

## AN ORDINANCE

NO. \_\_\_\_\_

### **AN ORDINANCE To Amend The Code Of The Township Of Lower Merion, Chapter 59, Brush, Grass And Weeds, To Regulate The Planting, Growing Or Maintenance Of Objectionable Vegetation, To Identify Such Vegetation And To Limit Enforcement Where Bamboo Has Migrated Onto Neighboring Property.**

The Board of Commissioners of the Township of Lower Merion hereby ordains:

**Section 1.** The Code of the Township of Lower Merion, Chapter 59 thereof, entitled Brush, Grass and Weeds, §59-1, Declaration of objectionable and poisonous vegetation as health hazard and nuisance, shall be revised to provide as follows:

§59-1. Declaration of objectionable and poisonous vegetation as health hazard and nuisance.

A. By reason of the danger they pose to public health, safety, or the ecology of the Township, the following plants or conditions are hereby declared to be nuisances:

- (1) Any plant that encroaches onto a roadway or sidewalk to an extent that it obstructs the vision of pedestrians or motorists, constitutes a tripping hazard for pedestrians, or otherwise interferes with safe travel by pedestrians or motor vehicles.
- (2) Any weed or plant designated as noxious in the noxious weed list set forth in the Act of Oct. 30, 2017, P.L. 774, No. 46, 3 Pa. C. S. § 1519, as it may be amended from time to time by the Commonwealth's Controlled Plant and Noxious Weed Committee, *Carduus nutans*, commonly known as musk thistle; *Cirsium arvense*, commonly known as Canadian thistle; *Cirsium vulgare*, commonly known as bull thistle; *Datura stramonium*, commonly known as jimson weed; *Galega officinalis*, commonly known as goat's rue; *Heracleum mantegazzianum*, commonly known as giant hogweed; *Lythrum salicaria* commonly known as Purple loosestrife; *Persicaria perfoliata*, commonly known as mile-a-minute; *Puerria* DC, commonly known as kudzu; *Rose multiflora*, commonly known as multiflora rose; *Sorghum bicolor* Moench ssp. *drummondii*, commonly known as shattercane; and *Sorghum halepense*, commonly known as Johnson grass.

- (3) Bamboo, meaning any monopodial (running), tropical or semitropical grass from the genus *Bambusa* including but not limited to *Bambusa*, *Phyllostachys*, and *Pseudosasa*; including *Bambusa vulgaris*, commonly known as common bamboo; *Phyllostachy aurea*, commonly known as golden bamboo; and *Pseudosasa japonica*, commonly known as arrow bamboo.
- (4) *Aegeopodium podagraria*, commonly known as goutweed; *Ampelopsis brevipedunculata*, commonly known as porcelain berry; *Microstegium vimineum*, commonly known as Japanese stiltgrass; *Polygonum cuspidatu*, commonly known as Japanese knotweed; and *Rubus phoenicolasius*, commonly known as wineberry.
- (5) *Toxicodendron pubescens*, commonly known as Atlantic poison oak; *Toxicodendron radicans*, commonly known as eastern poison ivy; and *Toxicodendron vernix*, commonly known as poison sumac.
- (6) Other noxious, toxic or allergenic weeds of like kind, or, if offensive, any vines, tall grass or other vegetation exceeding 12 inches in height.

B. Prohibited Acts.

- (1) It is hereby declared to be unlawful for any landowner or occupant to propagate, allow to grow, or maintain on land within the Township any plant declared by this Chapter to be a nuisance.
- (2) Qualified Bamboo Exemption. Although bamboo is declared to be a nuisance plant and growing or allowing it to grow on land within the Township is prohibited, bamboo that was propagated or allowed to grow before May 18, 2016, is exempt from the prohibition and may remain on the land. This exemption does not apply, however, to any bamboo that migrates or falls onto any land owned or held by the Township, onto any roadway or sidewalk, onto the private property of another, or which is within 20 feet of the property line of a third party or a public or private right of way.

**Section 2.** The Code of the Township of Lower Merion, Chapter 59 thereof, entitled Brush, Grass and Weeds, §59-2, Notice to Abate Violation and Landowner's Duty to Abate, shall be revised to provide as follows:

**§59.2 Notice to Abate Violation and Landowner's Duty to Abate.**

- A. The Township is hereby authorized to issue a notice of violation to any landowner upon finding that a nuisance plant is growing on that landowner's property, or has migrated onto any land owned or held by the Township, onto any roadway or

sidewalk, or onto the private property of another in violation of this Chapter. Such notice shall be served by regular mail, with proof of mailing, or hand delivery, or if service cannot be effected by either means, by posting the notice in a conspicuous manner on the property. The notice shall require the landowner, within 30 days of the date of the notice, to remove the nuisance plant from the property(ies), sidewalk, or roadway specified in the notice, and shall set forth the penalties for a failure to abate, including payment of the costs incurred by the Township in removing the nuisance should the landowner fail to do so.

- B. A landowner may appeal a notice of violation by letter setting forth the grounds therefore and sent within 14 days of receipt or posting of the notice of violation to the Director of Building and Planning. The appeal shall be heard by the Building and Planning Committee of the Board of Commissioners.
- C. It shall be a valid and complete defense to a notice of violation based on the presence of bamboo on the respondent-landowner's property either that:
  - (1) The bamboo was growing on the property prior to May 18, 2016 and is not within 20 feet of the property line of a third party or a public or private right of way; or
  - (2) The following:
    - (a) the bamboo migrated from property not owned or controlled by the respondent-landowner, and either:
      - (b) before receiving the notice of violation, the respondent-landowner had given written notice to the owner of the land from which the bamboo migrated of the unlawful encroachment and had demanded its removal, to no avail; or
      - (c) respondent-landowner has taken steps to remove the encroaching bamboo.
- D. If, after 30 days, the recipient of a notice of violation has neither abated the violation as required by the notice nor timely contested the notice of violation by the procedure prescribed herein, the Township is hereby authorized to abate the violation by removing the nuisance plants specified in the notice of violation from the property of the landowner or from any adjoining property, public or private onto which said plants have migrated. All costs incurred by the Township in abating the violation, including, but not limited to, the costs of notice, removal, restoration, and inspection, shall be the responsibility of the respondent-landowner and may be collected as provided by law, including the filing of a municipal claim.
- E. If bamboo growing on a property prior to May 18, 2016 encroaches onto

adjoining property, public or private, or within 20 feet of the property line of a third party or a public or private right of way, the respondent-landowner is hereby required to remove the encroachment and to install at least 20 feet from the property boundary an impenetrable barrier to a depth of three feet below grade to prevent the encroachment from recurring. The failure to comply with either of these requirements shall constitute a separate violation.

- F. The appeal of a notice of violation shall toll the running of the 30-day period for abating a violation until the date of a final decision.

**Section 3.** Nothing in this Ordinance or in Chapter 59 of the Code of the Township of Lower Merion, as hereby amended, shall be construed to affect any suit or proceedings in any Court, any rights acquired or liability incurred, any permit issued, or any cause or causes of action existing under the said Chapter 59 prior to the adoption of this amendment.

**Section 4.** The provisions of this Ordinance are severable, and if any section, sentence, clause, part, or provision thereof shall be held illegal, invalid, or unconstitutional by any Court of competent jurisdiction, such decision of this court shall not affect or impair the remaining sections, sentences, clauses, parts or provisions of this ordinance. It is hereby declared to be the intent of the Board that this ordinance would have been adopted if such illegal, invalid, or unconstitutional section, sentence, clause, part, or provision had not been included herein.

**Section 5.** This Ordinance shall take effect and be in force from and after its approval as required by law.

Approved by the Board this                      day of                      , 2019.

BOARD OF COMMISSIONERS OF THE  
TOWNSHIP OF LOWER MERION

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Daniel S. Bernheim, President

ATTEST:

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Jody L. Kelley, Secretary