



Main Office Phone:
310 - 798-2400

Direct Dial:
310-798-2400 Ext. 1

Carstens, Black & Minter LLP
700 North Pacific Coast Highway, Suite 200
Redondo Beach, CA 90277-2147
www.cbcearthlaw.com

Douglas P. Carstens
Email Address:
dpc@cbcearthlaw.com

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Mayor and City Council
City of Monterey Park
320 W Newmark Ave,
Monterey Park, CA 91754

c/o City Clerk, mpclerk@montereypark.ca.gov

RE: Citywide Data Center Prohibition; City Council Hearing March 4,
2026, **Agenda Item Number 12.A**

Honorable Mayor and City Council:

On behalf of No Data Center MPK, composed of concerned residents of the City of Monterey Park (“City”), we ask that you prohibit data centers throughout the City by adopting a prohibition on data centers that applies citywide both by ballot measure and by ordinance.¹ While a ballot measure to prohibit data centers should *also* be placed on the

¹ The prohibition on data centers set forth in the proposed ballot measure should be modified and added to the municipal code by ordinance in addition to adding by ballot measure. The prohibition on data centers in the ballot measure currently in the proposed ballot measure should be modified by striking out text to eliminate potential loopholes as follows:

Prohibited Land Use Designations

Prohibited: All data centers are prohibited throughout the City. “Data Center” means a building, dedicated space within a building, or group of structures ~~located on one or more acres of land~~ used to house a large group of networked computer systems used for data storage and processing for off-site and on-site users, to be used for the remote storage, processing, or distribution of large amounts of data. Such facilities may also include air handlers, power generators, water cooling and storage facilities, utility substations, back-up batteries, fire suppression systems, enhanced security features, and other associated

ballot for a future election, the City should not use such an action as an excuse to refrain from immediately taking effective action to prohibit data centers. Any lawsuit filed by a data center proponent, including but not limited to proponents with active applications, to prevent the City's prohibition of data centers either by ordinance or by ballot measure, or both, would be meritless.

A. The City Should Pass An Ordinance to Prohibit Data Centers.

In order to protect the health and safety of its residents, the City should pass a strong and clear ordinance to prohibit data centers. Proceeding by ballot alone creates significant expense and uncertainty. While the expense of an election is justified- especially if the measure is added to the ballot at a general election- the delay, lack of protection and uncertainty until the election would not be justified. The proposed ballot measure in its current state is incomplete and has loopholes that open the possibility for data centers in the future. It would be irresponsible for the City to rush to finalize incomplete ballot language that does not have full protections in place for the community just to hit deadlines for a June election.

In addition to placing a measure on the ballot, the City should by ordinance prohibit data centers throughout the City. Such a citywide prohibition would eliminate the effect of section 21.14.220 of the Municipal Code which currently provides data centers are permitted with a development agreement: "Data centers are permitted only with a development agreement in accordance with Chapter 21.44 of this code." A citywide prohibition would also eliminate the possible allowance of data centers in the Market Place Specific Plan (Ordinance No. 2231 adopted on June 21, 2023) or other areas of the City.

The City must make the intent to prohibit data centers clearer and more explicit by listing "Data centers" under in the Municipal Code and in the General Plan as a prohibited use. The City must strengthen the Municipal Code and General Plan to make Data Centers in any form (e.g. AI Data Centers, Hyperscale Data Centers, or any other similar use) or any size explicitly prohibited to deter any developers from pursuing development.

A citywide prohibition on data centers should be added to the municipal code to apply throughout the City, not just to Saturn Park, Market Place, or other specific

utility infrastructure to support operations. ~~This definition does not apply to smaller data processing facilities that are located on less than one acre of land and where such facilities are accessory or incidental to another primary use.~~

geographic areas. The City must take effective actions to protect the health and safety of all of its constituents citywide.

B. The City Should Both Pass an Ordinance and Adopt a Ballot Measure to Prohibit Data Centers in the City, Not Merely Rely on One or the Other Prohibition.

There is no valid reason the City cannot pass an ordinance *and* adopt a ballot measure to prohibit data centers. Passage of an ordinance and passage of a ballot measure prohibiting data centers would be well within the City’s valid exercise of its police powers as measures necessary to protect public health and welfare. (*Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach* (2001) 86 Cal.App.4th 534, 555.) Passing an ordinance or adopting a ballot measure to prohibit data centers is not illegal because it is within the valid police powers of the City. (*Id.* at 555 [“Enactment of a city ordinance prohibiting [a particular land use], unless arbitrary, is a valid exercise of the municipal police power.”])

Both the electorate passing a ballot measure and City Council adopting an ordinance are necessary in order to provide a belt and suspenders approach to protecting public health and welfare. Choosing to rely only on a ballot measure without also adopting an ordinance delays the necessary protections to the public until after an election and resolution of possible challenges to the election results. It also subjects protection of the public’s health and welfare to the vagaries and political uncertainty of the ballot box process. Adopting an ordinance at the City Council level assures the public that the City Council is protecting its health and welfare, not passively relying on the electorate alone to provide those protections.

There are no data center proponents with vested rights to build data centers. Although there may be an application pending, because that application has not been approved, the applicant has not obtained any vested rights that would guard against changes in the law. In *Hermosa Beach Stop Oil Coalition*, the court found a project proponent there “did not proceed far enough with the proposed project to acquire vested rights that would permit it to continue” with its oil exploration and production project. (*Id.*, p. 558.)

Any lawsuit filed against the City for enactment of a data center prohibition would be meritless and easily defeated. There is no way to prevent project proponents from filing litigation against the City because they have First Amendment rights to petition government with such claims, but the threats of such lawsuits should not dissuade the

City from protecting the health and safety of its residents in the strongest ways and by the strongest means possible, especially considering the lack of merit of such claims.

C. A Mere Moratorium, While Useful, Is Not Sufficient to Prohibit Data Centers in the City Because a Ballot Measure and Ordinance Are Necessary As Well.

A moratorium on processing of data center applications is useful and should be approved, but it should not be an excuse against taking more effective action such as passing an ordinance or adopting a ballot measure to prohibit data centers. A moratorium is impermanent because it only lasts for a set period of time. A moratorium without an ordinance or ballot measure prohibiting data centers would signal to data center proponents that the City will eventually process and approve data center applications, just not during the moratorium period. Instead, it should be made very clear to all landowners in the City that data centers are a prohibited use that, unless the law changes, will not be permitted in the City.

D. The City Must Make Changes to the Municipal Code and General Plan Directly Rather Than Indirectly Through Future Implementation.

The proposed ballot measure should be strengthened to make changes to the Municipal Code and General Plan directly, rather than directing the City Council to make the changes through future implementation efforts. To the extent future action is directed, a deadline date should be specified, for example within one month of the ballot's passage, rather than relying on the vaguely worded direction for the City Council to "promptly" take action.

The City's proposed ballot must make direct changes so it does not take the risk that its ballot measure will be invalidated as an indirect measure under cases such as *Marblehead v. City of San Clemente* (1991) 226 Cal.App.3d 1504, because it does not actually legislate the changes. The ruling in *Marblehead* (that a ballot measure was ineffective to legislate changes) was distinguished in the subsequent case *Pala Band of Mission Indians v. Board of Supervisors of San Diego County* (1997) 54 Cal.App.4th 565, 575-577. In *Pala Band*, the Court of Appeal rejected the assertion by the Pala Band of Mission Indians that Proposition C in San Diego County was invalid using the same argument as *Marblehead*, i.e., that it was allegedly "indirect" legislation. (*Id.* at 575.) In rejecting the plaintiff's indirect legislation argument, the Court of Appeal in *Pala Band* reasoned:

the voters said precisely how the General Plan is to be amended—Section 7A changes the land use element to designate the Gregory Canyon site for use as a solid waste facility. Sections 7C and 7D merely tell the County to enact any necessary amendments to ensure the General Plan amendment will take place. Such enabling legislation promotes, rather than violates, the requirement that a general plan reflect an integrated and consistent document.

(*Pala Band, supra*, 54 Cal.App.4th at 577.) Therefore, to be effective and less vulnerable to legal challenge, the ballot measure must make actual changes and specify exactly by number what sections it is adding to the City’s Municipal Code and General Plan.

The ballot measure must be written to specify what section is being added to the Municipal Code and General Plan to add “Prohibited Land Use Designations.” Furthermore, as noted in footnote 1 of this letter, the size parameters that modify the outright prohibition on data centers throughout the City should be eliminated because such parameters can create a loophole that allows data centers. (See ~~strikeout text in footnote 1.~~)

Conclusion.

We support the City’s intention to add a prohibition to data centers to the Municipal Code. However, we ask that the City adopt such a prohibition by ordinance as well as placing such a prohibition on the ballot for approval by the electorate. Further, the prohibition on data centers should be added to the City’s General Plan as well as its Municipal Code. Protecting the health and welfare of City residents is critical enough that it demands more than half measures. We look forward to working with you to ensure data centers are prohibited city wide.

Sincerely,



Douglas P. Carstens