

BOROUGH OF EATONTOWN
COUNTY OF MONMOUTH, STATE OF NEW JERSEY

AN ORDINANCE OF THE BOROUGH OF EATONTOWN ESTABLISHING CHAPTER 251 OF THE CODE OF THE BOROUGH OF EATONTOWN, ENTITLED, "REGULATION OF BAMBOO IN THE BOROUGH OF EATONTOWN"

WHEREAS, the Mayor and Council of the Borough of seeks to establish minimum standards to govern the existence of Bamboo for all properties located in the Borough of Eatontown; and

WHEREAS, the Borough adopts these regulations for the purpose and intent of promoting the health, safety and welfare of the public and any properties not regulated by any other Statute, Rule or Ordinance; and

WHEREAS, certain provisions are necessary to establish enforcement of the regulations and standards governing properties in the Borough of Eatontown.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Council of the Borough of Eatontown, County of Monmouth and State of New Jersey that the following provisions shall govern the growth, planting, confinement and removal and remediation of Bamboo in the Borough of Eatontown as part of Chapter 251 of the Borough of Eatontown:

CHAPTER 251

REGULATION OF BAMBOO IN THE BOROUGH OF EATONTOWN

§251-1. Definitions.

- A. **Bamboo.** Shall mean all native and non-native variations of the plant commonly known as Bamboo. To that extent, there shall be no distinction between various types of Bamboo or named type of Bamboo.
- B. **Bamboo Property Owner(s).** Shall mean any property owner(s) or tenant(s) or person or entity in control of property or his or her agent, who, or which, have Bamboo on their property, even if the Bamboo has spread onto their property from an adjoining property.
- C. **Buffer Zone.** Shall mean a distance of at least 100 feet from any property line; lane; street; avenue; road, whether public or private, from any neighboring property, whichever is more restrictive to the Bamboo property owner(s).
- D. **Borough.** Shall mean the Borough of Eatontown, County of Monmouth and State of New Jersey.
- E. **Notice.** Shall mean any written Notice of Violation by, from or on behalf of the Borough of Eatontown notifying the Bamboo property owner(s) that they are in violation of this Ordinance and directing them to cure or fix the violation. Such Notice shall be sent by Certified Mail/RRR and regular mail addressed to the owner(s) listed on the current tax address on file in the Borough or Landlord/Tenant Registration Statement or Mercantile License on file in the Borough. A copy shall also be posted on the property in question.
- F. **Receipt of Notice.** Shall mean receipt of the Notice required herein shall be the date of mailing said Notice, or if applicable, posting of the Notice on the property in question; whichever is earlier.

§251-2 No Planting of Bamboo.

- A. As of the adoption of this Ordinance, planting of any Bamboo is prohibited in the Borough of Eatontown.
- B. Any existing Bamboo may not be replaced or replanted after any such existing Bamboo has died or been removed.
- C. Any person who plants or replants Bamboo within the Borough of Eatontown, after the effective date of this Ordinance shall be in violation of this Ordinance and shall be subject to the penalties set forth herein.
- D. All existing Bamboo, existing prior to the enactment of this Ordinance shall be trimmed and maintained so that no part of the plant or plants shall be closer than 100 feet from the property line.

§251-3 Regulation of and Limitation on Existing Bamboo.

A. Any Bamboo already in existence on any property within the Borough's limits as of the effective date of this Ordinance may remain on such property; subject to the following regulations:

1. Bamboo shall not be permitted to exist within any Buffer Zone as defined by this Ordinance or to spread to adjoining properties.
2. Bamboo Property Owners(s), and/or tenant, person or entity in control or his or her agent shall take all necessary measures to ensure that any Bamboo on the property does not exist within any Buffer Zone. Such measures shall include but not be limited to cutting down the Bamboo existing in the Buffer Zone and physically removing or poisoning the Rhizomes or spraying any regrowth for several years or until the Bamboo is dead, and, if Bamboo is permitted to remain outside of the Buffer Zone, installing sheathing comprised of metal and other impenetrable material and place no less than 100 feet from the property line at a sufficient depth to prevent any growth of Bamboo within any Buffer Zone.
3. In addition to the Buffer Zone, and any adjoining properties, as stated by this Ordinance, Bamboo shall not be allowed in municipal right-of-ways, conservation easements or municipal property no matter what distance from the property line.
4. This Ordinance shall not be deemed to alter any rights at Common Law or otherwise that any property owner(s) may have to recover the cost of removal of Bamboo on their own property from another property owner from whose property the Bamboo has spread.

§251-4 Removal of Bamboo.

If Bamboo on any property grows in or into any Buffer Zone or any adjoining property, the Borough shall give Notice to the Bamboo's property owner(s), and/or tenants or person or entity in control or their agents as required by this Ordinance, that the said property owner(s), and/or tenants or person or entity in control or their agents are responsible for the extermination or removal of such Bamboo from the Buffer Zone, and/or with the consent of the adjoining property owner removal, remediation and restoration of the adjoining property to its natural state prior to the growth of Bamboo.

§251-5 Inspection.

All places and premises in the Borough of Eatontown shall be subject to inspection by the Borough Code Enforcement Officer or other designated Borough Enforcement Officer designated in compliance with this Ordinance.

§251-6 Notice of Failure to Comply with Property Maintenance Ordinance.

The Borough Code Enforcement Officer or other designated, authorized Borough Enforcement Officer, in writing, as defined in the Ordinance shall deliver to the owner(s), and/or tenant or person or entity in control of the subject property or the agent of the owner(s) and/or tenant or person in control or entity advising him/her or the entity of the particular violation. The owner(s), and/or tenant, person or entity shall have thirty (30) days from the date of receipt of said Notice to commence extermination or removal and remediation of all Bamboo, which is in violation of this Ordinance, as noted in the Notice of Violation, with completion of all the aforesaid actions and restoration of the property to its prior natural status without the Bamboo at his/her/its sole cost and expense within ninety (90) days of commencement. Said Notice shall serve as a continuing Notice for the remainder of the calendar year, and the Borough may, without further Notice, take action in accordance with this Ordinance.

§251-7 Hardship Appeal for Extension of Time.

Any party who needs to take action as a result of §251-6, but is able to demonstrate that he/she/it, after a good faith effort to complete all of the aforesaid actions within ninety (90) days is unable to do so, said party may file a Notice of Appeal within ten (10) days following the ninety (90) day period of completion, to the Borough Administrator to seek a temporary extension of time to complete all extermination, removal, remediation and/or restoration as required by the Notice of Violation. Such an extension shall only be granted after proof of good faith efforts to complete all of the aforesaid actions within ninety (90) days, without success. Should the Borough Administrator deny the appeal, a final appeal may be made to the Mayor and Council within ten (10) days of the Administrator's denial. During all such appeals, actions of enforcement of this Ordinance shall be stayed until the appeal process is completed. A grant of an extension of time shall provide a limited time for completion and not an exemption from completion.

§251-8 Failure or Refusal to Comply with the Ordinance.

Upon failure, neglect or refusal of any owner(s) and/or tenant or person or entity in control or his/her or its agent to remediate existence of Bamboo located on the owner(s), and/or tenants or person or entity in control or their agents property in violation of this Ordinance, or on adjoining property owners' property upon consent to remediate, and to restore the adjoining property owner(s) property in order to correct the conditions in violation of this Ordinance within the time period prescribed above, then the Borough is authorized to take all actions prescribed by this Ordinance as against the violating owner(s) and/or tenants or person or entity in control or their agents. All remediation shall also include proper restoration of the subject property to its natural state without Bamboo.

§251-9 Violations and Penalties.

- A. Whenever Bamboo, as defined by this Ordinance , is found planted in the ground or any plot of land, lot or any other premises or place in violation of this Ordinance, a Notice of Violation shall be issued, pursuant to §251-6.
- B. The cost of abatement and restoration shall be borne by the Bamboo's Property Owner(s), and or tenant, person or entity in control, or their agent.
- C. If the Bamboo's Property Owner(s), and/or tenant or person or entity in control fails to comply with such Notice of Violation, subject to any period of appeal, the Borough Code Enforcement Officer or other designated authorized Borough Enforcement Officer under all circumstances may issue a Summons and seek the fines provided by the Municipal Court of the Borough of Eatontown or designated Court to the extent stated below.
- D. Any owner(s), and/or tenants or person or entity in control or their agents violating any of the provisions of this Ordinance and who fail to abate, remediate and restore said property in violation after proper notice shall be subject to the following penalties:
 1. For a first offense, a fine not to exceed the statutory limitations of fines in Municipal Court or \$2,000.00; whichever is greater, plus costs of prosecution for each day in which the violation has occurred for which the property owner or party in control has been found guilty.
 2. For a second or greater offence, a maximum fine allowed by State Statute, a term of imprisonment not exceeding 90 days or a period of community service not exceeding 90 days or any combination thereof. In addition, the Borough through the Code Enforcement Department may remove, remediate and restore the property or otherwise control the Bamboo species and the Borough may thereafter recover the cost of such removal, remediation and restoration from the Bamboo's property owner(s), and/or tenants or person or entity in control or their agents, and place a lien on the property to cover the cost of the removal, remediation and restoration.
 3. The remedy of removal of the Bamboo and remediation and restoration of the subject property by the Borough shall exist at all times; including a first violation where such Bamboo is located in a municipal right-of-way, municipal easement or a municipal property, along with the right to place a lien on the property to recover the cost of removal.
 4. Each day in which a violation occurs shall constitute a separate offense under this Ordinance.

§251-10 Enforcement of Other Law or Ordinances Not Impaired.

The Regulation of Bamboo standards and regulations shall be in addition to the provisions of any other applicable Ordinance, Law, Rule or Regulation. Nothing in this Ordinance shall be construed to impair or prevent enforcement of any other Ordinance, Law, Rule or Regulation.

§251-11 Enforcement in Superior Court of New Jersey or other Appropriate Court.

The remedies set forth in §251-9 shall not be exclusive and the Borough shall at all times have the option to bring a legal action in the Superior Court of New Jersey or other appropriate Court to seek Injunctive Relief or other equitable remedies, damages and costs of remediation, removal and restoration and/or other legal action to the extent permitted by law, and seek against the violating party the costs of said action including reasonable attorney fees.

In the event any provision of this Ordinance is stricken by a Court for any reason, the remaining provisions of the Ordinance shall remain valid and in full force and effect notwithstanding the stricken provision.

BE IT FURTHER ORDAINED, that

- A. All other Ordinances or provisions of the Code of the Borough of Eatontown or parts thereof, which are inconsistent with any provisions in this Ordinance, are hereby repealed to the extent of such conflict or inconsistency.
- B. This Ordinance shall take effect upon its passage and publication as required by law.

DATE INTRODUCED: August 28, 2019
DATE ADOPTED: September 25, 2019

APPROVED: _____ ATTEST: _____

~~ANTHONY TALERICO, JR., MAYOR~~
Date:

Date:

Date:

CMD.Garcia

Corinne DiCoccia, Deputy Municipal Clerk

Date: 9/26/19

