

HICKORY TOWNSHIP
LAWRENCE COUNTY, PA

ORDINANCE NO. 2019- 1

AN ORDINANCE OF THE TOWNSHIP OF HICKORY, LAWRENCE COUNTY, PENNSYLVANIA REPEALING THE HICKORY TOWNSHIP AMUSEMENT TAX ORDINANCE NO. 4 OF 1993 AS AMENDED AND ENACTING A NEW ORDINANCE PROVIDING FOR AN AMUSEMENT TAX

WHEREAS, the Township of Hickory (the "Township") adopted the Amusement Tax Ordinance No. 4 of 1993; and

WHEREAS, the Board of Supervisors for the Township of Hickory, Lawrence County, Pennsylvania deems it to be in the best interest and the general welfare of the citizens and residents of the Township to repeal the "Hickory Township Amusement Tax Ordinance No. 4 of 1993", and enact a new amusement tax for general revenue purposes.

NOW THEREFORE, BE IT ENACTED AND ORDAINED by the Board of Supervisors for the Township of Hickory, Lawrence County, Pennsylvania, by virtue and power and authority vested in said Board of Supervisors as follows:

SECTION 1: The Hickory Township Amusement Tax Ordinance No. 4 of 1993 is hereby repealed in its entirety.

SECTION 2: Authority for enactment.

This Part is enacted under authority of the Local Tax Enabling Act, P.L. 1257, No. 511, December 31, 1965, 53 P.S. § 6901 et seq., as hereafter amended, supplemented, modified or reenacted by the General Assembly of Pennsylvania.

SECTION 3: Definitions and word usage.

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

ADMISSION. Monetary charges of any character, including, but not limited to, contributions, donations, dues, or membership fees, periodic or otherwise, charges for the privilege of attending or viewing amusements, parking fees and online sales.

AMUSEMENT. All manner and form of entertainment, amusement, recreation, education, exhibition, or sport including, but not limited to, theatrical performances, lectures, motion picture exhibitions, historical exhibitions, and/or displays, swimming or bathing pools, either natural or man-made, amusement parks, museums, golf courses, stadia, circus, carnivals, fairgrounds, campgrounds (including but not limited to those subject to periodic admission or admission on a timeshare basis), athletic events, sporting tournaments, admissions to dances, musicals or concerts including "cover" charges to such activities, and all other forms and manner of sport, recreation, pastime, diversion or edification. Amusement shall not include activities

that take place solely within a public street right of way and which do not originate or end within Hickory Township.

AMUSEMENT FACILITY. The physical site of building upon or within which the amusement takes place and to which admission or participation fees are charged for entry thereto.

PARTICIPATION FEE. Monetary charges of any character, including contributions, donations dues or membership fees, periodic or otherwise, charged for the privilege of engaging in amusements as defined herein; provided a participation fee shall not include tax added or charges expressly subject to the Tax Reform Code of 1971, P.L. 6, No. 2, March 4, 1971, 71 P.S. §7101 et seq. as hereafter amended, supplemental modified or reenacted by the General Assembly of Pennsylvania.

PERSON. Every natural person, co-partnership, association, joint venture or corporation. Whenever used in a clause prescribing and imposing a penalty, the term " person" as applied to co-partnerships, associations or joint ventures shall mean the partners or members thereof; and as applied to corporations shall mean the officers thereof.

B. If applicable, the singular shall include the plural and the plural shall include the singular; the masculine shall include the feminine.

SECTION 4: Imposition of tax.

A. A tax is hereby imposed for general revenue purposes at:

1. The rate of 7% of the admission price or participation fee to each and every amusement within the Township of Hickory for which the individual price of admission is \$1.00 or more.

B. Where the admission price or participation fee is not fixed or established, the tax shall be collected based upon the gross admission fee, gross participation fee, or fees collected.

[Example: Where a donation of an unestablished amount is requested to attend or participate in an event, the tax will be based on the gross amount of donations collected.]

C. Where the price of admission or participation fee is wholly or in part included in the price paid for parking, refreshment, service and/or merchandise, where purchase of such parking, refreshment, service or merchandise is required as a condition for admission or participation, the taxable price shall be deemed to be 100% of the price paid for parking, refreshment, service and/or merchandise.

[Example: Where a person is required to pay a set price for combined items (i.e. \$20 for admission or participation and a t-shirt and soft drink), the tax is based on 100% of the price paid for combined items.]

SECTION 5: Exemption.

- A. The tax imposed by this Part shall not apply to admission to or participation in any form of amusement which involves participation of students, and which is sponsored, organized, and promoted by, and whose benefits inure to a charitable, religious, civic or non-profit educational organization whose status is evidenced by proof of Internal Revenue Service tax exemption, public school(s) or public school district(s) within the Commonwealth of Pennsylvania or a nonprofit organization created and operated to coordinate such events, such as the Pennsylvania Interscholastic Athletic Association, public school athletic booster events, parent-teacher organization events or organization(s) or association(s) comprised of public school official or public school educators, if a majority of the members of such nonprofit organization consist of public schools or public school districts, public school official or public school educators. Nor shall the tax imposed by this Part apply to admission or participation in any form of amusement which operated by a "local agency" (as contemplated by the Political Subdivision Tort Claims Act, 42 Pa.C.S.A §§8541-8564). The Township shall determine in its sole discretion when an exemption may be applicable.

SECTION 6: Permit required.

- A. After the effective date of this Part, any person desiring to conduct or continue to conduct any amusement, the price of admission to or participation in which is subject to tax under this Part, shall file with Township an application for either a permanent amusement permit or a temporary amusement permit, as the case may be. If the owner of the facility in which the amusement is to be held or take place is different from the person desiring to conduct or continue to conduct the amusement, the application shall be filed by the party conducting the amusement. In the case of any amusement that is to continue for longer than 10 days, a permanent amusement permit shall be issued.

In the case of any amusement that is to continue for 10 days or less, a temporary permit shall be issued, subject to subsection D. below.

[Example: An organization desires to conduct a dog show to which admission will be charged at a hotel. The owner of the hotel is not the organizer of the dog show. The dog show organizer must sign the amusement permit application.]

- B. The application shall be on such form as the Township shall prescribe and shall include the following requests for information:
- 1) The proper legal name and address of the person conducting the amusement.
 - 2) The proper legal name and address of the person owning the facility in which the amusement is to be conducted.
 - 3) The type of permit being applied for.
 - 4) The location of the amusement covered by the permit.
 - 5) The admission price or prices charged to be charged.
 - 6) The approximate total receipts anticipated.
 - 7) The names and address of copartners, members and/or officers of the person conducting the amusement.
 - 8) Type/description of amusement.

9) Period for which the permit is to be issued. If the application is filed by a corporation, it shall be signed by two officers. If the application is filed by a co-partnership, association or joint venture, the application shall be signed by all partners and members.

- C. Upon receipt of properly completed and executed application, and subject to compliance with subsection D below, the township shall issue the applicable permit which shall be in such form as the Board of Supervisors shall determine.

SECTION 7: Permit expiration.

A permanent permit shall remain in effect until terminated by the holder or upon 10 days' written notice from the Township or its designated Tax Collector. A temporary permit shall be through until the last day the amusement is conducted.

SECTION 8: Payment of tax due; report to be submitted by permit holders.

- A. Every holder if a temporary permit, which shall include the owner of the facility and the party conducting the amusement, shall within 10 days after the close of the amusement, pay over to the appointed Amusement Tax Collector the amount of tax due from such person under this Part upon the admission or participation for such amusement, and at the same time shall submit to the appointed Amusement Tax Collector a report of the total admission or participation fees charged and/or collected for the amusement and total amount of tax due on such admission or participation. On the day of expiration of such temporary permit, the person(s) holding the permit shall, in addition, submit a report to the appointed Amusement Tax Collector, under oath or affirmation, of all admission or participation charged or collected during the period in which such temporary permit was in effect and of all taxes due and paid.
- B. Every holder if a permanent permit, which shall include the owner of the facility and the party conducting the amusement shall, on or before the last day of each month, unless special arrangements are approved by the Township, pay over to the appointed Amusement Tax Collector the amount of tax due from such person, under this Part, upon admission or participation for the preceding collection period (the last day or preceding month through the next to last day to the then current month), and at the same time shall submit to the appointed Amusement Tax Collector, under oath or affirmation, a report of the total taxable admission or participation fees charged or collected during such collection period and the total amount of the tax due on such admission or participation. If the last day of the month falls on a holiday or weekend day, or a day which the Amusement Tax Collector's office is closed, that tax shall be paid on the following business day.
- C. **In the event the owner of the facility is not identical to the party conducting the amusement, each party shall be fully responsible for proper reporting of tax due and payment of the tax due.**

SECTION 9: Appointment and duties of Amusement Tax Collector.

- A. The Board of Supervisors shall appoint, from time to time, an Amusement Tax Collector for the tax imposed by this Part. The Amusement Tax Collector is charged with the duties of collecting and receiving taxes, fine and penalties imposed by this Part. It shall be its duty to keep a record showing the amount received by it, from received and the date of such receipt.
- B. The Amusement Tax Collector and its duly appointed agents are hereby empowered with the approval of the board of Supervisors for the Township of Hickory to prescribe, adopt and promulgate rules and regulations relating to any matter pertaining to the administration and enforcement of the Part, and are charged with enforcing the provision of this Part and any rules and/or regulations promulgated pursuant hereto.
- C. If any person required to secure a permit under this Ordinance shall fail to file a report at the time specified herein or shall file a report which in its face appears incorrect or insufficient, the Amusement Tax Collector or its duly appointed agents shall assess said person or persons amount of tax which said Amusement Tax Collector or its agents deem reasonable and appropriate. In all cases assessment, the Amusement Tax Collector or its duly appointed agents shall give the parties assessed a notice in which shall be stated the amount of the tax imposed or levied.
- D. Every holder of an amusement permit shall keep and maintain complete records showing daily admission charged or collected, the amount of tax due and any other information necessary to determine the amount of tax due. Said records shall be retained by the holder of an amusement permit for a three-year period following payment of the tax.
- E. Audit. Each person operating an activity or place of amusement as defined herein within Hickory Township shall keep an accurate record of all ADMISSION or PARTICIPATION fees charged or collected and the Township, shall have access to the books and records relating to the number of ADMISSION or PARTICIPATION fees charged or collected by the person conducting such activity or place of ADMISSION , at a reasonable time for the purpose of verifying and ascertaining the number of ADMISSION or PARTICIPATION fees received, charged, or collected by such person, provided that any information gained by the Township, as a result of any reports, investigations or verification required or authorized by this Part shall be confidential except for the official purposes, and any disclosure of any information contrary to the provisions of this Section shall constitute a violation of this part.
- F. Any person aggrieved by any decision of the Amusement Tax Collector shall have the right to appeal to the Court of Common Pleas of Lawrence County.

SECTION 10: Unauthorized disclosure.

- A. Any information gained by the Township of the Amusement Tax Collector, or any other official or agent of the Township as a result of any returns, investigations or verifications required, or authorized by this Ordinance, shall be confidential, except for official purposes, and except in accordance with proper judicial order, or as otherwise provided by law.

SECTION 11: Violations and penalties; enforcement.

- A. If any person shall fail to pay, when due, tax due under this Ordinance, a penalty of 10% of the amount of tax due and unpaid shall be added thereto.
- B. Enforcement and remedies.
 - 1) Enforcement notice.
 - a. If it appears to the Township that violation of this Ordinance has occurred, the Township shall initiate enforcement proceedings by sending an enforcement notice as provided in this section.
 - b. The enforcement notice shall be sent to the violator and, if applicable, the owner of record of the parcel on which the violation has occurred, to any person who has filed a written request and is authorized to receive enforcement notices regarding that parcel and to any other person requested in writing by the owner of record.
 - 2) Enforcement remedies.
 - a. Violations and penalties. Any person, partnership or corporation who or which has violated or permitted the violation of the provisions of this Ordinance shall, upon being found liable thereof in a civil enforcement proceeding commenced by the Township, pay a judgement of not more than \$1,000 plus all court costs, including reasonable attorney fees incurred by the Township as a result thereof. No judgement shall commence or be imposed, levied or payable until the date of the determination of a violation by the district justice. If the defendant neither pays nor timely appeals the judgment, the Township may enforce the judgement pursuant to the applicable rules of civil procedure. Each day that a violation continues or each section of this Ordinance which shall be found to have been violated shall constitute a separate violation.
 - b. 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.
 - c. District justices shall have initial jurisdiction over proceedings brought under this section.
- C. If any person shall fail to pay the tax due, interest shall accrue thereon at the rate of 1% per month, on any portion thereof, for which said tax remains due and unpaid.
- D. If any reason the tax is not paid when due and suit is brought for recovery of the tax, the person liable therefore, in addition, shall be liable for the cost of collection, interest and penalties herein imposed and reasonable attorney fees.

SECTION 12: Applicability. This Ordinance shall not apply to any person or property as to whom or which it is beyond the legal power of the said Township to impose this tax or the duties herein provided for.

SECTION 13: Repeal. All provisions of previous Ordinances of the Township of Hickory, which are contrary to this Ordinance, are expressly repealed.

SECTION 14: Severability. The provisions of this Ordinance shall be severable. If any of its provisions shall be held to be unconstitutional, illegal or otherwise invalid, that decision shall not affect the remaining provision of this Ordinance of the Code of the Township of Hickory.

SECTION 15: Saving Clause. In all other respects, the Code of the Township of Hickory shall remain as previously enacted and ordained.

SECTION 16: Effective Date. This Ordinance shall take effect on March 5, 2019.

ENACTED AND ORDAINED THIS 4th DAY OF MARCH, 2019

Hickory Township
Board of Supervisors
Lawrence County, Pennsylvania

ATTEST:


Secretary


Chairperson


Member


Member