



City of Phoenix

PLANNING AND DEVELOPMENT DEPARTMENT

To: Alan Stephenson
Deputy City Manager

Date: June 29, 2026

From: David Benton
Chief Counsel

Subject: ITEM 89 ON THE JULY 1, 2026, FORMAL AGENDA – AUTHORIZATION TO GRANT 5C DATA CENTERS (5C) A BINDING WAIVER OF ENFORCMENT (WAIVER) OF THE SPECIAL PERMIT PROVISIONS FOR DATA CENTERS (ORDINANCE S-53089) - DISTRICT 4

Item 89 is a request to grant 5C Data Centers (5C) a Binding Waiver of Enforcement (Waiver) of the Special Permit Provisions for Data Centers under Ordinance G-7396.

Following the City of Phoenix's adoption of Ordinance G-7396 on July 2, 2025, which established a regulatory framework for data centers, 5C submitted a demand to the City under A.R.S. § 12-1134, asserting that the ordinance diminished the fair market value of its property located at 2802 W Palm Lane, Phoenix, AZ 85009, Assessor's Parcel Numbers 108-15-002D and 108-15-002B. Pursuant to A.R.S. § 12-1134(E), Ordinance G-7396 authorizes the City Council, in its sole discretion, to grant binding waivers of the special permit requirements for data centers.

Staff continues to engage with 5C and the community regarding the conditions of this Waiver to ensure that the proposed data center will adequately address and mitigate potential health and safety impacts on neighboring properties. Accordingly, the Waiver (Exhibit A) to Ordinance S-52435 has been revised to address these additional considerations. See enclosed Exhibit A.

Approved: _____

A handwritten signature in black ink, appearing to read "Alan Stephenson", written over a horizontal line.

Alan Stephenson, Deputy City Manager

EXHIBIT A

WHEN RECORDED RETURN TO:

City of Phoenix
Department of Law
ATTN: City Attorney
200 W. Washington Street, 13th Floor
Phoenix, AZ 85003

BINDING WAIVER OF ENFORCEMENT

THIS BINDING WAIVER OF ENFORCEMENT (“Waiver”) is granted by the City of Phoenix (the “City”) as of the date of City Council approval set forth below to 10384 LAUREL LLC and 2802 Palm Lane LLC (the “Owner”) as owner of the real property located at 2802 W Palm Lane, Phoenix, AZ 85009, Assessor's Parcel Numbers 108-15-002D and 108-15-002B, which is more particularly described in **Exhibit B**, as attached hereto and incorporated herein (the “Property”) pursuant to the terms and conditions herein.

Recitals:

- A. On July 2, 2025, the Phoenix City Council adopted Ordinance G-7396 (the “Data Center Regulations”) amending the City of Phoenix Zoning Ordinance to establish data centers as a defined use and to allow this use in certain zoning districts within the City, pursuant to a special permit that addresses health and safety impacts common to this land use (the “Special Permit”). The primary purpose of a Special Permit is to protect public health and safety by requiring the proposed data center to address and mitigate potential health and safety impacts on neighboring properties, including, among other things, fire and public safety threats, hazardous materials, energy use, water use, and noise pollution.
- B. Pursuant to A.R.S. § 12-1134 (“Proposition 207”), private property owners may seek compensation if they believe enactment of a land use law results in a diminution in value of the private real property as of the date of its enactment. Proposition 207 allows the City to issue a binding waiver of enforcement of a land use law to resolve any demand for compensation based on that law. By its terms, Proposition 207 does not require compensation for land use laws enacted to protect the public’s health and safety.
- C. Because the Ordinance was enacted to protect public health and safety and is therefore exempt from demands for compensation, the City is not willing to resolve demands for compensation under the Ordinance with waivers of enforcement, unless it is first assured that health and safety concerns will be fully addressed even without a special permit.
- D. On April 20, 2026, Owner submitted a demand for \$19,737,660 of compensation under Proposition 207, for alleged impacts relating to the Data Center Regulations (the “Claim”).
- E. In response to the Claim, the City requested health and safety information from the Owner to evaluate whether the Owner’s proposed use of the Property for a data center included

sufficient health and safety mitigation measures to allow for a data center use on the Property without unreasonable impacts to public health and safety.

- F. The Owner desires to foster good relationships with the surrounding neighbors and the City.
- G. In response to the City's request, the Owner has provided the City with health and safety information for evaluation. The Owner acknowledges that, to the best of its knowledge and belief, the health and safety information submitted to the City for review is a true and accurate description and depiction of the future location and operation of the data center on the Property.
- H. The City Manager has reviewed and evaluated the submitted information and has prepared a recommendation to the City Council to issue the Owner this Waiver, subject to the terms and conditions herein, to use the Property for a data center without adhering to the Special Permit requirement in Section 5 of the Data Center Regulations, codified at Section 647.A.2.kk of the Zoning Ordinance of the City of Phoenix (collectively, the "Waived Requirements").

Waiver:

NOW, THEREFORE, in consideration of the mutual benefits and covenants herein, the City of Phoenix and Owner agree as follows:

1. Incorporation of Introduction and Recitals. The introduction and recitals set forth above are acknowledged by the City and the Owner to be true and correct and are incorporated herein by this reference.
2. Binding Waiver of Enforcement. Pursuant to its authority under A.R.S. § 12-1134, the City acknowledges and agrees that the Waived Requirements shall not be enforced nor applicable to the Property, subject to the following (the "Health and Safety Requirements"):
 - a. Fire and First Responder Requirements:
 - i. Owner shall provide a plan for fire roads, vertical clearance, and access points, and shall coordinate with the Phoenix Fire Department (the "Department") to create a safe radius and fire response plan to address building collapse potential.
 - ii. Owner shall describe fire sprinkler systems that will be installed, including early detection systems and clean agent suppression systems. If such systems include proprietary information due to the nature of the system, the City (and any other jurisdictions likely to respond to incidents on the Property due to the automatic aid system) will execute the necessary non-disclosure agreements.
 - iii. Owner shall provide the Department with building layouts, plans and drawings and provide and coordinate response training with emergency

responders. If such layouts, plans or drawings include proprietary information due to nature of the system, the City (and any other jurisdictions likely to respond to incidents on the Property due to the automatic aid system) will execute the necessary non-disclosure agreements.

- iv. Owner shall provide measures to prevent or mitigate thermal run away and off-gas monitoring from battery fires. To include efforts to mitigate the creation of an urban heat island by reducing heat absorption with reflective surfaces and vegetation, increasing shade, and improving energy efficiency in buildings and infrastructure.
- v. Owner shall describe how smoke and off gases will be managed.
- vi. Prior to the issuance of a Certificate of Occupancy for any data center use, Owner shall provide site tours for the Department and participate in pre-incident planning to educate the Department regarding access, apparatus positioning, fire protection systems, location of hazardous processes, location of monitoring equipment, building construction and interior configuration, contact information for responsible parties, etc.
- vii. Provide BESS specifications and locations, comply with local guidelines, and provide updates to the Department as project engineering progresses
- viii. Provide hazardous materials management plans, the location of all hazardous materials and related safety data sheets and comply with all Community Right to Know requirements. For purposes of this agreement, hazardous materials are as defined in the Fire Code.
- ix. Data center uses will provide fire department access points, shut-offs for power, fuel, and water, and a digital site plan for use by first responders.
- x. All uses will comply with the Phoenix Fire Code.
- xi. No unpermitted installations or modifications will be made to approved fire and life safety systems.
- xii. Data center uses will integrate regional hazardous materials mitigation and disaster response with local emergency management agencies.

b. Energy Use Requirements:

- i. The Owner has delivered to the City: 1) a letter from Arizona Public Service Company (“APS”) that demonstrates its capacity to serve a data center development on the Property and 2) a completed load service study by APS which determines that APS can serve the proposed data center use. Prior to the issuance of a Certificate of Occupancy for any data center building or portion thereof, the Owner will provide the City a copy of a load commitment agreement with APS that confirms its capacity and commitment to serve such proposed data center use.
- ii. Nuclear power generation shall never be permitted on the Property.
- iii. Permanent power generation shall not be permitted on the Property, except for emergency backup generators, which will include twelve (12) 3300 kW diesel generators. Owner may only operate emergency backup generators in the event of a utility outage or for periodic testing and maintenance.

- iv. All on-site power generation shall meet or exceed emissions standards for non-attainment zones and shall comply with the Noise Mitigation Requirements.
 - c. Water Use Requirements:
 - i. Water use on the Property shall not degrade or compromise the adequacy of the water supply for fire suppression efforts.
 - ii. If applicable, the Property shall comply with Ordinance G-7237, which provides that developments that use an average of 250,000 gallons of water or more per day are required to provide a Water Conservation Plan and that developments that use an average of 500,000 gallons of water or more per day are required to demonstrate a minimum of 30% water reuse in the Water Conservation Plan. If applicable, the Water Conservation Plan must be reviewed and approved by the Water Services Department (WSD) prior to preliminary site plan approval.
 - d. Noise Mitigation Requirements:
 - i. Data center uses will not generate noise in excess of 55 dB(A) between 7:00 AM and 10:00 PM or 45 dB(A) between 10:00 PM and 7:00 AM when measured from the property line of the nearest residentially-zoned property.
 - ii. The project will utilize industry-standard noise mitigation strategies, acoustical designs, and materials to reduce overall noise levels to meet City standards. Specific methods to mitigate noise and ensure compliance with the noise limits set forth above require staff approval and shall be stipulated as a condition of Final Site Plan approval.
 - iii. If supported by an updated noise study, the noise limits set forth above may be adjusted to a level that does not exceed the level of existing background noise.
 - iv. Backup generators, chillers, HVAC units, and other noise-generating equipment shall be located on the eastern side of the Property with a 150-foot setback from residentially zoned property or enclosed within a building or other acoustically screened structure. Any roof-mounted equipment shall be enclosed or otherwise screened for sound mitigation.
- 3. Waiver Subject to Health and Safety Requirements. This Waiver is subject to the Owner's continuing obligations as follows:
 - a. Owner shall not cause or allow any installations or material modifications to the Property that: (i) are inconsistent with, adversely impact, or undermine the Fire and First Responder Requirements, the Energy Use Requirements, the Water Use Requirements, or the Noise Mitigation Requirements; (ii) reduce established standards and efficiencies of life safety systems; (iii) lead to system failures that endanger life safety; or (iv) are not at all times in compliance with the City of Phoenix Fire Code.

- b. Owner shall not cause or allow any material changes to the Energy Use Requirements, including but not limited to the method of providing on-site power for backup purposes, or the method of power delivery from designated energy utility providers, with no less than 120 days' notice to the City.
 - c. Owner shall not introduce potentially hazardous conditions without proper notice, review and permitting. For example, Owner shall not allow or undertake the installation of unpermitted battery energy storage systems or the degradation of water supplies that compromise fire suppression efforts.
 - d. Owner shall obtain and maintain throughout the term, a CSA STAR Level 2 assurance (either STAR Certification or STAR Attestation) based on the then-current version of the Cloud Controls Matrix (CCM). Evidence of current STAR Level 2 status (certificate or most-recent attestation report) shall be provided to City prior to issuance of a certificate of occupancy for any Data Center use.
 - e. Identify a qualified point of contact (e.g., a designated Chief Information Security Officer or equivalent with at least five years of relevant experience), including contact information, responsibilities for maintenance of CSA STAR certification, and a commitment to updates submitted to the City upon material changes.
 - f. Owner shall provide the name and post contact information for a point of contact.
 - g. Pursuant to Phoenix Zoning Ordinance § 703(A)(5), Owner shall screen power and other critical infrastructure, as defined by Phoenix Zoning Ordinance § 202.
 - h. The existing building does not meet the landscape setback requirements in Section 4 of the Data Center Regulations, codified at Section 507 Tab A.II.D.5. Nonetheless, Owner agrees to submit a plan to install trees along the entire perimeter of the property, which will be reviewed and approved by the Planning and Development Department.
 - i. All primary power will be served by APS through planned system capacity and existing utility infrastructure, with the exception of two (2) new underground feeds connecting the Property to the nearest APS substation.
4. Recordation. This Waiver shall be adopted by Resolution of the City of Phoenix City Council and recorded by the City in its entirety in the Official Records of Maricopa County, Arizona, not later than 10 days after this Waiver takes effect.
 5. Covenants Running with the Land. The Owner and the City acknowledge and agree this Waiver runs with the Property and is binding upon the City and the Owner, its successors, assigns, and any subsequent owners or lessees of the Property.

6. Bar to Action. The Owner and the City acknowledge and agree this Waiver shall serve as a bar to any future claim for diminished value based upon the adoption of the Data Center Regulations or otherwise arising from the facts and circumstances of the Claim.
7. Governing Law. This waiver, and all rights and obligations created hereby, shall be determined and governed by the laws of the State of Arizona.

PASSED by the City Council of the City of Phoenix this 1st day of July 2026.

MAYOR

Date

ATTEST:

Denise Archibald, City Clerk

APPROVED AS TO FORM:
Julie M. Kriegh, City Attorney

BY: _____

REVIEWED BY:

Ed Zuercher, City Manager

Acknowledgement

By signing below, the undersigned represents and warrants that they are the lawful Owner of the Property or duly authorized to sign this Waiver on behalf of the Owner, and that this Waiver is knowing and voluntary.

Owner/Authorized Agent: _____

Title: _____

Date: _____

State of Arizona)

County of Maricopa) ss.

Subscribed and sworn to before me this ____ day of _____, 20 ____, by

_____.

Notary Public

My Commission Expires: _____

Exhibit B
Legal Description of the Property

PARCEL ONE (1):

THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 35, TOWNSHIP 2 NORTH, RANGE 2 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA; AND

EXCEPT THE WEST 30 FEET THEREOF; AND

EXCEPT THE EAST 30 FEET THEREOF; AND

EXCEPTING THEREFROM THAT PORTION LYING WITHIN THE NORTH 396.20 FEET OF THE FOLLOWING DESCRIBED PROPERTY:

THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER AND THE SOUTH HALF OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER; ALL IN SECTION 35, TOWNSHIP 2 NORTH, RANGE 2 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA.

PARCEL TWO (2):

Unofficial Document

THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 35, TOWNSHIP 2 NORTH, RANGE 2 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

EXCEPT THE SOUTH 30 FEET THEREOF; AND

EXCEPT THE WEST 30 FEET THEREOF; AND

EXCEPT THE EAST 30 FEET THEREOF.