

ORDINANCE NO. 2-2026

AN ORDINANCE OF THE BOROUGH COUNCIL OF THE BOROUGH OF KUTZTOWN, BERKS COUNTY, PENNSYLVANIA, AMENDING CHAPTER 225 OF THE CODE OF THE BOROUGH OF KUTZTOWN, ENTITLED "ZONING" TO PROVIDE DEFINITIONS AND SPECIFIC REQUIREMENTS FOR DATA CENTERS AND DATA CENTER ACCESSORY USES.

WHEREAS, Article VI of the Pennsylvania Municipalities Planning Code, 53 P.S. § 10601, et seq., authorizes the BOROUGH OF KUTZTOWN to enact, amend and repeal Zoning Ordinances within the BOROUGH OF KUTZTOWN; and

WHEREAS, the Kutztown Code enacted on December 26, 1995, and effective beginning December 30, 1995, sets forth a Chapter 225, entitled "Zoning," which chapter has heretofore been amended from time to time; and

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

WHEREAS, the Borough Council of The Borough of Kutztown desires to add provisions to the Zoning Ordinance relating to Data Centers and Data Center Accessory Uses;

BE IT AND IT IS HEREBY ENACTED AND ORDAINED by the Borough Council of the Borough of Kutztown, Berks County, Pennsylvania, as follows:

SECTION 1. Section 225-5 of the Kutztown Borough Code of Ordinances, entitled Definitions, is hereby amended to add and insert in alphabetical order 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.

Cooling Systems: Any mechanical system or process used to maintain the temperature of servers and equipment in a data center. This includes traditional air conditioning, water-cooled chillers, and evaporative cooling systems.

Water Use Efficiency: The ratio of water used for cooling and other operational processes within a data center relative to the amount of heat dissipated or processed.

Closed-Loop Cooling System: A cooling system in which water is continuously recirculated within the system, minimizing the need for freshwater intake.

Water Conservation Technologies: Technologies and methods that reduce the overall consumption of water, including low-flow devices, waterless cooling systems, or the reuse of greywater.

Greywater: Wastewater from sinks, showers, and other non-toilet fixtures that may be treated and reused for non-potable purposes, such as cooling.

Sensitive Receptors - residential uses, schools, preschools, daycare centers, in-home daycares, long term care facilities, retirement and nursing homes, community centers, places of worship, parks (excluding trails), campgrounds, prisons, and dormitories.

SECTION 2. Section 225-21 F (Uses Permitted By Conditional Use) is hereby repealed and reenacted and shall read as follows:

F. Uses Permitted by Conditional Use Only

1. Data Centers Data Centers and Data Center Accessory Uses shall be permitted in all Industrial Zoning districts, with the exception of the Medium Industrial Overlay Zoning District, pursuant to the conditions set forth in Section 225- 33.6 of the Borough of Kutztown Zoning Ordinance:

SECTION 3.Section 225-21 G. is hereby created and enacted to read as follows:

G. Additional regulations for permitted uses.

(1) Odor. No emission of unpleasant gases or other odorous matter shall be permitted in such quantities as to be offensive outside the lot lines of the lot on which such gases or odors originate.

(2) Toxic gases. The emission of noxious, toxic or corrosive gases or fumes injurious to persons, property or vegetation beyond the lot lines occupied by the use is prohibited.

(3) Glare and heat. Glare and heat generated from any process shall not produce glare visible, or objectionable heat, beyond the lot lines of the lot on which the operation is located. Direct glare from incandescent exposed lights shall not be visible from adjoining streets or properties.

(4) Liquid wastes or sewage. No discharge is permitted into a reservoir, sewage or storm disposal system, stream, open body of water or into the ground of any materials in such a way or of such nature or temperature as could contaminate any water supply or damage or be detrimental to any sewage system or any sewage treatment plant or otherwise cause the emission of dangerous objectionable elements unless treated so that thin soluble substances, such as oils, grease, acids, alkalines and other chemicals, are in accordance with the standards as approved by Water Pollution Control Boards, appropriate agencies of the Commonwealth of Pennsylvania and/or the United States of America, other Borough regulations or other agencies having jurisdiction.

(5) Vibration. Vibration perceptible beyond the lot lines of the lot on or in which said vibrations originate shall not be permitted.

(6) Noise. No noise shall be audible beyond the lot lines of the lot on which said noise originates exceeding the noise levels provided for in § 225-21B(1) of this chapter. Objectionable noises due to intermittence, heat, frequency or shrillness shall be muffled.

(7) Smoke, soot or dust. The emission of gray smoke at a density greater than No. 1 on a Ringelmann Chart, published by the United States Bureau of Mines, shall not be permitted, except that gray smoke of a shade not darker than No. 2 may be emitted for not more than four minutes in any thirty-minute period.

(8) Electric or electronic interference. Electric or electronic devices shall be shielded in such a manner as not to interfere with radio or television reception or transmissions of any kind.

SECTION 4. Section 225-33.6 of the Borough of Kutztown Zoning Ordinance is hereby created and enacted to read as follows:

§225-33.6 Data Centers and Data Center Accessory Uses

- A. Purpose. Data Centers and Data Center Accessory Uses shall be permitted by Conditional Use in any Industrial Zoning District, with the exception of the Medium Industrial Overlay Zoning District, when approved in compliance with the procedures, standards, and criteria contained in this section.
- B. Pre-Application Presentation. Any application for this conditional use must be preceded by a scheduled pre-application presentation to the Borough Planning Commission as part of a normally scheduled meeting.
- C. Dimensional Standards. The dimensional standards of Data Centers and Data Center Accessory Uses shall be in accordance with 225-21 B, with the following exceptions:
 - (1) Data Centers and Data Centers Accessory Uses shall be set back a minimum of 200 feet from the boundary of any residential zoning district or the lot line of any property containing a Sensitive Receptor.
 - (2) Any Data Center and Data Center Accessory Uses that are visible from beyond the exterior lot lines of the uses shall be separated from some lot lines by an earthen berm. Such berm shall average 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.
- D. Noise and Vibration
 - (1) The applicant shall demonstrate through a sound study conducted by a professional acoustical expert that the sound generated by a Data Center and/or Data Center Accessory Uses during normal operations shall comply with Kutztown Borough Code 225-21.B(1). A sound study shall be conducted at the following phases:
 - a) A preliminary noise impact study, to include low impact frequency noise analysis, to address adverse community impacts associated with sound, shall be conducted as part of the conditional use process.
 - b) An interim sound study shall be conducted during the building permit approval process based upon the proposed user or users of the Data Center and Data Center Accessory Uses depicted on the building plans. Any sound reducing materials or systems recommended by interim sound study shall be incorporated into the construction plans for the use.
 - c) An as-built sound study shall be conducted six months after issuance of the certificate of occupancy and prior to the final escrow release for any land development phase. An as-built sound study shall also be required thereafter by the borough of Kutztown six months after issuance of any other certificate of occupancy. If it is determined by the as-built sound study that there is a violation of the aforesaid noise limits, it shall be considered a violation of this Ordinance.
 - (2) Maximum decibel levels as specified in Section 225-21B.1 of the Borough of Kutztown Zoning Ordinance shall not apply during times of power outage, however the sound studies shall also evaluate and report anticipated decibel levels when all emergency power generation equipment is running, including backup generators.

- (3) The applicant shall provide a vibration study prepared by a qualified professional that demonstrates that no vibration from the Data Center, Data Center Accessory Uses, or associated equipment will be perceptible to the human sense of feeling beyond the property line.

E. Water and Sewer

1. If the use will be served by a public water supply, the applicant shall submit documentation from the public authority certifying that the public authority will supply the water needed, that it will comply with sections 3 through 7 below, and that the system will be closed loop. All costs to produce enough water (including creation of infrastructure) shall be paid by the applicant, with none of the costs, including increased service costs, being passed along to Borough residents or businesses.
2. If the use is to rely upon nonpublic sources of water, the applicant shall provide a water feasibility study. The purpose of the study is to determine if there is an adequate supply of water for the proposed use and to estimate the impact of the use on existing wells, groundwater, and surface waters in the vicinity. No Data Center shall be approved unless the water feasibility study demonstrates that the anticipated water supply yield is adequate for the project and that the proposed water withdrawals and discharges will not endanger or adversely affect the quantity or quality of groundwater supplies or surface waters in the vicinity. The water feasibility study shall include the following information at a minimum:
 - a. The projected water demands of the Data Center;
 - 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. The long-term safe yield of the water source;
 - e. A description of the amount or portion of water withdrawn that will be recycled or discharged and by what means;
 - f. A geologic map of the area with a radius of at least one mile from the site;
 - g. The location of all publicly known, existing and proposed wells within 1,000 feet of the property boundary, with a notation of the capacity of all high-yield wells;
 - h. The location of all surface waters, including perennial and intermittent streams, rivers, lakes, reservoirs, ponds, wetlands, springs, natural seeps, and estuaries, within 1,000 feet of the property boundary;
 - i. A determination of the effects of the proposed water supply system on the quantity and quality of water in nearby wells, surface waters, and the groundwater table;
 - j. A statement of the qualifications and the signature(s) of the person(s) preparing the study.
3. Water Usage Requirements
 - a) Water Conservation Standards:
 - 1) Data centers shall be required to implement water conservation strategies that minimize the consumption of municipal water. This includes the installation of closed-loop cooling systems, water recycling technologies, and high-efficiency fixtures and equipment.

- 2) The Borough encourages the use of non-potable water sources such as recycled water, stormwater, or greywater for cooling purposes where feasible and compliant with state regulations.

b) Water Usage Reporting:

- 1) Data center operators shall be required to submit an annual water usage report to the Borough, detailing the volume of water consumed by the facility, the type of cooling system used, and the water-saving measures implemented to align with the water conservation requirement statement in Section 225-33.6 (E) (3) (a) (1).
- 2) This report shall include data on the quantity of water used for cooling, non-cooling purposes, and any water recovered or reused within the facility.

c) Water Efficiency Goals:

- 1) Data centers should aim to achieve a Water Usage Effectiveness (WUE) score of ≤ 2 liters of water per kilowatt-hour (L/kWh) of energy used for cooling.
- 2) Facilities must demonstrate that their water consumption is within the Borough's acceptable limits, as found in zoning District Regulations 225-21 (b) (1).. If the data center exceeds the established thresholds, corrective actions, such as upgrading cooling systems or implementing additional conservation measures, must be undertaken.

4. Cooling System Regulations

a) Closed-Loop Systems:

- 1) Those Data centers, which are using public water, are required to use closed-loop cooling systems, which recycle water within the system, reducing overall water intake and minimizing waste.
- 2) If a water-based cooling system is used, the facility must demonstrate that the water is recirculated and not discharged into the local sewer system or nearby water bodies unless approved by the Borough's wastewater management authority.

b) Evaporative Cooling:

- 1) Evaporative cooling systems are permitted, but they must meet the following conditions:
 - i. The water evaporation rate must be minimized through efficient design and the use of water-saving technologies.
 - ii. Facilities using evaporative cooling must ensure that water consumption is continuously monitored to maintain compliance with Borough standards.
 - iii. Data Center must provide documentation, acceptable to the Borough, that it will not be using public water.

c) Use of Greywater:

- 1) Where feasible and in compliance with state and local regulations, data centers may use treated greywater for cooling purposes, landscaping, or other non-potable uses.
- 2) The facility must obtain approval from the Borough's public works department for the use of greywater and demonstrate compliance with all health and safety standards.

d) Rainwater Harvesting:

- 1) Data centers are encouraged to consider rainwater harvesting systems for non-potable uses, including cooling or landscaping. Any harvested rainwater must be stored and treated according to applicable regulations before use.

5. Water And Wastewater Impact Assessment

a) Water Impact Analysis:

- 1) A water usage impact analysis shall be required as part of the conditional use application for new data center developments or major expansions.
- 2) The analysis must include:
 - i. A detailed estimate of the facility's water demand and cooling needs.
 - ii. A description of the cooling system and water conservation technologies to be employed.
 - iii. A water efficiency plan, outlining specific measures the facility will take to minimize water consumption.

b) Wastewater Discharge:

- 1) Data centers must comply with local wastewater discharge regulations. If water from cooling systems or other processes is discharged into the municipal sewer system, it must meet the Borough's water quality standards.
- 2) The facility must obtain approval from the Borough's wastewater treatment authority for any discharge into the local sewer system.

6. The applicant shall provide proof of review and approval from the Delaware River Basin Commission for projects proposing:

- a) Water withdrawals of 100,000 gallons per day (gpd) or more over a 30-day average from any source or combination of sources within the Delaware River Basin; or
- b) Any consumptive water use of 20,000 gpd or more over a 30-day average from any water source.

7. 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.

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 that the necessary capacity is, or can be, available and that 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. All costs to produce enough power (including creation of infrastructure or remodeling of the power grids) are to be paid by the applicant, with none of the costs, including increased service costs, being passed along to Borough residents or businesses.
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 Principal use and shall be approved according to the zoning regulations applicable to such use.

G. Emergency Management

1. The applicant shall submit an Emergency Response Plan (ERP) prepared by a qualified professional. 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.

H. Design Elements - Any Data Center and Data Center Accessory Use building façade that faces a road, , or existing residential use must incorporate at least two of the following design elements every 150 horizontal feet:

1. A change in building material, pattern, texture, or color;
2. A change in building height;
3. Building step-backs or recesses having a minimum depth of five (5) feet;

I. Parking - Data Centers must comply with Borough Zoning Regulation 225-29.A(1)a)[9]

J. Decommissioning Plan – Conditional use application must include the submission of a decommissioning plan prepared by a qualified professional, and a decommissioning agreement between the applicant and the Borough. The plan will include, but not be limited to procedures for safe shutdown, removal of equipment, disposal or recycling of materials, site

restoration, a decommissioning bond, and language which includes a process for the review of decommissioning costs every 5 years.

SECTION 5: Enforcement And Penalties

1. Non-Compliance Penalties:

a) Failure to comply with the water usage standards outlined in this ordinance may result in the following penalties:

- 1) A fine of up to \$1,000 per day for each day the violation persists.
- 2) Requirement to implement corrective measures at the data center's expense.

2. Suspension of Operations:

a) In the event of severe non-compliance, the Borough may temporarily suspend the operations of the data center until compliance is achieved, particularly if the facility poses a risk to public health or local water resources.

SECTION 6: Severability. If any article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase or word in this Ordinance, is for any reason declared to be unconstitutional, illegal or invalid, by any court of competent jurisdiction, this decision shall not affect or impair the validity of the Ordinance as a whole, or any other article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase, word or remaining portion of the within Ordinance. The Borough Council of the Borough of Kutztown, Berks County, Pennsylvania, hereby declares that it would have adopted the within Ordinance and each article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase, and word thereof, irrespective of the limitations, restrictions, sentences, clauses, phrases, or words that may be declared illegal, invalid, or unconstitutional.

SECTION 7. Repeal of Ordinances. Any Ordinance or part of Ordinances conflicting with the provisions of this Ordinance are hereby repealed insofar as they are inconsistent with this Ordinance's provisions.

Code of Ordinances. The Kutztown Code, as amended, shall be and remain unchanged in full force and effect except as amended, supplemented, and modified from time to time. This Ordinance shall become part of the Kutztown Code upon adoption.

Effective Date. This Ordinance shall become effective on the earliest date permitted by law.

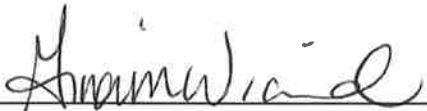
ENACTED AND ORDAINED as an Ordinance of the Borough of Kutztown, Berks

County, Commonwealth of Pennsylvania, by the Borough Council this 15th day of September, 2026, in lawful session duly assembled.

BOROUGH OF KUTZTOWN

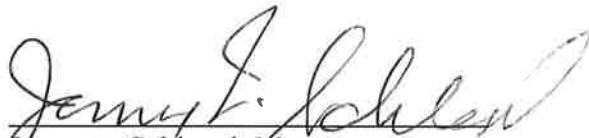
By: _____

Kevin J. Snyder, President of Borough Council

Attest: _____

Gina M. Wiand, Borough Secretary

Approved as an Ordinance this 15th day of September, 2026.



James F. Schlegel, Mayor