CHAPTER _____ OF THE BERGEN TOWN CODE **DRAFT 10/26**

DATA CENTERS AND CRYPTOCURRENCY FACILITIES

Authority.

This chapter is adopted pursuant to the New York State Constitution, Article IX, Town Law §2(c)(6) and (10), New York Statute of Local Governments, § 10 (1) and (7); sections 261 through 264 and section 10 of the Municipal Home Rule Law of the State of New York, which authorizes the Town of Bergen to adopt zoning provisions that advance and protect the health, safety and welfare of the community.

Purpose and intent.

A. This chapter is adopted to advance and protect the public health, safety, welfare, and quality of life of the Town of Bergen by creating regulations for the installation and use of data centers and cryptocurrency facilities, with the following objectives:
   (1) To provide a regulatory scheme for the designation of properties suitable for the location, construction and operation of data centers and cryptocurrency facilities, thereby directing development away from agricultural lands, sensitive environmental resources and residential neighborhoods and areas that currently have or can acquire the infrastructure necessary to support such facilities.
   (2) To ensure compatible land uses in the vicinity of the areas affected by data centers and cryptocurrency facilities.
   (3) To mitigate and limit environmental impacts (heat discharge, stormwater runoff and adverse effects on air and water quality) of data centers and cryptocurrency facilities on environmental resources, such as important agricultural lands, forests, wildlife and other protected resources.
   (4) To create synergy between data center/cryptocurrency facility development and other stated goals of Bergen pursuant to its Comprehensive Plan.
   (5) To preserve the character of the community by assuring appropriate design, siting, screening and other appropriate measures to limit the visual impact and avoid incompatible land use conflicts.
   (6) To prevent nuisance conditions such as excessive noise, vibration, and light pollution that could impact nearby residences, businesses, or agricultural operations.
   (7) To protect infrastructure capacity by ensuing that electrical, water, and wastewater systems can reliably meet the needs of these facilities without compromising service to other users.

B. This zoning ordinance does not supersede any other state or federal regulation pertaining to electrical storage laws. Any conflict between this chapter and state law and federal law and/or utility regulation shall be resolved by application of state law and federal law and/or utility regulations.

Definitions.

ACCESSORY DATA CENTER USE/CONTAINMENT STRUCTURE – A building, or structure, or partial use of a building or structure, used to store, manage, process or transmit digital data for business uses, including computers, network equipment, systems, servers, and other associated components related to the digital data storage and operations that is secondary, subordinate and customarily incidental to and located on the same lot as the principal use of a property. Such a use cannot dominate the property or operate as an independent principal use.

DATA CENTER – An industrial use facility that is primarily used for the storage, management, processing, and transmission of digital data, and which houses computer or network equipment, systems, servers, appliances, and other associated components related to the digital data storage and processing as a principal land use on a parcel. Equipment

and accessories customary to data centers including but not limited to air handlers, power generators, water cooling and storage facilities, utility substations, and other associated utility infrastructure shall also be considered part of a data center. Accessory structures or rooms that house equipment and staff to serve an on-site business or office shall also be considered a data center.

COMMERCIAL CYRYPTOCURRENCY MINING- The process where a global network of computers running special software to solve codes works to ensure that transactions are legitimate and added correctly to the digital database and new cryptocurrency is added into circulation through the use of server clusters that require a high energy consumption service.

CRYPTOCURRENCY – A digitally generated currency secured in a manner making it difficult to counterfeit or double spend.

CRYPTOCURRENCY DATA MINE – A specific type of data center using a facility or use of land, buildings, or structures where computing equipment is used to solve complex mathematical algorithms in connection with verifying and adding transactions to a blockchain or other distributed ledger, commonly known as cryptocurrency mining. For purposes of this law, a cryptocurrency data mining operation shall be considered a distinct land use, different from a "data center" as defined in this section.

SENSITIVE RECEPTOR - Schools, preschools, day care centers, in-home daycares, health facilities such as hospitals, long term care facilities, retirement and nursing homes, community centers, places of worship, playgrounds, parks (excluding trails), campgrounds, dormitories, and any residence where such residence is not located on a parcel with an existing industrial, commercial, or unpermitted use.

SERVER CLUSTER- A group of three or more computers that are connected with each other and operate closely to act as a single computer to be used for the purpose of cryptocurrency mining.

UNREASONABLE NOISE - Any sound, which by reason of its volume, pitch, frequency, duration, repetition, character of the area, or time of occurrence is excessive or unwanted or sound that interferes with the normal use and enjoyment of property, and which annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of a reasonable person of normal sensitivities, or which causes injury to animal life or damage to property or business. Unreasonable noise includes, but it did not limit to, continuous or tonal sounds, impulsive or intermittent noises, and low-frequency vibrations.

Applicability.

The requirements of this section shall apply to all data centers, cryptocurrency mines, and accessory data center uses proposed or modified in the Town of Bergen after the effective date of this chapter. All data centers, cryptocurrency mines, and accessory data center uses as defined shall require both Site Plan Review and approval and a Special Use Permit review and approval.

General Requirements.

A. Data Center, Cryptocurrency facilities and accessory buildings shall be allowed as accessory use in the Town of Bergen's Industrial Zones. All uses shall be subject to review and approval with a Special Use Permit and Site Plan Review.

B. A building permit issued by the Bergen Code Enforcement Officer shall be required for construction or modification of any data center, cryptocurrency mine and accessory data center. An electrical inspection must be conducted by an approved electrical inspection agency for Bergen.

C. Issuance of approvals by the Bergen Planning Board which shall include review pursuant to the State Environmental Quality Review Act, including ECL Article 8 and its implementing regulations at NYCRR Part 617 ("SEQRA).

D. All data centers, cryptocurrency mines and accessory data centers battery energy storage systems buildings, and all other buildings or structures are subject to the Uniform Code and/or the Energy Code shall be designed, erected, and installed in accordance with all applicable provisions of the Uniform Code, all applicable provisions of the Energy Code, and all applicable provisions of the codes, regulations, and industry standards as referenced in the Uniform Code, the Energy Code, and the Town of Bergen Town Code.

E. All data centers, cryptocurrency mines and accessory data center buildings or structures shall comply with the International Fire Code, NFPA 70, NFPA 855, and other relevant State and Federal codes and regulations.

Site Plan and Special Use Permit Application Requirements for Data Centers/ Cryptocurrency Mines and Accessory Data/Cryptocurrency Center Uses

A. All accessory data/cryptocurrency center uses shall be subject to review and approval with a Special Use Permit and Site Plan Review. A new site plan review and renewal of the special use permit shall be required for any physical expansion of any pre-existing data/cryptocurrency containment structures. In addition to other submission requirements of Bergen Town Code Chapter 475, an application for such facilities shall also include the following:

1. A narrative description of the nature of the on-site activities and operations, including the market area served by the facility, the hours of operation of the facility, the total number of employees on each shift, the times, frequencies, and types of vehicle trips generated, the types of materials stored and the duration period of storage of materials.

2. A site plan of the property that indicates the location of proposed improvements, flood plains, wetlands, streams, and cultural and historic resources on the property and within 500 feet of the boundaries of the property, as well as appropriate fencing and/or other reasonable steps to ensure safety from electrical hazards and identifying a power source for the operation.

3. Data clearly articulates water needs, use, availability, recycling and/or release procedures, and local and regional impacts on water resources.

4. Data that clearly articulates electrical needs and sources.

5. An evaluation of the potential impacts of the proposed use, both positive and negative, upon:

   (a) Emergency services and fire protection,

   (b) Sewage disposal

(c) Solid waste disposal

6. A narrative description of any environmental impacts that are likely to be generated (e.g., odor, noise, smoke, dust, trash, glare, heat islands, vibration, electrical disturbance, wastewater, stormwater, solid waste, etc.) and specific measures employed to mitigate or eliminate any negative impacts. The applicant shall provide further evidence that the impacts generated by the proposed use fall within acceptable levels, as regulated by applicable laws and ordinances.

B. Application for any data center, cryptocurrency mine and our accessory data center buildings must be made to and approved by the Bergen Planning Board, where it must meet the guidelines as defined herein and shall be:

1. Reviewed by the Bergen Planning Board for completeness. An application shall be complete when it addresses all matters listed herein, including, but not limited to, compliance with the Uniform Code, the Energy Code, addressing matters relating to floodplain, utility lines, electrical circuitry, signage, lighting, vegetation, tree cutting, noise, decommissioning, site plan considerations, special use considerations, ownership changes, safety, emergency operation plan, easements, permit time frame and abandonment. Applicants shall be advised within 15 business days as to the status of the application.

2. Subject to a public hearing to hear all comments for and against the application. The Bergen Planning Board shall have a notice printed in at least once in the official newspaper so designated by the Town Board at least five days before such hearing, Applicants shall deliver the notice by first class mail to adjoining landowners or landowners within 1,000 feet of the property at least 10 days prior to such hearing. Proof of mailing shall be provided to the Bergen Planning Board at the public hearing.

3. Referred to the Genesee County Planning Department pursuant to General Municipal Law § 239-m if required.

4. Upon closing of the public hearing, the Bergen Planning Board shall take action on the application within 62 days of the public hearing, which can include approval, approval with conditions, or denial. The sixty-two-day period may be extended upon consent of both the Bergen Planning Board and the applicant.

5. Upon approval of the Bergen Planning Board, an application for a building permit is to be made to the Bergen Code Enforcement Officer.

Design and Siting Standards.

In addition to the Site Plan considerations and Special Use standards, the following design and sitting standards shall be met by all data centers, cryptocurrency mines, and accessory data center uses:

(1) Building Placement and Siting.

a) Data center or cryptocurrency facility must be located within the Town of Bergen's industrial zones.

b) Data Centers, cryptocurrency mines and accessory data center uses that visually approximate commercial office building is encouraged.

c) No container storage structures such as but not limited to shipping containers, shall be used to house a data center.

d) There shall be no blank, windowless wall facing any private or public street.

e) All mechanical equipment shall be shown on any proposed site plan and must be fully screened on all sides with a design, materials, details, and treatment compatible with those used on the principal façade of the building.

f) No ground mounted mechanical equipment shall be located in any required front yard.

(2) Off-street Loading Areas. Loading bays are permitted to be located on only 1 façade but shall not be located on the front façade.

(3) Area and Bulk Standards

a) Only one data center or cryptocurrency mine shall be allowed in each of the town's Interchange INT-R, Interchange INT-I and Industrial I district.

b) The minimum required lot size shall be 2 acres.

c) The maximum height shall not exceed 35 feet.

d) The minimum road frontage shall be 150'.

e) All buildings and structures associated with data centers or cryptocurrency mines shall maintain a minimum 100-foot setback from all property lines.

(4) Parking. There should be one parking space for each employee per shift. All ADA requirements shall also be met.

(5) Lighting. All exterior lighting, whether building mounted or pole is mounted, shall be designed and constructed with cutoff and fully shielded fixtures that direct light downward and into the interior of the property and away from adjacent roads and properties. No outdoor lighting used for the data center shall create light that exceeds 0.1 footcandle at any adjacent residential property, or 0.5 footcandle when adjacent to any non-residential use. No light pole shall exceed 18' in height. Except for safety lighting, lighting for parking areas shall be automatically turned off by 10:00 pm.

(6) Fencing. If security fencing is provided, such fencing shall be effectively screened using vegetation placed outside the fence and outside of the road right-of-way. Security fencing shall not exceed ten feet in height. See also (8) below.

(7) Signage. Data centers shall have one building-mounted and one ground-mounted sign. There shall be a maximum total sign area of 32 square feet. Additionally, a sign listing all 24-hour contact information shall be provided on site in a location easily accessible to emergency responders.

(8) Screening. Screening shall be required whenever a data center, cryptocurrency mine, and accessory data center use is adjacent to a residential use or a residential zoning district. The Planning Board may waive the screening when the data center is not adjacent to a residence or a residential district.

b) Use of existing vegetation for landscaping and screening is strongly encouraged and may be substituted for new berms and plantings when approved by the Planning Board.

c) When fencing has been provided, screening shall be a minimum depth of 8 feet of vegetation when the data center abuts residential properties or a residential zoning district.

d) All fencing provided along road frontage shall be landscaped.

E. Performance Standards.

(1) Noise and Heat

(a) Data center/cryptocurrency mining operation may not cause unreasonable noise that causes adverse or detrimental effects to adjoining tenants, licensees, owners and/or residents and that diminishes the quality of life or increases the costs of operating their business or maintaining their homes. An acoustical study prepared by a professional acoustical engineer shall be required as part of the site plan and special use application that demonstrates that the use, including all its components, will not produce a noise level of 60 decibels and above measured at the lot lines of the premises where the facility is located.

b) On property adjacent to existing residential development, or to a zoning district permitting residential uses, all mechanical equipment associated with data center, cryptocurrency mine, and accessory data center uses located on the property, whether on a roof top, on the ground level, or elsewhere on the exterior of the property, shall be fully screened on all four sides by an acoustical barrier using methods including but not limited to louvers, enclosures, fan selection and speed controls, use of restricted generator testing hours, or changing equipment yard orientation.

c) The Planning Board and/or Town Board may require additional sound mitigation if the acoustical study indicates potential impacts to sensitive receptors, and when increases in ambience noise in excess of 3 dB are likely to occur.

(2) Containment structure requirements.

(a) Containment structures. The containment structure shall be at least 700 square feet, permanently affixed, and not be created solely by shipping containers or tother temporary buildings.

(b) New York State codes and standards. All buildings standards required by this section, shall be designed by a New York State licensed engineer or architect and in accordance with all applicable codes and standards, including but not limited to the New York State Uniform Fire Prevention and building Coed as

adopted pursuant to Article 18 of Executive Law and the New York State Energy Conservation Construction Code adopted pursuant to Article 11 of the Energy Law.

(c) The temperature inside of a containment space for data/cryptocurrency mining operation shall at all times comply with all state and federal laws, rules, and regulations including but not limited to those issued by the New York State Department of Environmental Conservation and the Occupation Safety and Health Administration.

(3) Infrastructure (Water, Sewer, Electricity)

a) Electricity.

1. Verification. Prior to approval of a site plan and special use permit, the application shall provide written verification from the electric provider to prove adequate electrical capacity is available that it can safely accommodate the proposed data center use, and that such use does not adversely impact other electrical needs and users in the area. The applicant shall further show that the use will not cause electrical interference or fluctuations in line voltage on and off the premises.

2. Underground wiring shall be used to the maximum extent feasible.

3. Data centers, cryptocurrency mines, and accessory data centers may use dedicated fossil fuel generators for emergency power when the public utility is not available, but not for normal use power.

b) Water.

1. Neither public water nonprivate well water shall be used for direct single pass or evaporative cooling to limit water usage requirements.

2. The applicant shall provide data showing adequate water capacity for the facility. If no public water service is available, the applicant shall conduct well pump tests to ensure that no adjacent wells are adversely affected by the data center water use.

3. Any public water service area extension to provide water to a data center shall be fully evaluated by the Planning Board and Town Board for cumulative and growth inducing impacts.

4. Any public water service area extension, when approved, shall be provided at the applicant's cost.

c) Sewer. A data center, cryptocurrency mine, or accessory data center use shall be connected to a sewer service area whenever such infrastructure is present. When such facility is not located in a sewer service area, an on-site wastewater system shall be provided that meets all local, County and New York State Department of Health requirements for on-site wastewater treatment.

d) All NYS Stormwater Pollution Prevention requirements shall be met pursuant to the NY State Pollutant Discharge Elimination System (SPDES). The New York State Stormwater Management Design Manual, most up-to-date version, shall be used in the design. In no circumstance shall heated water be discharged into any wetland or waterway.

(3) Safety

a) An active, clean agent fire protection system shall be provided and maintained in good working order within any structure which contains a data center, cryptocurrency mine or an accessory data center use. High-sensitivity smoke detectors should be installed and operational in order to activate this clean agent fire suppression system.

b) There shall be an emergency electricity termination switch installed outside of any containment structure used as a data center, cryptocurrency mine or an accessory data center uses.

c) Containment space. The equipment used in any data center, cryptocurrency mine or an accessory data center uses shall be housed in an individually metered, electrically grounded structure with a fire rating designed to resist an internal electrical fire for at least 30 minutes. The containment space shall contain baffles that will automatically close in the event of fire independent of a possible electric system failure.

d) All building and site elements shall be designed by a New York State licensed architect or engineer and in accordance with all applicable codes and standards.

e) An operations plan shall be submitted and approved by the Planning Board and Town Board that provides a 24-hour emergency contact for the facility. A copy of the approved Safety plan shall also be given to the Bergen Code Enforcement Officer and Bergen Fire Department.

f) The applicant shall coordinate with the Town of Bergen, local Genesee County Sheriff and Bergen Fire Department to ensure there are adequate mechanisms in place for contact with and for providing fence and building access to emergency service providers. Where fencing is provided, a Knox Box shall be required.

(4) Renewable Energy Expectations. To promote energy efficiency, data centers, cryptocurrency mines, and accessory data center uses are encouraged to:

a) Use waste heat recovery for nearby uses.

b) Install continuous monitoring and reporting systems to track and publicly disclose real-time energy use and efficiency metrics.

c) Identify and implement greenhouse gas offsets.

d) Use renewable energy such as on-site generation, power purchase agreements, green energy sourcing, or co-location with renewable projects.

Permit Time Frame.

The special use permit and site plan approval for data/cryptocurrency facilities shall be valid for a period of 18 months. In the event construction is not completed in accordance with final site plan approval within 18 months of said approval, an extension of 180 days can be granted to complete construction. If the owner/operator fails to complete construction within the aforesaid 24 months, the approval shall expire.

Inspection and Enforcement.

A. Any violation of this chapter shall be subject to the same civil and criminal penalties provided for in the Town of Bergen Town Code (including any applicable zoning regulations) and/or the laws of New York State.

B. The Code Enforcement Officer is hereby authorized to make inspections to determine compliance with the provisions of this chapter. When the C ode Enforcement Officer determines that there is a violation, he shall cause a written notice thereof to be served upon the owner of the property in violation. Such notice shall include a statement of the conditions that violate the provision of this chapter and the action required to correct such violations.

C. The Code Enforcement Officer will specify the time and nature of work to be done to correct such violation.

D. Upon failure to comply with said notice, the Code Enforcement Officer may prepare an appearance ticket returnable to the Town of Bergen Court.

E. Whenever such notice has been legally served upon the owner of a noncompliant premises, and such owner shall neglect or fail to comply with the requirements of such notice within the time period provided therein, the Town Board may authorize the work to be done and pay the cost thereof out of general Town funds to be appropriated by the Town Board for such purposes.

F. The Town shall be reimbursed by the owner for the cost of work performed or services rendered. Said costs may be secured by a line placed upon the premises.

Penalties for Offenses.

Any person who violates or knowingly permits the violation of this chapter shall be deemed to have committed an offense against this chapter and shall be subject to penalties. Each separate violation shall constitute a separate additional offense. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this chapter shall be deemed misdemeanors, and for such purpose only, all provisions of law relating to misdemeanors shall apply to such violations. Every day of such violation after the thirty-day period for compliance shall be deemed to constitute a separate additional offense. Notwithstanding the foregoing, any person violating any provision of this chapter or any article, section or subdivision thereof shall be subject to a civil penalty in the sum of $350 for the first such violation, $700 for the second such violation and $1,000 for any subsequent violation, said penalties to be recoverable in a civil action in the name of the Town of Bergen.

(A) Any person who violates this chapter may be enjoined from a continuing violation hereof in an action in any court of competent jurisdiction, and in the event that an injunction is granted enjoining said violation, the party seeking said injunction shall be entitled to recover the costs, disbursements and reasonable attorney fees incurred in connection with bringing and prosecuting said action.

Severability.

If any clause, sentence, paragraph, subsection, section or part of this chapter, or the application thereof to any person, individual, firm or corporation, or circumstance shall be adjudged by a court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subsection, section or part of this chapter, or in its application to the person, individual, firm or corporation, or circumstance directly involved in the controversy in which said order or judgment shall be rendered.

Effective Date.

This chapter shall take effect upon the date it is filed with the Office of the New York State Secretary of State in accordance with Municipal Home rule Law §27.

Sec. 5. The Bergen Town Board is committed to protecting neighboring property owners from operational disturbances by enacting appropriate setbacks, screening methods, decibel limits, discharge rules, etc. for data centers and cryptocurrency facilites.

Sec. 6. The Bergen Town Board is committed to the mitigation of the impacts of data centers and cryptocurrency facilities on environmental resources, such as important agricultural lands, forests, wildlife and other protected resources.

Sec. 7. The Bergen Town Board is committed to the mitigation of the impacts of data centers and cryptocurrency facilities on utilities and manmade resources, including but not limited to electricity, public water, waste treatment centers and public infrastructure.

Sec. 8. The Town of Bergen will monitor the maintenance of data centers and cryptocurrency facilities through its code enforcement officer, consultants and other involved agencies in order to ensure the safe operation of the system.

Sec. 9. The Bergen Town Board intends to update its Comprehensive Plan with these goals during the next update process.

MOTION for adoption of this resolution by
Seconded by

Discussion:

VOTE BY ROLL CALL AND RECORD:
Councilperson Anderson
Councilperson Ely
Councilperson Grant
Councilman Swanson
Supervisor Haywood

Submitted –October 20,2026

RESOLUTION NO. Goals and Policies for Data Centers and Cryptocurrency Facilities

WHEREAS, There is a requirement for municipalities adopting Data Center and Cryptocurrency Facilities regulations to either create or update its Comprehensive Plan defining the goals and policies regarding these systems or to issue a Board Resolution or Executive Order defining these goals and policies; and

WHEREAS, The Town Board of the Town of Bergen is in the early stages of updating its Comprehensive Plan and will not complete the plan prior to the expiration of the moratorium on Data Centers and Cryptocurrency Facilities; and

WHEREAS, The Town of Bergen does not address Executive Orders it in its Town Code; and

WHEREAS, the Town Board of the Town of Bergen has determined that a resolution setting the goals and policies for Data Centers and Cryptocurrency Facilities is the most appropriate option for compliance at this time: and

WHEREAS, the Town Board of the Town of Bergen defines the goals and policies of its Data Centers and Cryptocurrency Facilities proposed regulation as follows.

NOW, THEREFORE, BE IT RESOLVED:

Sec. 1. The Bergen Town Board recognizes the emergence of data centers and cryptocurrency facilities as new technologies and economic activities evolve.

Sec. 2. The Bergen Town Board desires to create appropriate regulations governing data centers and cryptocurrency facilities that support other stated goals of Bergen pursuant to its Comprehensive Plan.

Sec. 3. The Bergen Town Board intends to permit the installation of data centers and cryptocurrency facilities, unless otherwise prohibited by higher governmental authorities, in designated zoning districts. However, the data center and cryptocurrency facilities project approval process will ensure compatible land uses in the vicinity of the areas affected by these facilities. The data center and cryptocurrency facilities projects will meet the underlying zoning requirements, planning board requirements and special permit requirements in order to ensure this compatibility and public input will be considered through the public hearing process.

Sec. 4. The Bergen Town Board is committed to the safe and effective operation of emerging technological facilities such as data centers and cryptocurrency facilities and will work with the owners/operators and other involved agencies, such as Genesee County, the Bergen Fire Department, the NYS Department of Environmental Conservation, and others to this end.