ORDINANCE NO. 5-2026

AN ORDINANCE OF THE BOROUGH OF KUTZTOWN, BERKS COUNTY, PENNSYLVANIA, CREATING AND ENACTING ARTICLE V OF CHAPTER 225 OF THE KUTZTOWN CODE SO AS TO ADD §225-50 (c), ENTITLED "CONDITIONAL USE PROCEDURES/ BOROUGH COUNCIL" WHICH WILL PROVIDE PROCEDURES AND STANDARDS FOR THE APPROVAL OF CERTAIN USES WITHIN THE BOROUGH OF KUTZTOWN BY CONDITIONAL USE.

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 Borough Council of the Borough of Kutztown desires to provide procedures and standards for approvals of uses by Conditional Use; and

WHEREAS, the Borough Council of the Borough of Kutztown finds that it is in the best interests of the Borough and its citizens to amend Chapter 225 of the Kutztown Code to adopt provisions for the approval of certain uses by Conditional Use as set forth in the Pennsylvania Municipalities Planning Code.

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 225-50 (c) of the Kutztown Code is hereby created and enacted and shall read as follows:

§ 225-50 C. Conditional use procedures/ Borough Council.

1. Application. Four copies of an application for permission to conduct a use permitted by condition shall be submitted to the Borough Secretary. Such application shall include all information specified for a zoning permit application in § 225-43 of this chapter and any other information necessary to allow the Borough Council to determine that all requirements of this chapter have been met. The application shall be accompanied by the application fee established from time to time by resolution of Borough Council.

(a) Completeness review. Within ten (10) days after the Borough Secretary receives an application, the Zoning Officer shall review the application for completeness and shall notify the applicant in writing whether the application is complete. If the application is incomplete, the notice shall identify each deficiency, and the applicant may submit a corrected application, which shall be reviewed for completeness within ten (10) days after it is received. If the Zoning Officer does not notify the applicant within the applicable ten-day period, the application shall be deemed complete as of the date it was received.

(b) Date of filing. An application shall be considered duly filed on the date a complete application, including the required copies, information and fee, is received by the Borough Secretary at the Borough office during regular business hours, as shown by the Borough's date stamp. An application delivered by mail, certified mail, courier or other delivery service shall be considered received on the date it is delivered to the Borough office, not the date it was mailed or sent. An application received after regular business hours, or on a day the Borough office is closed, shall be considered received on the next business day. All time periods in this section shall be measured from the date the application is duly filed unless otherwise stated.

2. Review.

(a) After an application is duly filed, the Council shall refer one copy of the application to the Borough Planning Commission for its review and one copy to the Borough Zoning Officer for their review. The application shall be reviewed at one or more advertised meetings of the Borough Council.

(b) Planning Commission review. The Planning Commission shall submit its comments and recommendations to Borough Council before the hearing. Borough Council shall consider the comments of the Planning Commission, but the failure of the Planning Commission to submit comments shall not delay the hearing or decision.

(c) Hearing. Borough Council shall hold a hearing on the application in accordance with Sections 908 and 913.2 of the Pennsylvania Municipalities Planning Code ("MPC"). The first hearing shall be commenced within sixty (60) days after the date the application is duly filed, unless the applicant has agreed in writing or on the record to an extension of time. Each subsequent hearing shall be held within forty-five (45) days after the prior hearing, unless otherwise agreed to by the applicant in writing or on the record. The applicant shall complete the presentation of its case-in-chief within one hundred (100) days after the first hearing, and persons opposed to the application shall complete the presentation of their opposition within one hundred (100) days after the first hearing held after the completion of the applicant's case-in-chief, as provided in Section 908(1.2) of the MPC.

(d) Notice. Public notice of each hearing shall be given; written notice shall be given to the applicant, the Zoning Officer and any person who has made a timely request for notice; and the affected tract of land shall be conspicuously posted at least one (1) week before the hearing, all as provided in Section 908(1) of the MPC.

(e) The Borough Council shall render a written decision or, when no decision is called for, make written findings on the conditional use application within 45 days after the last hearing before the Council. Where the application is contested or denied, each decision shall be accompanied by findings of fact or conclusions based thereon, together with any reasons therefor. Conclusions based on any provisions of this chapter or of any ordinance, rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found.

(f) Deemed decision; delivery. If Borough Council fails to commence the hearing within the time required by Subsection 2(c), or fails to render a written decision within forty-five (45) days after the last hearing, the decision shall be deemed to have been rendered in favor of the applicant, unless the applicant has agreed in writing or on the record to an extension of time, as provided in Section 913.2(b) of the MPC. A copy of the written decision shall be delivered to the applicant personally or mailed to the applicant not later than the day following its date.

(g) The granting of permission to conduct a use permitted by condition does not exempt an application from acquiring all approvals required by the Borough's Subdivision and Land Development Ordinance.

3. Standards.

(a) Such use shall be one which is specifically authorized as a conditional use in the district.

(b) Such conditional use shall only be granted subject to any applicable conditions and safeguards as required by this Zoning Chapter.

(c) Such conditional use may be granted subject to additional reasonable conditions and safeguards as may be deemed by the Council to be advisable and appropriate.

(d) Such use shall be found by the Council to be in harmony with the general purposes and intent of this Zoning Chapter.

(e) Such use shall not adversely affect the character of the district, nor the conservation of property values nor the health and safety of residents or workers on adjacent properties and in the general neighborhood.

(f) Such use shall be of such size and so located and laid out in relation to its access streets that vehicular and pedestrian traffic to and from such use will not create undue congestion or hazards prejudicial to the general neighborhood.

(g) Such use shall be consistent with the goals, objectives and future land use plan of the Borough's adopted Comprehensive Plan, as amended, including any multi-municipal comprehensive plan adopted by the Borough, with respect to the type, location and intensity of development planned for the area in which the use is proposed.

(h) When an application for a conditional use has been filed with the Borough Secretary on behalf of Borough Council and the subject matter of such application would ultimately constitute either a land development or subdivision as defined in § 225-5, no change or amendment of the zoning, subdivision or other governing ordinance or plans shall affect the decision on such application adversely to the applicant, and the applicant shall be entitled to a decision in accordance with the provisions of the governing ordinances or plans as they stood at the time the application was duly filed; provided, further, that should such an application be approved by the Borough Council, the applicant shall be entitled to proceed with the submission of either land development or subdivision plans

within a period of six months or longer or as may be approved by the Borough Council following the date of such approval in accordance with the provisions of the governing ordinances or plans as they stood at the time the application was duly filed before the Borough Council. If either a land development or subdivision plan is so filed within said period, such plan shall be subject to the provisions of Section 508(1) through (4), and specifically to the time limitations of Section 508(4), of the Pennsylvania Municipalities Planning Code, as amended, which shall commence as of the date of filing such land development or subdivision plan.

SECTION 2. 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.

SECTION 3. 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 4. Effective Date. This Ordinance shall become effective on the earliest date permitted by law.

SECTION 5. 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.

ENACTED AND ORDAINED as an ordinance of the Borough of Kutztown, Berks County, Commonwealth of Pennsylvania by the Borough Council this 17th day of November, 2026, in lawful session duly assembled.

BOROUGH OF KUTZTOWN

By: _____
Kevin J. Snyder, President of Borough Council

Attest: _____
Gina M. Wiand, Secretary of the Borough

Approved as an ordinance this 17th day of November, 2026.

James F. Schlegel, Mayor