

**PALMERTON BOROUGH, PENNSYLVANIA**

**ORDINANCE NO. 790**

**AN ORDINANCE OF THE PALMERTON BOROUGH COUNCIL, PENNSYLVANIA, TO AMEND THE PALMERTON BOROUGH ZONING ORDINANCE TO DEFINE AND ADD SPECIFIC REQUIREMENTS FOR DATA CENTERS AND DATA CENTER ACCESSORY USES.**

**WHEREAS**, Article VI of the Pennsylvania Municipalities Planning Code, 53 P.S. §601, *et seq.*, authorizes PALMERTON BOROUGH to enact, amend and repeal Zoning Ordinances; and

**WHEREAS**, the PALMERTON BOROUGH COUNCIL deems it to be in the best interest and general welfare of the residents of PALMERTON BOROUGH to update and amend provisions of the PALMERTON BOROUGH Zoning Ordinance to provide for Data Centers and Data Center Accessory Uses; and

**WHEREAS**, the PALMERTON BOROUGH COUNCIL of PALMERTON BOROUGH desires to add provisions to the Zoning Ordinance relating to Data Centers and Data Center Accessory Uses;

**NOW, THEREFORE, BE IT ORDAINED AND ENACTED**, by the PALMERTON BOROUGH COUNCIL of PALMERTON BOROUGH as follows:

**Section 1.** Article 2 Definitions, Section 202 Definition of Terms, of the Palmerton Borough Zoning Ordinance, is amended to add the following definitions:

**Data Center:** A building or buildings which are occupied primarily by computers and/or telecommunications and related equipment where digital information is processed, transferred and/or stored, primarily to and from offsite locations. This use does not include computers or telecommunications related equipment that is secondary and customarily incidental to an otherwise permitted use on the property, such as servers associated with an office building. This use shall also include cryptocurrency mining, blockchain transaction processing, and server farms. A Data Center may include Data Center Accessory Uses.

**Data Center Accessory Use:** Ancillary uses or structures secondary and incidental to a Data Center use, including but not limited to: administrative, logistical, fiber optic, storage, and security buildings or structures; sources of electrical power such as generators used to provide temporary power when the main source of power is interrupted; electrical substations; utility lines; domestic and non-contact cooling water and wastewater treatment facilities; water holding facilities; pump stations; water towers; environmental controls (air conditioning or cooling towers, fire suppression, and related equipment); security features, provided such data center accessory uses/structures are located on the same tract or assemblage of adjacent parcels developed as a unified development with a Data Center. The use shall not

include energy generation systems used or intended to be used to supply power to the Data Center during normal operations.

**Data center Operator:** the person or entity responsible for the post-construction operation of a data center.

**Sensitive Receptors:** Includes residential uses, schools, preschools, daycare centers, in-home daycares, hospitals, assisted-living and personal care facilities, long term care facilities, retirement and nursing homes, community centers, places of worship, parks (excluding trails), recreational facilities, agricultural lands, conservation lands, campgrounds, prisons, and dormitories.

**Sustainable yield:** The amount of ground water that can be safely withdrawn from an aquifer annually without producing an undesirable result. Undesirable results include, but are not limited to, depletion of groundwater storage, the intrusion of water of undesirable quality, the contravention of existing water rights, excessive depletion of surface waters by induced infiltration, and land subsidence.

**Section 2.** Article 3 Establishment of Zoning Districts, Section 306.B Table of Permitted Uses by District, of the Palmerton Borough Zoning Ordinance, is amended to designate the following use in the associated district:

6. INDUSTRIAL USES; add Data Centers and Data Center Accessory Uses (S 402) as a Conditional Use (C) in the Industrial (I) Zoning District when approved in compliance with the procedures, standards, and criteria contained in this section. For all other districts in the Table, Data Center and Data Center Accessory Uses are not permitted (N).

**Section 3.** Article 4 Additional Requirements for Specific Special Exceptions and Other Uses, Section 402.A is amended to add Data Centers and Data Center Accessory Uses:

**Data Centers and Data Center Accessory Uses**

- A. **Dimensional Standards.** The dimensional standards of Data Centers and Data Center Accessory Uses shall be in accordance with Section 307 Dimensional Requirements By District, with the following exceptions:
  - 1. The maximum building height for a Data Center shall be 45 feet, plus up to 15 additional feet for roof mounted equipment such as cooling and ventilation systems, HVAC units and cooling towers.
  - 2. The maximum height of Data Center Accessory Uses shall be no greater than the height of the principal building, exclusive of roof-mounted equipment.
  - 3. Data Centers and Data Center Accessory Uses shall be set back 500 feet from the boundary of residential zoning districts (R1, R2, R3), Planned Development District (PD), or the lot line of any property developed with a sensitive receptor.

4. Data Centers and Data Center Accessory Uses shall be set back a minimum of 100 feet from all other adjoining property lines and road rights-of-way.

**B. Landscape Buffer; Fencing.** A landscape buffer is required between Data Centers and Data Center Accessory uses and any adjoining residential zoning district (R1, R2, R3), Planned Development District (PD), sensitive receptor, or public roadway. Requirements for said buffer must comply with section 804.C (Buffer Yards) and the requirements listed below, whichever is more restrictive:

1. The landscape buffer shall be at least 50 feet in width and may be part of the minimum setback distance.
2. The landscape buffer shall be free of structures, dumpsters, storage or display areas, signs, materials, loading or unloading areas, and vehicle parking.
3. Buffer plantings shall consist of native species planted as follows:
  - a. One (1) large evergreen tree per 25 linear feet of buffer. The size of large evergreen trees shall be a minimum of eight (8) feet in height at the time of planting.
  - b. One (1) deciduous canopy (shade) tree per 75 linear feet of buffer. Size of canopy (shade) trees shall be a minimum of 2½ inch caliper at the time of planting.
  - c. One ornamental/flowering tree per 50 linear feet of buffer. The size of ornamental/flowering trees shall be a minimum of eight (8) feet in height for multi-stemmed varieties, or 2½ inch caliper at the time of planting for single-stemmed varieties.
  - d. Five (5) shrubs per 25 linear feet of buffer. Size of shrubs shall be fully branched and minimum of three feet in height at the time of planting. Shrubs shall be a combination of evergreen and deciduous species, with a minimum of 50% being evergreen.
4. A variety of species shall be used in order to prevent monocultural plantings. American arborvitae and similar weak-stem plants shall not be used to be the buffer yard requirements. If more than 20 evergreen plants are proposed, no more than 50% shall be of one species.
5. A monotonous straight row of the same species shall not be permitted. A more naturalistic form of planting with a mix of species shall be provided.
6. In the event that existing topography and/or vegetation is adequate to meet the intent of the required buffer yard, the Zoning Hearing Board, upon recommendation by the Borough Engineer and Planning Commission, may determine that such existing topography and/or vegetation constitute all or part of the required buffer yard.
7. Any plant material that dies, is removed, is diseased, or is severely damaged shall be replaced by the current property owner, on a one-to-one basis, as soon is practical considering the growing seasons, within a maximum of 180 days.
8. Fencing of the property is permitted, provided that fencing along public and private roadways is not chain-link, with or without slatted inserts, and does not include barbed

wire or other similarly visibly intrusive deterrence device. An applicant shall not be required to comply with this requirement if fencing is fully screened from view by one or more of the means identified above.

**C. Equipment Screening**

1. To provide visual screening and reduce noise levels, ground-mounted and roof-mounted equipment used for cooling, ventilating, or otherwise operating the facility, including backup power generation equipment, that is located within 500 feet of a public roadway, residential zoning districts (R1, R2, R3), Planned Development Districts (PD), or the lot line of any property developed with a sensitive receptor must be fully enclosed, except where not mechanically feasible based on the manufacturer's specifications. If it is not mechanically feasible to fully enclose the equipment, it must be fully screened from view using one or more of the following means:
  - a. The landscape buffer required by subsection (C) above.
  - b. By existing vegetation that will remain on the property.
  - c. By the principal Data Center building or an accessory building
  - d. A berm averaging a minimum of five (5) feet in height above the adjacent average ground level with a maximum side slope of 3:1, provided that the berm shall be covered by a well-maintained all season natural ground cover and any required screening plantings shall be arranged on the outside and top of the berm. No berm shall be used if the possibility exists that the berm will divert stormwater in a negative fashion.
  - e. A visually solid fence, screen wall or panel, parapet wall, or other visually solid screen that shall be constructed of materials compatible with those used in the exterior construction of the principal building.

**D. Noise and Vibration [Additionally, see section 505.A (Noise)]**

1. The applicant shall demonstrate through a sound study conducted by a professional acoustical expert that the sound and vibration generated by a Data Center and/or Data Center Accessory Uses during normal operations shall be limited to a maximum daytime (7:00 a.m. to 9:00 p.m. Monday-Saturday except holidays) decibel level of 67 dB(A) and a maximum nighttime, Sunday, and holidays (9:00 p.m. to 7:00 a.m. Monday-Saturday and all day Sunday and holidays) decibel level of 61 dB(A) as measured from the property line of the use. The sound study shall be conducted using generally accepted methodology in the following phases:
  - a. A sound modeling study shall be conducted to demonstrate that the proposed use will comply with applicable noise requirements of this section. The sound modeling shall be performed according to ISO 9613-2 series methods or other generally accepted engineering methods for outdoor sound propagation. All significant noise sources associated with the proposed Data Center and Data Center Accessory Uses(s) shall be included. The sound modeling study shall be submitted with the special exception.



- b. The source of water to be used;
  - c. A description of how water will be used, including the amount or proportion of water to be used for each purpose (e.g. cooling, humidity control, fire suppression, and domestic usage);
  - d. A description of the amount or portion of water withdrawn that will be recycled or discharged, by what means, and at what temperature;
  - e. A topographic map of the area with a radius of at least one mile from the site including:
    - a. The location of all existing and proposed wells within 3,000 feet of the property boundary, including test wells and monitoring wells, with a notation of the capacity of all high-yield. The distance shall be increased to encompass the diversion and recharge areas of the proposed groundwater source if the hydrological setting analysis required by subsection (5)(a) below indicates either area will extend beyond 3,000 feet from the property boundary;
    - b. The location of all existing and proposed on-lot sewage disposal systems as well as all sewage treatment system surface water discharges;
    - c. The location of all surface waters, including perennial and intermittent streams, rivers, lakes, reservoirs, ponds, wetlands, springs, natural seeps, and estuaries, and the classification thereof (Cold Water Fisheries, High Quality, Exceptional Value, etc.), if applicable, as set forth in Chapters 93 and 105 of Title 25 of the Pennsylvania Code;
    - d. Any known or potential habitats for threatened or endangered species; and;
    - e. The information applicable to groundwater withdrawals or surface water withdrawals, as appropriate, as required by subsections (5) and (6), below.
    - f. A statement of the qualifications and the signature(s) of the person(s) preparing the study.
5. **Groundwater withdrawals.** For groundwater sources, the water feasibility study shall include a hydrogeologic report prepared by a registered professional geologist licensed by the Commonwealth of Pennsylvania analyzing the long-term sustainable yield of the water source. The hydrogeologic report shall include:
- a. A hydrological setting analysis which includes a hydrogeologic cross section, delineation of the portion of the aquifer through which water is diverted to the well

(area of diversion), delineation of the area providing groundwater recharge to the diversion area (recharge area), and identification of water resources located within the diversion and recharge areas.

- b. The results of an aquifer test conducted in accordance with Pennsylvania Department of Environmental Protection, Bureau of Safe Drinking Water, Document No. 394-2125-001, Aquifer Testing Guidance for Public Water Systems, or other generally accepted methodology. Data shall include, at a minimum, precipitation data, static water levels immediately prior to yield testing, linear hydrographs of water levels and test responses of all monitoring points through background, testing, and recovery monitoring periods, residual drawdown graphs and logarithmic hydrographs of the production well and any monitoring points that had observable drawdown as a result of operating the production well. Field notes showing original observations, water levels and flow readings and the time readings were taken shall be included.
  - c. Analysis and interpretation of the aquifer test data, including a determination of the aquifer's hydraulic conductivity and specific capacity; aquifer transmissivity and storage coefficient; estimation of the horizontal extent of the cone of depression; and determination of a safe yield for the well, including analysis of the effects of 180 days of pumping with no recharge; and a groundwater availability analysis providing potential availability in a one-in-ten year drought.
  - d. Test results from any wells tested in accordance with Section 7, below
  - e. A determination of the effects of the proposed withdrawal on the quantity and quality of water in wells, surface waters, and the groundwater table within the horizontal extent of the cone of depression and how those impacts will be mitigated or remediated.
6. **Surface water withdrawals.** See supplementary info for Delaware River Basin
7. **Water Supply – Pre-construction well testing**
- a. If the use is to rely upon a nonpublic groundwater source and will withdraw and/or discharge 20,000 gallons per day (gpd) or more over any consecutive 30-day period, the applicant shall notify each property owner within 3,000 feet of the property boundary or within the horizontal extent of the any production well's cone of depression, as determined by the hydrogeologic study, whichever is greater, of the proposed project and shall offer to test the owner's well for baseline water quality, total depth of the well, static water level and operating pumping water level.
  - b. If the property owner grants permission to allow for water quality and well testing, the applicant shall hire and pay the full cost of a certified lab and professional geologist with a focus on hydrogeology to collect the laboratory samples and well information. Alternatively, the property owner may elect to hire a certified lab and professional geologist of his own choosing to collect the laboratory samples and well information, in which case the applicant shall pay the full cost of such services.
  - c. Notifications shall be sent via certified mail, shall include the name and contact information of the person to whom to respond, and shall allow sufficient time for

property owners to respond and for testing to be conducted prior to commencement of the constant-rate aquifer test.

- d. The applicant shall include all test results obtained pursuant to this section in the water feasibility study.

**8. Water Supply – Post-construction monitoring and reporting**

- a. For purposes of this section, area of influence (AOI) shall mean the greater of the horizontal extent of the production well(s)' cone of depression, as determined by the hydrogeologic report, or the area within 3,000 feet of the property boundary of the proposed project, or, in the case of an assemblage of parcels, within 3,000 feet of the exterior lines of the assemblage of parcels.
- b. Groundwater monitoring plan. The applicant shall submit a Groundwater Monitoring Plan prepared by a professional licensed hydrogeologist with expertise in groundwater resource planning and management or another qualified professional or professionals approved by the Borough of Palmerton. The Groundwater Monitoring Plan shall include:
  - a. An inventory of existing wells, springs, and other groundwater resources within the AOI, including information on the location, ownership, depth to water, and usage for all wells;
  - b. Description of a groundwater monitoring system that ensures accurate characterization of groundwater flow, groundwater quantity and quality, and flow systems within the AOI. The system shall consist of the following at a minimum:
    - i. At least one monitoring well at a point hydraulically upgradient from the point(s) of withdrawal in the direction of increasing static head that is capable of providing representative data of groundwater not affected by the facility, except when the facility occupies the most upgradient position in the flow system. In that case, sufficient downgradient monitoring wells shall be placed to determine the extent of adverse effects on groundwater from the facility; and
    - ii. At least three monitoring wells at points hydraulically downgradient in the direction of decreasing static head from the point(s) of withdrawal.
- c. Benchmark data collected prior to commencement of water withdrawal against which the impact of the water withdrawal may be compared in the future. Benchmark data shall include groundwater levels in all monitoring wells recorded as a distance from the elevation at the well head referenced to mean sea level based on United States Geological Survey datum.
- d. Any additional information the Borough of Palmerton deems necessary to effectively assess the impact of the proposed development on groundwater supplies.

9. **Inspection of wells.** The Data Center Operator shall inspect monitoring wells, including water level loggers, at least monthly to ensure that they are not damaged and are functioning properly. If a damaged or malfunctioning well is identified, the Borough of Palmerton shall be contacted immediately in writing, and the well shall be restored to its design specifications within two weeks, unless weather conditions do not permit and/or this period is extended in writing by the Borough of Palmerton. In the event that the water table falls below the bottom of a monitoring well and the water level logger in that well becomes inoperable, the well shall be inspected at a minimum of once every two weeks and the data logger shall be re-installed once the water table is again observed in the well.
10. **Reporting.** The Data Center Operator shall submit to the Borough of Palmerton quarterly reports on forms and in a manner prescribed by the Borough of Palmerton. Reports shall include the following:
  - a. The quantity of all withdrawals, measured by means of a continuous-recording device, flow meter, or other method accurate to within 5% of actual flow, on a daily basis or such other frequency as may be approved by the Borough of Palmerton;
  - b. Groundwater levels at all monitoring wells; measured on a daily basis or such other frequency as may be approved by the Borough of Palmerton;
  - c. Precipitation data, measured on a daily basis or such other frequency as may be approved by the Borough of Palmerton;
  - d. Certification of the accuracy of all measuring devices and methods to within 5% of actual flow;
  - e. Any loss of measuring or recording capabilities that occurred during the reporting period;
  - f. A running comparison of monitoring data comparing the data for the recording period to the data for the same period in each of the previous five years;
  - g. Any additional information the Borough of Palmerton deems necessary to determine whether the data center's water withdrawal adversely impacts water supply.
11. **Sewer.** The applicant shall demonstrate that adequate means of wastewater disposal, including domestic wastewater and wastewater used for cooling or industrial purposes, have been provided and approved by the Sewage Enforcement Officer and/or the Pennsylvania Department of Environmental Protection. If capacity does not exist in the Borough's sanitary sewer system, the Applicant/Developer will be responsible for upgrading the necessary system components for the project to proceed. This shall include all costs associated with design, permitting, construction, etc.

**F. Power Supply**

1. If the applicant proposes to connect the Data Center to the electric grid, the applicant shall provide documentation from the applicable electric service provider certifying that the necessary capacity is available, and that the electric service provider will serve the

Data Center. Known impacts on electric rates or availability for other uses directly attributable to the Data Center project shall be noted.

2. Any energy generation system designed or used to supply power directly to a Data Center during normal operations, including solar, wind, fossil fuel, or nuclear energy generating systems, shall not be considered part of the Data Center use. Such systems shall be considered a separate use and shall be approved according to the zoning regulations applicable to such use.
3. All generators, whether portable or fixed/permanent, shall be equipped with functioning mufflers and enclosures to comply with the noise limits and all other applicable noise restrictions contained within the Palmerton Borough Zoning Ordinance.
4. Non-residential or non-light commercial portable or backup generators shall not be operated between 8:00 p.m. and 8:00 a.m. except during emergencies.

#### **G. Emergency Management**

1. The applicant shall submit an Emergency Response Plan (ERP) prepared by a qualified professional with Pennsylvania Emergency Management (PEMA) professional-level certification, Emergency Planning Professional (EPP) certification, or other recognized professional-level emergency planning certification. The ERP shall:
  - a. Be reviewed and accepted by the local fire department and emergency management services as part of the special exception process;
  - b. Include detailed procedures for fire suppression, containment, ventilation, and evacuation;
  - c. Include an evaluation of the access roads and hydrant locations within the site to ensure suitable access for emergency equipment within the site;
  - d. Ensure that all first responders receive adequate training specific to the installed system;
  - e. Include provisions for annual fire safety inspections demonstrating compliance with fire safety standards to be performed by a qualified professional on behalf of the Data Center.
2. Any Data Center use proposing battery storage or any other device or group of devices capable of storing energy in order to supply electrical energy at a later time, whether the energy is stored for use on-site or off-site, shall demonstrate compliance with National Fire Protection Association (NFPA) Standard 855, Installation of Stationary Energy Storage Systems, or similar standards and must include fire suppression systems designed specifically for battery storage.

3. No Data Center shall be approved unless the applicant demonstrates that procedures for fire suppression, containment, ventilation, and evacuation are sufficiently protective of public health, safety and welfare.
4. A campus security plan should be prepared in consultation with police and local emergency officials.

#### **H. Aesthetics**

1. Any Data Center and Data Center Accessory Use building façade that faces a road, or existing residential district (R1, R2, R3), Planned Development Districts (PD), or sensitive receptor must incorporate at least two of the following design elements every 150 horizontal feet:
  - a. A change in building material, pattern, texture, or color;
  - b. A change in building height;
  - c. Building step-backs or recesses having a minimum depth of five (5) feet;
2. Uninterrupted blank wall façades shall be prohibited to the extent that they are visible from a public right-of-way or a residential area. Design variations on long exterior walls shall be employed in order to create visual interest. Examples of such design variations include, but are not limited to, banding, windows, scoring of building facades, color changes, texture or material changes, and a variety in building height across a single building.
3. Exterior walls shall incorporate elements that create patterns of façade recession, offsets, and extrusions along the entire length of the façade. For every 200 feet of building length, a recession, offset, and/or extrusion must be incorporated at a minimum of 20 feet in length and five (5) in depth.
4. On all four sides of each building, roof-mounted equipment shall be screened with materials that are consistent and harmonious with the building's façade and character. Such screening shall be provided in order to conceal the equipment from off-site view and to buffer sound generated by such equipment.
5. External building materials shall be of colors that are low-reflective, subtle, or earth tone. Fluorescent and metallic colors shall be prohibited as exterior wall colors.

#### **I. Parking**

1. Data Centers are to be provided with at least one parking space per 2,500 square feet of floor area designed and intended to be accessible regularly by employees, or one parking space for every one employee, based upon the maximum number of employees on site during the largest shift, whichever is greater. The number of ADA parking spaces is to be determined by the total number of parking spaces required for the facility.

2. All facilities with gated entrances shall provide for an on-site queuing area for the stacking of a minimum of one tractor trailer. The gated entrances shall also be provided with a knox-box type device dictated by the Palmerton Borough Fire Department.
3. No parking or loading/unloading shall be permitted on or along any public road. A minimum of one (1) off street loading/unloading space/dock shall be provided for each Data Center.

**J. Decommissioning:**

1. A decommissioning plan shall be required at the time of application for all proposed data centers under the jurisdiction of this zoning ordinance that establishes detailed inventory, timelines, management and removal of physical equipment, disposal of recycling materials, and plans for future use or restoration of the site.
2. Decommissioning must begin within one (1) year of discontinuation of Data Center operations, or upon notice of abandonment by the operator, whichever occurs first. Decommissioning shall be completed within (18) months thereafter unless extended by the Borough in writing for good cause.
3. Standards for Decommissioning:
  - a. Hazardous materials, including, but not limited to, batteries, fuel, or refrigerants, shall be disposed of in compliance with state and federal law.
  - b. Disturbed soils shall be stabilized and revegetated.
  - c. All utility providers must be notified of the discontinuation of operations.

**K. Utility Lines**

1. To the extent practical, utility lines, including but not limited to electronic, fiber optic, cable and telephone lines, from substations to a Data Center and/or Data Center Campus and/or accessories shall be placed underground. This requirement shall not apply if the utility company requires aboveground lines, or the placement of underground lines is not feasible.

**L. Environmental Impact Statement**

1. An Environmental Impact Assessment shall be performed and submitted. Assessment shall be prepared by a professional environmental engineer, ecologist, environmental planner, or other qualified individual. An assessment shall include a description of the proposed use including location relationship to other projects or proposals, with adequate data and detail for the Borough to assess the environmental impact. The assessment shall also include a comprehensive description of the existing environment and the probable future effects of the proposal. The description shall focus on the elements of the environment (Air pollution, Hazardous air emissions and dust, dirt, smoke, vapor and odor control) most likely to be affected as well as potential regional effects and ecological interrelationships. It should show any potential for public nuisance to residents resulting from operations, including noise, glare, light and visual

obstacles. A stormwater plan should also be included with the Environmental Impact Statement.

2. In addition to the above, the impact statement should include any critical impact area, condition or feature which is environmentally sensitive or which if disturbed during construction would adversely affect the environment. Critical impact areas include, but are not limited to, floodplains, riparian buffers, streams, wetlands, slopes greater than 15%, highly acidic or highly erodible soils, hydric soils, hydrologic soil groups, areas of high water table and mature stands of native vegetation and aquifer recharge and discharge areas.

**M. Outdoor Lighting**

1. A photometric plan shall be provided showing all exterior lighting for the Data Center. The plan shall be designed so as to not produce more than .25 foot-candles at any abutting lot line or right of way line.
2. Exterior lighting shall not be mounted higher than 38 feet on a standard or other freestanding support or the exterior of a structure from the lowest adjacent grade. The fixture shall be fully shielded or cutoff so as to direct light at a downward angle and towards the interior of the lot and not equal to or higher than the horizontal plane of the bulb, bulb enclosure, or light shielding.

**N. Construction Hours**

1. Construction and related operation of heavy machinery, operating or permitting the operation of any tools, equipment or heavy machinery used in construction, drilling, or demolition work associated with or for a Data Center and/or Data Center Campus and/or accessories may only occur between the hours of 7:00am and 6:00pm. The Borough may permit additional construction hours by administrative modification upon request by the Applicant.

**O. Public Inquiries/ Complaints**

1. The facility operator is required to maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints through the life of the project. The facility operator should be required to make reasonable effort to respond to the public's inquiries and complaints.

**Section 4: Severability.** If any sentence, clause, section, or part of this Ordinance or of the Zoning Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts hereof. It is hereby declared as the intent of the Palmerton Borough Council that this Ordinance and the Zoning Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

**Section 5. Repealer.** All Ordinances or parts of Ordinances conflicting with any provision of this Ordinance are hereby repealed insofar as the same affects this Ordinance.

**Section 6 Codification.** Pursuant to the Borough of Palmerton and the Pennsylvania Municipalities Planning Code, the Palmerton Borough Zoning Ordinance shall hereby be codified to incorporate the above-referenced amendments.

**Section 7. Effective Date.** This Ordinance shall take effect fifteen (15) days after its adoption.

ADOPTED 25th day of June, 2026

BOROUGH OF PALMERTON

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Terry L. Costenbader, Council President

ATTEST:

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Autumn Canfield, Secretary

APPROVED this 25th day of June, 2026

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John Rodrigues, Mayor

## DELAWARE RIVER BASIN

For surface water sources, the water feasibility study shall demonstrate that withdrawals will comply with the standards set forth in Table I:

<b>Table 1</b>			
<b>Parameter</b>	<b>Drainage area of stream at point of withdrawal</b>		
	<b>&lt;10 sq. mi.</b>	<b>10-200 sq. mi</b>	<b>&gt; 200 sq. mile</b>
Floods	Maintain magnitude and frequency of 20-year, 5-year, and 2-year floods		
Monthly high flow	No greater than 10% change in magnitude in any month		
Monthly median flow	No change	No greater than 10% change in magnitude in any month	
Monthly low flow	No change	No greater than 10% change in magnitude in any month	
Upper monthly flow range	No greater than 20% change in magnitude in any month		
Middle monthly flow range	No change	No greater than 10% change in magnitude in any month	No greater than 15% change in magnitude in any month
Lower monthly flow range	No change	No greater than 10% change in magnitude in any month	

1. Terms used in Table I shall have the following meanings:

- i. **20-year flood:** Peak streamflow level having a 5% chance of occurrence in any given year
- ii. **5-year flood:** Peak streamflow level having a 20% chance of occurrence in any given year
- iii. **2-year flood:** Peak streamflow level having a 50% chance of occurrence in any given year
- iv. **Percent exceedance value.** The probability that a given flow will be equaled or exceeded in the stream at the point of withdrawal within a given month, expressed as Px. For example, the probability that the P75 flow for a given month will be exceeded at some point during the month is 75%.
- v. **Monthly flow duration curve:** a cumulative curve showing percent exceedance values for flows over a calendar month
- vi. **Monthly high flow:** flow having a percent exceedance value of P10
- vii. **Monthly median flow:** flow having a percent exceedance value of P50
- viii. **Monthly low flow:** For streams with drainage areas less than 10 miles, flow having a percent exceedance value of P75, for all other streams, flow having a percent exceedance value of P90

- vix. **Upper monthly flow range:** The area under the stream's monthly flow duration curve between P10 and P50
  - x. **Middle monthly flow range:** The area under the stream's monthly flow duration curve between P50 and P75
  - xi. **Lower monthly flow range:** The area under the stream's monthly flow duration curve between P75 and P99
2. **Baseline streamflow calculation.**<sup>25</sup> Baseline streamflow statistics and flow duration curves shall be calculated using generally accepted methodology based on a minimum of ten (10) recent years of record, with representative wet, normal, and dry periods sufficiently represented.
  3. **Use of reference stream gage.** Where data does not exist for the location from which withdrawal is proposed, data from an appropriate USGS reference stream gage shall be used to calculate baseline flow statistics. The reference stream shall be unregulated and of a similar drainage area size, physiographic province and geology, and mean annual precipitation and evapotranspiration, and ideally located on the same stream or on a nearby stream. Best professional judgment shall be used in selecting a reference stream that best represents the project site. Flow statistics from the reference gage shall be transferred to the project site using the drainage area ratio method.
  4. **De minimis withdrawals.** An applicant is exempt from the requirement to demonstrate compliance with Table 1 if the feasibility study demonstrates that withdrawals will be *de minimis*. A withdrawal is *de minimis* if it does not exceed 5% of P95 for any calendar month for streams having a drainage between 10 and 1,000 square miles at the point of withdrawal or 10% of P95 for any calendar month for streams having a drainage area greater than or equal to 1,000 square miles at the point of withdrawal. No withdrawal shall be considered *de minimis* for streams having a drainage area less than 10 square miles at the point of withdrawal.

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<sup>25</sup> Susquehanna River Basin Commission, TECHNICAL GUIDANCE FOR LOW FLOW PROTECTION RELATED TO WITHDRAWAL APPROVALS UNDER POLICY NO. 2012-11 at6-7 (2012)