

ORDINANCE NO. 192,2009

AN ORDINANCE OF THE TOWNSHIP OF TILDEN, BERKS COUNTY, PENNSYLVANIA, AMENDING CHAPTER XIV, ENTITLED "HEALTH AND SAFETY" OF THE CODE OF ORDINANCES OF THE TOWNSHIP OF TILDEN BY ESTABLISHING A NEW PART 2, ENTITLED "GRAFFITI"; ESTABLISHING THAT GRAFFITI IS A NUISANCE; ESTABLISHING THAT IT IS ILLEGAL FOR MINORS TO POSSESS GRAFFITI INSTRUMENTS ON PUBLIC PROPERTY OR PRIVATE PROPERTY WITHOUT THE PRIVATE PROPERTY OWNER'S CONSENT; ESTABLISHING THAT ANY OWNER OF PROPERTY ON WHICH GRAFFITI IS VISIBLE TO THE PUBLIC SHALL REMOVE SAID GRAFFITI; ESTABLISHING THAT THE TOWNSHIP MAY, UPON NOTICE TO THE PROPERTY OWNER OR OCCUPANT THEREOF, ORDER THE REMOVAL OF THE GRAFFITI AND SHALL BE ENTITLED TO ENTER THE PROPERTY TO REMOVE SAID GRAFFITI AND SHALL BE ENTITLED TO THE COLLECTION OF THE COSTS THEREOF PLUS PENALTIES AND ATTORNEY FEES FROM THE PROPERTY OWNER OR OCCUPIER; ESTABLISHING PENALTIES THEREOF FOR THE FAILURE TO COMPLY AND PROVIDING FOR A SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

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. Chapter XIV, entitled "Health and Safety" of the Code of Ordinances of the Township of Tilden, is hereby amended by adding thereto the following new Part 2:

"Part 2

Graffiti

Section 201. Graffiti is a Public Nuisance. The Board of Supervisors find that graffiti is a public nuisance. Graffiti is offensive, contributes to neighborhood deterioration, lends to the depreciation of property defaced by graffiti and the surrounding property and tends to remain on property unless promptly removed. The Board of Supervisors must take all reasonable measures to prevent and eradicate graffiti in order to minimize its detrimental impact upon the health, safety and welfare of the public.

Section 202. Definitions. The following words, terms and phrases, when used within this Part shall have the following meanings:

"Graffiti" - Any inscription, work, symbol, figure, mark or design that is etched, scrawled, stained, drawn, painted on or adhered to any property's surface without the express consent of the property owner or the property owner's agent, including, but not limited to any wall, underpass, overpass, trestle, tree, sign, pole, post, building, fixture or other improvement whether permanent or temporary, regardless of content or nature of the material that has been applied, and which is visible from any public property or public right-of-way, or from any private property other than the property on which the graffiti exists. Graffiti shall not include temporary, water soluble markings, symbols and inscriptions.

"Graffiti Implement" - any implement capable of marking a surface, including, but not limited to aerosol or pressurized paint containers, markers, gum labels, paint brushes and tools capable of etching or scaring. Graffiti Implement shall not include implements which make temporary marks that are water soluble, such as chalk.

"Gum Labels" -- any material such as, but not limited to, decals, stickers, posters or labels which are backed with a glue or adhesive material which after being affixed to property cannot be removed from the property in an intact condition with minimal effort.

"Minor" - any person under the age of 18.

"Perpetrator" - any Person convicted, adjudicated or otherwise determined to be liable under this Part.

"Person" - any individual, firm, partnership, association, corporation, company or organization of any kind.

"Property" - all public and private property.

"Township" - Township of Tilden.

Section 203. Prohibition of Graffiti. No person shall place Graffiti or cause Graffiti to be placed on any Property in the Township or on any Property which is visible to anyone within the Township.

Section 204. Possession of Graffiti Implements. It shall be illegal for a Minor to possess Graffiti Implement(s) on any Property unless the Property owner has consented to the Minor's possession of the Graffiti Implement on such Property.

Section 205. Removal of Graffiti. No Person owning Property within the Township shall allow Graffiti visible to the public to remain on such Person's Property.

Section 206. Notice to Remove Graffiti. Upon discovering Graffiti on private property, any Person authorized by the Township Board of Supervisors shall issue written notice to the property owner, agent or occupant to promptly remove the Graffiti. If Graffiti is not removed by the Person, agent or occupant within ten (10) days of the mailing of the first notice to remove, a second notice to remove the Graffiti shall be issued, authorizing the Township or agent of the Township to enter the property and remove the Graffiti at the property owner's expense. The failure to remove the Graffiti within ten (10) days of the second notice shall constitute a violation of this Part.

Section 207. Remedies.

(a) Fine. Any Person who shall violate, fail, neglect or refuse to comply with any provision of this Part shall, upon conviction or adjudication by summary delinquency proceeding shall be sentenced to pay a fine no less than \$100 and no more than \$1,000, plus the cost of prosecution and the cost of the removal of the Graffiti and repair of the Property or, in default of payment, shall be subject to imprisonment or detention not exceeding thirty (30) days. Each day a violation of this Part continues, shall count as a separate offense;

(b) Penalties. Except where the legal fees, administrative and filing costs exceed the cost of removal, a bill for the cost of removal shall be delivered to the Property owner, occupier or authorized agent of the Property owner or Perpetrator and in the event of non-payment, the Township may file a lien against the Property or sue the Perpetrator for such costs. Liability for the cost of removal shall be in addition to liability for any fine imposed; or

(c) Mitigation. In lieu of or in mitigation of such fines and penalties; upon agreement with or among the Perpetrator, as well as, if appropriate, the District Attorney or representative of the Township, the Property owner or other identifiable victims, the Perpetrator may participate in the Berks County Graffiti Abatement Program.

Section 208. Conflicts. Whenever the requirements of this Part are in conflict with other Parts, the most restrictive, or those imposing a higher standard shall be imposed.

Section 209. Severability. The provisions of this Part are severable. If any section, clause sentence, part or provision hereof shall be held illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair any of the remaining sections, clauses, sentences, parts or provisions of this Part. It is hereby declared to be the intent of the Township that this Part would have been adopted if such illegal, invalid or unconstitutional section, clause, sentence, part or provision had not been included herein."

SECTION 2. 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 3. This Ordinance shall become effective in accordance with the law.

SECTION 4. The Code of Ordinances of the Township of Tilden, 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, as amended, upon adoption.

SECTION 5. It is declared that enactment of this Ordinance is necessary for the protection, benefit and preservation of health, safety and welfare of the inhabitants of the Township.

ENACTED AND ORDAINED into law this 14th day of March 2009 by the Board of Supervisors of the Township of Tilden, Berks County, Pennsylvania.

TOWNSHIP OF TILDEN
BOARD OF SUPERVISORS

Russell H. Weirby

Judy E. Romig

Troy R. Watt

Attest. Cheryl A. Haus
Secretary