



EL DORADO - SPECIAL CITY COMMISSION MEETING AGENDA
CITY HALL - 220 E 1ST AVE, EL DORADO, KS
July 13, 2026 - 5:30 PM

CALL TO ORDER & ROLL CALL

New Business

- 1 Executive Session (Attorney-Client Privileged Discussion)
- 2 Consideration of an Ordinance of the City of El Dorado, Kansas, prohibiting the installation and operation of High Impact Data Centers and Tier 2 and Tier 3 Battery Energy Storage Systems to protect health, safety, and welfare of the residents of El Dorado, Kansas.

Adjournment

EL DORADO

KANSAS

TO: City Commission
FROM: David Dillner, City Manager
SUBJ: Executive Session (Attorney-Client Privileged Discussion)
DATE: July 13, 2026

Summary:

On June 22, 2026, the City received a citizen-led petition seeking action under K.S.A. 12-3013 regarding an ordinance "prohibiting High Impact Data Centers and Tier 2 and Tier 3 Battery Storage Systems in the City of El Dorado, Kansas." The petition was signed by over 700 people and was provided to the County Clerk for verification and certification. The City Attorney will discuss the legal context of the petition with the governing body.

Attachments:

1. Data Center/Battery Storage Ordinance (Proposed by Petition)

Funding Source:

NA

Operation Impact:

NA

Options/Alternatives:

NA

Staff Recommendation:

NA

Commission Action:

Commissioner _____ moved to recess into executive session pursuant to the attorney-client privileged exception under K.S.A. 75-4319(b)(2) for consultation with an attorney for the public body or agency for the purpose of discussing a citizen-initiated petition filed under K.S.A. 12-3013, and to reconvene the meeting at _____ p.m. in the Commission Chambers.

Commissioner _____ seconded the motion.

**PETITION FOR ORDINANCE PROHIBITING HIGH IMPACT DATA
CENTERS AND TIER 2 AND TIER 3 BATTERY ENERGY STORAGE
SYSTEMS IN THE CITY OF EL DORADO, KANSAS**

1) High Impact Data Centers present substantial risks to the public health, safety, and welfare of the residents of El Dorado, Kansas, and threaten the stability and capacity of local and regional infrastructure, especially utility infrastructure. Even when closed-loop cooling systems are used, these facilities require significant quantities of water for the initial filling of the cooling loops, ongoing additional water to make up for this water use, and additional routine water system maintenance and chemical treatment. This demand, combined with extreme electrical demand that can overload local and regional power grids, imposes substantial strain on local and regional utilities and competes directly with the essential needs of existing residents and other existing users in the community.

2) Battery Energy Storage Systems ("BESS") present substantial risks and dangers to the public health, safety, and welfare of the residents of El Dorado, Kansas. These risks and dangers include thermal runaway, which is a chain reaction caused by the overheating of battery cells, which can lead to unnatural fires or explosions. Thermal runaway may also release toxic gases, which also pose a serious health hazard to the residents of El Dorado, Kansas. The operation of BESS technology could also present hazards of cascading cell service failures and flammable gas accumulation. Multiple incidents have occurred nationally and internationally that clearly demonstrate the risk associated with BESS.

The undersigned electors of the City of El Dorado, Kansas, hereby submit this Petition for a proposed ordinance prohibiting High Impact Data Centers and Battery Energy Storage Systems pursuant to K.S.A. § 12-3013 and respectfully request that the governing body of the City of El Dorado, Kansas to pass the following ordinance without alteration or submit the same to a vote of the electors.

BALLOT QUESTION: "Shall the following ordinance be adopted? "An Ordinance of the City of El Dorado, Kansas prohibiting the installation and operation of High Impact Data Centers and Type 2 and Type 3 battery energy storage systems to protect the health, safety, and welfare of the residents of El Dorado, Kansas."

[End of Page; the proposed Ordinance begins on the following page]

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF EL DORADO, KANSAS PROHIBITING THE INSTALLATION AND OPERATION OF HIGH IMPACT DATA CENTERS AND TIER 2 AND TIER 3 BATTERY ENERGY STORAGE SYSTEMS TO PROTECT HEALTH, SAFETY, AND WELFARE OF THE RESIDENTS OF EL DORADO, KANSAS.

WHEREAS, High Impact Data Centers are rapidly evolving land use that has only recently begun to be proposed in jurisdictions across the United States, and the suitability and impact of such facilities on the City of El Dorado, Kansas is unstudied and is likely to generate many negative environmental and health impacts, including industrial-scale disruption to existing land uses, current residents, and the environment;

WHEREAS, emerging forms of High Impact Data Center development involve significant electrical and water consumption, causing higher demand leading to additional strain on regional infrastructure that has not been adequately evaluated or addressed;

WHEREAS, High Impact Data Centers generate significant noise and heat, which will also strain municipal services and negatively impact the quality of life of residents of the City of El Dorado, Kansas;

WHEREAS, Battery Energy Storage Systems ("BESS") are being deployed with increasing frequency in connection with renewable energy generation facilities, grid stability projects, and commercial and industrial applications; and

WHEREAS, documented BESS accidents have resulted in explosions, prolonged fires, toxic gas emissions, and injuries to emergency response personnel.

WHEREAS, Tier 2 and Tier 3 BESS present significant fire, explosion, and thermal runaway risks that endanger the City of El Dorado, Kansas, particularly first responders, properties near BESS, and other residents of the City of El Dorado, Kansas.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EL DORADO, KANSAS:

SECTION 1. The purpose of this Ordinance is to protect the public health, safety, and welfare of the residents of the City of El Dorado, Kansas, by prohibiting the installation and operation of High Impact Data Centers and Tier 2 and Tier 3 Battery Energy Storage Systems ("BESS").

SECTION 2. For the purposes of this Ordinance, the following terms shall have the meanings indicated:

- A.** "High Impact Data Center" means a principal use consisting of one or more buildings, structures, or facilities whose primary purpose is the housing, operation, and maintenance of computer servers, data storage devices, networking equipment, and associated infrastructure (including but not limited to cooling systems, backup power generators, substations, and high-capacity electrical and water systems) for the bulk processing, storage, or transmission of electronic data, that requires a peak electrical load exceeding ten (10) megawatts, or a daily water draw exceeding one hundred thousand (100,000) gallons. This term includes server

farms, colocation facilities, AI training facilities, cryptocurrency mining operations, and similar high-density computing facilities, provided however, that High Impact Data Center does not include accessory data processing equipment that is incidental and subordinate to the primary use of a building (e.g., ordinary office servers, school computer labs, or manufacturing process controls).

- B. "Battery Energy Storage System" or "BESS" means:** An engineered facility (inclusive of all ancillary facilities required to interconnect and operate the facility) that is capable of charging batteries from an electrical transmission system, storing the electrical energy, and discharging the electrical energy to later reenergize the same system and does not include a powerplant or other manner of generating electricity for distribution and storage. BESS may also include one or more devices, when assembled together, are capable of storing energy to supply electrical energy at a future time, provided however, that BESS does not include a stand-alone twelve-volt car battery or an electric motor vehicle. A battery energy storage system is classified as a Tier 1, Tier 2, or Tier 3 battery energy storage system as follows:

(i) Tier 1 battery energy storage systems have an aggregate energy capacity less than or equal to 80 kWh and, if in a room or enclosed area, consist of only a single energy storage system technology. All Tier 1 battery energy storage systems located on residential properties shall comply with all applicable codes (building, fire, property, etc.) as they may currently be in effect or hereafter amended in the City of El Dorado.

(ii) Tier 2 battery energy storage systems have an aggregate energy capacity between 81 and 600 kWh or are comprised of more than one energy storage system technology in a room or enclosed area.

(iii) Tier 3 battery energy storage systems have an aggregate energy capacity greater than 600 kWh and, if in a room or enclosed area, consist of only one energy storage system technology. An engineered facility (means one or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include a stand-alone 12-volt car battery or an electric motor vehicle. A BESS includes all equipment required for the system to operate, including but not limited to batteries, battery chargers, battery management systems, controls, power conditioning systems, inverters, associated electrical equipment, fire suppression systems, and thermal management systems.

SECTION 3. No person, firm, corporation, or other entity shall construct, install, operate, maintain, or cause to be constructed, installed, operated, or maintained, any High Impact Data Center in the jurisdictional boundaries City of El Dorado, Kansas.

SECTION 4. No person, firm, corporation, or other entity shall construct, install, operate, maintain, or cause to be constructed, installed, operated, or maintained, any Tier 2 or Tier 3 BESS in the jurisdictional boundaries City of El Dorado, Kansas.

SECTION 5. Multiple Tier 1 BESS shall not be installed or operated in a configuration or proximity that would function to effectively create a Tier 2 or Tier 3 BESS. The following factors shall be considered in determining whether multiple Tier 1 BESS constitute an effective Tier 2 or Tier 3 BESS:

- (i) Whether the total aggregate capacity exceeds the thresholds defined in Section 2;
(ii) Whether systems that are located within 50 feet of each other on the same parcel or on

- adjacent parcels under common ownership or control;
- (iii) Whether systems share electrical components, fire suppression systems, or control systems;
 - (iv) Whether systems are designed to function as an integrated unit; or
 - (v) Whether systems are managed through a common energy management system or controller.

SECTION 6. The prohibition set forth in this Ordinance shall apply to all zoning districts and all land uses within the City of El Dorado, Kansas, including but not limited to, residential, commercial, industrial, institutional, and public facility zones as defined in the applicable zoning ordinances and resolutions, as currently in effect and as may hereafter be amended from time to time.

SECTION 7. Any violation of Section 3 or Section 4 of this Ordinance shall be subject to the civil and criminal penalties as set forth in Article 15 of the City of El Dorado Zoning Regulations.

SECTION 8. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof. Similarly, if any exemption, variance, or procedural provision is found invalid, it is the express intent that the core prohibitions shall remain in effect to the maximum extent permitted by law.

SECTION 9. Where the requirements of this Ordinance impose a different restriction or requirement than imposed by other City of El Dorado Ordinances, or other applicable rules or regulations, the requirements of this Ordinance shall prevail.

SECTION 10. This Ordinance shall take effect and be in force either upon publication as described by K.S.A. § 12-3007, or upon approval by the electors pursuant to K.S.A. § 12-3013, as applicable.

CITY OF EL DORADO, KANSAS

Bill Young, Mayor

[SEAL]

ATTEST:

Emerald Veatch, City Clerk

APPROVED AS TO FORM:

_____, City Attorney

EL DORADO

KANSAS

TO: City Commission
FROM: David Dillner, City Manager
SUBJ: Consideration of an Ordinance of the City of El Dorado, Kansas, prohibiting the installation and operation of High Impact Data Centers and Tier 2 and Tier 3 Battery Energy Storage Systems to protect health, safety, and welfare of the residents of El Dorado, Kansas.
DATE: July 13, 2026

Summary:

On June 6, 2026, the City Commission adopted Ordinance No. G-1463 that amended the Zoning Regulations defining various emerging industries, classifying each industry as "by-right" or "special use," and establishing standards for infrastructure capacity, water use, noise, setbacks, emergency access, screening, and surrounding land-use compatibility. Data centers and battery energy storage systems were defined in the adopted ordinance and classified as allowable in "I-1, Light Industrial Districts" and "I-2, Heavy Industrial Districts" through the special use process. Data centers are also allowed in "O-I, Office Industrial Districts" through a special use process.

On June 22, 2026, the City received a citizen-initiated petition seeking the adoption of an ordinance prohibiting "high impact" data centers and Tier 2 and Tier 3 battery energy storage systems pursuant to K.S.A. 12-3013. The Butler County Clerk certified the petition as meeting the statutory requirements for a valid petition on June 25, 2026. K.S.A. 12-3013 establishes the process for citizen-initiated ordinances. A qualifying petition requires the governing body to adopt the ordinance without alteration within twenty days or submit it to the voters in an election within ninety days. The City Commission shall call a special election, unless a regular city election is to be held within 90 days after the petition's receipt and certification. An ordinance adopted through this process generally cannot be amended or repealed by the governing body for ten years. An amendment or repeal prior to the ten-year window requires voter approval.

The citizen-initiated ordinance is intended to address resident concerns regarding water consumption, electrical demand, noise, heat, fire hazards, emergency response, land use compatibility, and effects on existing infrastructure by prohibiting specific land uses defined as "high impact" data centers and Tier 2 and Tier 3 battery energy storage systems. K.S.A. 12-3013 does not apply to administrative ordinances, ordinances concerning improvements financed through special assessments, or matters subject to another statutory referendum procedure. Kansas courts distinguish legislative measures, which establish new policy, from administrative measures, which implement existing policy. Whether every provision of the petitioned ordinance is a proper subject for initiative is a legal determination that should be made by the City Attorney.

Attachments:

1. Proposed (By Petition) Data Center/Battery Energy Storage System Prohibition Ordinance
2. Ordinance Petition Legal Memorandum
3. Ordinance No. G-1463

Funding Source:

This item has not been reviewed by any advisory board or committee of the City. The zoning text amendment adopted with Ordinance No. G-1463 was reviewed and recommended by the Planning

Commission. Given the statutory nature of the citizen-initiated petition found in K.S.A. 12-3013, the Planning Commission has not been asked to review the proposed ordinance even though it has general applicability to land use for "high impact" data centers and Tier 2 and Tier 3 battery energy storage systems within the corporate limits of El Dorado. Therefore, no recommendation has been provided for the City Commission's consideration.

Operation Impact:

Should the City Commission adopt an ordinance prohibiting "high-impact" data centers and Tier 2 and Tier 3 battery energy storage systems?

Alternative A: Adopt the Petitioned Ordinance Without Alteration. The Commission could adopt the ordinance exactly as submitted within the statutory period.

Advantages:

- Responds directly to the petitioners' request.
- Avoids the cost and administrative effort of an election.
- Establishes an immediate and easily understood prohibition.
- Eliminates the identified land-use and public-safety risks from the covered facilities inside the City.

Disadvantages:

- The ordinance cannot be corrected, clarified, or narrowed before adoption.
- The prohibition may include relatively modest commercial battery installations exceeding 80 kilowatt-hours, regardless of technology, location, fire-code compliance, or demonstrated risk.
- A blanket prohibition may be more vulnerable to legal challenge than standards supported by project-specific findings and established zoning procedures.
- The City Commission generally cannot amend or repeal the ordinance for ten years without voter approval.

Alternative B: Do Not Adopt the Ordinance and Call a Special Election. The Commission could decline to adopt the ordinance and initiate the election process required by K.S.A. 12-3013.

Advantages:

- Allows the electorate to decide a significant, long-term land-use policy.
- Avoids Commission adoption of language that staff cannot revise and that contains technical and administrative ambiguities.
- Complies with the statutory initiative framework while remaining neutral on the underlying policy.
- Provides an opportunity for public education regarding the ordinance's scope and effects.

Disadvantages:

- Creates election costs and administrative demands. Staff estimates the cost of a special election between \$10,000 to \$15,000.
- Extends uncertainty for residents, property owners, utilities, and prospective applicants until the election is completed.

- The ballot proposition must present the ordinance without alteration.
- If approved, the City would need to amend its Zoning Regulations to remove conflicts with the ballot language and the ten-year amendment restriction would apply.

Alternative C: Continue Development of a Regulatory Zoning Framework. The City may continue its separate zoning text amendment process addressing data centers and BESS through special-use approval, objective performance standards, utility-capacity review, setbacks, noise limits, fire-safety requirements, decommissioning security, and emergency-response planning. This alternative cannot substitute for the City's obligations under the certified petition. It may, however, provide a more adaptable policy framework if the petitioned ordinance is defeated, invalidated, or later becomes eligible for amendment.

The City Attorney may have other options to consider following a review of the legal considerations of this subject during the meeting.

Options/Alternatives:

Alternative A (Adoption of Ordinance): Direct costs would include publication. The City would avoid election expenses. Long-term opportunity costs could include forgone permit revenue, utility sales, property development, employment, and potential economic development activity. Those amounts cannot be reliably estimated without a specific project.

Alternative B (Special Election): The City would be responsible for election-related costs charged by the Butler County election officer, required publication, ballot preparation, legal services, public notices, and staff administration. Staff should obtain a written cost estimate before final election action. A special election would likely cost more than placing the question on an already scheduled regular election ballot.

Alternative C (Regulatory Framework): Costs could include planning and legal staff time, public hearings, fire-code consultation, utility studies, and outside technical assistance and consulting. Application and consultant reimbursement fees could offset future project review costs.

Staff Recommendation:

Given the legal nature of this subject, the City Manager will defer to the City Attorney for a recommendation following a review of the legal considerations of this subject during the meeting.

Commission Action:

A motion to adopt the ordinance as provided in the citizen-initiated ordinance would read as follows:

"I move to approve an ordinance of the City of El Dorado, Kansas, prohibiting the installation and operation of High Impact Data Centers and Tier 2 and Tier 3 Battery Energy Storage Systems to protect health, safety, and welfare of the residents of El Dorado, Kansas."

A motion to submit the citizen-initiated ordinance to the electors of the City would read as follows:

"I move that the Governing Body of the City of El Dorado, Kansas, declare its intent to call a special election pursuant to K.S.A. 12-3013 for the purpose of submitting to the electors of the City a proposed ordinance prohibiting the installation and operation of High Impact Data Centers and Tier 2 and Tier 3 Battery Energy Storage Systems within the City to protect the health, safety, and welfare of the residents of El Dorado, Kansas; and further, that staff be directed to prepare a resolution calling

and providing for said special election, for consideration and adoption by the Governing Body at a future meeting; and further, that staff be directed to coordinate with the Butler County Election Officer and return to the Governing Body with a recommended election date at that future meeting; and further, that staff be directed to prepare all documents necessary to provide notice of and conduct said special election in compliance with applicable Kansas law."

The City Attorney may have other options to consider following a review of the legal considerations of this subject during the meeting.

**PETITION FOR ORDINANCE PROHIBITING HIGH IMPACT DATA
CENTERS AND TIER 2 AND TIER 3 BATTERY ENERGY STORAGE
SYSTEMS IN THE CITY OF EL DORADO, KANSAS**

1) High Impact Data Centers present substantial risks to the public health, safety, and welfare of the residents of El Dorado, Kansas, and threaten the stability and capacity of local and regional infrastructure, especially utility infrastructure. Even when closed-loop cooling systems are used, these facilities require significant quantities of water for the initial filling of the cooling loops, ongoing additional water to make up for this water use, and additional routine water system maintenance and chemical treatment. This demand, combined with extreme electrical demand that can overload local and regional power grids, imposes substantial strain on local and regional utilities and competes directly with the essential needs of existing residents and other existing users in the community.

2) Battery Energy Storage Systems ("BESS") present substantial risks and dangers to the public health, safety, and welfare of the residents of El Dorado, Kansas. These risks and dangers include thermal runaway, which is a chain reaction caused by the overheating of battery cells, which can lead to unnatural fires or explosions. Thermal runaway may also release toxic gases, which also pose a serious health hazard to the residents of El Dorado, Kansas. The operation of BESS technology could also present hazards of cascading cell service failures and flammable gas accumulation. Multiple incidents have occurred nationally and internationally that clearly demonstrate the risk associated with BESS.

The undersigned electors of the City of El Dorado, Kansas, hereby submit this Petition for a proposed ordinance prohibiting High Impact Data Centers and Battery Energy Storage Systems pursuant to K.S.A. § 12-3013 and respectfully request that the governing body of the City of El Dorado, Kansas to pass the following ordinance without alteration or submit the same to a vote of the electors.

BALLOT QUESTION: "Shall the following ordinance be adopted? "An Ordinance of the City of El Dorado, Kansas prohibiting the installation and operation of High Impact Data Centers and Type 2 and Type 3 battery energy storage systems to protect the health, safety, and welfare of the residents of El Dorado, Kansas."

[End of Page; the proposed Ordinance begins on the following page]

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF EL DORADO, KANSAS PROHIBITING THE INSTALLATION AND OPERATION OF HIGH IMPACT DATA CENTERS AND TIER 2 AND TIER 3 BATTERY ENERGY STORAGE SYSTEMS TO PROTECT HEALTH, SAFETY, AND WELFARE OF THE RESIDENTS OF EL DORADO, KANSAS.

WHEREAS, High Impact Data Centers are rapidly evolving land use that has only recently begun to be proposed in jurisdictions across the United States, and the suitability and impact of such facilities on the City of El Dorado, Kansas is unstudied and is likely to generate many negative environmental and health impacts, including industrial-scale disruption to existing land uses, current residents, and the environment;

WHEREAS, emerging forms of High Impact Data Center development involve significant electrical and water consumption, causing higher demand leading to additional strain on regional infrastructure that has not been adequately evaluated or addressed;

WHEREAS, High Impact Data Centers generate significant noise and heat, which will also strain municipal services and negatively impact the quality of life of residents of the City of El Dorado, Kansas;

WHEREAS, Battery Energy Storage Systems ("BESS") are being deployed with increasing frequency in connection with renewable energy generation facilities, grid stability projects, and commercial and industrial applications; and

WHEREAS, documented BESS accidents have resulted in explosions, prolonged fires, toxic gas emissions, and injuries to emergency response personnel.

WHEREAS, Tier 2 and Tier 3 BESS present significant fire, explosion, and thermal runaway risks that endanger the City of El Dorado, Kansas, particularly first responders, properties near BESS, and other residents of the City of El Dorado, Kansas.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EL DORADO, KANSAS:

SECTION 1. The purpose of this Ordinance is to protect the public health, safety, and welfare of the residents of the City of El Dorado, Kansas, by prohibiting the installation and operation of High Impact Data Centers and Tier 2 and Tier 3 Battery Energy Storage Systems ("BESS").

SECTION 2. For the purposes of this Ordinance, the following terms shall have the meanings indicated:

- A.** "High Impact Data Center" means a principal use consisting of one or more buildings, structures, or facilities whose primary purpose is the housing, operation, and maintenance of computer servers, data storage devices, networking equipment, and associated infrastructure (including but not limited to cooling systems, backup power generators, substations, and high-capacity electrical and water systems) for the bulk processing, storage, or transmission of electronic data, that requires a peak electrical load exceeding ten (10) megawatts, or a daily water draw exceeding one hundred thousand (100,000) gallons. This term includes server

farms, colocation facilities, AI training facilities, cryptocurrency mining operations, and similar high-density computing facilities, provided however, that High Impact Data Center does not include accessory data processing equipment that is incidental and subordinate to the primary use of a building (e.g., ordinary office servers, school computer labs, or manufacturing process controls).

- B. "Battery Energy Storage System" or "BESS" means:** An engineered facility (inclusive of all ancillary facilities required to interconnect and operate the facility) that is capable of charging batteries from an electrical transmission system, storing the electrical energy, and discharging the electrical energy to later reenergize the same system and does not include a powerplant or other manner of generating electricity for distribution and storage. BESS may also include one or more devices, when assembled together, are capable of storing energy to supply electrical energy at a future time, provided however, that BESS does not include a stand-alone twelve-volt car battery or an electric motor vehicle. A battery energy storage system is classified as a Tier 1, Tier 2, or Tier 3 battery energy storage system as follows:

- (i) Tier 1 battery energy storage systems have an aggregate energy capacity less than or equal to 80 kWh and, if in a room or enclosed area, consist of only a single energy storage system technology. All Tier 1 battery energy storage systems located on residential properties shall comply with all applicable codes (building, fire, property, etc.) as they may currently be in effect or hereafter amended in the City of El Dorado.
- (ii) Tier 2 battery energy storage systems have an aggregate energy capacity between 81 and 600 kWh or are comprised of more than one energy storage system technology in a room or enclosed area.
- (iii) Tier 3 battery energy storage systems have an aggregate energy capacity greater than 600 kWh and, if in a room or enclosed area, consist of only one energy storage system technology. An engineered facility (means one or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include a stand-alone 12-volt car battery or an electric motor vehicle. A BESS includes all equipment required for the system to operate, including but not limited to batteries, battery chargers, battery management systems, controls, power conditioning systems, inverters, associated electrical equipment, fire suppression systems, and thermal management systems.

SECTION 3. No person, firm, corporation, or other entity shall construct, install, operate, maintain, or cause to be constructed, installed, operated, or maintained, any High Impact Data Center in the jurisdictional boundaries City of El Dorado, Kansas.

SECTION 4. No person, firm, corporation, or other entity shall construct, install, operate, maintain, or cause to be constructed, installed, operated, or maintained, any Tier 2 or Tier 3 BESS in the jurisdictional boundaries City of El Dorado, Kansas.

SECTION 5. Multiple Tier 1 BESS shall not be installed or operated in a configuration or proximity that would function to effectively create a Tier 2 or Tier 3 BESS. The following factors shall be considered in determining whether multiple Tier 1 BESS constitute an effective Tier 2 or Tier 3 BESS:

- (i) Whether the total aggregate capacity exceeds the thresholds defined in Section 2;
- (ii) Whether systems that are located within 50 feet of each other on the same parcel or on

- adjacent parcels under common ownership or control;
- (iii) Whether systems share electrical components, fire suppression systems, or control systems;
 - (iv) Whether systems are designed to function as an integrated unit; or
 - (v) Whether systems are managed through a common energy management system or controller.

SECTION 6. The prohibition set forth in this Ordinance shall apply to all zoning districts and all land uses within the City of El Dorado, Kansas, including but not limited to, residential, commercial, industrial, institutional, and public facility zones as defined in the applicable zoning ordinances and resolutions, as currently in effect and as may hereafter be amended from time to time.

SECTION 7. Any violation of Section 3 or Section 4 of this Ordinance shall be subject to the civil and criminal penalties as set forth in Article 15 of the City of El Dorado Zoning Regulations.

SECTION 8. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof. Similarly, if any exemption, variance, or procedural provision is found invalid, it is the express intent that the core prohibitions shall remain in effect to the maximum extent permitted by law.

SECTION 9. Where the requirements of this Ordinance impose a different restriction or requirement than imposed by other City of El Dorado Ordinances, or other applicable rules or regulations, the requirements of this Ordinance shall prevail.

SECTION 10. This Ordinance shall take effect and be in force either upon publication as described by K.S.A. § 12-3007, or upon approval by the electors pursuant to K.S.A. § 12-3013, as applicable.

CITY OF EL DORADO, KANSAS

Bill Young, Mayor

[SEAL]

ATTEST:

Emerald Veatch, City Clerk

APPROVED AS TO FORM:

_____, City Attorney



Daniel Yoza
Plaza Office
Direct Dial: (816) 460-1847
Dyoza@levycraig.com

July 8, 2026

VIA EMAIL

AB Legal
111N. Main Street
El Dorado, Kansas 67042
ashlyn@ablegalks.com
Attn: Ashlyn Lindskog

Re: Ordinance Petition filed with the City on June 22, 2026

Ashlyn:

I assisted in drafting the ordinance petition that was filed with the City of El Dorado, Kansas (the “City”) on June 22, 2026 (the “Ordinance”). In an email dated June 3, 2026, you communicated your view that the Ordinance is not a proper subject for an ordinance by petition, because K.S.A. 12-3013(e)(1) excludes administrative matters from the ordinance by petition process. You also graciously requested that I provide my view on this question, and I provided a response by email. Finally, in an email dated July 7, 2026, you requested that I draft a letter explaining my view about whether the Ordinance is administrative to supplement the information City Commission has on this topic. This letter explains my view on whether the Ordinance is administrative.

The Ordinance is not administrative, as defined in the relevant caselaw. *McAlister v. City of Fairway*, 289 Kan. 391 (2009) discusses the four guidelines that are used to determine if an ordinance is administrative or legislative:

1. Is it a new law (legislative) or executing an existing law (administrative)?

The Ordinance establishes a new law to prohibit High Impact Data Centers and Battery Energy Storage Centers. It is not executing or implementing the zoning amendments the City of Eldorado passed on June 1, or any other part of the City’s Zoning Code. Rather it is a regulatory ordinance, exercising the City’s police power to prohibit specific dangerous, risky, and/or wasteful *activities* within the City.

A PROFESSIONAL CORPORATION

PLAZA OFFICE
4520 MAIN STREET, STE. 400
KANSAS CITY, MO 64111
816-474-8181
816-471-2186 FAX

NORTH OFFICE
4151 N. MULBERRY DRIVE, STE. 205
KANSAS CITY, MO 64116
816-454-7474
816-454-3525 FAX

KANSAS OFFICE
8101 COLLEGE BLVD, STE. 100
OVERLAND PARK, KS 66210
913-831-6900
913-831-7156 FAX

LEVY CRAIG LAW FIRM

A PROFESSIONAL CORPORATION

July 8, 2026

Page 2

2. Does it deal with a new legislative purpose (legislative) or does it only deal with a small segment of an overall policy question (administrative)?

The Ordinance has a distinct new legislative purpose, which is described in the Title and Recitals. The overall policy question is whether the City should allow High Impact Data Centers and Battery Energy Storage Centers. The Ordinance does not simply implement an existing ordinance – it is intended to be implemented outside of and apart from all existing ordinances.

3. Does it require specialized training and experience in municipal government and intimate knowledge of the fiscal and other affairs of a city to make a rational choice (administrative), even if it establishes a general policy (legislative)?

The policy question of whether to allow High Impact Data Centers and Battery Energy Storage Centers does not require specialized knowledge in municipal affairs to make a rational choice. In *McAlister*, the topics of rezoning, annexation, and condemnation were the areas that required specialized knowledge in municipal affairs to make a rational choice. The Ordinance does not deal with these topics. In *City of Wichita v. Kansas Taxpayers Network, Inc.*, 255 Kan. 534 (1994) repealing a stormwater utility ordinance was that issue that required specialized knowledge in municipal affairs to make a rational choice. Prohibiting two specific dangerous, risky, and/or wasteful activities does not require internal knowledge of City operations, nor does require changes to the taxes, budget, spending, or any other internal administrative decisions of the city. All it does is state that High Impact Data Centers and Battery Energy Storage Centers are prohibited.

4. Does it concern a matter of statewide concern where the legislature delegates decision-making power to other parties (administrative)?

This is not an area of law of statewide concern where the legislature has delegated decision-making to other parties. The state legislature has passed no laws delegating regulatory authority over High Impact Data Centers and Battery Energy Storage Centers to any other parties. In contrast, the ordinance in *McAlister* prohibited rezoning and condemnation, which would have stopped the city from exercising its delegated zoning and condemnation powers, and utilities from their delegated condemnation powers. In the present case, the Ordinance only prohibits specifically designated dangerous, risky, and/or wasteful activities, which are not preempted by state regulatory frameworks. It does not change any of the city's ability to pass zoning ordinances.

A PROFESSIONAL CORPORATION

PLAZA OFFICE

4520 MAIN STREET, STE. 1600
KANSAS CITY, MO 64111
816-474-8181
816-471-2186 FAX

NORTH OFFICE

4151 N. MULBERRY DRIVE, STE. 205
KANSAS CITY, MO 64116
816-454-7474
816-454-3525 FAX

KANSAS OFFICE

8101 COLLEGE BLVD, STE. 100
OVERLAND PARK, KS 66210
913-831-6900
913-831-7156 FAX

LEVY CRAIG LAW FIRM

A PROFESSIONAL CORPORATION

July 8, 2026

Page 3

The Ordinance does not repeal or amend the zoning ordinance, nor does it disturb any vested landowner's zoning rights, as was the case in *McAlister*. The city can zone, rezone, or modify its comprehensive plan as it wishes. The Ordinance is simply legislation to exercise the city's police power to prohibit two specific dangerous, risky, and/or wasteful activities. It is more analogous to the City's current prohibitions on setting off fireworks or discharging pollutants into streams. It targets no specific land or landowner; rather, it regulates specific activities.

In *City of Wichita v. Fitzgerald*, 22 Kan. App. 2d 428 (1996) the Kansas Court of Appeals seems to say that implied repeals of administrative ordinances are themselves administrative, however, *McAlister* does not endorse this view. Rather, the Kansas Supreme Court explicitly states that the reason that *certain* implied repeals may be administrative: "We find the proposed ordinance's restrictions on the City's zoning authority would intrude into a matter of statewide concern given the comprehensive nature of the zoning statutes and the legislature's delegation of that authority to the cities."

I do not believe that the Ordinance repeals any existing zoning ordinances. It can easily be read in harmony with the existing zoning code. I reviewed the existing zoning code as it exists on the City's website and did not identify any clear inconsistencies with the Ordinance. The June 1 amendments simply create an SUP process and prohibit certain uses in certain zones, but they do not guarantee a right for the activities described in the Ordinance to occur in specific zones. Thus, there is no conflict or implied repeals created by the Ordinance. A landowner can apply for a rezoning for specific use, but *other ordinances* may still restrict their business activities at that location. This regulatory scheme is common in municipal law. One example of this situation would be where a landowner could rezone with the intent of operating an adult oriented business, but the city can still prohibit an adult oriented business from operating there, if the adult oriented business engages in any *conduct* prohibited by ordinance. Another example would be where a fireworks stand may be able to operate in the city under city land use and zoning laws, but this does not function as an implied repeal of another ordinance prohibiting shooting off fireworks in the city.

Finally, the hundreds of residents that signed the petition for the Ordinance are serious about this issue and are prepared to pursue all available legal remedies to see that the Ordinance is passed. If the Commission blocks the clear desire of their constituents by characterizing the Ordinance as administrative, this will only cause litigation and further conflict in the community without dealing with the underlying issue, which is residents' valid concerns about High Impact Data Centers and Battery Energy Storage Centers.

A PROFESSIONAL CORPORATION

PLAZA OFFICE

4520 MAIN STREET, STE. 1600
KANSAS CITY, MO 64111
816-474-8181
816-471-2186 FAX

NORTH OFFICE

4151 N. MULBERRY DRIVE, STE. 205
KANSAS CITY, MO 64116
816-454-7474
816-454-3525 FAX

KANSAS OFFICE

8101 COLLEGE BLVD, STE. 100
OVERLAND PARK, KS 66210
913-831-6900
913-831-7156 FAX

LEVY CRAIG LAW FIRM

A PROFESSIONAL CORPORATION

July 8, 2026

Page 4

Sincerely,

LEVY CRAIG LAW FIRM

A Professional Corporation



Daniel Yoza

A PROFESSIONAL CORPORATION

PLAZA OFFICE

4520 MAIN STREET, STE. 1600

KANSAS CITY, MO 64111

816-474-8181

816-471-2186 FAX

NORTH OFFICE

4151 N. MULBERRY DRIVE, STE. 205

KANSAS CITY, MO 64116

816-454-7474

816-454-3525 FAX

KANSAS OFFICE

8101 COLLEGE BLVD, STE. 100

OVERLAND PARK, KS 66210

913-831-6900

913-831-7156 FAX

ORDINANCE NO. G-1463

AN ORDINANCE AMENDING ARTICLE 3, APPENDIX A, AND ARTICLE 6 OF THE ZONING REGULATIONS OF THE CITY OF EL DORADO, KANSAS, TO ADD DEFINITIONS, USE CLASSIFICATIONS, AND SUPPLEMENTARY REGULATIONS FOR CERTAIN EMERGING INDUSTRIAL AND INFRASTRUCTURE USES.

WHEREAS, the City of El Dorado, Kansas, has adopted zoning regulations pursuant to the laws of the State of Kansas, including K.S.A. 12-741 et seq., and amendments thereto; and

WHEREAS, the City has determined that amendments to its Zoning Regulations are needed to improve clarity, consistency, and local readiness for certain emerging industrial and infrastructure use types that are not clearly addressed in the current regulations; and

WHEREAS, the proposed amendments are intended to preserve the City's existing zoning framework while adding definitions, use classifications, and supplementary standards to better guide future review of such uses; and

WHEREAS, the proposed amendments include revisions to Article 3, Rules and Definitions, Appendix A, Listing of Uses by Zoning District, and Article 6, Supplementary District Regulations; and

WHEREAS, after due notice as required by law, the Planning Commission of the City of El Dorado, Kansas, conducted a public hearing on the proposed amendments on June 1, 2026; and

WHEREAS, following the public hearing and consideration of the proposed text amendments, the Planning Commission recommended approval of said amendments to the City Commission of the City of El Dorado, Kansas; and

WHEREAS, the City Commission finds that adoption is consistent with the City's authority to regulate land use and development within its jurisdiction.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF EL DORADO, KANSAS:

Section 1. Amendment to Article 3, Rules and Definitions.

Article 3 of the Zoning Regulations of the City of El Dorado, Kansas, is hereby amended to add the definitions set forth in Attachment B, attached hereto and incorporated herein by reference as though fully set forth herein. Said definitions shall be inserted alphabetically within Article 3.

Section 2. Amendment to Appendix A, Listing of Uses by Zoning District.

Appendix A of the Zoning Regulations of the City of El Dorado, Kansas, is hereby amended to add the use classifications and supplementary regulation references set forth in Attachment C, attached hereto and incorporated herein by reference as though fully set forth herein.

Section 3. Amendment to Article 6, Supplementary District Regulations.

Article 6 of the Zoning Regulations of the City of El Dorado, Kansas, is hereby amended by adding Sections 25 through 39, as set forth in Attachment D, attached hereto and incorporated herein by reference as though fully set forth herein.

Section 4. Purpose and Effect.

The purpose of this Ordinance is to clarify the City's zoning regulations as they relate to certain emerging industrial and infrastructure uses, to establish corresponding use classifications within the zoning districts of the City, and to provide supplementary standards for the review and regulation of such uses. Nothing in this Ordinance shall be construed to waive, limit, or replace any other applicable local, state, or federal review, permit, licensing, safety, utility, environmental, subdivision, site plan, building code, fire code, or other regulatory requirement.

Section 5. Attachments Incorporated.

Attachment B, Attachment C, and Attachment D are hereby adopted as part of this Ordinance and shall be maintained with the official copy of this Ordinance on file with the City Clerk.

Section 6. Repealer.

All ordinances, resolutions, regulations, or parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 7. Severability.

If any section, subsection, sentence, clause, phrase, provision, or application of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, and the City Commission hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause, phrase, and provision hereof, irrespective of the fact that any one or more portions may be declared invalid or unconstitutional.

Section 8. Unchanged Provisions.

Except as expressly amended by this Ordinance, all other provisions of the Zoning Regulations of the City of El Dorado, Kansas, shall remain in full force and effect.

Section 9. Effective Date.

This Ordinance shall take effect and be in full force from and after its publication once in the official newspaper of the City of El Dorado, Kansas.

PASSED AND APPROVED by the Governing Body of the City of El Dorado, Kansas, this 1st day of June, 2026.



Emuel Hatcher

City Clerk

[Signature]
Mayor

APPROVED AS TO FORM:

ATTACHMENT B
ARTICLE 3
RULES AND DEFINITIONS

The following definitions shall be added to Article 3 and inserted alphabetically:

Advanced Manufacturing Facility: An establishment engaged in advanced or technology-intensive manufacturing processes involving a high degree of automation, precision equipment, robotics, sensors, digital controls, specialized materials, or similar production systems, and including ancillary offices, testing areas, storage, utilities, and support facilities.

Battery Cell Manufacturing Facility: An establishment engaged in the manufacture, assembly, formation, or finishing of rechargeable or nonrechargeable battery cells, modules, or similar electrochemical energy storage components, including associated mixing, coating, drying, calendaring, electrolyte filling, testing, storage, and support areas.

Battery Energy Storage System (BESS), Principal Use: One or more devices, assemblies, containers, or buildings capable of storing energy in order to supply electrical energy at a future time, where the system is the principal use of the site and includes associated batteries, inverters, transformers, switchgear, control systems, thermal management equipment, fire suppression equipment, and accessory structures. This term does not include a battery system that is clearly accessory to another principal use.

Battery Recycling and Critical Minerals Processing Facility: An establishment engaged in the disassembly, sorting, shredding, crushing, recycling, processing, refining, recovery, or transfer of spent batteries, battery materials, black mass, critical minerals, or similar materials, including associated storage, loading, testing, utilities, and support facilities.

Black Mass: Shredded, crushed, separated, or otherwise processed battery material containing a mixture of recoverable metals, minerals, graphite, electrolyte residue, or similar constituents generated through battery recycling or material recovery operations.

Carbon Capture, Compression, or CO2 Support Facility: An establishment or support facility engaged in capturing, compressing, dehydrating, liquefying, storing, transferring, or otherwise handling carbon dioxide or related support streams, including associated compression equipment, storage vessels, loading areas, pipelines, utility equipment, or similar support infrastructure.

Controlled Environment Agriculture Facility: An establishment engaged in crop production within enclosed or partially enclosed structures using controlled lighting, temperature, humidity, nutrients, carbon dioxide, irrigation, or similar environmental controls, including greenhouses, vertical farms, hydroponic, aeroponic, or aquaponic systems, and associated packaging, storage, and support areas.

Data Center: A facility, or portion of a facility, whose principal use is the storage, processing, management, or transmission of digital data using servers, network equipment, and related infrastructure. This use includes associated office areas, security features, cooling systems, switchgear, substations, backup power equipment, fuel storage, battery systems, and other accessory improvements necessary to support digital data operations. This term does not include a customary accessory server room or similar equipment area located within and subordinate to another principal use.

Hydrogen Production Facility: An establishment engaged in producing hydrogen through electrolysis, reforming, cracking, or similar industrial processes, including associated compression, storage, cooling, utility, control, and support equipment.

Hydrogen Storage and Distribution Facility: An establishment engaged in storing, compressing, transferring, blending, distributing, or dispensing hydrogen, including associated tanks, compressors, vaporizers, piping, fueling or loading areas, utility equipment, and support facilities.

Research and Development Facility: An establishment primarily engaged in research, design, testing, analysis, prototyping, pilot-scale development, or similar scientific, engineering, or technical activities conducted within laboratories, offices, testing areas, or pilot facilities. This term may include limited fabrication, assembly, or testing that is incidental to research and development activities, but does not include full-scale general manufacturing or processing unless otherwise expressly allowed.

Semiconductor Fabrication Facility: An establishment engaged in the manufacture of semiconductor wafers, chips, or similar devices through fabrication processes such as deposition, etching, lithography, cleaning, doping, chemical treatment, or similar operations, including associated clean rooms, ultra-pure water systems, chemical storage, utilities, testing, and support areas.

Semiconductor Packaging and Test Facility: An establishment engaged in assembling, packaging, burn-in, testing, reliability testing, thermal testing, or finishing semiconductor devices or components, including associated clean rooms, utilities, storage, and support areas.

Sensitive Use: A residence, residential district, school, day care center, hospital, nursing or convalescent home, assisted living facility, public park, trail, library, house of worship, or similar use where occupants may be more sensitive to noise, vibration, glare, emissions, or emergency events.

Small Modular Reactor or Microreactor Facility: An establishment or site containing a nuclear fission reactor designed for modular deployment or small-scale generation,

together with associated support buildings, security areas, cooling systems, utility systems, storage areas, access controls, and other related infrastructure.

Solar Energy Facility, Utility Scale: A principal use facility designed to generate electricity from solar energy for sale, transfer, or distribution to the electric grid or to off-site users, including solar panels, racking, inverters, transformers, substations, access drives, battery storage when accessory, and other related support facilities.

Solar Panel Manufacturing Facility: An establishment engaged in the manufacture, assembly, lamination, coating, treatment, or finishing of solar cells, solar modules, or solar panel components, including associated storage, utilities, testing, and support areas.

ATTACHMENT C**APPENDIX A****LISTING OF USES BY ZONING DISTRICT**

P = Permitted Use

S = Special Use Permit

X = Not Permitted/Not Applicable

Use Description (in alphabetical order)	O-I	I-1	I-2	Supplementary District Regulations
Advanced Manufacturing Facility	S	P	P	Article 6.25, Article 6.32
Battery Cell Manufacturing Facility	X	S	S	Article 6.25, Article 6.33
Battery Energy Storage System (BESS), Principal Use	X	S	S	Article 6.25, Article 6.26
Battery Recycling and Critical Minerals Processing Facility	X	S	S	Article 6.25, Article 6.29
Carbon Capture, Compression, or CO2 Support Facility	X	S	S	Article 6.25, Article 6.30
Controlled Environment Agriculture Facility	S	S	S	Article 6.25, Article 6.34
Data Center	S	S	S	Article 6.25, Article 6.27
Hydrogen Production Facility	X	S	S	Article 6.25, Article 6.28
Hydrogen Storage and Distribution Facility	X	S	S	Article 6.25, Article 6.28
Research and Development Facility	P	P	P	Article 6.25, Article 6.35
Semiconductor Fabrication Facility	X	S	S	Article 6.25, Article 6.36
Semiconductor Packaging and Test Facility	S	S	S	Article 6.25, Article 6.39
Small Modular Reactor or Microreactor Facility	X	S	S	Article 6.25, Article 6.31
Solar Energy Facility, Utility Scale	X	S	S	Article 6.25, Article 6.37
Solar Panel Manufacturing Facility	S	S	S	Article 6.25, Article 6.38

ATTACHMENT D
PROPOSED ARTICLE 6 STANDARDS
(EMERGING INDUSTRIAL USES)

25. Emerging Industrial Uses: Common Supplementary Regulations

A. Applicability:

These standards apply to development, expansion, or establishment of the following defined uses when permitted as a permitted use or approved by Special Use Permit:

- (1) Advanced Manufacturing Facility.
- (2) Battery Cell Manufacturing Facility.
- (3) Battery Energy Storage System (BESS), Principal Use.
- (4) Battery Recycling and Critical Minerals Processing Facility.
- (5) Carbon Capture, Compression, or CO2 Support Facility.
- (6) Controlled Environment Agriculture Facility.
- (7) Data Center.
- (8) Hydrogen Production Facility.
- (9) Hydrogen Storage and Distribution Facility.
- (10) Research and Development Facility.
- (11) Semiconductor Fabrication Facility.
- (12) Semiconductor Packaging and Test Facility.
- (13) Small Modular Reactor or Microreactor Facility.
- (14) Solar Energy Facility, Utility Scale.
- (15) Solar Panel Manufacturing Facility.

Where a conflict exists between these standards and another applicable provision of these regulations, the more restrictive requirement shall apply. These standards supplement, and do not replace, site plan review, Special Use Permit review, subdivision requirements, adopted construction and fire codes, utility review, drainage review, and any other applicable local, state, or federal requirements.

B. Outdoor Equipment, Screening, and Setbacks:

Outdoor equipment, including generators, fuel tanks, transformers, switchgear, battery containers, compressors, cooling equipment, transfer equipment, tanks, process support equipment, and similar equipment shall be:

- (1) Located and oriented to minimize visibility from public streets and from adjacent residential districts and sensitive uses.
- (2) Screened using a combination of opaque fencing, walls, berming, landscaping, or building placement.
- (3) Organized so that loading, service, and equipment yards are located to the maximum extent practical away from residential districts and sensitive uses.

When the subject site abuts a residential district or is located within 500 feet of a residential district boundary or sensitive use, outdoor mechanical equipment and emergency generators shall be placed to the maximum extent practical away from that boundary and shall incorporate enhanced screening and noise control measures.

Where outdoor equipment is proposed adjacent to a residential district or other sensitive use, the City may require, through site plan review or the Special Use Permit process, increased setbacks and enhanced buffering, including relocation of equipment, acoustic enclosures, or full enclosure within a building.

C. Noise, Vibration, and Operational Impacts:

Uses with significant mechanical equipment shall be designed and operated to minimize off-site noise and vibration impacts. The City may require an acoustic study prepared by a qualified professional to demonstrate anticipated sound levels and identify mitigation measures. When required, the study shall address tonal and low-frequency characteristics where applicable.

For uses with emergency generators or routine testing, the City may require, through site plan review or the Special Use Permit process:

- (1) A testing schedule, including limits on overnight or weekend testing, except during emergencies.
- (2) Maximum sound levels at the property line and, where applicable, evaluation methods that account for low-frequency noise.
- (3) Equipment mufflers, acoustic enclosures, barriers, or building-based screening.
- (4) A designated local contact for complaints and response coordination.

D. Lighting and Glare:

Exterior lighting shall be designed to minimize spillover and glare, with fixtures directed downward and shielded where appropriate. Lighting shall not create a hazard to public streets or adjacent properties.

Security lighting shall be designed to provide safety while minimizing impacts to adjacent properties, including the use of full cutoff fixtures and motion activation where appropriate.

E. Utilities and Infrastructure Documentation:

Applicants shall provide documentation sufficient for staff and decision makers to understand utility demands and service feasibility, including:

- (1) Electric demand characteristics, planned utility interconnections, and standby power configurations.
- (2) Water demand, if applicable, including average day, peak day, process water, and fire flow needs.

- (3) Cooling type, if applicable, including air-cooled, water-cooled, evaporative, or other major cooling system descriptions.
- (4) Wastewater discharge characteristics, if applicable, including expected discharge source, volume, and general pollutant characteristics.
- (5) Stormwater management and any containment needs for equipment yards, storage yards, loading areas, or process areas.
- (6) Phasing or staging of utility needs where development is proposed in phases.

The City may require utility provider letters, system impact documentation, or phased service plans as part of site plan review or the Special Use Permit process.

F. Hazardous Materials Summary, Emergency Coordination, and Containment:

Where a proposed use involves hazardous materials the City may require the applicant to provide a hazardous materials summary sufficient for local review. The summary may be conditioned or expanded through site plan review or the Special Use Permit process and shall include, as applicable:

- (1) General identification of chemical or material types and maximum on-site quantities.
- (2) General description of storage method and location.
- (3) Confirmation that current safety data sheets will be maintained and made available to emergency responders as required by law.
- (4) Emergency contact information for the owner, operator, and facility manager.
- (5) A general statement describing whether the facility anticipates state or federal hazardous chemical inventory reporting.
- (6) A spill prevention and containment narrative for fuels, oils, process chemicals, electrolytes, solvents, liquid reagents, gases, slurries, or similar materials, including drainage controls, curbing, berming, or containment areas where applicable.

Nothing in this section requires public disclosure of proprietary formulas or trade secrets beyond what is reasonably necessary for zoning, life safety, and emergency coordination review.

G. Industrial Wastewater and Pretreatment Review:

Where a proposed use involves process wastewater or has the potential to affect the public sewer system, the City may require an industrial wastewater narrative as part of site plan review or a Special Use Permit application. The narrative may include:

- (1) General description of process flows and wastewater sources.
- (2) Estimated flow volumes, including average and peak discharge where known.
- (3) General pollutant characteristics and whether pretreatment may be required.
- (4) Slug discharge or batch discharge risks, if applicable.
- (5) Proposed equalization, pretreatment, or containment measures.
- (6) Any anticipated need for separate agreements, permits, or wastewater review before connection or discharge.

H. Stormwater, Outdoor Materials Handling, and Housekeeping:

Where outdoor storage, loading, staging, processing, or scrap handling is proposed, the City may require a stormwater and outdoor materials handling narrative that identifies:

- (1) Areas for outdoor storage, loading, unloading, or transfer.
- (2) Materials proposed to be stored or handled outdoors.
- (3) Housekeeping, containment, covering, drainage, and spill response measures.
- (4) Whether stormwater pollution prevention planning, industrial stormwater permitting, or other stormwater controls may be required before operation.
- (5) Measures to prevent discharge of dust, sediment, oils, chemicals, black mass, residues, nutrients, or other pollutants to public drainage systems.

I. Fire Access, Emergency Response, and Safety Documentation:

Projects shall be designed to support safe emergency access, including fire lanes, turning radii, hydrant spacing, and equipment clearances as applicable under adopted codes and Fire Department standards.

Where the use involves higher-risk systems or hazardous materials, the City may require, through site plan review or the Special Use Permit process, documentation addressing:

- (1) Emergency response coordination and pre-incident planning.
- (2) Hazard mitigation plans and spill or release prevention measures.
- (3) Operational contacts and on-site safety measures, including posted emergency shutdown information.
- (4) Identification of restricted access areas, security measures, and emergency entry procedures.
- (5) Staging areas for emergency apparatus where warranted by the scale of development.

J. Material Change After Approval:

A substantial change to an approved emerging industrial use shall require review by the Zoning Administrator to determine whether an amended site plan, an amended Special Use Permit, or both are required. Substantial change as determined by the Zoning Administrator, may include, but is not limited to:

- (1) A significant increase in generating capacity, battery capacity, hydrogen storage volume, compression pressure, or reactor size.
 - (2) A change in battery chemistry or other technology that materially changes the hazard profile of the site.
 - (3) A major increase in generator count, fuel storage, or testing regime.
 - (4) A material increase in process water demand, wastewater discharge, or stormwater exposure risk.
 - (5) A change in the location or scale of outdoor equipment, storage, transfer areas, or loading facilities.
-

(6) The addition of carbon dioxide storage, compression, transfer, or pipeline interconnection not shown on the approved plan.

(7) Any other change determined by the Zoning Administrator to materially affect compatibility, utility demand, public safety, or environmental review.

K. Decommissioning and Removal:

For uses with significant fixed infrastructure, including BESS principal use sites, utility scale solar facilities, carbon dioxide support facilities, data centers, battery cell manufacturing facility, battery recycling and critical minerals processing facility, hydrogen production facility, hydrogen storage and distribution facility, small modular reactor or microreactor facility, solar energy facility, utility scale, solar panel manufacturing facility, and other uses designated by the City through Special Use Permit approval, the City may require a decommissioning, removal, and site restoration plan.

The plan may address:

(1) Trigger events for decommissioning, including end of useful life, abandonment, or cessation of operations for 12 consecutive months, unless extended by the City for good cause shown.

(2) Removal of equipment, foundations, pads, tanks, fencing, access drives, and other improvements not intended to remain.

(3) Restoration of grades, surfacing, and drainage.

(4) Management, recycling, or disposal of any regulated or hazardous materials.

(5) Responsible parties and contact information.

(6) Schedule for removal and restoration.

(7) Financial surety where warranted through the Special Use Permit process. The City may require periodic review of the surety amount to account for inflation, technology changes, or revised removal costs.

26. Battery Energy Storage System (BESS), Principal Use: Specific Supplementary Regulations

A. The application shall identify battery chemistry, total rated energy capacity, total rated power, number and type of containers or enclosures, inverter and transformer layout, and the location of emergency access points.

B. The system shall be designed and installed in compliance with all adopted building and fire codes and applicable standards, including the International Fire Code and NFPA 855, as amended.

C. The City may require, through site plan review or the Special Use Permit process:

(1) Fire department access and staging areas.

(2) Fencing and controlled access.

- (3) Signage and emergency shutdown information.
- (4) Remote monitoring, thermal detection, smoke detection, fire detection, or similar system information.
- (5) Thermal runaway mitigation documentation.
- (6) Minimum setbacks, separation distances, or enclosure requirements where warranted by site conditions.
- (7) A decommissioning plan and financial surety.

D. Prior to final occupancy, the City may require confirmation that emergency response information has been provided to the Fire Department, including emergency contacts, shutoff information, and site access instructions.

27. Data Center: Specific Supplementary Regulations

A. A Data Center shall require a Special Use Permit in any zoning district where the use is allowed.

B. Backup power systems, generator placement, fuel storage, substations, switchgear, and cooling equipment shall be designed and arranged to minimize noise, vibration, visual impacts, and operational impacts on adjacent property, particularly when near residential districts or other sensitive uses.

C. The application shall include a general inventory of stationary engines and turbines, if any, including unit count, estimated size, fuel type, anticipated non-emergency testing hours, and whether the equipment is intended solely for emergency backup, peak shaving, demand response, or any other operational purpose.

D. The application shall include a general water and cooling narrative, if applicable, identifying the cooling method, expected process or cooling water use, estimated average day and peak day demand, any anticipated blowdown or chemical treatment discharge requiring wastewater review, and whether non-potable, reclaimed, or reused water sources are proposed.

E. The application shall include a general utility and energy narrative identifying estimated peak electric demand in megawatts, planned utility interconnections, proposed phasing, any on-site generation or energy storage, and any known need for substation, transmission, or major distribution improvements.

F. The application shall include information identifying whether the project has completed, initiated, or will be required to complete the screening process through the Kansas Intelligence Fusion Center and, if so, the status of the review and any non-confidential results available at the time of application.

G. The application shall identify whether the applicant has engaged, completed, or enrolled in Every's Path to Power process, if applicable, or any successor large-load interconnection, delivery point, or service-feasibility review required by the serving electric utility, and shall provide any non-confidential correspondence or results available at the time of application.

H. The application shall identify whether additional air permitting, emissions review, or other regulatory review is anticipated for backup generation, turbines, boilers, or other stationary equipment before final permits are issued.

I. A noise mitigation plan, including an acoustic study prepared by a qualified professional, shall be required for any data center with outdoor cooling equipment, outdoor mechanical equipment, or stationary backup generation. The study shall address normal operations, routine testing, tonal and low-frequency characteristics, and recommended mitigation measures.

J. Non-emergency generator testing shall be limited to 7:00 a.m. to 7:00 p.m., Monday through Saturday, unless otherwise approved through the Special Use Permit process. No routine generator testing shall occur on Sundays or City-observed holidays, except during emergencies or when required to address an imminent reliability or safety issue.

K. Where a data center site abuts a residential district or is within 500 feet of a residential district boundary or other sensitive use, outdoor generator yards, cooling yards, substations, and bulk fuel storage shall be located at least 500 feet from that district boundary or sensitive use, unless the Planning Commission and Governing Body find that an alternative arrangement, together with buffering, screening, enclosure, and noise mitigation, will provide equivalent or greater protection.

L. The City may require, through the Special Use Permit process:

- (1) Generator test hours, frequency, and duration beyond the baseline requirements of this section.
- (2) Maximum sound levels at the property line and post-construction verification testing.
- (3) Outdoor equipment screening, placement, and enclosure.
- (4) Truck routing and delivery access, where applicable.
- (5) Fuel storage screening, secondary containment, and emergency access.
- (6) A designated local contact for complaints and emergency coordination.
- (7) Decommissioning, removal, and restoration requirements for outdoor equipment, fuel storage, or dedicated utility infrastructure not intended to remain.

**28. Hydrogen Production Facility and Hydrogen Storage and Distribution Facility:
Specific Supplementary Regulations**

A. The application shall identify, at a general level, the principal hydrogen-related processes proposed, including production, storage, compression, transfer, filling, blending, or distribution functions, and shall identify the location of storage vessels, compressors, transfer areas, fueling or loading areas, and safety setbacks.

B. Outdoor storage, compression equipment, and transfer areas shall be designed with safety setbacks, emergency access, controlled access, and equipment separation appropriate to the use and consistent with adopted codes.

C. The application shall include a general utility and operations narrative identifying estimated electric demand, water demand, if applicable, wastewater characteristics, if applicable, major process or storage volumes, and any anticipated air permitting or other regulatory review before operation.

D. The City may require, through site plan review or the Special Use Permit process:

- (1) Fire department access and emergency response coordination.
- (2) Fencing, controlled access, and security measures.
- (3) Signage and emergency shutdown information.
- (4) Separation distances, setbacks, and buffering from residential districts or sensitive uses.
- (5) Truck access, loading, unloading, or fueling operations.
- (6) Screening and placement of tanks, compressors, vaporizers, and related equipment.
- (7) Hazard mitigation and spill, release, or venting documentation where warranted.

29. Battery Recycling and Critical Minerals Processing Facility: Specific Supplementary Regulations

A. The application shall identify, at a general level, the principal recycling, dismantling, shredding, sorting, leaching, refining, separation, or recovery processes proposed on site and shall identify the location of outdoor storage, indoor storage, processing areas, transfer points, and waste handling areas.

B. The application shall include a general utilities and environmental narrative identifying electric demand, water demand, wastewater characteristics, stormwater exposure risks, and whether air permitting, industrial pretreatment, or other environmental review is anticipated before operation.

C. Outdoor storage of batteries, black mass, recovered materials, scrap, waste, or similar materials shall not occur except as shown on an approved site plan and subject to screening, containment, and stormwater protection measures.

D. The City may require, through site plan review or the Special Use Permit process:

- (1) Fire prevention and emergency response coordination.
- (2) Hazardous materials summaries and emergency contacts.
- (3) Wastewater and pretreatment review.
- (4) Outdoor storage, screening, and housekeeping.
- (5) Dust, odor, fumes, and nuisance mitigation.
- (6) Truck routing, truck queuing, and loading area design.
- (7) Setbacks and buffering from residential districts or sensitive uses.
- (8) Limits on outdoor dismantling, shredding, crushing, or similar activities.

30. Carbon Capture, Compression, or CO2 Support Facility: Specific Supplementary Regulations

A. The application shall identify, at a general level, the principal carbon capture, compression, dehydration, storage, transfer, pipeline interconnection, or related support functions proposed on site and shall identify major equipment, tanks, compression areas, transfer areas, and pipeline connection points.

B. The application shall include a general utility and operations narrative identifying estimated electric demand, water demand, if applicable, wastewater characteristics, if applicable, process support needs, and any anticipated regulatory review before operation.

C. Where carbon dioxide storage, compression, transfer, or pipeline support infrastructure is proposed, the application shall identify emergency access, controlled access, venting or pressure relief areas, where applicable, and general separation concepts from adjacent uses.

D. The City may require, through site plan review or the Special Use Permit process:

- (1) Screening and placement of compressors, tanks, pipe racks, and related equipment.
- (2) Emergency coordination and operational contacts.
- (3) Setbacks and buffering from residential districts or sensitive uses.
- (4) Truck access, transfer operations, and loading design, where applicable.
- (5) Decommissioning, removal, and restoration of support facilities not intended to remain.
- (6) Hazard mitigation and release response documentation where warranted.

31. Small Modular Reactor or Microreactor Facility: Specific Supplementary Regulations

A. A Small Modular Reactor or Microreactor Facility shall require a Special Use Permit.

B. The application shall identify, at a general level, the proposed reactor technology, generating capacity, support facilities, cooling approach, security features, emergency planning framework, and the location of all major facilities and restricted areas proposed on site.

C. Nothing in this section shall be interpreted to waive, replace, or supersede any applicable federal or state licensing, siting, safety, security, environmental, or emergency planning requirements.

D. The City may require, through the Special Use Permit process, narratives or documentation sufficient to understand:

- (1) Site access and security.
- (2) Emergency coordination and public safety planning.
- (3) Utility, water, wastewater, and cooling implications.
- (4) Decommissioning concepts and long-term site restoration assumptions.
- (5) Hazard mitigation and restricted access procedures.

E. The City may require, through the Special Use Permit process:

- (1) Setbacks and buffering from residential districts, public facilities, or other sensitive uses.
- (2) Access control, perimeter security, and screening of support facilities.
- (3) Emergency coordination with local responders.
- (4) Utility and infrastructure phasing.
- (5) Decommissioning and removal of non-reactor support facilities to the extent permitted by law.

32. Advanced Manufacturing Facility: Specific Supplementary Regulations

A. The application shall include a general description of the principal manufacturing processes proposed on site, the major raw materials and finished products, and the location of production areas, loading areas, storage areas, and major mechanical or utility equipment.

B. Where the use involves significant utility demand, process water, process wastewater, bulk material storage, or outdoor equipment, the application shall include utility and operations information sufficient to understand electric demand, water demand, wastewater characteristics, stormwater exposure risks, and major service needs.

C. Outdoor storage, staging, loading, and service areas shall be shown on the site plan and shall be screened and arranged to minimize visibility from public streets and from adjacent residential districts and sensitive uses.

D. The City may require, through site plan review or the Special Use Permit process:

- (1) Truck routing, truck queuing, and delivery access.

- (2) Screening and placement of outdoor equipment, tanks, loading areas, and service yards.
- (3) Utility, wastewater, and stormwater documentation.
- (4) Dust, odor, glare, vibration, or nuisance mitigation where warranted by the proposed operations.
- (5) Setbacks and buffering from residential districts or sensitive uses.
- (6) Limits on outdoor processing, outdoor storage, or hours of operation where warranted by site conditions.

33. Battery Cell Manufacturing Facility: Specific Supplementary Regulations

A. The application shall identify, at a general level, the battery chemistries proposed, major production processes, major solvent or electrolyte systems, dry room or controlled-atmosphere areas, if applicable, and the location of major production, storage, loading, and waste handling areas.

B. The application shall include a general utilities and environmental narrative identifying estimated electric demand, water demand, wastewater characteristics, stormwater exposure risks, and whether air permitting, industrial pretreatment, or other environmental review is anticipated before operation.

C. Outdoor storage of raw materials, off-spec products, waste materials, or chemical containers shall not occur except as shown on an approved site plan and subject to screening, containment, and stormwater protection measures.

D. The City may require, through site plan review or the Special Use Permit process:

- (1) Hazardous materials summaries and emergency coordination.
- (2) Wastewater and pretreatment review.
- (3) Outdoor storage, screening, and housekeeping.
- (4) Dust, odor, fumes, or nuisance mitigation measures.
- (5) Truck routing, truck queuing, and loading area design.
- (6) Setbacks and buffering from residential districts or sensitive uses.
- (7) Limits on outdoor dismantling, staging, or waste handling activities.

34. Controlled Environment Agriculture Facility: Specific Supplementary Regulations

A. The application shall identify, at a general level, the principal production type proposed, including greenhouse cultivation, vertical farming, hydroponic, aeroponic, aquaponic, or similar controlled-environment systems, and shall identify any accessory processing, packaging, storage, or retail components proposed on site.

B. The application shall include a general utility and operations narrative identifying estimated electric demand, water demand, wastewater or nutrient discharge

characteristics, if applicable, proposed backup power systems, hours of operation, and the location of major mechanical equipment.

C. Where supplemental lighting is proposed, site and building design shall minimize off-site glare and light spillover through shielding, screening, orientation, fixture selection, or building design.

D. Where the use is located within 500 feet of a residential district or sensitive use, the City may require a lighting plan identifying expected light levels and proposed mitigation measures.

E. Where carbon dioxide enrichment, fertilizer storage, nutrient mixing, pesticides, or similar materials are proposed above ordinary commercial quantities, the applicant shall provide a general hazardous materials and storage narrative consistent with Section 25.

F. The City may require, through site plan review or the Special Use Permit process:

- (1) Screening and placement of greenhouses, mechanical yards, tanks, pumps, chillers, and backup generators.
- (2) Lighting hours, shielding, and glare mitigation.
- (3) Odor, humidity, and ventilation controls where warranted by site conditions.
- (4) Wastewater, nutrient solution, or process discharge documentation and pretreatment review.
- (5) Loading, delivery access, and truck routing.
- (6) Setbacks and buffering from residential districts or sensitive uses.

35. Research and Development Facility: Specific Supplementary Regulations

A. This section is intended to address principal research and development campuses, laboratories, prototype facilities, and pilot-scale operations, and is not intended to regulate customary accessory laboratory or testing areas subordinate to another principal use.

B. The application shall identify, at a general level, the principal research, testing, prototype, pilot production, or laboratory activities proposed and whether the project includes outdoor testing areas, prototype yards, pilot-scale manufacturing, or major utility or mechanical equipment.

C. Where the proposed use involves hazardous materials above ordinary commercial quantities, process wastewater, outdoor testing, or pilot-scale production, the applicant shall provide narratives consistent with Section 25 regarding hazardous materials, wastewater, stormwater, and emergency coordination.

D. Outdoor testing areas, prototype yards, bulk storage areas, and major equipment yards shall be shown on the site plan and screened or buffered where necessary to protect adjacent property.

E. The City may require, through site plan review:

- (1) Screening and placement of outdoor testing, prototype, or service areas.
- (2) Noise, glare, vibration, or nuisance mitigation where warranted by site conditions.
- (3) Utility, wastewater, and hazardous materials documentation.
- (4) Limits on outdoor testing, demonstration activities, or hours of operation where warranted.
- (5) Setbacks and buffering from residential districts or sensitive uses.

36. Semiconductor Fabrication Facility: Specific Supplementary Regulations

A. The application shall include a general process narrative identifying whether the proposal involves wafer fabrication, etching, deposition, cleaning, lithography, chemical treatment, or other principal semiconductor manufacturing functions, and shall identify any clean room, ultra-pure water, chemical storage, gas storage, bulk chemical delivery, or process exhaust systems proposed.

B. The application shall include a general utilities narrative identifying estimated electric demand, water demand, anticipated ultra-pure water or process water needs, wastewater discharge characteristics, and any anticipated need for industrial pretreatment, air permitting, or other regulatory approvals before operation.

C. The application shall include a general hazardous materials narrative identifying, at a general level, the types of acids, solvents, gases, reagents, slurries, dopants, or other process materials proposed to be stored or used on site, together with general storage and containment methods.

D. The City may require utility provider letters, industrial wastewater review materials, or phased service plans where the scale of the facility warrants additional confirmation of service feasibility.

E. The City may require, through site plan review or the Special Use Permit process:

- (1) Industrial wastewater and pretreatment review.
- (2) Screening and placement of tanks, gas cabinets, scrubbers, exhaust systems, cooling equipment, transformers, and loading areas.
- (3) Hazardous materials management and emergency coordination.
- (4) Truck routing, delivery windows, and access design.
- (5) Setbacks and buffering from residential districts or sensitive uses.

(6) Limits on outdoor storage or outdoor transfer of chemicals, gases, or production materials.

(7) Air emissions, exhaust, or stack location information sufficient to support local compatibility review.

37. Solar Energy Facility, Utility Scale: Specific Supplementary Regulations

A. The application shall include a site plan identifying panel fields, inverter and transformer locations, substations, access drives, perimeter fencing, stormwater features, maintenance access, and any accessory battery storage or related equipment proposed on site.

B. Any Battery Energy Storage System proposed as part of a Utility Scale Solar Energy Facility shall comply with Section 26 in addition to this section.

C. The application shall identify whether the facility will interconnect to an existing or new substation, whether off-site utility improvements are anticipated, and whether a decommissioning or restoration plan is proposed as part of the project.

D. When the site abuts a residential district or sensitive use, the City may require enhanced setbacks, fencing, berming, landscaping, or other screening measures for inverter pads, substations, transformers, or maintenance yards.

E. The City may require, through site plan review or the Special Use Permit process:

(1) Screening and placement of substations, transformers, inverters, and maintenance yards.

(2) Setbacks and buffering from residential districts, public roads, or sensitive uses.

(3) Stormwater management, erosion control, and site stabilization.

(4) Vegetation management, groundcover, and weed control.

(5) Glare or reflectivity information where warranted by site location.

(6) Decommissioning, removal, site restoration, and financial surety.

38. Solar Panel Manufacturing Facility: Specific Supplementary Regulations

A. The application shall include a general manufacturing narrative identifying whether the operation includes glass handling, cell production, lamination, coating, chemical treatment, assembly, packaging, or other major process elements, and shall identify the location of production, storage, loading, and waste handling areas.

B. The application shall include a general utilities and environmental narrative identifying estimated electric demand, water demand, wastewater characteristics, stormwater exposure risks, and whether air permitting, industrial pretreatment, or other environmental review is anticipated before operation.

C. Outdoor storage of raw materials, waste materials, scrap, packaging materials, or chemical containers shall not occur except as shown on an approved site plan and subject to screening, containment, and stormwater protection measures.

D. The City may require, through site plan review or the Special Use Permit process:

- (1) Hazardous materials summaries and emergency coordination.
- (2) Wastewater and pretreatment review.
- (3) Outdoor storage, screening, and housekeeping.
- (4) Dust, odor, fumes, glare, or nuisance mitigation where warranted.
- (5) Truck routing, truck queuing, and loading area design.
- (6) Setbacks and buffering from residential districts or sensitive uses.
- (7) Limits on outdoor staging, storage, or waste handling activities.

39. Semiconductor Packaging and Test Facility: Specific Supplementary Regulations

A. The application shall identify, at a general level, whether the proposal involves semiconductor packaging, assembly, burn-in, reliability testing, thermal testing, or other related activities, and shall identify any clean room, controlled environment, process utilities, loading areas, or outdoor equipment proposed.

B. The application shall include a general utilities and operations narrative identifying electric demand, water demand, if applicable, wastewater characteristics, if applicable, and whether hazardous materials above ordinary commercial quantities are proposed.

C. Where the applicant demonstrates that the proposed facility will not involve wet-process fabrication, significant process wastewater, or substantial hazardous material inventories, the City may determine that a reduced level of application detail is sufficient.

D. The City may require, through site plan review or the Special Use Permit process:

- (1) Screening and placement of major mechanical equipment, tanks, loading areas, and service yards.
- (2) Utility, wastewater, and hazardous materials documentation where warranted.
- (3) Truck routing and loading area design.
- (4) Setbacks and buffering from residential districts or sensitive uses.
- (5) Limits on outdoor storage, testing, or transfer activities where warranted by site conditions.