



AI Infrastructure Meets Fair Housing: Emerging Risk in Data Center Siting

The rapid expansion of artificial intelligence (AI) is raising an infrastructure question that communities across the country increasingly must confront: Where will the data centers needed to support that growth be built?

The 2025 *Energy and AI* report by the International Energy Agency (IEA) projects that global electricity consumption from data centers will more than double by 2030, reaching approximately 945 terawatt-hours. The IEA identifies AI as the primary driver of that growth and projects that electricity demand from AI-optimized data centers will more than quadruple by the end of the decade. The U.S. Department of Energy likewise has identified data center expansion and the rise of AI applications as significant contributors to increasing electricity demand.

That growth has consequences beyond energy policy. More data centers mean more decisions about land use, infrastructure, water, power, community impacts, and the neighborhoods that will live alongside these facilities. As a result, data center development is no longer only a zoning, utility, and tax-incentive issue. It is increasingly entering the conversation about civil rights and fair housing.

That shift is already visible. The National Fair Housing Alliance's 2025 *Fair Housing Trends Report* discussed "The Growth of Data Centers and Zoning Implications," identifying potential effects on infrastructure burdens, land values, neighborhood character, displacement, and housing access in historically marginalized communities. In August 2026, the Legal Defense Fund and Atlanta community organizations urged the Atlanta City Council to reject a proposed data center in the historically Black West End neighborhood, arguing that concentrating industrial development in Black communities at the expense of affordable housing and other

opportunities may implicate federal civil-rights laws.

Neither development establishes that placing a data center near housing automatically violates the Fair Housing Act (FHA). But they show that the relationship between data center siting, housing, community impacts, and civil rights is no longer theoretical.

Data Centers Are Becoming a Land-Use Issue

Modern data centers can require significant and continuous electrical loads, cooling infrastructure, backup generation, and, depending on the technology used, substantial water resources. Their scale and operational characteristics may differ significantly from the office, warehouse, or traditional industrial uses under which zoning codes historically classified them.

Local governments are responding. Loudoun County, Virginia, eliminated by-right data center development in certain districts in 2025, while Aurora, Illinois, adopted comprehensive data center regulations in 2026 requiring conditional-use review, public hearings, and operational studies.

The details vary, but the broader shift matters. As data center development moves from ministerial approval into discretionary zoning or entitlement review, projects generate hearings, studies, public comments, negotiated conditions, findings, and an administrative record. How a municipality made the decision can become as important as the decision itself.

The emerging legal question is when a data center siting decision moves beyond a traditional land-use or environmental issue and affects housing in a manner that may implicate the FHA. Relevant effects could include displacement, reductions in housing opportunities, reinforcement of segregation, or additional burdens on communities already experiencing concentrated industrial impacts.

Fair-Housing Law Has Long Reached Land-Use Decisions

The FHA is not limited to discriminatory refusals to sell or rent individual homes. Section 804(a), 42 U.S.C. § 3604(a), prohibits discrimination that “otherwise make[s] unavailable or den[ies]” a dwelling because of a protected characteristic. Courts

therefore have long recognized that certain zoning and land-use decisions may fall within the Act when they restrict housing opportunities.

There are limits. Courts have declined to extend § 3604(a) to every governmental action that negatively affects an existing residential community. Cases involving highways, maintenance of government-owned property, and illegal dumping illustrate the need for a sufficiently close connection between the challenged action and housing availability.

Data center siting may present facts that do not fit neatly within those earlier cases. The analysis may look different where a siting decision affects land planned or available for housing, contributes to displacement, reinforces existing patterns of segregation, or involves materially different treatment of communities based on race or another protected characteristic.

That uncertainty is precisely why fair-housing considerations should be addressed at the outset of the siting and entitlement process. Municipalities and developers should conduct an early civil- rights and fair-housing risk analysis that considers the proposed site, surrounding housing, demographic and cumulative-impact data, the criteria being applied, and the potential effect on existing or planned residential communities.

That risk analysis should also inform a deliberate community-engagement strategy. Early engagement with affected residents, community organizations, and civil-rights groups can surface concerns while alternative sites, mitigation measures, and community benefits remain available. Waiting until a public hearing or threatened litigation can result in delays, added conditions, litigation costs, and lost development time.

From Siting Patterns to Fair-Housing Risk

The Supreme Court's decision in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015), adds another dimension. The Court confirmed that disparate-impact claims are cognizable under the FHA, while emphasizing that statistical disparity alone is not enough. A plaintiff must identify a policy or practice that caused the disparity and satisfy what the Court described as a "robust causality requirement."

That framework matters in the data center context. If a municipality adopts or applies a siting policy that repeatedly channels high-impact facilities into particular communities, demographic disparities associated with that policy could receive scrutiny. But disparity alone would not resolve the legal question. The analysis would still need to focus on the policy or practice at issue, causation, the connection to housing, and the legitimate reasons supporting the decision.

The Court also observed that a challenge to a private developer's decision to build in one location rather than another may have difficulty establishing a qualifying policy, particularly where a single siting decision is involved and numerous factors influence development decisions.

That does not make fair housing irrelevant to developers. A challenge to a municipality's approval can delay or jeopardize the project itself, and developer-generated materials often become part of the record used to evaluate the government's decision. Site-selection analyses, alternatives considered, infrastructure studies, community presentations, mitigation proposals, and communications with public officials can all affect how that record ultimately looks.

The federal enforcement environment is also changing. In 2026, the U.S. Department of Housing and Urban Development (HUD) proposed to remove its regulatory disparate-impact framework and leave interpretation of disparate-impact liability under the FHA to the courts. But *Inclusive Communities* remains, controlling Supreme Court precedent recognizing disparate-impact liability under the Act.

At the same time, some states are reinforcing disparate-impact protections under their own civil-rights laws, reducing the practical significance of any federal regulatory retreat within those jurisdictions. Illinois, for example, amended the Illinois Human Rights Act to expressly prohibit the use in real estate transactions, criteria or methods that have the effect of subjecting individuals to unlawful discrimination unless they are necessary to achieve a substantial, legitimate, nondiscriminatory interest and no less discriminatory alternative is available. New Jersey has taken a similar approach through regulation. In late 2025, the New Jersey Division on Civil Rights adopted comprehensive rules expressly recognizing disparate-impact liability under the New Jersey Law Against Discrimination, including in housing and lending.

These developments mean that the changing federal enforcement posture does not necessarily narrow disparate-impact exposure at the state level. For municipalities and developers evaluating data center siting decisions, the relevant legal framework may therefore include not only the federal FHA and *Inclusive Communities* but also state civil-rights laws that independently preserve disparate-impact theories.

The Data Is Drawing Civil-Rights Attention

Emerging research helps explain why the issue is attracting attention. In 2026, environmental justice organization Front and Centered released a Washington State report examining hyperscale data center development. The report found that 57% of the data centers it analyzed were located in census tracts with the highest proportions of people of color, while 2% were located in census tracts with the lowest proportions. It also reported that race had a stronger relationship than income with where the analyzed facilities were located and that 47% were in communities facing some of Washington's highest environmental-health risks.

Those findings are specific to Washington and should not be treated as establishing a nationwide pattern. They do, however, illustrate the type of demographic, environmental, and community-participation evidence advocates may examine when evaluating future projects.

Civil-rights organizations are also engaging in individual data center disputes. In addition to the Atlanta advocacy, the NAACP has pursued environmental litigation involving xAI's data center operations in the Memphis area. That litigation arises under environmental law rather than the FHA, but it demonstrates growing scrutiny of how data center-related environmental burdens are distributed.

As more projects are proposed, future disputes may test whether particular siting decisions have a sufficiently direct relationship to housing availability, displacement, segregation, or discriminatory municipal decision-making to support fair-housing claims.

Why the Administrative Record Matters

Moving a data center from by-right development into a conditional-use or special-use process does not itself create FHA liability. It does, however, create a record.

That record may show why a particular site was selected, what alternatives were evaluated, what impacts were identified, how siting criteria were applied, what neighborhood concerns were raised, what mitigation was considered, and how decision-makers responded. It can ultimately make a decision easier or harder to defend.

Consider two municipalities that approve similar projects. One applies established criteria consistently, evaluates infrastructure and residential impacts, obtains appropriate studies, meaningfully considers community concerns, evaluates mitigation, and documents legitimate planning reasons for the decision.

The other departs from ordinary procedures without explanation, applies criteria differently among communities, dismisses concerns about impacts on surrounding housing, and provides little contemporaneous explanation for the site selection.

The facilities may be similar. The litigation risk is not.

The same principle applies to developers. Although a direct FHA theory against a private data center developer may be less straightforward, the developer frequently supplies much of the information on which the governmental decision is based. Developers therefore have a substantial interest in ensuring that their portion of the record reflects a thoughtful, consistent, and defensible process.

That interest is practical as well as legal. Even a fair-housing complaint or civil-rights challenge that ultimately does not succeed on the merits can impose significant costs on a project. Investigations, administrative proceedings, requests for information, litigation, and related political scrutiny can delay entitlements, financing, construction, and other project milestones. They can also create reputational risk, particularly where allegations involve discriminatory siting, environmental burdens, displacement, or impacts on historically marginalized communities. For a project dependent on timing, public approvals, investor confidence, and community support, the disruption caused by a fair-housing dispute can be consequential long before there is any final legal determination.

For that reason, fair-housing review should be understood not simply as a litigation defense exercise but as part of front-end project risk management. A well-developed record, consistent decision-making criteria, and meaningful community

engagement can help reduce both the likelihood of a challenge and the operational and reputational consequences if one arises.

Community Engagement as Dispute Prevention

The growing controversy surrounding data center development also suggests that traditional public-relations outreach may not be enough. A required public meeting held after a site has effectively been selected can become a forum for entrenched positions rather than a meaningful opportunity to identify and resolve concerns.

Municipalities and developers should consider borrowing more deliberately from mediation and alternative dispute-resolution techniques earlier in the process. That does not mean formally mediating every proposed data center. It means designing engagement around effective mediation principles: identifying interests in addition to positions, creating a structured process for raising concerns, clarifying which issues are negotiable, and developing a reliable mechanism for documenting commitments and following up on them.

For significant projects, that may include stakeholder mapping, listening sessions before a large public hearing, the use of a neutral facilitator, and an issue matrix addressing noise, water use, power infrastructure, housing, traffic, and community investment. Where disputes are more developed, facilitated negotiation or mediation may help parties evaluate mitigation measures or community benefits.

This approach can improve the information reaching decision-makers, identify objections while changes remain feasible, and give residents a meaningful forum before the only remaining options are a contested public hearing or litigation.

Done correctly, community engagement is not simply communications strategy. It is a form of dispute prevention.

Practical Considerations for Municipalities and Developers

Municipalities should incorporate fair-housing and civil-rights issue-spotting into the same front-end due diligence used to assess zoning, infrastructure, environmental, and procedural risk. They should be able to explain what objective criteria govern siting decisions, whether those criteria are being applied consistently, how the

proposed site interacts with existing and planned housing, what other burdens are already concentrated in the surrounding community, what alternatives or mitigation measures were considered, and whether residents had a meaningful opportunity to raise concerns before the decision became effectively final.

Developers should conduct a similar review as part of site-selection and entitlement strategy. They should consider whether the record provides a defensible explanation for why a location was selected; whether the project affects existing or planned housing; whether studies meaningfully evaluate effects on nearby residential communities; whether alternative sites or configurations were considered where appropriate; and whether statements made during community engagement are consistent with the entitlement record.

Both municipalities and developers should also think in advance about how disagreement will be managed. An engagement protocol that establishes who receives community concerns, how issues will be evaluated, when decision-makers will respond, and when neutral facilitation or mediation may be appropriate can prevent a disagreement from becoming an entrenched dispute.

Looking Ahead

The relationship between data center development and fair housing is still evolving. That is precisely why municipalities and developers should be paying attention now.

AI use is expanding, data center electricity demand is projected to rise dramatically, and additional facilities will be needed to meet the growing computing demand. Each project requires decisions about land, infrastructure, surrounding communities, and the allocation of environmental and economic burdens.

At the same time, fair-housing and civil-rights organizations are increasingly connecting those decisions to housing, segregation, displacement, environmental justice, and community participation.

The FHA will not apply to every data center dispute, but fair-housing considerations are increasingly difficult to separate from siting decisions involving housing, displacement, segregation, and community impacts.

The better approach is to address those issues early: apply defensible siting criteria, evaluate housing and demographic impacts, engage affected communities, use dispute-resolution tools before positions harden, and document the basis for the decision.

As the AI infrastructure buildout accelerates, fair-housing and civil-rights due diligence and effective dispute prevention should become part of every responsible data center site-selection strategy.

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