

TILDEN TOWNSHIP
BERKS COUNTY, PENNSYLVANIA

ORDINANCE No. 230-2018

AN ORDINANCE OF TILDEN TOWNSHIP, BERKS COUNTY, PENNSYLVANIA, REGULATING THE USE AND DISPLAY OF FIREWORKS WITHIN THE TOWNSHIP, PROVIDING FOR THE GRANTING OF PERMITS FOR DISPLAYS OF FIREWORKS WITHIN THE TOWNSHIP, AND SETTING FORTH PENALTIES FOR VIOLATION

WHEREAS, Tilden Township, Berks County, Pennsylvania ("Township") is a Township of the Second Class in the County of Berks and Commonwealth of Pennsylvania;

WHEREAS, the Commonwealth of Pennsylvania, through Section 1534(2) of the Second Class Township Code, 53 P.S. § 66534(2) and 35 P.S. § 1271, *et seq.* authorizes the Township to grant permits for supervised public displays of fireworks and adopt rules and regulations governing the sale, use, and display of fireworks in the Township; and,

WHEREAS, Act 43 of 2017, amending the Tax Reform Code of 1971, 72 P.S. § 7101, *et seq.*, added Article XXIV to the Tax Reform Code, 72 P.S. §§ 2401-2416, amending the Fireworks Law, effective October 30, 2017; and,

WHEREAS, the passage of Act 43, and the changes to the Fireworks Law necessitated amendment to the Township's existing ordinance regulating use and display of fireworks; and,

WHEREAS, pursuant to the above-cited authority, and for the protection of the health, safety, and welfare of the community and traveling public, the Board of Supervisors of Tilden Township hereby establishes the following regulations for the use and display of fireworks in the Township.

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

SECTION 1. Definitions. For purposes of this Ordinance, the following terms shall have the meanings set forth below:

A. "Fireworks." The term "fireworks" shall mean and include "consumer fireworks" and "display fireworks" which are, under Pennsylvania law, as follows:

1. "Consumer Fireworks." The term "consumer fireworks" shall mean and include any combustible or explosive composition or any substance or combination of substances, containing a maximum of fifty milligrams of explosive materials, intended to produce visible and/or audible effects by combustion and which is suitable for use by the public that complies with the construction, performance composition and labeling requirements of the Consumer Products Safety Commission contained in Title 16 of the Code of Federal Regulations (16 CFR) (relating to commercial practices) or any successor regulation and which complies with the provision for "consumer fireworks" as defined in the American Pyrotechnics Association (APA) Standard 87-1, or any successor standard, the sale, possession, or use of which shall be permitted throughout this Commonwealth. The term "consumer fireworks" does not include devices including "ground and hand held sparkling devices," "novelties," and "toy caps," as defined in APA Standard 87-1, titled *Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics*, 2001 Edition, or any subsequent edition.

2. "Display Fireworks." - Large fireworks to be used solely by professional pyrotechnicians and designed primarily to produce visible or audible effects by combustion, deflagration, or detonation. The term includes, but is not limited to:

- Salutes that contain more than two grains or 130 milligrams of explosive materials;
- Aerial shells containing more than 60 grams of pyrotechnic compositions; and,
- Other display pieces that exceed the limits of explosive materials for classification as consumer fireworks and are classified as fireworks UN0333, UN0334, or UN0335 by the United States Department of Transportation at 49 CFR 172.101 (relating to purpose and use of hazardous materials table).

The term "fireworks" shall not include:

- Devices including "ground and hand held sparkling devices," "novelties," and "toy caps," as defined in APA Standard 87-1, as referenced above; and,
- Explosives which are illegal under federal law, such as devices as described in 49 CFR 173.54 (relating to forbidden

explosives) or those devices that have not been tested, approved and labeled by the United States Department of Transportation, including, but not limited to, those devices commonly referred to as "M-80," "M-100," "blockbuster," "cherry bomb" or "quarter or half stick" explosive devices.

B. "Township." The term "Township" shall mean Tilden Township, Berks County, Pennsylvania and its Board of Supervisors.

C. "Person." The term "person" shall be defined as any individual, partnership, firm, limited liability company or partnership, public or private corporation, incorporated or unincorporated association, enterprise, or any other legal entity and, including without limitation with respect to each of the above, any agent, servant, or employee thereof.

D. "Display." The term "display" shall mean any event, whether or not open to the general public, and whether or not admission is charged, at which fireworks are discharged, fired, or activated.

E. "Fire Chief." The term "Fire Chief" shall mean the Chief of the Fire Department(s) having jurisdiction in the Township, in the discretion of the Board of Supervisors, to render decisions on issues regarding fireworks, or the designee of the same.

SECTION 2. Use of Consumer Fireworks. A person who is at least 18 years of age and meets the requirements of the Fireworks Act, as amended, and other applicable law, may purchase, possess, and use Consumer Fireworks, provided that a person may not intentionally ignite or discharge:

A. Consumer Fireworks on public or private property without the express permission of the owner on private property or governing authority with jurisdiction in the case of public property;

B. Consumer Fireworks or sparkling devices within, or throw consumer fireworks or sparkling devices from, a motor vehicle or building;

C. Consumer Fireworks or sparkling devices into or at a motor vehicle or building or at another person;

D. Consumer Fireworks or sparkling devices while the person is under the influence of alcohol, a controlled substance, or another drug; and/or,

E. Consumer Fireworks within 150 feet of an occupied structure.

SECTION 2. Permit Required for Use of Display Fireworks.

A. Except as provided hereinafter by this Ordinance, it shall be unlawful for any person to use or explode any Display Fireworks in the Township, unless a permit is granted by the Township.

B. Applications for permits shall be made in writing on a form prescribed by the Township at least thirty (30) days in advance of the date set for a display, setting forth the proposed location, the character thereof, the name and address of the operator, and the name and address of the owner or owners of the grounds on which the display is to be held. If an application is submitted and executed by an operator acting on behalf of the owner, the owner shall execute the application as well. The application/permit fee shall be Fifty Dollars (\$50.00). The Application Form is attached to this Ordinance.

C. The applicant shall provide to the Township evidence of the operator's registration in good standing with the Attorney General of Pennsylvania, and set forth the operator's credentials evidencing competency to perform the public display.

D. As a condition of the issuance of a permit, the applicant, or the operator of the display on behalf of the applicant, shall submit a bond, which shall be in the amount of at least Five Hundred Thousand and 00/100 Dollars (\$500,000.00) and up to One Million and 00/100 Dollars (\$1,000,000.00) as determined by the Township, conditioned for payment of all damages which may be caused either to a person or persons, or to property by reason of the display and arising from any acts of the applicant or operator, or agents, employees, or contractors/subcontractors of the same.

E. The Township will submit a copy of the permit application to the Fire Chief, who shall review the application, credentials of the proposed operator, and proposed location of the display and determine any hazards to persons or property which could preclude the issuance of the permit or require the attachment of conditions to the grant of the permit.

F. If an after a permit is granted under this Ordinance, the possession and use of Display Fireworks shall be limited solely to the purpose described in the application and permit.

G. The Township may attach reasonable conditions to the issuance of a permit.

H. No permit granted hereunder shall be transferable without the written approval of the Township. Any transferee must meet all requirements of this Ordinance, applicable state and federal law, and must post the bond required by this Ordinance.

I. The Fire Chief may suspend any permit issued under this Ordinance due to drought, dry conditions, high winds, or any other factor reasonably related to public safety. The Fire Chief may dispatch fire department members and/or equipment, and fire police, to the scene of a permitted display. Where any such deployment occurs, the applicant shall defray the cost of such services in an amount determined by the Township.

J. If by reason of unfavorable weather or other dangerous conditions in the opinion of the operator and/or Fire Chief at the time of the scheduled display for which the permit is issued the display does not take place, the person to whom the permit is issued may within seventy two (72) hours, apply to the Township requesting a continuance of the public display to a new date. Upon receiving an application for continuance, the Township may extend the permit under such terms and conditions as it deems appropriate.

K. A Display Fireworks permit may not be issued to a person under 21 years of age.

SECTION 3. Display and Discharge. Every use of Consumer Fireworks and Display Fireworks within the Township shall be performed by a competent individual and shall be of such character and so located, discharged, fired, or activated in such a manner so as not to be hazardous to property or endanger any person or persons. Applicant for use of Display Fireworks shall arrange with the Fire Department having jurisdiction to have them present at the display or use and deployed in such a manner as to prevent injury to persons or damage to property. No Display Fireworks shall be ignited within 300 feet of a facility that meets the requirements of 72 P.S. §§ 2407 and 2410 (Sales locations and temporary sales locations for fireworks).

SECTION 4. Disposal of Unfired Fireworks and Residuals. It shall be the responsibility of the applicant and/or operator to dispose of all unfired fireworks, misfired fireworks, trash, and any other residue or remains within twelve (12) hours of the conclusion of the display. Any materials which are hazardous shall be immediately disposed of in an proper manner.

SECTION 5. Exceptions to Permit Requirement. The permit requirements of this Ordinance shall not be applicable to the following activities involving the use of fireworks or similar devices as defined herein:

A. When the use is authorized under a permit from an agency of the state or federal government.

B. When used as authorized by a permit for agricultural purposes in connection with the raising of crops and the protection of crops from bird and animal damage.

C. Use by railroads or other transportation agencies for signal purposes or other illumination.

D. When used in quarrying or for blasting or other industrial use.

E. Use of blank cartridges for show or theatrical production or for signal or ceremonial purposes in athletics or sports.

F. Use by military organizations composed of veterans of the United States Armed Forces.

SECTION 6. Penalties for Violation. Any person who violates any provision of this Ordinance shall, in an action before a Magisterial District Judge prosecuted as a summary criminal offense shall, upon conviction thereof, be subject to a fine of not less than One Hundred Dollars (\$100.00) and not more than One Thousand Dollars (\$1,000.00) for each and every offense, and, in default of payment, imprisonment for a term not exceeding thirty (30) days in Berks County Prison. Each day or portion thereof for which a violation of this Ordinance is found to occur shall constitute a new and separate offense.

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

SECTION 8. 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 illegal, unconstitutional 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 Board of Supervisors of Tilden Township, 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 word that may be declared illegal, unconstitutional or invalid.

SECTION 9. Effective Date. This ordinance shall become effective (five (5) days from the date of enactment.

DULY ENACTED AND ORDAINED this 13 day of June, 2018.

BOARD OF SUPERVISORS OF
TILDEN TOWNSHIP

Gene L. Schappell
Chairman

Frank A. H.
Vice Chairman

Robert L. H.
Supervisor

Attest: [Signature]
Secretary

