

ORDINANCE NO. 21-2015
(As Amended)

Enacting Section 1180.08 of the Codified Ordinances of the City of Worthington to Regulate the Growth of Running Bamboo.

WHEREAS, the growing of running bamboo, if not controlled and/or contained, results in a rapid spreading and infestation of bamboo plants through its root system and underground rhizomes; and

WHEREAS, the growth of the bamboo plants may cause serious damage to structures and plant materials located in the path of the underground root system; and

WHEREAS, property owners adjacent to parcels that contain bamboo cite difficulty and expense in attempts to keep unwanted running bamboo from extending onto their yards and spreading; and

WHEREAS, the City wishes to preserve and protect private and public property from the damaging spread of bamboo, protect indigenous plant materials from the invasive spread of bamboo, and maintain the general welfare of the residents of the City.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Municipality of Worthington, County of Franklin, State of Ohio:

SECTION 1. That Section 1180.08 of the Codified Ordinances of the City is enacted to read as follows:

1180.08 GROWTH OF BAMBOO.

(a) Definitions. As used in this chapter, certain terms are defined as follows:

(1) “Bamboo” means any tropical or semi-tropical grasses classified as “running bamboo” with monopodial (leptomorph) rhizome (root) systems which typically send off the rhizomes far away from the plant.

(2) “Bamboo Owner” means any property owner or resident who has planted and/or grows Bamboo, or who maintains Bamboo on the property, or who permits Bamboo to grow or remain on the property even if the Bamboo has spread from an adjoining property. Any property owner or resident at whose property Bamboo is found will be considered a Bamboo Owner, except any property owner or resident who:

(i) Did not plant or grow or cause Bamboo to be planted or grown on his or her property; and

(ii) Has provided satisfactory proof to the City that, within a reasonable period of time after discovering the encroachment of Bamboo onto the property from an adjoining or neighboring

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property, advised the owner of such property, by delivery of a written notice, of an objection to the encroachment of the Bamboo and a request for the Bamboo to be removed; and
(iii) Has initiated steps for the removal of the Bamboo from the property.

(b) Applicability. For purposes of this Section 1180.08, Bamboo found growing upon property shall constitute presumptive evidence that the Bamboo was planted and/or grown by and with the consent of the owner upon whose property the Bamboo is growing. If the Bamboo is found to have encroached, spread, invaded or intruded upon any property other than the property on which it was planted, including public property and right-of-way, it shall be presumed that the Bamboo is “running bamboo” as defined herein, and subject to the provisions of this Section 1180.08.

(c) Duty to Confine. All Bamboo Owners must confine Bamboo in a manner that will prevent the Bamboo from encroaching, spreading, invading or intruding onto any other private or public property or right-of-way, and shall be required to take any such reasonable measure to do so, including but not limited to the installation of a properly constructed and maintained underground physical barrier system. A Bamboo Owner who fails to confine Bamboo to the Bamboo Owner’s property shall be subject to the penalty provisions of Section 1180.08(g) herein.

(d) Property Owners Affected by Bamboo. In the event that a property owner notifies a Bamboo Owner that Bamboo is encroaching, spreading, invading or intruding upon such property owner’s property, as required under Section 1180.08(a)(2)(ii), such notifying property owner shall give consent to the Bamboo Owner for the Bamboo Owner to enter such notifying property owner’s property in order that the Bamboo Owner may remove the Bamboo thereon. Failure to give consent shall hold the notifying property owner responsible for the removal of the encroaching Bamboo at such property owner’s cost. Consent hereunder shall also be deemed to be consent given to a contractor that the Bamboo Owner may hire for the removal of the Bamboo, and to the City or the City’s contractor should that become necessary. Neither the Bamboo Owner, the City, or a contractor hired on behalf of the Bamboo Owner or the City to remove Bamboo from a neighboring property, shall be liable for incidental damages caused by the removal of the Bamboo.

(e) Failure to Confine. In the event Bamboo growing on a Bamboo Owner’s property encroaches or grows onto an adjoining or neighboring property, and the Bamboo Owner fails to remove the Bamboo, or fails to cause it to be removed following a request to do so by the affected adjoining property owner within ten (10) days from the date of the request,

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the affected adjoining property owner shall notify the Director of Service and Engineering of such encroachment. The Director shall be provided satisfactory proof from the affected adjoining neighbor that the Bamboo Owner was notified of the encroachment and had the requisite number of days to remove the Bamboo. The Director shall confirm the presence of the encroaching Bamboo and shall notify the Bamboo Owner in writing of such encroachment, which notice shall:

- (1) Specify the nature and location of the violation;
- (2) Provide notice of the requirement to remove all portions of the Bamboo plant from the affected adjoining property within ten (10) days from the date of the notice; and
- (3) State that the failure to comply with the notice and order may hold the Bamboo Owner liable to the City for the cost of removal, any fines that may be imposed pursuant to Section 1180.08(g), and the City's cost to install a barrier system as may be permitted under Section 1180.08(i).

The Director's notice shall be sent to the Bamboo Owner by certified mail, return receipt requested.

(f) Appeal. If a Bamboo Owner believes that the determination of the Director of Service and Engineering that he or she is in violation of the provisions of this Section 1180.08 is in error, then that determination may be appealed to the City Manager within five (5) days of receipt of the notice to remove the Bamboo issued pursuant to subsection (e) hereof, by the filing of a written notice of appeal. The Bamboo Owner shall have the opportunity to present relevant evidence to the City Manager, or the City Manager's designee (which may be a hearing officer appointed by the City Manager), with or without legal counsel. A record of the hearing shall be kept, including without limitation all documentary evidence presented together with a record of the testimony offered by any witnesses, whose testimony shall be duly sworn. The decision of the City Manager, or designee, shall be rendered at the hearing and mailed to the person to whom the original notice was served by regular and certified mail, within five (5) days of the date of the decision.

At the hearing, the City Manager, or designee, may: (i) direct the Bamboo Owner to remove the encroaching Bamboo within ten (10) days of the receipt of the appeal decision; (ii) order the Bamboo to be removed, order

the installation of a physical barrier system (for subsequent violations), or order both, either with City crews or by contracting with a third party, in which case the Bamboo Owner will be charged with the cost of such work

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ordered to be done, plus a 25% administrative fee as set forth in subsection (j) hereof; or (iii) grant the appeal and reverse the Director's order.

(g) Penalty. Any Bamboo Owner, whether a person, firm, corporation, or other legal entity, that is found to have failed to remove Bamboo when noticed to do so under Section 1180.08(e) shall be fined \$100.00 per day for each day that the Bamboo remains after the expiration of the 10-day notice period given by the Director of Service and Engineering. This penalty shall be vacated only if the Bamboo Owner is found not to be responsible for the Bamboo removal as a result of an appeal determination. A penalty shall be stayed from the date the matter is appealed to the date the appeal is decided. All penalty amounts not paid when due may result in the City pursuing collection through the court, which amounts sought shall include all unpaid fines plus the cost of collection.

(h) City Removal of Bamboo. If the Bamboo Owner fails to remove the Bamboo as directed in the notice sent pursuant to subsection (f) or as a result of an order to do so by the City Manager at the appeal hearing, the Director of Service and Engineering shall cause the Bamboo to be removed and destroyed, and may employ the necessary labor and equipment to perform such task, together with any cleanup work required, within appropriations previously made by Council. The City shall not be liable to an owner of property affected by Bamboo for damages caused as a result of the Bamboo removal.

(i) Installation of a Physical Barrier System by City. Successive violations of this Ordinance may result in the City determining, at the City's discretion, to enter upon the land of the Bamboo Owner and install a physical barrier system designed to contain the Bamboo and prevent its encroachment to adjoining properties. The cost of the installation of the barrier system shall be charged to the Bamboo Owner as provided in subsection (j) herein. The City shall not be liable to a Bamboo Owner for damages caused as a result of the barrier system installation.

(j) Statement of Cost to Owner. When the Director of Service and Engineering causes Bamboo to be removed as provided in subsection (h) above, or when the City installs a physical barrier system as provided in subsection (i) above, a statement of the cost thereof shall be mailed to the Bamboo Owner by certified mail, return receipt requested. If the certified mail is returned or refused, then such statement may be sent by ordinary mail, or personal service by posting at the subject property if the Bamboo Owner is the occupant thereof, by any means that assures and documents delivery. Such statement of cost shall include the following costs of the City:

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- (1) Labor and materials.
- (2) Transportation of equipment.
- (3) Equipment rental.

The minimum fee to be charged shall be twenty-five dollars (\$25.00) per hour. A 25% administrative fee shall be charged on the total amount of the costs of removal.

(k) Cost Payment; Unpaid Costs a Lien. The Bamboo Owner shall pay such amounts as are charged in accordance with subsection (j) hereof to the City Clerk within thirty days after receipt of the statement of costs. Any payment so received shall be restored to the appropriation from which the cost was paid. If the fee is not paid when due, the Director of Finance shall certify to the County Auditor the proceedings taken under this section, together with a statement of the charges for services as listed in subsection (j) hereof and a legal description of the premises. Such amounts shall be entered upon the tax duplicate and shall be a lien upon such lands from the date of entry, and shall be collected as other taxes and returned to the City General Fund as provided by Ohio Revised Code Section 731.54. These costs shall be separate from any fine that may be imposed as a penalty under subsection (g) hereof.

SECTION 2. That notice of passage of the Ordinance shall be posted in the Municipal Administration Building, the Worthington Library, the Griswold Center, and the Worthington Community Center and shall set forth the title and effective date of the Ordinance and a statement that the Ordinance is on file in the office of the Clerk of Council. This Ordinance shall take effect and be in force from and after the earliest period allowed by law and by the Charter of the City of Worthington, Ohio.

Passed June 15, 2015

/s/ Bonnie D. Michael
President of Council

Attest:

/s/ D. Kay Thress
Clerk of Council

Introduced June 1, 2015
P.H. June 15, 2015
Effective July 8, 2015