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Municipal Regulation of Data Centers

There is no denying that data centers have become a hot button topic. With the proliferation of AI in just about everything from phones to appliances and our continued reliance on cloud computing and storage, Wisconsin has become the latest state to see an influx of large-scale data center developments. Perhaps there is no better example of the immense scale of these developments than the $15 billion, 1.3-gigawatt, 672-acre behemoth in development in Port Washington. The Port Washington data center alone is reported to require the same amount of power as approximately half a million homes and will consume 22,000 gallons of water per day through a closed loop system.

While these developments promise a significant increase in property tax revenue and limited job creation, many Wisconsinites are concerned. Some are concerned by the sheer quantity of resources these data centers will consume, and the potential costs borne by ratepayers to provide them. Others are worried about the potential harmful effects on the environment and nearby properties from impacts to local water supplies and noise pollution. Some have also raised the possibility that these data centers will be abandoned due to an AI bubble or obsolescence, potentially raising utility rates and property taxes, and increasing blight. These concerns range across the political spectrum, a rarity in the polarized world we live in, with a recent Marquette Law School poll showing broad bipartisan opposition.[1]

This opposition has led some municipalities to seek ways of stopping these data center developments; others have pulled back after receiving public backlash. There has been consternation over municipalities entering into non-disclosure agreements related to data center development. And in Port Washington, voters approved a referendum during the Spring 2026 election to require voter approval for the creation of future TID districts of more than $10 million as a response to the $458 million TID the city already approved for the Port Washington data center. Given this landscape, municipalities should be aware of the options they have to regulate data centers in order to maximize the benefits and minimize the harms.

Zoning

Zoning is likely the strongest tool municipalities have to regulate data centers. Zoning allows municipalities to determine where data center development is appropriate, such as by limiting the districts or zones in which it is a permitted as conditional use. Zoning also allows municipalities to impose conditions and restrictions on data center development or impose uniform requirements specific to data centers, such as height, area, setback, screening,

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and access requirements. Under the current legal framework in Wisconsin, municipalities can even use zoning to outright prohibit data centers if desired.

Since these large-scale data centers are so new to the state, most of the zoning regulations enacted to date have been temporary moratoriums on large-scale data center development. Such a moratorium gives a municipality time to research and determine how to regulate these data centers, and gives time to see whether the state will enact any regulatory changes to address some of the concerns.[2] Many of the municipalities that have enacted moratoriums in their zoning codes are taking the time to examine municipal regulations from other states where these large-scale data centers are more prevalent and identifying issues those localities have faced. Such an approach aims to ensure municipalities avoid putting the cart before the horse – development of a large-scale data center before the proper regulations or restrictions are in place to protect public health, safety, and welfare.

Unzoned municipalities are able to enact an interim zoning ordinance under Wis. Stat. § 62.23(7)(da). Such an ordinance allows unzoned municipalities to freeze land use changes for up to two years to give them time to enact a comprehensive zoning ordinance. With careful drafting, such an ordinance could operate similarly to a moratorium. One benefit of such an ordinance is that it can be enacted like a regular ordinance and does not require plan commission review/recommendation or holding a public hearing, so it can be enacted much faster than a typical zoning ordinance. Municipalities may want to consider including exceptions in their interim zoning ordinance to provide a process to allow unobjectionable land use changes.

One important aspect of zoning to remember is that a zoning ordinance does not stop a legal non-conforming use that existed before the zoning ordinance was enacted.[3] That means any pre-existing data center would still be allowed to continue, even if a subsequent zoning change prohibits it. Additionally, a developer may obtain a vested interest to complete their development despite a zoning change part way through development prohibiting or restricting it, typically once a building permit has been applied for. Due to this, municipalities will want to consider whether to take a more proactive approach to data center regulation.

As with any zoning regulation, municipalities also should remember to review their comprehensive plans to ensure any proposed zoning change is in strict conformity with the plan. Amending a comprehensive plan takes time,[4] so municipalities should plan accordingly.

Development Moratorium

Municipalities may be able to place a development moratorium on data centers under Wis. Stat. § 66.1002. This allows for the adoption of up to a 12-month development moratorium that can be extended one time for up to 6 months. As with a zoning moratorium, this would give a municipality time to research and enact regulations on data centers. It also would provide time to adopt or make changes to a comprehensive plan needed to regulate data centers.

While municipalities have express authority to enact a development moratorium,[5] they may only do so under certain circumstances: (i) if a municipality has enacted a comprehensive plan; (ii) is in the process of preparing its comprehensive plan; or (iii) is in the process of preparing a significant amendment to its comprehensive plan in response to a substantial change in conditions in the municipality. A municipality must also adopt a resolution stating the moratorium is needed either to prevent a shortage in, or the overburdening of, local public facilities, or to address a significant threat to public health or safety that is presented by a proposed or anticipated activity due to a request for rezoning, a plat or certified survey map, or a subdivision plan or other land division. This resolution must be accompanied by a written report from a registered engineer or a public health professional that states the moratoria is justified based on overburdened public facilities and/or a threat to public health and safety.

Licensing

Another tool municipalities can use to regulate data centers is a licensing ordinance. A licensing ordinance can be enacted using a municipality's general police powers to protect the health, safety, welfare and convenience of the public. This is particularly useful for municipalities that are unwilling or unable to use a zoning ordinance, such as towns that are subject to county zoning. A licensing ordinance would allow a municipality to impose some restrictions on data centers, although it would not provide the same latitude as a zoning ordinance.

Municipalities will need to be careful when drafting data center licensing ordinances to avoid them being considered a zoning ordinance. Municipalities are strongly encouraged to follow the framework identified in the *Zwiefelhofer v. Town of Cooks Valley* case which found a non-metallic mining licensing ordinance was not a zoning ordinance, despite impose significant land use regulations on mining throughout the town.

While a licensing ordinance cannot outright prohibit data centers to avoid being a zoning ordinance, it may dissuade some developers from pursing a data center development. Anecdotally, it appears some developers

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are pursuing data center developments in municipalities with little or no regulation. Unzoned towns near existing or proposed high voltage power lines appear to be particularly desirable. Due to this, a licensing ordinance may be enough to cause many developers to look elsewhere.

Development Agreement

Municipalities can also impose some regulations on data center development via development agreements. A development agreement is a consensual, binding contract between two or more parties, typically between a landowner/land developer and a municipality. Municipalities regularly use development agreements for all manner of developments, including data centers. While a development agreement will not prevent a data center development, it could provide an avenue for municipalities to impose some regulation to minimize the potential harm from a given development. Such agreements are generally more useful in conjunction with other municipal land use and development regulations, such as zoning, subdivision, and licensing ordinances. Development agreements are also critical to any TIF provided for a project.

Conclusion

Considering the recent increase in large-scale data center developments and the likelihood of additional data center developments in the near future, Wisconsin municipalities are strongly encouraged to start considering whether municipal regulation is desired. Given the scale of these developments and the risks of non-conforming use and vested interests arising from reactive regulation, municipalities may want to pursue a proactive regulatory approach before a large-scale data center project comes to fruition. Now would be a good time to review existing zoning ordinances and comprehensive plans to determine how such developments are currently regulated and to identify any deficiencies in such regulation. Municipalities may also want to direct their plan commissions to start having discussions on data centers and explore what kind of regulations may be needed.

— Eric B. Hagen

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Public Bidding Refresher: Changes to Public Bidding Threshold and Best Practices Reminders

Regardless of what the weather is doing, it is safe to forecast that Wisconsin's construction season is well underway. As your community looks to its next public construction project, with the recent changes to Wisconsin's public bidding thresholds, now is a good time for a refresher on the requirements and limitations of Wisconsin's public bidding law.

Public Bidding Law Changes

The Wisconsin Legislature recently enacted 2025 Wisconsin Act 188, which for the first time in over 25 years, updates Wisconsin's competitive bidding thresholds and requirements for certain local government public works projects.

The major change is that cities, villages, municipally-owned utilities, towns, and counties saw their public bidding thresholds double for general construction projects. These governmental entities must now provide a class 1 notice before contracting for any project between $10,000 and $50,000, and must publicly bid and award to the lowest responsible bidder any project that exceeds $50,000.

A major exception is that the Act preserves the prior notice limit of $5,000 and bidding limit of $25,000 for newly defined "public highway construction" (cities and villages) and "public highway contract" (towns). Public highway construction is defined as "a public construction project involving the construction, improvement, repair, or maintenance of a highway." Wis. Stat. § 62.15(1)(b)1.b. Public highway contract is defined as "a contract for the construction, execution, repair, remodeling, or improvement of a highway." Wis. Stat. § 60.47(1)(as).

Towns and counties also saw the addition of an exception for "construction by a private person of an improvement that is donated" to the local government after the completion of construction, similar to what was already available to cities and villages. Wis. Stat. §§ 60.47(5)(c) & 59.52(29)(c)2.

Unfortunately, there was no commensurate change for sanitary district or lake district public bidding thresholds, with those remaining at $25,000 and $2,500 respectively.

The new limits became effective on April 5, 2026.

Other Requirements Remain

While the thresholds were updated, other aspects of Wisconsin's public bid law remain unchanged. When a project is required to be publicly bid, the project must be let to the lowest responsive and responsible bidder after advertising for and receiving sealed competitive bids.

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A bidder is responsive if the bidder provides all information required by the bid packet, a bid bond, and a performance and payment bond. There is no statutory authority to allow correction of bids, meaning an error identified in a bid pre-opening requires that the bid be returned but prohibits the bidder from bidding again on the project unless it is relet. A bid discovered post-opening grants the municipality discretion to allow withdrawal of the bid.

The determination of the lowest responsible bidder remains the responsibility of the local governmental body. A municipality may determine responsibility through either the statutory pre-qualification process prior to bidding under Wis. Stat. § 66.0901(2) or at the time of bid opening and award. While a municipality has relatively wide discretion related to finding a bidder irresponsible, the municipality should have evidence and not just opinion to support any such conclusion.

The new law also makes no change to existing bonding requirements and thresholds. Municipalities must still ensure that bidders and awardees provide bid bonds and payment and performance bonds, when required by law. *See* Wis. Stat. §§ 62.15(3) and Wis. Stat. § 779.14.

There are many nuances to and additional requirements of Wisconsin's public bidding laws, so it is best to check with your municipal attorney prior to bidding or contracting for public construction projects.

Best Practices: Or How to Avoid Being Stuck with a Bad Contract

Simply put—involve your municipal attorney early. There is a lot that goes into construction projects before they are bid: capital improvement plans are created, projects are budgeted, funding is applied for, architects or engineers are hired, and plans, specifications, and "standard" construction contracts are prepared. If an attorney is not involved early in the project, there are points where it becomes too late for an attorney to have meaningful input or impact.

For example, most standard AIA or EJCDC construction contracts assign responsibilities to the architect or engineer, but the architect or engineer is not a party to those contracts and, unless specified elsewhere, are not bound by their terms. Any duties to be taken on by the architect or engineer must be agreed to in the municipality's agreement with the architect or engineer. While contracts with design professionals can be readily amended if mutually agreeable, the same solution does not exist for contracts with the contractor.

When a contractor bids on a project, the contractor is entitled to rely upon the plans, specifications, and contract terms in preparing their bid. This also ensures that a municipality is comparing apples to apples when the bids come in. A municipality is prohibited from negotiating with a contractor after receipt of bids. This means that to have any meaningful input as to the material terms of the construction contract, the municipal attorney must be consulted with prior to bid advertisement, if not earlier.

Involving a municipal attorney early is also important where more unique contracts are contemplated, such as indefinite quantity contracts for unknown work throughout the course of a construction season. While Wisconsin's public construction laws are relatively rigid, a municipal attorney can help make sure that your community remains in compliance with all applicable laws while helping to protect your community's interests.

If you have questions about public construction contracts, please feel free to contact a member of Boardman Clark's Municipal Law Practice Group.

— Jared W. Smith

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1 A substantial majority (69%) of adults say the costs of data centers outweigh their benefits, while 30% say the benefits are greater. This represents an increase in skepticism about data centers since January, when 62% saw costs as greater than benefits and 37% said benefits are greater. This opposition is bipartisan, with 62% of Republicans, 76% of Democrats, and 73% of independents saying the costs are greater than the benefits. This opinion increased across each partisan group. In January, 53% of Republicans, 70% of Democrats, and 65% of independents saw costs greater than benefits." https://law.marquette.edu/poll/2026/04/22/new-marquette-law-school-national-survey-finds-high-approval-of-iran-cease-fire-low-support-for-the-war-and-few-who-think-u-s-goals-have-been-achieved/

2 There were multiple data center bills proposed during the most recent legislative session, but none have passed so far. See 2025 Assembly Bills 722 and 840, and 2025 Senate Bills 729 and 843.

3 See Wis. Stat. sec. 62.23(7)(ab), (h), (hb), and (hc).

4 Pursuant to Wis. Stat. sec. 66.1001(4), amendment to a comprehensive plan requires the plan commission to review and approve a resolution, and for the City Council, Village Board, or Town Board to hold a public hearing (preceded by publication of a notice of hearing at least 30 days prior) before enacting an ordinance to adopt the amendment.

5 Note, Counties do not have express authority under § 66.1002 to enact a development moratorium.

AI and Attorney-Client Privilege: What Wisconsin Municipalities Need to Know

Municipalities are introducing artificial intelligence (AI) tools in their everyday operations—from drafting reports and correspondence to processing citizen inquiries to optimizing waste collection or public transit routes. While AI tools offer efficiency gains, they can also introduce significant and underappreciated legal risks. Chief among these risks is the potential loss of attorney-client privilege and work product protection. For Wisconsin municipalities, transparency obligations intersect with litigation exposure. Therefore, improper or careless AI use may transform confidential legal strategy into discoverable—or even public—records. Understanding these risks is critical to preserving attorney-client privilege and institutional stability.

Attorney-client privilege protects confidential communications between a client and an attorney made for the purpose of obtaining legal advice from disclosure. As such, the privilege exists where communications are (1) between a client and a lawyer or their representatives, (2) intended to be confidential, and (3) made to secure legal advice.

Generative AI tools complicate these protective frameworks because users' interactions with them may fall outside the traditional scope of privilege. A recent federal case, *United States v. Heppner*[1], illustrates the risk. There, a criminal defendant used Anthropic's Claude to generate documents analyzing his legal exposure and defense strategy. The court held that the attorney-client privilege did not protect those documents. Applying the first element of attorney-client privilege, the court explained that the AI tool was not a lawyer, so the communications were not between the defendant and his attorney. Likewise, because the AI tool's privacy policy explicitly stated that it collects, stores, and trains its model on user inputs and outputs, there was no reasonable expectation of confidentiality. Finally, the court emphasized that the AI platform itself disclaimed any ability to provide legal advice.

The *Heppner* case underscores that sharing information with an AI tool may be treated as a voluntary disclosure to a third party, which in turn can waive privilege altogether. Courts commonly hold that privilege is lost when confidential information is shared with those outside the attorney-client relationship. Because AI tools—particularly consumer-grade ones like ChatGPT or Gemini—are generally not bound by duties of confidentiality and may store, process, or disclose user inputs, legal strategy, factual summaries, or internal communications submitted to them may become discoverable in litigation.

Inadvertently surrendering privilege can be devastating in litigation. Municipalities routinely face claims involving disputes with public employees, civil rights allegations, land use decisions, and contract disputes. If internal legal analyses or litigation strategies are disclosed through AI use, opposing parties may gain direct access to the municipality's thought process and legal positioning. In practical terms, this can weaken defenses, undermine settlement leverage, and increase exposure to liability.

More specific to Wisconsin municipalities, AI-generated content may itself be subject to disclosure under Wisconsin's Public Records Law. Wisconsin defines "record" broadly to include "[a]ny material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by a [ ] [governmental] authority."[2] Because public officials' prompts, outputs, and related communications with AI tools are "created" and may be stored or retrieved, they could be subject to disclosure upon request unless a specific exemption applies. The Public Records Law presumes openness and requires authorities to justify withholding records through statutory exceptions or a balancing test. If privilege has already been waived due to improper AI use, municipalities may have little basis to withhold records created with or by AI from public disclosure.

Generative AI presents both opportunity and risk for municipalities. While AI does not need to be avoided altogether, its use must be deliberate and controlled. *Heppner* demonstrates that courts have started applying traditional privilege principles to these new technologies. As such, municipal officials and counsel should treat public AI tools as third parties for privilege purposes and avoid inputting confidential or legally sensitive information absent appropriate safeguards. Municipalities that fail to adapt may see their most sensitive legal communications transform into trial evidence—or worse, press releases.

— Emmerson A. Mirus

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1 No. 1:25-cr-00503-JSR, 2026 WL 436479 (S.D.N.Y. Feb. 17, 2026)

2 Wis. Stat. § 19.32(2)

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