TOWNSHIP OF DENVILLE MUNICIPAL COUNCIL
WORKSHOP MEETING
October 10, 2017, 7:30 P.M.

• Salute to the Flag
• Compliance with Open Public Meetings Act
• Roll Call:

Council Members:
___ Gabel  ___ Witte  ___ Kuser
___ Lyden  ___ Fitzpatrick  ___ Murphy
___ Golinski, Council President

In Attendance:
___ Mayor Andes  ___ Administrator Ward
___ Township Attorney Jansen  ___ Other: ________

Public Portion (Please limit comments to a maximum of three (3) minutes)

DISCUSSION
Discussion on Running Bamboo

R-17-226: Resolution Authorizing Executive Session to Discuss Collective Bargaining Negotiations

Motion to Adjourn
President Golinski noted that the Council will now engage in a discussion on bamboo. He thanked Mr. Baggot for his introductory comments stressing the importance of protecting our neighbors from this invasive plant.

Administrator Ward noted that President Golinski brought this subject to his attention in July. He said that since he has been Administrator in Denville he has visited homes where the growth of bamboo has caused neighbor disputes. Mr. Ward added that, to this point, there has been no legislation on a state or municipal level that would enable the Township to assist property owners with this problem.

Administrator Ward advised that the bill referenced by Mr. Baggot was adopted by the Assembly but there is no corresponding bill in the Senate. He said that he has provided the Council with a copy of the Assembly bill as well as a copy of ordinances adopted by Hillside and Emerson.

Attorney DeBona noted that she reviewed several ordinances that utilize five (5) different approaches. She said that Wayne's ordinance calls for a total ban on the planting of bamboo, with a fifteen (15) day grace period to remove it. Mrs. DeBona added that other towns have a total ban but if it has already been planted it can remain, but must be controlled so it remains on the owner's property. She said that, among the other towns, there is a wide variety of approaches, including requiring containers.

Councilwoman Smith asked what the difference is between “running bamboo” and just bamboo.
Attorney DeBona replied that she is not sure but that there is a specific genus mentioned in the Assembly bill and that the type of bamboo that spreads rapidly is known as “running bamboo”. She added that, if an ordinance is considered, it would be wise to specify that it refers to “running bamboo”.

President Golinski advised that he received a recommendation from a resident that the Council reach out to the Morris County Cooperative Extension Agricultural Dept. for clarification regarding the types of bamboo.

Councilwoman Smith suggested that, if there is a grandfather clause, it should include the requirement to contain the existing bamboo.

Councilman Gabel asked if any proposed ordinance would concentrate solely on bamboo or would it include other types of invasive plants.

President Golinski replied that his thought, when this subject came up, was that bamboo is the most invasive and destructive plant. He said that if anyone wants to suggest the addition of other invasive plants for the Council to inquire about, the list can certainly be presented to the Cooperative Extension. Mr. Golinski added that he thinks the biggest threat is bamboo. President Golinski commented that his concern is the grandfathering issue.

Councilman Kuser noted that there is no way to find out who planted the bamboo originally. He said that he would like to hear from a botanist about invasive, destructive plants.

Councilwoman Lyden asked what the reason is for growing bamboo. Administrator Ward replied that it grows quickly and provides privacy between properties, much like a fence.

Councilman Fitzpatrick asked how the Council can address the bamboo that grows along the river. Administrator Ward replied that he would defer to Engineer Ruschke on that because he thinks it is in a protected wetlands buffer area.

Mayor Andes encouraged the Council to adopt an ordinance to put some kind of restriction on growing bamboo.

Councilman Scollans agreed that it is extremely important to have some kind of restriction.

Administrator Ward suggested that the Council might consider passing a resolution to encourage Senator Bucco and the other Senators to take up the Assembly bill in the Senate.

President Golinski recommended that the Council compile a list of plants that they feel may need to be researched and perhaps take pictures of suspected problem areas with bamboo. He said the list can be sent to the Clerk’s Office for consolidation and then invite an expert in the field to come and speak to the Council, in order that the best possible ordinance may be adopted.

President Golinski invited Mr. Baggot to come forward and share any additional information he may have about bamboo.

Mr. Baggot commented that the Assembly bill may provide some very helpful information as the Council researches this subject. He added that any ordinance that is considered must include a provision requiring containment or it won’t work.

Motion to Adjourn: Moved by Member Smith, Seconded by Member Gabel
Ayes: Unanimous

Meeting adjourned at 8:10 p.m.

Respectfully submitted by:

Kathleen A. Costello
ASSEMBLY, No. 449

STATE OF NEW JERSEY

217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:
Assemblyman VINCENT MAZZEO
District 2 (Atlantic)
Assemblyman TIM EUSTACE
District 38 (Bergen and Passaic)
Assemblyman SEAN T. KEAN
District 30 (Monmouth and Ocean)

SYNOPSIS
Regulates planting and sale of running bamboo.

CURRENT VERSION OF TEXT
Introduced Pending Technical Review by Legislative Counsel.
AN ACT concerning running bamboo, and supplementing Title 4 of the Revised Statutes and P.L.1960, c.39 (C.56:8-1 et seq.).

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. a. A person who plants running bamboo or who allows running bamboo to grow on the person's property shall not allow such running bamboo to grow beyond the boundaries of the property. A person who violates this subsection shall be liable for any damages caused to any adjacent property by the running bamboo, including, but not limited to, the cost of removal of any running bamboo that grows on to the adjacent property. A subsequent purchaser of property, or a person who takes possession of property pursuant to a foreclosure or other legal action, shall be responsible for maintaining the running bamboo in compliance with this subsection. A landscaper or installer of running bamboo shall not be subject to liability under this subsection.

b. A person shall not plant running bamboo or allow running bamboo to be planted on the person’s property at a location that is 100 feet or less from the property boundary line of any abutting property or public right-of-way unless: (1) the running bamboo is contained by a properly constructed and maintained barrier system that prevents the spread of roots underground; or (2) the running bamboo is planted above ground in a container or planter so that the running bamboo is contained and does not come in contact with the surrounding soil.

A person who violates this subsection shall be liable to a civil penalty of $100, to be collected in a summary proceeding pursuant to the “Penalty Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.). If the violation is of a continuing nature, each month during which it continues shall constitute an additional, separate, and distinct offense until such time as the running bamboo is removed or contained by a properly constructed barrier system. The provisions of this subsection shall not apply to any running bamboo planted on or before the effective date of this act. A landscaper or installer of running bamboo shall not be subject to liability under this subsection.

c. A retail seller or installer of running bamboo shall provide to each customer who purchases running bamboo from the seller or installer a statement prepared by the New Jersey Agricultural Experiment Station at Rutgers, the State University, pursuant to section 2 of P.L. , e. C. (pending before the Legislature as this bill). A retail seller or installer of running bamboo who violates this subsection shall be fined $100 for each plant sold or installed in violation of this act, to be collected in a summary proceeding pursuant to the “Penalty Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.).
d. For the purposes of this section, "running bamboo" means any bamboo in the genus Phyllostachys, including Phyllostachys aureosulcata.

2. a. The New Jersey Agricultural Experiment Station at Rutgers, the State University, shall, in consultation with the Department of Agriculture and the Department of Environmental Protection, develop a statement, to be posted on the website of the New Jersey Agricultural Experiment Station, that explains the issues related to planting running bamboo and provides recommendations for properly containing it.

b. The Department of Agriculture, in consultation with the Attorney General, shall prepare a plain language summary of the provisions contained in section 1 of P.L. , c. (C. ) (pending before the Legislature as this bill), which shall be posted on the website of the New Jersey Agricultural Experiment Station.

c. For the purposes of this section, "running bamboo" means the same as that term is defined in section 1 of P.L. , c. (C. ) (pending before the Legislature as this bill).

3. The Director of the Division of Consumer Affairs in the Department of Law and Public Safety shall require the property condition disclosure statement obtained from the seller, pursuant to paragraph (3) of subsection b. of section 1 of P.L.1999, c.76 (C.56:8-19.1), to include the following question: "Are you aware of the presence of any running bamboo (Phyllostachys aureosulcata or other bamboo in the genus Phyllostachys) on this property at any time in the past five years? If yes, describe the location of the running bamboo, and any action taken to remove or contain the running bamboo, if known."

4. This act shall take effect on the 90th day after enactment.

STATEMENT

This bill would require that a person who plants running bamboo or who allows running bamboo to grow on the person’s property shall not allow such running bamboo to grow beyond the boundaries of the property (Under the bill, "running bamboo" means any bamboo in the genus Phyllostachys, including Phyllostachys aureosulcata.). A person who violates this requirement will be liable for any damages caused to any adjacent property by the running bamboo, including, but not limited to, the cost of removal of any running bamboo that grows on the adjacent property. A subsequent purchaser of property, or a person who takes possession of property pursuant to a foreclosure or other legal action, shall be responsible for maintaining the running bamboo.
Under the bill, a landscaper or installer of running bamboo shall not
be subject to liability.

This bill would also require that a person shall not plant running
bamboo or allow running bamboo to be planted on the person’s
property at a location that is 100 feet or less from the property
boundary line of any abutting property or public right-of-way unless
the running bamboo is contained by a properly constructed and
maintained barrier system that prevents the spread of roots
underground; or the running bamboo is planted above ground in a
container or planter so that the running bamboo is contained and
does not come in contact with the surrounding soil. A person who
violates this requirement shall be liable to a civil penalty of $100. If
the violation is of a continuing nature, each month during which it
continues shall constitute an additional, separate, and distinct
offense until such time as the running bamboo is removed or
contained by a properly constructed barrier system. A landscaper or
installer of running bamboo shall not be subject to liability.

This bill would also require that a retail seller or installer of
running bamboo shall provide to each customer who purchases
running bamboo from the seller or installer a statement prepared by
the New Jersey Agricultural Experiment Station at Rutgers, the
State University. A retail seller of installer of running bamboo who
violates this requirement shall be fined $100 for each plant sold or
installed in violation of this requirement.

Under the bill, the New Jersey Agricultural Experiment Station
at Rutgers, the State University, shall, in consultation with the
Department of Agricultural and the Department of Environmental
Protection, develop a statement to be posted on the website of the
New Jersey Agricultural Experiment Station that explains the issues
related to planting running bamboo and provides recommendations
for properly containing it. Also, the Department of Agriculture, in
consultation with the Attorney General, must prepare a plain
language summary of the provisions of the bill concerning the
planting or growing of running bamboo, which shall be posted on
the website of the New Jersey Agricultural Experiment Station.

Finally, the Division of the Division of Consumer Affairs in the
Department of Law and Public Safety shall require the property
condition statement obtained from the seller to include the
following question: “Are you aware of the presence of any running
bamboo (Phyllostachys aureosulcata or other bamboo in the genus
Phyllostachys) on this property at any time in the past five years? If
yes, describe the location of the running bamboo, and any action
taken to remove or contain the running bamboo, it known.”
RESOLUTION IN SUPPORT OF ASSEMBLY BILL NO. 449

WHEREAS, Assembly Bill No. 449 has been pre-filed for introduction in the 2016 session of the State of New Jersey Assembly; and

WHEREAS, this proposed bill would regulate the planting of running bamboo by requiring a person who plants running bamboo or who allows running bamboo to grow on their property to construct appropriate barriers or plant above ground in containers so as to prevent the running bamboo from growing beyond the boundaries of the property; and

WHEREAS, the term “running bamboo” as defined in the aforementioned bill would mean any bamboo in the genus Phyllostachys, including Phyllostachys aureosulcata; and

WHEREAS, the proposed legislation provides for substantial penalties for those who prospectively violate the provisions of the bill and said penalties would continue until the running bamboo is removed, placed into a container or the appropriate barrier system is constructed; and

WHEREAS, the legislation would also hold a person who violates the provisions of the bill liable for any damages caused by the running bamboo to any adjacent property; and

WHEREAS, there is increasing concern by the residents of the Township of Denville regarding the negative impacts that running bamboo will have on their properties if said planting is permitted to continue unregulated into the future.

NOW, THEREFORE, BE IT RESOLVED that the Municipal Council of the Township of Denville, County of Morris, State of New Jersey, encourages its New Jersey State Legislators to support the passage of Assembly Bill No. 449; and

BE IT FURTHER RESOLVED that copies of this resolution shall be forwarded to the Members of New Jersey’s 25th Legislative District.

BY ORDER OF THE MUNICIPAL COUNCIL
OF THE TOWNSHIP OF DENVILLE

I, Kathryn Bowditch-Leon, Municipal Clerk for the Township of Denville do hereby certify the above to be a true and exact copy of the resolution adopted by the Municipal Council of the Township of Denville at their regular Council meeting held on March 15, 2016.

Certification Date: ___________________________ Kathryn Bowditch-Leon, RMC
Municipal Clerk
This Ordinance shall not apply to any land owner or possessor of said land who, prior to the effective date of this Ordinance, has planted or caused to grow any bamboo on any property within the Borough limits unless the code enforcement officer determines, on his/her own or upon complaint from any abutting or nearby property owner, that any portion of such bamboo has been allowed to grow upon, extend roots across, or extend branches, stalks or leaves over any public way or any private property not owned by or in the possession of such land owner or any possessor of said land. If such occurs, the provisions of Section 4 shall apply.

SECTION 3. Exemptions.

This Ordinance shall not apply to any land owner or possessor of said land who, prior to the effective date of this Ordinance, has planted or caused to grow any bamboo on any property within the Borough limits unless the code enforcement officer determines, on his/her own or upon complaint from any abutting or nearby property owner, that any portion of such bamboo has been allowed to grow upon, extend roots across, or extend branches, stalks or leaves over any public way or any private property not owned by or in the possession of such land owner or any possessor of said land. If such occurs, the provisions of Section 4 shall apply.

Whenever a complaint is received by the Borough regarding the encroachment of any bamboo plant or root, or whenever the Borough, on its own observations and inspections, determines that there is an encroachment of bamboo plants or roots on to the property of another land owner, or tenant in possession of the property, or both, the Borough shall cause Notice to be served and the following actions occur:

1. The Notice shall be mailed by Certified Mail, Return Receipt Requested, properly addressed and 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 undeliverable by the United States Post Office. First Class mail shall be deemed delivered within five (5) calendar days of its being mailed by the Borough.

2. The Notice shall specify the nature of the violation(s).

3. The Notice shall state that the violation(s) must be corrected within twenty (20) calendar days from the date of the received or returned mailing.

4. The Notice shall state specifically what must be done by the responsible party to correct the violation(s).

SECTION 5. Repealer.

All Ordinances of the Borough of Hillsdale which are inconsistent with the provisions of this Ordinance are hereby repealed as to the extent of such inconsistency.

SECTION 6. Penalties.

A. Any person determined by any court of competent jurisdiction to have violated this Ordinance shall be subject to pay a fine of not less than Twenty-Five ($25.00) Dollars per day nor more than One Hundred ($100.00) Dollars per day, for each day the violation exists after the date for removal as set forth in the Notice which was sent to violator and received by the violator as defined above. Each day of a continuing violation shall constitute a separate offense, for which an additional fine can be levied. The per day fine will be in addition to a penalty for failure to comply with the Bamboo Ordinance. This fine can be up to the maximum penalty set by the State of New Jersey.

B. If the violation is not remedied within the time set forth in the aforesaid Notice, the Borough is hereby authorized to remove or have removed any encroaching bamboo and to take all reasonable steps to eradicate the re-growth of the bamboo on the public rights of way, including sidewalks, and to restore such land to its normal condition, prior to such removal and eradication.

C. The cost of the corrective action together with any civil penalties, legal fees and other costs shall be recoverable from the responsible party.

SECTION 7. Unlawful

If any section, subsection, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid by any Court of competent jurisdiction, such decision shall not affect the remaining portion of this Ordinance.
SECTION 8. Effective Date.

This Ordinance, if adopted by the Borough Council shall, within five (5) days after its passage, Sundays excepted, be presented to the Mayor and Borough Clerk. The Mayor shall, within ten (10) days after receiving the ordinance, Sundays excepted, either approve this Ordinance by affixing his signature thereto or return it to the Council by delivering it to the Borough Clerk together with a statement setting forth his objections thereto or any item or part thereof. This Ordinance or any item or part thereof shall not take effect without the Mayor's approval, unless the Mayor fails to return this Ordinance to the Borough Council, as prescribed above, or unless the Borough Council, upon consideration of this Ordinance following its return shall, by a vote of two thirds (2/3rds) of all of the members of the Borough Council, resolve to override the veto.

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Introduced: July 8, 2014

Attest: ____________________________  ____________________________
       Susan Witkowski                  Max Arnowitz
       Municipal Clerk                  Mayor
BOROUGH OF EMERSON
County of Bergen
Notice of Adoption

Introduced: November 12th
Adopted: December 3rd

NOTICE IS HEREBY GIVEN that the following ordinance was adopted on the second reading after a Public Hearing at the Regular Meeting of the Borough Council of the Borough of Emerson on the 3rd day of December, 2013. A copy of Ordinance 1470-13 is on file in the Borough Clerk’s Office in the Municipal Building, 1 Municipal Pl., Emerson, NJ 07630.

ORDINANCE NO. 1470-13
AN ORDINANCE OF THE BOROUGH OF EMERSON ADOPTING REGULATIONS FOR THE PLANTING, GROWING OR CULTIVATING BAMBOO

THE BOROUGH OF EMERSON HEREBY ORDAINS:

SECTION 1. Purpose.

This Ordinance is adopted to control the planting, cultivating or growing of bamboo in the Borough of Emerson; and to require barriers to prevent the spread of existing bamboo into other areas of the Borough.

SECTION 2. Regulation of the Planting, Growing or Cultivating of Bamboo.

Subject to certain exemptions set forth in this Ordinance, no persons, or other property owners or tenants shall plant, cultivate, or cause to grow, any bamboo on any lot or parcel of ground in the Borough of Emerson, subject to the following exceptions:

1. The root system of such bamboo plants 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 of growth of the bamboo plants’ root system beyond the container beyond which it is planted; or

2. The root system is contained within a properly constructed and maintained barrier system.

3. Whether planted or growing in a container, as described herein, all bamboo plants shall be located, trimmed and maintained so that no part of the plant shall be closer than 10 feet from any property line.

SECTION 3. Exemptions.

This Ordinance shall not apply to any land owner or possessor who, prior to the effective date of this ordinance, has planted or caused to grow any bamboo on any property within the borough limits unless the code enforcement officer determines on his own or upon complaint from any abutting or nearby property owner, that any portion of such bamboo has been allowed to grow upon, extend roots across, or extend branches, stalks or leaves over any public way or any private property not owned by or in the possession of such land owner or any possessor of said land.


Whenever a complaint is received by the Borough regarding the encroachment of any bamboo plant or root, or whenever the Borough on its own observations and inspections, determines that there is an encroachment of bamboo plants or roots on to the property of another land owner, or tenant in possession of the property, or both, which notice shall be substantially as follows:
1. The Notice shall be mailed by Certified mail, return receipt requested, properly addressed and 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 undeliverable by the United States Post Office, when the First Class mail was not returned.

2. The Notice shall specify the nature of the violation.

3. The Notice shall state that the violation must be corrected within thirty (30) days from the date of the received or returned mailing.

4. The Notice shall state specifically what must be done by the responsible party to correct the violation.

SECTION 5. Repealer.

All Ordinances of the Borough of Emerson which are inconsistent with the provisions of this Ordinance are hereby repealed as to the extent of such inconsistency.

SECTION 6. Penalties.

A. Any person determined by any court of competent jurisdiction to have violated this ordinance shall be subject to pay a fine of not less than $25.00 per day, nor more than $100.00 per day, or each day the violation existed after the date for removal as set forth in the Notice which was sent to violator, and received by the violator. Each day of a continuing violation shall constitute a separate offense, for which an additional fine can be levied. The per day fine will be in addition to a penalty for failure to comply with the Bamboo ordinance. This fine can be up to the maximum penalty set by the State of New Jersey.

B. If the violation is not remedied within the time set forth in the aforesaid notice, the Borough is hereby authorized to remove or have removed any encroaching bamboo and to take all reasonable steps to eradicate the re-growth of the bamboo on the public rights of way, including sidewalks, and to restore such land to its normal condition, prior to such removal and eradication.

C. The cost of the corrective action together with any civil penalties, legal fees and other costs shall be recoverable from the responsible party.

SECTION 7. Unlawful

If any section, subsection, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid by any Court of competent jurisdiction, such decision shall not affect the remaining portion of this Ordinance.

SECTION 8. Effective Date.

This Ordinance shall take effect immediately upon final passage, approval and publication by law.

ATTEST:

Carol Dray, RMC CMC CMR
Borough Clerk

Carlos Colina
Mayor
RESOLUTION

WHEREAS, the Open Public Meetings Act P.L. 1974, Chapter 231 permits the exclusion of the public from a meeting in certain circumstances; and

WHEREAS, this public body is of the opinion that such circumstances presently exist.

NOW, THEREFORE, BE IT RESOLVED by the Municipal Council of the Township of Denville, that the public shall be excluded from discussion of the following matter(s):

- A confidential matter, under Federal Law or State Statute, or rule of court
- A matter in which the release of information would impair a right to receive funds from the Government of the United States
- Material the disclosure of which constitutes an unwarranted invasion of privacy
- Collective bargaining negotiations.
- A matter involving the purchase, lease or acquisition of real property with public funds,
- Tactics and techniques utilized in protecting the safety and property of the public, including investigations of violations or possible violations of the law,
- Pending or anticipated litigation or contract negotiation other than in section (4) herein which the public body is, or may become a party, specifically ________________________________
- Matters falling within the attorney-client privilege ________________________________
- A matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance of promotion or disciplining of a specific prospective public officer or employee employed or appointed by the public body
- Deliberations occurring after a public hearing that may result in the imposition of a specific civil penalty or loss of a license or permit

BE IT FURTHER RESOLVED that minutes will be kept on file in the municipal clerk's office, and once the matter involving the confidentiality of the above no longer requires that confidentiality, then the minutes shall be made public.

BY ORDER OF THE MUNICIPAL COUNCIL
OF THE TOWNSHIP OF DENVILLE

I, Kathryn Bowditch-Leon, Municipal Clerk for the Township of Denville do hereby certify the above to be a true and exact copy of a resolution approved by the Municipal Council at their meeting held on October 10, 2017.

Certification date: ________________________________
Kathryn Bowditch-Leon, RMC
Municipal Clerk