooftop decks and balconies are not allowed within 25 feet of a neighboring property line.
 - g. An accessory dwelling unit must be connected to public utilities if available on the lot or parcel. If the lot is serviced by an on-site septic system, the applicant must show that sufficient sewage treatment capacity will be available to meet anticipated needs.
 - h. An accessory dwelling unit must comply with all residential building code requirements as defined by Article 22 and Article 23 of the Burleigh County Zoning Ordinance.
 - i. An accessory dwelling unit may be occupied by no more than one family, as defined by Article 3 of the Burleigh County Zoning Ordinance.
4. Methods of Creation. A new accessory dwelling unit may be created in any of the following ways:
- a. Conversion of a portion of an existing principal or accessory structure into a separate accessory dwelling unit.
 - b. Expansion of an existing structure that is in compliance with all setback, lot coverage, and height requirements of the underlying zoning district.
 - c. Construction of a new structure containing a single-family dwelling unit with an internal accessory dwelling unit.
 - d. Construction of a new detached accessory structure containing a dwelling unit on a lot with an existing principal structure.
 - e. Reuse of a non-conforming second dwelling unit within a residence that has ceased to be continuously utilized as a dwelling unit and thus does not qualify as a non-conforming use.
5. Special Use Permit Submittal Requirements. The following documents shall be submitted with any application for a special use permit to allow an accessory dwelling unit:

- a. A building plan that demonstrates compliance with all requirements of the residential building code.
 - b. For all new construction of an accessory structure, a site plan is required. The site plan must show, to scale, the location and dimensions of the building, all required setbacks, and any easements on the property.
 - c. For all accessory dwelling units that would be served by an on-site septic system, documentation to provide compliance with Article 24 is required.
 - d. Prior to the issuance of a building permit and special use permit for the accessory dwelling, the property owner must submit a signed non-conversion agreement to Burleigh County. The non-conversion agreement must be recorded with the Burleigh County Recorder.
6. Termination of Special Use Permit. A special use permit for an accessory dwelling shall automatically expire:
- a. If the permitted accessory dwelling unit is substantially altered and is no longer in conformance with these provisions,
 - b. The owner of the property no longer occupies one of the units,
 - c. The required parking is no longer maintained and available for use by the occupant,
 - d. Or the permit is not put to use within twenty-four (24) months from date of approval.

Section 2 Repeal All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 3. Severability If any section provision or part of this ordinance shall be adjudged invalid or unconstitutional such as adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

Section 4. Effective Date This ordinance shall take effect after final passage, adoption and publication as provided by law

First Reading Passed: _____

Passed and adopted this _____ day of _____, 2024-2025

Brian Bitner

Chairperson

Final passage and adoption:

I, Mark Splonskowski, do hereby certify that I am the duly elected auditor of the County of Burleigh, State of North Dakota, and that the foregoing is a full, true and correct copy of an ordinance adopted by the Board of Burleigh County Commissioners at its regular meeting of

IN WITNESS WHEREOF: I have hereto set my hand and seal of Burleigh County this _____ day of _____, 2024 **2025**

Mark Splonskowski, Burleigh County Auditor/Treasurer

DRAFT

ACCESSORY DWELLING STRUCTURES

Information necessary to thoroughly evaluate the impacts of Acc. Dwelling Units

	<u>Section</u>
Detailed site plan	1.5. b
Occupied by Owner	1.2. c.

Siting & Performance Standards in Zoning Code

Allowable zones. Approval process.	1 & II
Minimum setbacks from occupied residences, public assembly areas.	1.3. f.
Min./Max. Square footage req'.	1.2. a., 1.3.a-e
Offstreet Parking	1.2. d.
Termination of SUP	1.6. a-e.
Privacy req.	1.3. f.
Utilities Connection Requirements	1.3. g.
Vegetative screening/landscape buffers	N/A

Tax Impacts

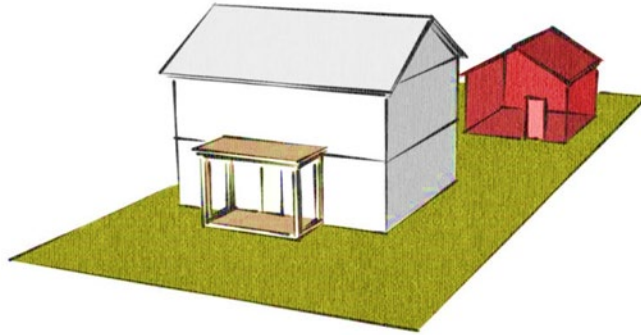
Equipment is personal property, not real property.

Buildings are taxed, equipment is not.

Types of Accessory Dwelling Units (ADUs)

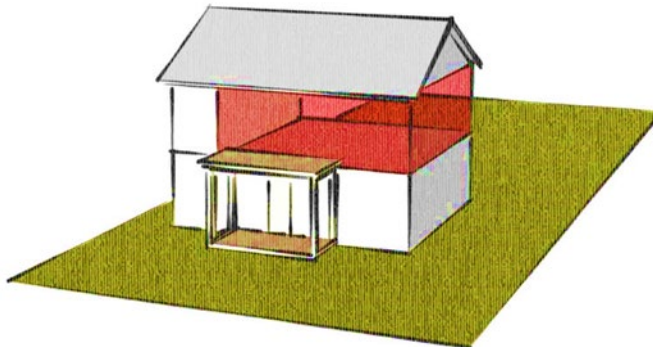
External ADU:

A dwelling unit separate from the primary home, either above a garage or in a stand-alone structure.



Internal ADU:

The use of a portion of the home for the unit, typically in a basement, attic, or an attached addition to the home



Definition of ADU:

“Accessory dwelling unit: A separate and complete dwelling unit established in conjunction with, and ancillary to, the principal single-family dwelling unit, whether within the same structure as the principal unit or within a detached accessory structure on the same lot or parcel. An accessory dwelling unit contains one bedroom, kitchen and bathroom facilities, and a separate exterior entrance.”

Occupancy Requirements

The owner must live in either the primary home or the ADU. This requirement will be applied to subsequent owners if the lot is sold and the ADU remains in place. The ADU may be occupied by one family or up to four unrelated people. Only one ADU is allowed per lot or parcel. An ADU may be used for extended family.

Size Requirements

The residential space must be more than 300 square feet and less than ~~800~~ 900 square feet; however, the size may be up to 1,200 square feet on lots of 5 acres or more. An internal ADU may not exceed 40% of the entire floor plan of the home (not counting an attached garage). The footprint of the primary and accessory structure together may not be greater than 30% of the area of the lot. The height of an external ADU may not exceed 25 feet.

Setbacks for External ADUs

External ADUs must meet standard setback requirements for any other accessory structures. In general, this means they must not be in a front yard, must be at least 15' from side or 50' rear property lines, depending on the zoning, and must be 10 feet from the primary home.

