

ORDINANCE NO. 167,2006

AN ORDINANCE OF THE TOWNSHIP OF TILDEN, BERKS COUNTY, PENNSYLVANIA, AMENDING CHAPTER AMENDING AND RESTATING IN ITS ENTIRETY PART 2, ENTITLED "OUTDOOR FIRES", OF CHAPTER IX, ENTITLED "FIRE PREVENTION AND FIRE PROTECTION" OF THE CODE OF ORDINANCES OF THE TOWNSHIP OF TILDEN TO PROHIBIT UNCONTAINED OUTDOOR FIRES UPON A BAN BY THE COUNTY OF BERKS; TO AMEND THE PURPOSE TO INCLUDE THE PROTECTION OF THE HEALTH, SAFETY AND WELFARE OF THE RESIDENTS OF THE TOWNSHIP; TO AMEND THE GENERAL RESTRICTIONS TO INCLUDE MOUNTAIN LAND, HAZARDOUS AND DANGEROUS MATERIALS INCLUDING TIRES, SETTING A SIZE LIMITATION AND SETTING TIME LIMITS FOR BURNING; AND TO AMEND THE PENALTIES TO INCLUDE THE COSTS AND FEES INCURRED BY THE TOWNSHIP, FIRE DEPARTMENT OR FOREST SERVICE TO EXTINGUISH A FIRE IN VIOLATION OF THE PART

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Board of Supervisors of the Township of Tilden, Berks County, Pennsylvania, and it is hereby ENACTED AND ORDAINED by the authority of the same as follows:

SECTION 1. Part 2, entitled "Outdoor Fires", of Chapter IX, entitled "Fire Prevention and Fire Protection", of the Code of Ordinances of the Township of Tilden is hereby amended and restated in its entirety as follows:

"Part 2

Outdoor Fires

Section 201. Purpose. The purpose of this Part is to prevent public and private nuisances caused by outdoor fires deliberately or carelessly set and maintained within Tilden Township, to avoid unnecessary calls and false alarms to the fire company, police or forest fire crew, and to protect the health, safety and welfare of the residents of the Township of Tilden.

Section 202. Definitions. As used in this Part, the following terms shall have the meanings indicated, unless a different meaning clearly appears from the context:

(a) Attended. The presence of a Competent Adult who at all times maintains a clear view of the entire area of the fire and who is not more than one hundred fifty feet (150') from the fire until the fire is completely extinguished.

(b) Competent Adult. Any person over the age of eighteen (18) years who is not under the influence of drugs (either illegal drugs or prescription medication) or alcohol and who is not suffering from any serious mental illness.

(c) Contained Fire. Any fire contained in an incinerator, in a fireplace used for outdoor cooking or in a fireproof container.

(d) Fire. Any fire set or maintained outside of a building.

(e) Township. The Township of Tilden, Berks County, Pennsylvania.

(f) Uncontained Fire. Any fire except a 'contained fire.'

Section 203. General Restrictions.

(a) No fire shall be set or maintained within fifty feet (50') of any building or property line within the Township, except for cooking on appliances designed for the purpose of preparing foods (gas, electric or charcoal grills or stoves, etc.).

(b) No fire shall be set or maintained on any public road, mountain land or public property within the Township.

(c) No fire shall be set or maintained which may endanger any building or property, except where such building or property is used by a fire department for training purposes.

(d) No fire shall be set or maintained which includes the burning of any hazardous or dangerous materials, including tires.

(e) No fires shall be set or maintained that exceed fifty (50) square feet.

(f) No fires shall be set or maintained between the hours of 9:00 p.m. and 7:00 a.m.

(g) This Part shall not apply to gas, charcoal or wood fires used for cooking purposes.

Section 204. Uncontained Fires. Uncontained fires shall be allowed to burn subject at all times to the following restrictions:

(a) No uncontained fire shall be allowed to burn whenever drought or extreme weather conditions exist or when a ban on burning has been put into effect by the Commonwealth of Pennsylvania, the County of Berks or the Township Supervisors. Notice of such restriction shall be given by notice in a newspaper of general circulation and by posting a notice at the Township office or by giving such other notice as the Township shall deem appropriate.

(b) The Berks County Fire Communications Center, Hamburg Fire Company and Shartlesville Fire Company, as appropriate, must be notified prior to burning any uncontained fire.

(c) The Tilden Township Police Department and the Desk Officer at the Pennsylvania State Police, Hamburg Barracks must be notified in the event a fire continues to burn after dusk.

(d) No uncontained fire shall be maintained unless constantly attended by at least one competent adult.

(e) Any uncontained fire which is permitted to burn in an unsafe manner, under adverse weather conditions or which is unsupervised or which is determined to be unsafe by an official of the fire company or an officer of the Tilden Township Police Department shall be extinguished immediately upon demand by such official or officer.

Section 205. Penalties. Any person, partnership, corporation or other entity who or which has violated or permitted the violation of the provisions of this Part shall, upon being found liable therefor in a civil enforcement proceeding commenced by the Township, pay a judgment of not more than One Thousand Dollars (\$1,000.00) plus all court costs, including reasonable attorney fees incurred by the Township as a result thereof, and all fees and costs incurred by the Township, fire department or forest service to extinguish the fire in violation of this Part.

The officer(s) of the Township authorized to do so by the Board of Supervisors shall determine in each instance whether a violation has occurred

under this Part. Upon determining that a violation has occurred, the authorized officer shall (i) determine the amount of such judgment, not to exceed the limitations set forth herein, and (ii) serve written notice upon the violator in person or by registered or certified mail, return receipt requested, postage prepaid, identifying the applicable section of this Part which has allegedly been violated and the time and place of the schedule civil enforcement proceeding before the district justice.

If the violation requires the attendance of a fire company and/or police, the District Justice shall take an account of the costs incurred by the fire company and/or police in responding to the violation in determining the amount of judgment to be levied. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by a district justice. If the defendant neither pays nor timely appeals the judgment, the Township may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the district justice in determining that there has been a violation further determines that there was a good faith basis for the person, partnership, corporation or other entity violating this Part to have believed that there was no such violation, in which event there shall be deemed to have been only one (1) such violation until the fifth (5th) day following the date of the determination of a violation by the district justice, and thereafter each day that a violation continues shall constitute a separate violation. All judgments, costs and reasonable attorneys' fees collected for the violation of this Part shall be paid over to the Township.

The Court of Common Pleas, upon petition, may grant an order of stay, upon cause shown, tolling the per diem judgment pending a final adjudication of the violation and judgment.

Nothing contained in this Section shall be construed or interpreted to grant to any person or entity other than the Township the right to commence any action for enforcement pursuant to this Section.

Section 206. Severability. If any sentence, clause, section or part of this Part 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 of this Part. It is hereby declared as the intent of the Board of Supervisors of Tilden Township that this Part would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not be included herein."

SECTION 2. If any sentence, clause, section or part of this 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 of this Ordinance. It is hereby declared as the intent of the Board of Supervisors of the Township that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

SECTION 3. All ordinances or parts of ordinances conflicting with the provisions of this Ordinance are hereby repealed insofar as they are inconsistent with this Ordinance.

SECTION 4. This Ordinance shall become effective in accordance with law.

SECTION 5. The Code of Ordinances of the Township of Tilden, Berks County, Pennsylvania, as amended, shall be and remain unchanged and in full force and effect except as amended, supplemented and modified by this Ordinance. This Ordinance shall become a part of the code of Ordinances of the Township of Tilden, Berks County, Pennsylvania, as amended, upon adoption.

DULY ENACTED AND ORDAINED this 10th day of June, 2006.

TOWNSHIP OF TILDEN
BOARD OF SUPERVISORS

Troy R. Hatt
Russell H. Wally
Judy E. Romig

Attest: Cheryl A. Haus
Secretary