

ORDINANCE NO. 14-2017

ORDINANCE OF THE TOWNSHIP OF LIVINGSTON AMENDING AND SUPPLEMENTING CHAPTER 227 PROPERTY MAINTENANCE REGULATING THE PLANTING, GROWING, MAINTENANCE AND/OR CULTIVATING OF BAMBOO

BE IT ORDAINED by the Township Council of the Township of Livingston, in the County of Essex, State of New Jersey as follows:

SECTION 1. Purpose.

This Ordinance is adopted to control the planting, growing and cultivation and maintenance of bamboo within and/or involving the Township, in order to protect and promote the public health, safety and welfare through the restriction and prohibition of new plantings of bamboo and the maintenance of existing plantings of bamboo.

SECTION 2. Chapter 227 of the Code of the Township of Livingston as amended as follows:

§227-2. Definitions.

*Bamboo. Any tall tree-like tropical or semi-tropical fast-growing grass of the genus Bambusa, having hollow woody-wall stems with ring joints and edible young shoots (bamboo shoots), including all types of bamboo.*

*Bamboo Owner. Any owner of property where Bamboo exists as of the Effective Date.*

*Rhizome. A horizontal underground plant stem capable of producing the bud, shoot and root systems of a new plant.*

*Rhizome Barrier. An impervious root barrier that is either (i) made of 60 mil to 80 mil thick polyethylene sheet buried 22" to 34" deep with a lip of at least 2" above ground, or (ii) a solid reinforced concrete container with no drainage holes or (iii) another material not subject to rot, rust, cracking under normal but extended use, and which is impervious to penetration by Bamboo Rhizomes.*

*Invading Plants. Bamboo whose Rhizomes originate from a culm, bud or shoot located on one property and which have grown to encroach upon another property. Any Bamboo found (1) on a property which has no other Bamboo likely to be the source, and (2) whose Rhizomes emanate from the direction of an adjoining property which has Bamboo growth that is more mature than the Bamboo that is believed to be a result of encroachment, shall be presumed an Invading Plant and the owner of the property on which the more mature Bamboo is located shall be presumed the owner of such Invading Plants, even if the Rhizomes cannot be entirely traced to the source plant.*

§227-26. *Bamboo.*

*A. Regulation of Planting, Growing and/or Cultivating of Bamboo*

- 1. No person, resident, citizen, property owner, occupant and/or tenant of property located within the Township shall plant, cultivate or cause to grow any Bamboo on any lot, plot or parcel of ground anywhere within the geographic boundaries of the Township, except under the following circumstances:*
  - a. Where the root system of such Bamboo is entirely contained within an above ground level planter, barrel or other vessel of such design, material and location as to entirely prevent the spread or growth of the Bamboo's root system beyond the container in which it is planted, and located, trimmed and maintained such that no part of the plant shall cross any property line, structure, utility line or swimming pool at any time.*
  - b. Where planted in the ground within a Rhizome Barrier and located, trimmed and maintained such that no part of the plant shall cross any property line, structure, utility line or swimming pool at any time.*
  - c. Where Bamboo has been planted prior to the Effective Date and the owner, occupant or operator complies with §227-26(B)(1) below, and trims and maintains such that no part of the plant shall cross any property line, structure, utility line or swimming pool at any time .*

*Notwithstanding compliance with this §227-26(A)(1), any property owner that plants, cultivates or causes to grow any Bamboo shall be responsible for trimming and maintaining the Bamboo such that no part of the plant shall cross any property line, structure, utility line or swimming pool at any time.*

- 2. Planting of Bamboo in a buried planter or other ground level container is prohibited unless it is planted in a Rhizome Barrier.*

*B. Maintenance and Remediation for Existing Bamboo Stands*

- 1. Where Bamboo exists prior to the Effective Date, such Bamboo Owner must, within 90 days of the Effective Date of this Ordinance or within such reasonable additional time as the Building Department may allow due to weather or other extenuating circumstances, (i) place the Bamboo Rhizome completely within a Rhizome Barrier, or (ii) remove such Bamboo.*
- 2. The owner of an Invading Plant(s) shall be liable for any damages caused to any property by such Bamboo, including, but not limited to, the cost of removal of any*

*Bamboo that grows on the affected property, PROVIDED THAT such encroachment occurs after the Effective Date.*

*C. Complaint Notice, Order for Removal and Compliance.*

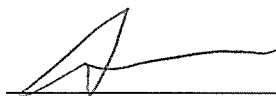
- 1. Whenever a complaint is received by the Township regarding the planting, growing, maintenance or encroachment of any Bamboo, or whenever the Township, on its own observation and/or inspection, determines that there have been prohibited plantings of Bamboo, a failure to erect and maintain a proper barrier and to trim and maintain the Bamboo to prevent such Bamboo from growing beyond the permitted boundaries and/or there is encroachment of Bamboo on the property of another land owner as described in §227-26(B)(2) above, occupant or tenant in the possession of the property, the Township shall call notice to be served on the responsible party and the following actions shall occur:
  - a. The Notice shall be mailed by Certified Mail, Return Receipt Requested, properly addressed with sufficient postage and also by First Class mail. Notice by Certified Mail shall be deemed complete on the date of personal delivery or the date the Certified Mail is marked refused or unclaimed or otherwise undelivered by the United States Post Office. First Class mail shall be deemed delivered within 5 calendar days of it being mailed by the Township.*
  - b. The Notice shall specify the nature of the violation(s).*
  - c. The Notice shall state that the violation(s) must be corrected to comply with the ordinance within 60 calendar days from the date of the received or returned mailing.*
  - d. The Notice shall state specifically what must be done by the responsible party to cure the violation(s).**
- 2. If the responsible party shall fail to mitigate the violation within the time specified in the Notice, a Complaint alleging the violation shall be filed with the Livingston Municipal Court and, upon conviction, the penalties imposed by this Ordinance shall be assessed on a daily basis.*

*D. Violations and Penalties.*

*Any person determined by the Livingston Municipal Court to have violated this Ordinance shall be subject to a fine, imprisonment or community service as provided in § 1-7, General Penalty, of Chapter 1. Each day of a continued violation shall constitute a separate offense for which an additional fine can be levied.*

- 1. If the violation is not remedied within 180 days, the Township is hereby authorized to remove or have removed any encroaching Bamboo and to take reasonable steps to eradicate the re-growth of such plant and/or roots on the property impacted by the same, including any public rights of way, including but not limited to sidewalks, structures, utilities, and to restore such feature to its normal condition, prior to the removal and eradication.*
- 2. The cost of any such corrective action together with any civil penalties, legal fees and other costs shall be recoverable from the responsible party once a court of competent jurisdiction has made a determination of responsibility.*
- 3. Nothing herein shall be interpreted as limiting the rights of a private property owner to seek civil relief through a court of proper jurisdiction, nor the institution of civil proceedings against proper parties, including such actions arising out of Bamboo that has spread to adjacent or nearby properties either before or after this Ordinance is adopted.*

SECTION 3. Except as hereby amended, the Code of the Township of Livingston shall remain in full force and effect.

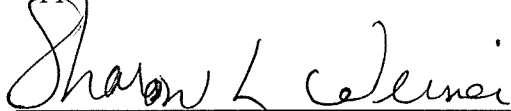


SHAWN R. KLEIN, Mayor



GLENN R. TURTLETAUB, Township Clerk

Approved as to form:



SHARON L. WEINER, Township Attorney

Introduced: May 1, 2017

Adopted: May 22, 2017