

ORDINANCE NO. 410

AN ORDINANCE OF THE TOWNSHIP OF UPPER BERN, BERKS COUNTY, PENNSYLVANIA, TO PROVIDE REVENUE BY IMPOSING A TAX UPON SALE OF ADMISSION TO PLACES OF AMUSEMENT, ENTERTAINMENT, DIVERSION, SPORT, RECREATION AND PASTIME AND UPON CHARGES MADE TO ENGAGE IN ANY PRIVILEGE, TRANSACTION, AMUSEMENT, ENTERTAINMENT, DIVERSION, SPORT, RECREATION OR PASTIME; REQUIRING ALL PERSONS, PARTNERSHIPS, ASSOCIATIONS AND CORPORATIONS SELLING SUCH ADMISSIONS OR MAKING SUCH CHARGES TO SECURE PERMITS; IMPOSING DUTIES AND CONFERRING POWERS UPON THE TAX COLLECTOR, PRESCRIBING THE METHOD AND MANNER OF COLLECTING THE SAID TAX; PROVIDING CERTAIN EXEMPTIONS AND IMPOSING PENALTIES.

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

Section 1. That this ordinance shall be known and may be cited as the “Admission, Participating and Privilege Tax Ordinance.”

Section 2. That the following words and phrases when used in this ordinance shall have the meaning ascribed to them in this section except where the context clearly indicates a different meaning:

“Amusement.” All manner and forms of entertainment, including among others, theatrical or operatic performances, concerts, video and motion picture shows, vaudeville, circuses, carnivals, fairs and side shows, all forms of entertainment at fair grounds and amusement parks;

athletic contests or diversion, including among others, wrestling matches, boxing and sparring exhibitions, football, basketball and baseball games, bowling games, skating, golfing, tennis, hockey, bathing, swimming, archery, shooting, riding, dancing, and all other forms of diversion, sport, recreation, or pastime, shows, exhibitions, contests, displays and games, juke boxes, pinball machines, video games, computer animation, and any other form of mechanical, electronic or computerized device for which admission is charged or paid or is coin operated; as well as all other methods of obtaining monetary admission charges, and upon charges made to engage in any privilege, transaction, amusement, entertainment, diversion, sport, recreation or pastime, donations, contributions, or monetary charges of any character, from the general public, or a limited or selected number thereof.

“Established Price.” Regular monetary charge of any character whatever, including donations, contributions, fixed and exacted, or in any manner fixed and received by producers, as herein defined, from the general public, or a limited or selected number thereof, directly or indirectly, for the privilege to attend or engage in any entertainment or amusement, provided that when such entertainment or amusement is conducted at any roof garden, night club, cabaret, or other place where the charge for admission or charge is made to engage in any privilege, transaction, amusement, entertainment, diversion, sport, recreation or pastime is wholly, or in part, included in the price paid for refreshment, service, or merchandise, the amount paid for admission to such amusement shall be deemed to be the amount of the cover or minimum charge, if any.

“Not-for-Profit Corporation.” Any corporation existing in good standing in accordance with the laws of the Commonwealth of Pennsylvania which is recognized as a not-for-profit corporation under Section 501(c)(3) of the Internal Revenue Code.

“Person.” Every individual person, co-partnership, association, unincorporated enterprise owned by two (2) or more persons, or corporation, domestic or foreign. Whenever used in any clause prescribing and imposing a penalty, or both, the term “person” as applied to co-partnerships or associations, shall mean the partners, or members thereof, and as applied to corporations, the officers thereof.

“Place of Amusement.” Any place, indoors or outdoors, within the Township of Upper Bern where the general public or a limited or selected number thereof, may, upon payment of an established price, attend or engage in any amusement as herein defined, including but not being limited to, theaters, opera houses, moving picture houses, amusement parks, stadiums, arenas, gymnasiums, baseball parks, bowling alleys, skating rinks, circus or carnival tents or grounds, fair grounds, halls, lodge rooms, riding academies, golf courses, bathing and swimming places, dance halls, tennis courts, archery, rifle or shotgun ranges, roof gardens, cabarets, night clubs, arcades maintaining coin operated machines, and other like places.

“Producer.” Any person, as herein defined, conducting any place of amusement, as herein defined, where the general public or a limited or selected number thereof, may, upon the payment of an established price, attend or engage in any amusement.

“Tax Collector.” Such person or persons appointed by the Board of Supervisors to administer the provisions of this ordinance and collect the permit fees and taxes provided herein.

“Temporary Amusement.” An amusement to be conducted at one location for a period of less than one (1) month.

The singular shall include the plural, and the masculine shall include the feminine and the neuter.

Section 3. (a) On and after the effective date of this ordinance, it shall be unlawful for any producer to continue to conduct, or thereafter to begin to conduct any form of amusement at any permanent or temporary place of amusement, within the Township of Upper Bern unless an amusement permit or permits shall have been issued to him as hereinafter prescribed and the tax herein imposed paid in accordance with the provisions herein made.

(b) Every producer, desiring to continue to conduct or hereafter to begin to conduct any amusement within the Township of Upper Bern, shall file an application for a permanent or temporary amusement permit or permits, as the case may be, with the Tax Collector. Every application for such permit or permits shall be made upon a form prescribed, prepared, and furnished by the Tax Collector, and shall set forth the name under which the applicant conducts or intends to conduct an amusement, whether the applicant conducts or intends to conduct a permanent or temporary form of amusement, the location of the permanent or temporary place of amusement, and such other information as the Tax Collector may require. If the applicant has or intends to have more than one place of amusement within the Township of Upper Bern, the application shall state the location of each place of amusement, and in the case of a temporary form of amusement, the date and length of time such amusement is to be conducted at each place and the name and address of the owner, lessee, or custodian of the premises upon

which such amusement is to be conducted. If the applicant is an association or a corporation, the application shall state the names and addresses of the principal officers thereof, and any other information prescribed by the Tax Collector for purposes of identification. The application shall be signed by the producer, if a natural person, and in the case of an association by a member or partner, thereof, and in the case of a corporation by an officer thereof. Any person signing the application for a permit shall be representing and verifying to the Township that he has personal knowledge of the facts contained in the permit, that he has made a good faith effort to ascertain that the facts so asserted are true and correct and that he will have personal responsibility and liability for any violations of this ordinance based on false information and/or inaccuracies contained in the permit. Any person violating the requirements of this section shall be subject to criminal prosecution for false swearing, together with any other violations of Pennsylvania law.

At the time of making such application, the applicant shall pay to the Tax Collector a permit fee of Twenty-five Dollars (\$25.00) for each temporary or annual permit.

Upon approval of the application and the payment of any permit fee or fees herein required, the Tax Collector shall grant and issue to each applicant an annual or temporary amusement permit for each place of amusement within the Township of Upper Bern, set forth in his application. Amusement permits shall not be assignable, and shall be valid only for the persons in whose names they are issued, and for the conduct or amusements at the places designated therein, and shall at all times be conspicuously displayed at the places for which they are issued. All permits for permanent places of amusement shall expire on the thirty-first day of December next succeeding the date upon which they are issued, unless sooner suspended,

surrendered, or revoked for cause by the proper authorities of the Township of Upper Bern. Permits for temporary places of amusement shall expire at the time specified therein. The producer of a temporary amusement shall notify the Tax Collector promptly of any change in the original contemplated activity, either as to date, or time, of, the conduct of the amusement at each place.

(c) That the permits issued for places of amusement, under the provisions of this ordinance, may be renewed annually before the first day of January, upon application made to the Tax Collector, and the payment of a renewal fee of Fifteen Dollars (\$15.00). Whenever any permit, issued under the provision of this ordinance, is defaced, destroyed, or lost, the Tax Collector may issue a duplicate permit to the holder of the defaced, destroyed or lost permit upon the payment of a fee of Five Dollars (\$5.00).

(d) That the Tax Collector may suspend or revoke an amusement permit as hereinafter set forth. Upon receiving notice of the suspension or revocation, the holder of the permit shall immediately surrender the permit to the tax collector. Such suspension or revocation will remain in full force and effect for the time specified by the Tax Collector unless such suspension or revocation is reversed after a hearing before the Township's Board of Supervisors, in accordance with the procedure as hereinafter set forth.

Section 4. (a) That a tax is hereby imposed upon the sale of admission to places of amusement and upon charges made to engage in any privilege, transaction, amusement, entertainment, diversion, sport, recreation or pastime at the rate of five percent (5%) of the

established price charged the general public, or a limited or selected group thereof, by any producer for such admission or charges, which shall be paid by the person acquiring the same.

(b) That in the case of a person (except bona fide employees of a producer, or municipal or State officers on official business or totally blind persons or school children who have not yet graduated from high school and as a school project are admitted free to places of amusement or permitted to engage in, without charge, any privilege, etc., as herein set forth) admitted free or at reduced rates to any place of amusement or reduced rates for any charges made to engage in any privilege, transaction, amusement, entertainment, diversion, sport, recreation or pastime, at a time when and under circumstances under which an established price is charged to other persons, the tax, imposed by this ordinance, shall be computed on the established price charged to such other persons of the same class for the same or similar accommodations, to be paid by the person so admitted or charged.

(c) That in the case of persons having the permanent use of boxes or seats in any place of amusement, or a lease for the use of such box or seat in such place of amusement, the tax, imposed by this ordinance, shall be computed on the established price for which a similar box or seat is sold for each performance or exhibition, at which the box or seat is used or reserved by or for the lessee or holder, such tax to be paid by the lessee or holder.

Section 5. (a) That producers shall collect the tax imposed by this ordinance and shall be liable to the Township of Upper Bern as agents thereof for the payment of the same into the Township Treasury through the Tax Collector, as hereinafter provided in this ordinance.

(b) That where permits are obtained for conducting temporary amusements by persons who are not the owners, lessees, or custodians of the places where the amusements are to be conducted or where the temporary amusement is permitted by the owner, lessee or custodian of any place, to be conducted without the procurement of a permit or permits required by this ordinance, the tax, imposed by this ordinance, shall be paid by the owner, lessee or custodian of such place where such temporary amusement is held or conducted, unless paid by the producer conducting the amusement.

Section 6. (a) That for the purpose of ascertaining the amount of tax payable by the producers to the Township of Upper Bern, it shall be the duty of:

(1) Every producer, except as hereinafter provided, conducting a place of amusement to transmit to the Tax Collector on a form prescribed and prepared by him, a report of the amount of tax collected by him during the preceding month, on or before the tenth (10th) day of each month after the effective date of this ordinance. Along with the report, the amount of taxes collected for the preceding month shall be paid.

(2) Every producer, conducting a temporary place of amusement shall file a report and pay the tax due to the Tax Collector, or his duly authorized agent, within ten days after the event or amusement is held, or at such other time as prescribed by the Tax Collector on the permit.

(3) Every report submitted by a producer shall be verified that the information submitted on the report is true and correct to this best of his knowledge, information and belief and shall also represent that the person executing the verification has personally

reviewed the information set forth in the report and that the verification is based on that personal inspection.

(b) That all reports required under this section shall show such information as the Tax Collector shall prescribe. The Tax Collector shall have the authority to demand additional information from a producer whenever the Tax Collector deems it necessary and appropriate to verify the information submitted by the producer on either the permit or the report.

(c) That any producer, who shall fail to make payment of the tax at the time of filing the report, as hereinabove set forth, shall be penalized by having the tax rate increased to ten percent (10%). In addition, any and all such overdue taxes shall bear interest at the rate of one and one-half percent (1-1/2%) per month from the date that such tax is due and payable until paid.

Section 7. That if any producer shall neglect or refuse to make any report or payment as herein required, the Township shall have the power to pursue the payment of such tax, together with any interest and penalties by any legal means allowed for collection within the Commonwealth of Pennsylvania, including, but not limited to, the filing of a municipal lien or pursuing an action for either equitable and/or legal relief.

Section 8. That if the Tax Collector is not satisfied with the report and payment of tax made by any producer under the provisions of this ordinance, he is hereby authorized and empowered to make a determination of the tax due by such producer, based upon the facts contained in the report, or upon any information within his possession, or that shall come into his possession, and for this purpose, the Tax Collector of the Township of Upper Bern is authorized

to examine the books, papers, tickets, ticket stubs and records of any producer, taxable under this ordinance, to verify the accuracy of any report or payment made under the provisions thereof or to ascertain whether the taxes imposed by this ordinance have been paid.

Section 9. That if any producer shall neglect or refuse to make any report and payment of tax required by this ordinance, or if, as a result of an investigation by the Tax Collector, a report is found to be incorrect, the Tax Collector shall estimate the tax due by such producer, and determine the amount due by him for taxes, penalties and interest thereon. The producer shall provide any and all documentation and/or information reasonably requested by the Tax Collector for the purposes of determining the truth and accuracy of the permit, any report and/or the amount of taxes paid. The application for the issuance of a permit, and the acceptance of the permit by the producer, shall constitute producer's consent to provide all such documentation requested by the Tax Collector and shall also constitute consent to enter the producer's place of amusement by the Tax Collector or any other authorized representative of the Township to inspect the premises and determine the accuracy of the information supplied and taxes paid. Failure to produce any such documentation, or allow any such inspections, shall constitute a violation of this ordinance and result in the immediate revocation of the permit..

Section 10. That all taxes, interest and penalties collected or received under the provisions of this ordinance shall be paid into the Treasury of the Township of Upper Bern for the use and benefit of the Township of Upper Bern.

Section 11. That the Tax Collector shall require a permit for any applicant which is a not-for-profit corporation, but shall waive any tax, penalty or interest due on account of

fundraising activities by the not-for-profit corporation. Except for the requirement of the payment of tax, interest and penalties as herein set forth, the provisions of this Ordinance shall fully apply to not-for-profit corporations and/or organizations.

Section 12. That the Tax Collector is hereby authorized to require any applicant to post a cash bond or letter of credit for any applicant to receive a permit under the provisions of this Ordinance when, in the Tax Collector's discretion, the Tax Collector believes that such a bond or letter of credit is necessary to guarantee payment of any tax due. For the purposes of determining the amount of bond or letter of credit necessary, the Tax Collector shall estimate the potential tax revenue to be generated through the permit being requested by the applicant. Such bond or letter of credit may be in an amount up to twice the amount of tax revenue estimated to be generated through the issuance of the permit.

Section 13. That the Tax Collector is hereby authorized and directed to make and keep such records, prepare such forms and take such other measures as may be necessary or convenient to carry this ordinance into effect and may, in his discretion, require reasonable deposits to be made by applicants for temporary permits.

Section 14. That the provisions of this ordinance are severable, and if any of its provisions or exceptions shall be held illegal, invalid or unconstitutional, the decision of the Court shall not affect or impair any of the remaining provisions of this ordinance. It is hereby declared to be the legislative intent that this ordinance would have been adopted if such illegal, invalid or unconstitutional provisions or exemptions had not been included herein.

Section 15. (a) That the Tax Collector shall have the right to suspend and/or revoke any permit issued under this ordinance. In the event of a first violation of any term or condition, the Tax Collector shall suspend the producer's permit after giving the producer five (5) days written notice to comply with the violation. If the violation has not been cured within the five day written notice, then and in that event, the permit shall be suspended until compliance has been made and written notice of such compliance is given by the Tax Collector to the producer.

(b) In the event of a second violation within five (5) years from the date of the first violation, the Tax Collector shall suspend the producer's permit if the violation is not cured within five days from the date of written notification of the violation sent by the Tax Collector to the producer. Such suspension shall remain in effect for a period of thirty (30) days following the date that the producer complies with the violation notice provided by the Tax Collector.

(c) In the event of a third violation within five (5) years from the date of the initial violation, the Tax Collector shall revoke the producer's permit for a period of one year from the date that the producer complies with the Tax Collector's notification of violation.

(d) No permit suspension shall be lifted by the Tax Collector as long as the violation remains in effect.

Section 16. Any person who is subject to any of the penalties, fines, costs, suspensions, and/or revocations as herein set forth, shall have the right to appeal the action of the Tax Collector by requesting a hearing before the Township Board of Supervisors. Such aggrieved person shall make such request within ten (10) days of receiving a notice of violation from the

Tax Collector. Said notice must be sent in writing to the Township Secretary. If a timely notice is received by the Township Secretary, a hearing will be provided to the aggrieved party within thirty (30) days from the date that the notice is received. At the time that the aggrieved party requests such a hearing, he or she shall deposit with the Township Secretary a fund presently established at Seven Hundred Fifty Dollars (\$750.00) to be used to pay the expenses for the hearing so requested, including the costs of transcription of the notes of testimony, counsel fees for the Board of Supervisors as well as the Tax Collector. Said escrow fund may be increased from time to time by resolution of the Township Supervisors. Failure to pay said sum shall be deemed a waiver of the aggrieved party's right to a hearing and in such event the decision of the Tax Collector shall be final.

(a) The hearing requested by the aggrieved party shall be opened to the general public in accordance with the Pennsylvania Sunshine Act.

(b) The aggrieved party shall have the burden of going forward in any such hearing and will have to establish that the Tax Collector's actions were arbitrary and capricious. A decision by the Township Supervisors shall be provided in writing within thirty days from the date that the hearing is concluded. The decision of the Township Supervisors shall be binding on the Tax Collector and the Township. The aggrieved party, however, may file an appeal from the decision with the Berks County Court of Common Pleas within thirty days from the date of the written decision of the Township Supervisors. In such event the appellate review shall be limited to determining if the Township Supervisors abused their discretion in rendering their opinion.

Section 17. In addition to any of the additional costs as herein set forth, any person who shall violate any term or condition of this ordinance shall be required to reimburse the Township for all reasonable legal fees expended by the Township and/or the Tax Collector in pursuing such violation(s). Failure of producer to reimburse the Township and/or Tax Collector of such legal fees within thirty days after receiving notification of the fees shall be grounds for immediate suspension or revocation as hereinabove set forth.

Section 18. That Ordinance No. 1 of 1964 of Upper Bern Township as herein amended is hereby ratified and confirmed.

Section 19. Any provision of any ordinance inconsistent with the provisions of this ordinance shall be repealed to the extent of the inconsistency.

Enacted and ordained this 3 day of Dec, 1997.

BOARD OF SUPERVISORS
UPPER BERN TOWNSHIP

Tom Restack

[Signature]

[Signature]

Attest: [Signature]
Secretary