

**CITY OF NIAGARA FALLS, NY
PROPOSED ZONING ORDINANCE AMENDMENTS**

JUNE 13, 2022 AMENDMENTS - HIGH ENERGY USAGE OVERLAY DISTRICT

Additional definitions: “Cryptocurrency,” “Cryptocurrency Mining,” “Cryptocurrency Mining Facility”, “Data Center”, “High-Energy Uses”,.

Amendments as shown as underscored language to be added to Chapter Sections 1302.2.3, 1302.2.4, 1302.2.8, 1302.2.9, 1302.2.13, 1302.2.16, 1302.2.18, 1319.5, and 1326.4

SECTION I The CITY OF NIAGARA FALLS, NY ZONING ORDINANCE Is hereby amended as follows:

1303 DEFINITIONS

1303.2 List of Definitions:

1303.2.3 “C”

CONTAINERS or SHIPPING CONTAINERS – A unit originally or specifically designed or used to store goods or merchandise during shipping or hauling by container upon ships, rail, or other types of transportation and are usually 8' wide and 8'6" high by either 20' or 40' length. Any container, including shipping containers, which has been converted and installed so as to be compliant with the requirements of a “building” pursuant to the New York State Building Code shall not be considered a Container or Shipping Container for purposes of this Section 1303.

CRYPTOCURRENCY - Digital currency in which encryption techniques are used to regulate the generation of units of currency and verify the transfer of funds which do not require the backing of banking institutions. Cryptocurrency includes but is not limited to Bitcoin, Ethereum, and Litecoin.

CRYPTOCURRENCY MINING - The operation of specialized computer equipment for the purpose of processing cryptocurrency transactions to verify and add such transactions to a public ledger, known as a blockchain, or any data processing required to release new units of cryptocurrency. This activity typically involves the solving of algorithms as part of the development and maintenance of a blockchain which is a type of distributed ledger maintained on a peer-to-peer network. Typical physical characteristics of cryptocurrency

mining include specialized computer hardware; High Density Load (HDL) electricity use; a high Energy Use Intensity (EUI) where the operating square footage as determined by the Utility is above 250kWh/ft²/year, or with a high load factor, in addition to the use of equipment to cool the hardware and operating space. For the purposes of the associated regulations, cryptocurrency mining does not include the exchange of cryptocurrency or any other type of virtual currency nor does it encompass the use, creation, or maintenance of all types of peer-to-peer distributed ledgers.

CRYPTOCURRENCY MINING FACILITY- Any facility where Cyptocurrency Mining is occurring, including a bitcoin blockchain verification facility or a bitcoin mine.

1303.2.4 “D”

DATA CENTER – A physical facility used for the storage, management, processing, and/or transmission of digital data, which houses business computer systems, networking equipment, power supplies including generators, subsystems, and other associated components related to digital data operations. Data Centers do not include the generation or mining of cryptocurrency. They may also include other associated infrastructure used to support digital data operations such as ventilation/cooling systems, offices, conference rooms, and other administrative space for the purposes of supporting digital data operations.

1303.2.8 “H”

HIGH-ENERGY USES – Business activities that require high energy consumption compared to other businesses in the applicable district(s) of the City of Niagara Falls. Cryptocurrency mining and data center are high-energy use activities, as defined in this Article.

1319 – OVERLAYS

1319.5 High Energy Usage Overlay District

A. Purpose: The High Energy Usage Overlay District is intended to accommodate certain businesses, with operations and facilities that require high energy consumption compared to other businesses in the underlying district(s), and, if not properly regulated, can compared with other industrial uses also create high-noise levels and other negative impacts. The City of Niagara Falls recognizes that the use of equipment and facilities for

certain businesses, such as cryptocurrency mining and data centers, have a significant impact on energy consumption which may run counter to the City's commitment to further New York State's energy goals through the Climate Leadership and Community Protection Act (CLCPA) and Green Amendment. As an Environmental Justice community, the City must protect the public health, safety, and general welfare of the City's residents resulting from disproportionate environmental impacts.

To limit the cumulative impact that these businesses may have on the City, the City has determined that such businesses shall only be permitted within the boundaries of this overlay district. The City will impose conditions on businesses to mitigate impacts from high energy consumptions and other environmental impacts that may result from these businesses. This overlay district shall create incentive for new development in the area enhancing economic benefits, while protecting the public health and safety of the City's residents.

B: Findings: The City finds that the proposed uses in this District may produce unacceptable levels of noise. Excess noise has been implicated in a variety of health disorders, ranging from stress and hypertension to permanent hearing loss. Additionally, noise has been demonstrated to cause psychological problems: "[e]ven moderate levels of noise can heighten anxiety, decrease the incidence of cooperative behavior, and increase the risk of hostile behavior in experimental subjects." [Sidney A. Shapiro, Lessons from a Public Policy Failure: EPA and Noise Abatement, 19 Ecology L. Q. 1,5 (1992).], Accordingly, the setbacks and buffers in 1319.5 have been created to protect other properties from unacceptable levels of noise.

1319.5.1 Applicability; Process

A. The High Energy Usage Overlay District is restricted to the following zoning district: Industrial (I2).The High Energy Usage Overlay District is superimposed over the base zoning districts as set forth in Schedule 8: Zoning Map. The regulation in this section shall only apply to those lands located within the boundaries of the High Energy Usage Overlay District. In such overlay district, proposed land uses are subject to the requirements set forth in this section, and, unless specified otherwise, in addition to the requirements and standards applicable to the underlying district, including site plan requirements.

B. At the time of enactment of this section 1319.5, none of the uses authorized in the High Energy Usage Overlay District pursuant to section 1319.5.2, is a legally authorized use in the City of Niagara Falls. Nothing in this Ordinance shall be deemed as authorizing any person to conduct any of the of the permitted uses described in section 1319.5.2 prior to obtaining all approvals required by this section 1319.5, nor to continue to conduct any activity governed by this section 1319.5 while pursuing the approvals required by this section. Nothing in this Ordinance shall be deemed to grandfather in or otherwise permit any of the uses governed by this section 1319.5 and described in section 1319.5.2.

C. Applicants seeking to operate a Permitted Use identified in subsection 1319.5.2 shall petition the City Council for rezoning to High Energy Usage District pursuant to the procedure for Amendments under 1302.4 of this Ordinance.

D. Level 2 Site Plan Review pursuant to Section 1324.4.2 of this Ordinance shall be required.

E. A Special Use Permit shall be required for each use allowed in this District.

1319.5.2 Permitted Uses

A. Cryptocurrency Mining Facility

1. Cryptocurrency mining is prohibited as a home occupation or as an accessory use to any other use.

B. Data Centers

1319.5.3 SEQRA

Pursuant to the authority granted in 6 N.Y.C.R.R. 617.4, a rezoning, special use permit, and/or site plan under this Article, or a variance from any requirement of this Ordinance for a High Energy Usage Overlay District use or structure, shall be classified as Type I, under the State Environmental Quality Review Act ("SEQRA") and shall be subject to review pursuant to SEQRA codified at Environmental Conservation Law Article 8, its implementing regulations at 6 NYCRR Part 617, and the City of Niagara Falls Zoning Ordinance Section 1326. All applications shall submit a Full Environmental Assessment Form in accordance with SEQRA, which shall include an evaluation by a qualified professional of sound levels and characteristics (such as pitch and duration) generated from proposed facilities in accordance with New York State Department of Environmental Conservation guidance for Assessing and Mitigating Noise Impacts.

1319.5.4 Supplemental Regulations

A. General Requirements

All proposed developments under Section 1319.5 shall meet the following standards:

- 1. All activities authorized by this Article shall be conducted only in "Buildings," as that term is defined in Section 202 of the 2020 Existing Building Code of New York State. The use of shipping containers, railroad cars, semi-truck trailers or similar storage containers, whether existing structures or new structures, is prohibited as any component of an operation within the High Energy Usage Overlay District unless such containers comply with all applicable provisions for a building under the 2020 Existing Building Code of New York State.**

2. No façade shall have more than twenty percent (20%) of the area exposed with apparatus, including but not limited to, vents, fans, and HVAC systems.
3. Electric fields shall not create interference with off-site premises, including telecommunications services.
4. Environmental and Energy Impact Plan
 - a. Each applicant must provide an environmental and energy impact plan, prepared by a NY licensed engineer, in addition to the environmental assessment form required by SEORA.
 - b. At a minimum, this environmental and energy impact plan will describe: the source of energy, anticipated energy impact of the development, mitigation efforts to offset energy consumption, energy efficiency of the development. The submission shall include an assessment of the proposed use's potential electrical consumption on the capacity available to serve the other needs of the neighborhood (as defined by the electric circuit or substation for the property).
 - c. It will also include verification that any e-waste generated from the facility will be handled by a New York State Department of Environmental Conservation-licensed recycling firm.
5. Site Plan Review of projects with a High Energy Usage District shall consider whether additional landscaping, fencing, or other mitigation is required to mitigate noise and visual impacts Noise barriers shall use sound absorbing rather than reflective materials.
6. In addition to noise limitations in any other City ordinance, it shall be unlawful for noise levels generated by a high energy use facility, which includes all buildings, structures, containers, and/or ancillary equipment of the facility on the same lot,

a) to exceed 1) forty (40) dBA between the hours of 10:00 pm and 7:00 am, daily, and any time during weekend hours, and 2) fifty (50) dBA during any other time, as measured at the nearest property line of any property zoned and used for residential purposes

b) to exceed sixty-five (65) dBA as measured at any property line of the noise source, if the adjoining property line (ignoring any public right-of-way) is zoned Industrial

c) to exceed fifty (50) dBA as measured at any property line of the noise source, if the adjoining property line (ignoring any public right-of-way) is zoned anything except Industrial

d . Measurements under this section shall be made by a Sound Level Meter (SLM), an instrument (commonly handheld) designed to measure sound levels in a standardized way. At a minimum, it is comprised of a microphone, a preamplifier, signal processing components and a display. For the purposes of this document, it shall be a Type 1 or 2 SLM (handheld type) meeting the American National Standards Institute (ANSI) S1.4 criteria standard; and

e. Compliance with the provisions of this section shall be measured based on the adjoining zoning and uses as of the date on which application under Section 1319.5 is made for a permitted use.

B. Bulk Regulations

All permitted uses and their structures within the boundaries of the High Energy Usage Overlay District shall comply with the bulk regulation of the underlying district.

1. Setbacks

All structures housing a permitted use in a High-Energy Usage Overlay District are subject to the greater of the setbacks of the underlying zone or the following setback requirements. Notwithstanding requirements of an underlying district, no maximum setbacks apply.

	<u>Adjoining District is Zoned Industrial</u>	<u>Adjoining District is Zoned Anything Except Industrial</u>
<u>Minimum Front Yard Setback</u>	<u>40 feet</u>	<u>50 feet</u>
<u>Minimum Side Yard Setback</u>	<u>20 feet</u>	<u>25 feet</u>
<u>Minimum Rear Yard Setback</u>	<u>20 feet</u>	<u>25 feet</u>

2. Buffer

The closest portion of any building or other structure utilized for High Energy Usage Overlay District uses shall be two hundred (200) feet from the nearest boundary of any Residential or Neighborhood Commercial zoned parcels and 50 feet from the nearest boundary of any Traditional Commercial, General Commercial Downtown or Business Park.

3. Site Plan Applications shall include drawings demonstrating compliance with the Setback and Buffer standards of this Ordinance.

C. Building and Structure Compliance **1. Permitted uses in a High-Density Overlay District may only be conducted in buildings and structures fully compliant with the Uniform Code. No permitted uses in a High-Density Overlay District may be conducted in any building or structure unless a Certificate of Occupancy, as defined in the Uniform Code, has been issued for that proposed use in such building or structure.**

1319.5.5 Conflict.

In the event of a conflict between this Section 1319 and any other portion of the City of Niagara Falls, NY Zoning Ordinance, the provisions of this Section 1319 shall supersede and govern.

1326 - ENVIRONMENTAL QUALITY REVIEW

1326.4 - Type I Actions

B. The granting of a zoning change, site plan, special use permit, or variance to a High Energy Usage Overlay District, pursuant to Section 1319.5.

Schedule 1 – Use Table

See attached

SECTION 2 Severability Clause.

- a) If any part of this Ordinance Amendment is for any reason held to be unconstitutional or invalid, such decision shall not affect the remainder of this Amendment or the Ordinance.
- b) If any specific requirement for a permit under Section 1319, or for a use permitted under Section 1319, is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining requirements for any required permit for a use permitted under Section 1319.
- c) The City Council of the City of Niagara Falls hereby declares that it would have passed this Local Law and each section and subsection thereof, irrespective of the fact that any one or more of these sections, subsections, sentences, clauses, or phrases may be declared unconstitutional or invalid