

**BOROUGH OF CAPE MAY POINT
COUNTY OF CAPE MAY
STATE OF NEW JERSEY**

ORDINANCE 12-2020

**AN ORDINANCE AMENDING BOROUGH CODE CHAPTER 113
("NUISANCES; PUBLIC HEALTH") TO ADD NEW ARTICLE II
("PROHIBITIONS AGAINST BAMBOO")**

WHEREAS, that certain types of the bamboo plant are invasive and often difficult to control, and such bamboo can and has caused significant damage to properties in the Borough of Cape May Point. The purposes of this section are to preserve and protect private and public property from the damaging spread of bamboo, to protect indigenous and other plant materials from the invasive spread of bamboo, and to maintain the general welfare of the residents of the Borough of Cape May Point.

NOW THEREFORE BE IT ORDAINED by the Board of Commissioners of the Borough of Cape May Point that Chapter 113 of the Borough Code is hereby amended as follows:

SECTION 1

**ARTICLE I
NUISANCES, PUBLIC HEALTH**

§ 113-1 ADOPTION OF STANDARDS.

A code defining and prohibiting certain matters, things, conditions or acts, and each of them, as a nuisance; prohibiting certain noises or sounds; requiring the proper heating of apartments; prohibiting the lease or rental of certain buildings; prohibiting spitting in or upon public buildings, conveyances or sidewalks; authorizing the inspection of premises by an enforcing official; providing for the removal or abatement of certain nuisances and recovery of expenses incurred by the Board of Health in removing or abating such nuisances; and prescribing penalties for violations is hereby established pursuant to Chapter 188, Laws of 1950, N.J.S.A. 26:3-69.1 to 26:3-69.6. A copy of said code is annexed hereto and made a part hereof without the inclusion of the text thereof herein.

§ 113-2 TITLE.

The code established and adopted by this chapter is described and commonly known as the "Public Health Nuisance Code of New Jersey (1953)."

§ 113-3 COPIES OF CODE ON FILE.

Three copies of said Public Health Nuisance Code of New Jersey (1953) have been placed on file in the office of the Municipal Clerk upon the introduction of this chapter and will remain on file there for use and examination by the public.

§ 113-4 VIOLATIONS AND PENALTIES.

Any person who violates or neglects to comply with any provision of this chapter 113 or code established herein or notice issued pursuant thereto shall, upon conviction thereof, be liable to a penalty of not less than \$2 nor more than \$500 for each violation. (N.J.S.A. 26:3-70)

SECTION 2

ARTICLE II PROHIBITIONS AGAINST BAMBOO

§113-5. BAMBOO PLANTING PROHIBITED; CONTAINMENT AND REMOVAL.

It is determined that certain types of the bamboo plant are invasive and often difficult to control, and such bamboo can and has caused significant damage to properties in the Borough of Cape May Point. The purposes of this section are to preserve and protect private and public property from the damaging spread of bamboo, to protect indigenous and other plant materials from the invasive spread of bamboo, and to maintain the general welfare of the residents of the Borough of Cape May Point.

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 bamboo" upon any property located within the Borough of Cape May Point. For the purposes of this section, "running bamboo" means any bamboo in the genus *Phyllostachys*, including *Phyllostachys aureosulcata*.

B. Duty to confine.

In the event any species commonly known as "running bamboo" is located upon any property within the Borough of Cape May Point, 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 article originated on another property.

C. Removal.

(1) In the event running bamboo is present on the effective date of this prohibition and a complaint is received by the Borough regarding an encroachment of any bamboo plant or root, and the Code Enforcement Officer of the Borough, after observation and/or inspection, determines that there is an encroachment or invasion on any adjoining/neighborly private or public property or public right-of-way (hereinafter, "the affected property"), the Borough shall serve notice to the bamboo property owner, in writing, that the bamboo has invaded other private or public properties or public rights-of-way and demand remediation of the encroachment of the bamboo from the affected property, and demand approved confinement against future encroachment. 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 45 days of receipt of such notice, the bamboo property owner shall submit to the Code Enforcement Officer of the Borough, with a copy to the owner of the affected property, a plan for the remediation of the encroachment of the bamboo from the affected property, which plan shall include restoration of the affected property after remediation of the encroachment. Within 120 days of receipt of the Code Enforcement Officer's approval of the plan of remediation and restoration, the remediation and restoration shall be completed to the satisfaction of the Code Enforcement Officer of the Borough.

(2) If the bamboo property owner does not accomplish the remediation of the encroachment from such other private or public property or public right-of-way in accordance herewith, the Code Enforcement Officer of the Borough of Cape May Point shall cause a citation to be issued, with a penalty up to \$100 for each day the violation continues, enforceable through the Municipal Court of the Borough of Cape May Point. The Administrative 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 proper parties.

(4) When an encroachment is upon public property or a 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 of Cape May Point, 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 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.

SECTION 3

All ordinances inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.

SECTION 4

Should any provision of this ordinance be deemed invalid for any reason that invalidity shall not affect the remaining provisions of the ordinance, and the provisions and sections of the ordinance are hereby declared to be severable with respect to their validity.

SECTION 5

This ordinance shall take effect twenty (20) days after final passage, according to law.

Final Adoption Vote	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT
Mullock						
vanHeeswyk						
Moffatt						

Robert Mullock, Commissioner

Anita vanHeeswyk, Commissioner

Robert Moffatt, Mayor

ATTEST:

Elaine L. Wallace, Borough Clerk

FIRST READING: October 8, 2020
PUBLICATION: October 14, 2020
PUBLIC HEARING: November 12, 2020
PUBLICATION: November 18, 2020