

ORDINANCE No. 2023-07

AN ORDINANCE OF THE BOROUGH OF CHESTER, COUNTY OF MORRIS, STATE OF NEW JERSEY AMENDING THE BOROUGH CODE OF THE BOROUGH OF CHESTER, PART TWO (GENERAL LEGISLATION), CHAPTER 116 (DISORDERLY CONDUCT), SECTION 116-21 (RESERVED) OF THE BOROUGH CODE TO INCLUDE A NEW §166-21 ENTITLED “BAMBOO PLANTING PROHIBITED; CONTAINMENT AND REMOVAL.”

WHEREAS, municipalities are empowered to make, amend, repeal, and enforce its ordinances pursuant to statute (N.J.S.A. 40:48-1, et seq.); and

WHEREAS, municipalities are required by statute to follow specific procedures for the passage of ordinances (N.J.S.A. 40:49-2 et seq.); and

WHEREAS, municipalities are empowered to adopt and amend ordinances to protect the public safety and welfare; and

WHEREAS, it is determined the bamboo plant is an invasive and non-native plant and often difficult to control and can, and has, caused significant damage to properties in the Borough of Chester. The purposes of this subsection are to preserve and protect private and public property from the damaging spread of bamboo grasses and plants, to protect indigenous and other plant materials from the invasive spread of bamboo, and to maintain the general welfare of the residents of Chester Borough; and

WHEREAS, the Mayor and Council of the Borough of Chester wish to address the problems associated with bamboo by amending Part Two (General Legislation), Chapter 116 (Disorderly Conduct), Section 116-21 (Reserved) of the Borough Code to include a new §116-21 (Bamboo Planting Prohibited; Containment and Removal);

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Council of the Borough of Chester, County of Morris, State of New Jersey that the Chester Borough Code is to be amended as follows:

Section 1. Part Two (General Legislation), Chapter 116 (Disorderly Conduct), Section 116-21 (Reserved) of the Borough Code is hereby amended to include a new §116-21 (Bamboo Planting Prohibited; Containment and Removal) as follows:

§116-21 Bamboo Planting Prohibited; Containment and Removal. It is determined the bamboo plant is an invasive and not native plant and often difficult to control and can, and has, caused significant damage to properties in the Borough of Chester. The purposes of this subsection are to preserve and protect private and public property from the damaging spread of bamboo grasses and plants, to protect indigenous and other plant materials from the invasive spread of bamboo, and to maintain the general welfare of the residents of Chester Borough.

a. Prohibition. No owner, tenant or occupant of a property, or person, corporation or other entity, shall plant, install or cause or permit the planting or installation of plant species commonly known as Running (monopodial) Bamboo or Clumping (sympodial) Bamboo, including but not limited to the following plant genera: Arundinaria, Bambusa, Chimonobambusa, Dendrocalamus, Fargesia, Phyllostachys, Pleioblastus, Pseudosasa, Sasa, Sasaella, Semiarundinaria upon any property located within Chester Borough.

b. Duty to Confine. In the event any species commonly known as Running Bamboo or Clumping Bamboo is located upon any property within the Chester Borough, prior to the effective date of this prohibition, the owner and occupant of said property shall jointly and severally be required to confine such species to prevent the encroachment, spread, invasion or intrusion of same onto any other private or public property or public right-of-way. In lieu of confining the species, the property owner or occupant may elect to totally remove the bamboo from the property, and all affected properties. Failure to properly confine such bamboo shall require removal as set forth below. The cost of said removal shall be at the bamboo property owner's expense. This duty to confine shall not apply if the property owner and/or occupant can establish to the satisfaction of the Code Enforcement Officer that the bamboo which is on his/her property at the time of the adoption of this Ordinance originated on another property.

c. Removal.

1. In the event Running Bamboo or Clumping Bamboo is present on the effective date of this prohibition and a complaint is received by Chester Borough regarding an encroachment of any bamboo plant or root, and the Code Enforcement Officer of Chester Borough, after observation and/or inspection, determines that there is an encroachment or invasion on any adjoining/neighborhood private or public property or public right-of-way (hereinafter, "the affected property"), the Chester Borough Code Enforcement Officer shall serve notice to the bamboo property owner in writing that the bamboo has invaded other private or public property(s) or public right-of-way(s) and demand the removal of the bamboo from the affected property, and demand approved confinement against future encroachment or, in the alternative, the total removal from the bamboo property owner's property. Notice shall be provided to the bamboo property owner, as well as to the owner of the affected property, by certified, return receipt requested mail and regular mail. Within forty-five (45) days of receipt of such notice, the bamboo property owner shall submit to the Code Enforcement Officer of Chester Borough, with a copy to the owner of the affected property, a plan for the removal of the bamboo from the affected property, which plan shall include restoration of the affected property after removal of the bamboo. Within one hundred twenty (120) days of receipt of the Code Enforcement Officer's approval of the plan of removal and restoration, the removal and restoration shall be completed to the satisfaction of the Code Enforcement Officer of Chester Borough.

2. If the bamboo property owner does not accomplish the removal of the bamboo from such other private or public property or public right-of-way in

accordance herewith, the Code Enforcement Officer of the Chester Borough shall cause a summons to be issued to the violating property owner. Violators of this Chapter 116 shall be subject to the fines and penalties set forth in Part I, Article III (§1-17 through 1-20) of the Borough Code, including but not limited to fines for each day the violation continues. The Code Enforcement Officer may request, and the Municipal Court may grant, a specific performance remedy. The Borough may also institute civil proceedings for injunctive or civil relief.

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 the property parties.

4. When an encroachment is upon public property or public right-of-way and the bamboo property owner and/or occupant has not complied with the written notice provided as set forth above, the Borough, at its discretion, may remove or contract for the removal of such bamboo from the Borough property or public right-of-way. The cost of such removal shall be the responsibility of the bamboo property owner and occupant and shall be paid or assessed as a lien against the property on which the bamboo growth originated. The cost of said removal from the Borough owned property and/or public right-of-way shall include the installation of an appropriate barrier to prevent future bamboo invasion.

d. Replanting Prohibited: Any Running Bamboo or Clumping Bamboo either planted or caused to be planted or existing on the effective date of this regulation, may not be replanted or replaced once such bamboo is or has become dead, destroyed, uprooted, or otherwise removed.

e. Enforcement Authority: The provisions of this Section shall be enforceable by the Chester Borough Code Enforcement Officer, the Zoning Officer, Borough Administrator, it any employee designated by the Borough Administrator. Reference to in this Section to the Code Enforcement Officer of Chester Borough shall include all granted enforcement authority in this paragraph.

Section 2. If any Chapter, Article, Section or Subsection, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid by any court of competent jurisdiction such decisions shall not affect the remaining portions of this Ordinance.

Section 3. All ordinances or rules or regulations of the Borough of Chester, which are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

Section 4. This ordinance shall take after final passage and appropriate publication according to law.

Dated: July 18, 2023

Janet Hoven, Mayor

Attest:

Robin Ghebreah, RMC, Municipal Clerk

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LEGAL NOTICE OF PENDING ORDINANCE

Notice is hereby given that the Ordinance published herewith was introduced and passed upon first reading at a meeting of the Mayor and Council of the Borough of Chester, in the County of Morris, New Jersey, held on the 6th day of July 2023. It will be further considered for final passage after public hearing thereon, at a meeting of said Mayor and Council to be held in the Chester Borough Hall, 50 North Road, in said Borough, on July 18, 2023 at 7:00 p.m., and during the week prior and up to and including the date of such meeting, copies of said Ordinance will be made available at the Clerk's office in said Borough Hall building to members of the general public who shall request the same.

Robin Ghebreah, RMC, Municipal Clerk