

Sponsor: Councilwoman Brown
First Reading: 05/06/15
Second Reading: waived
Third Reading: 05/16/15
Ord. No.: 005-15

AN ORDINANCE TO AMEND CHAPTER 74 (“VEGETATION”) OF THE TOWN CODE OF THE TOWN OF SMYRNA TO CREATE AND CLARIFY APPEALS PROCEDURES FOR VIOLATIONS OF ARTICLE II (“GRASS AND WEEDS”), ARTICLE III (“TREES”), AND ARTICLE IV (“BAMBOO”) AND TO CORRECT ERRORS TO INTERNAL REFERENCES IN CHAPTER 74

WHEREAS, the Town of Smyrna is authorized under section 4.2.25 of the Town Charter to “provide for and preserve the health, peace, safety, cleanliness, ornament, good order and public welfare of the Town and its inhabitants;”

WHEREAS, the Town has enacted regulations pertaining to the maintenance of vegetation on properties within the Town of Smyrna; and

WHEREAS, it is necessary for the Town of Smyrna to establish appeals procedures whereby individuals determined by a code enforcement constable to be in violation of the provisions of Chapter 74 (“Vegetation”) can appeal the determination to the town manager.

NOW THEREFORE, BE IT HEREBY ENACTED by the Town Council of the Town of Smyrna, a majority thereof concurring in Council duly met, that the Town Code of the Town of Smyrna be and hereby is amended as follows:

Section 1. Amend Chapter 74 (“Vegetation”), Article II (“Grass and Weeds”), Section 74-29 (“Abatement of nuisance by town upon owner’s failure; collection of costs”) by making insertions as shown by underlining and deletions as shown by strike through as follows:

Sec. 74-29. - Abatement of nuisance by town upon owner's failure; collection of costs.

In case the owner or responsible party for the lot or parcel of ground shall fail to abate the nuisance, the ~~town manager of the town~~ Manager of Building and Inspections shall give five days written notice once each calendar year (January 1 through December 31) that the town shall proceed, without further notice, ~~to do so to~~ abate the nuisance each time the property is inspected and found to be in violation of this article. The cost thereof, together with any fines and costs, shall constitute claim against the owner or owners of the lot or parcel of ground and may be collected as any other fine or cost is collected. The written notice of violation and any invoice sent to the owner or responsible party shall provide notice of the right to appeal the code enforcement constable’s decision as outlined in this article.

Section 2. Amend Chapter 74 (“Vegetation”), Article II (“Grass and Weeds”), by making insertions as shown by underlining and deletions as shown by strike through as follows:

Sec. 74-32. Appeals Procedures.

Any property owner or responsible party seeking to appeal the decision of a code enforcement constable finding the property to be in violation of this article shall file an appeal, in writing, to the town manager within ten (10) business days of the date of the notice of violation or the date of the invoice for the mowing and trimming costs, whichever comes later. The town manager shall review the appeal and provide the appellant with an opportunity to present his/her case to the town manager. The town manager shall issue a written determination within twenty (20) business days of receipt of the appeal.

Section 3. Amend Chapter 74 (“Vegetation”), Article III (“Trees”), by making insertions as shown by underlining and deletions as shown by strike through as follows:

Sec. 74-65. - Review of commissioners and town manager.

The mayor and town council shall have the right to review the conduct, acts and decisions of the town tree commission and the town manager. Any person may appeal any ruling or order of the town manager or town tree commission within 10 business days of the ruling or order to the mayor and council who may hear the matter and make the final decision. All rulings or orders issued by the town manager or town tree commission shall include notice of the right to appeal the ruling or order.

Section 3. Amend Chapter 74 (“Vegetation”), Article IV (“Bamboo”), by making insertions as shown by underlining and deletions as shown by strike through as follows:

Sec. 74-71. - Unlawful to plant or grow bamboo without proper barrier/container and setback.

Subject to the exemption provided in section ~~74-56~~ 74-72, no person(s) or other legal entity(s) shall plant or cause to grow bamboo on any lot or parcel of ground within the town unless:

- (1) The root system of such bamboo plant(s) 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/growth of the bamboo plant'(s) root system beyond the container in which it is planted; or
- (2) The root system is contained within a barrier, constructed in accordance with the following specifications, and only after a compliance inspection performed, and a permit issued, by the code enforcement constable ~~town code enforcement official~~:
 - a. The barrier itself shall be composed of high density polypropylene or polyethylene, 40 mil or heavier;
 - b. Each portion or sheet of the barrier shall be secured or joined together by the use of stainless steel clamps or stainless steel closure strips designed for such barriers;
 - c. The barrier shall be installed not less than 30 inches deep;
 - d. The barrier shall be circular or oblong shaped;
 - e. Not less than three inches of the barrier shall protrude above ground level around the entire perimeter of the barrier;
 - f. When installed, the barrier shall slant outward from the bottom to the top.
- (3) Whether planted or growing in a container (under subparagraph (1) above) or contained within a barrier (under subparagraph (2) above), all bamboo plants shall be located, trimmed and maintained so that no part of the plant (including stalks, branches, leaves, and/or roots) shall extend nearer than ten feet from any property line.

Sec. 74-72. - Exemptions.

Section ~~74-55~~ 74-71 shall not apply to any landowner or possessor who, prior to the effective date of this article, has planted or caused to grow any bamboo on any property within the limits of the town unless a code enforcement constable ~~the town code enforcement official~~ determines, 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 landowner or possessor.

Sec. 74-73. - Complaint/order for removal, repair and compliance; appeals procedures.

Whenever a complaint is received by the town that any bamboo plant or root is encroaching on the property of an adjacent or abutting landowner, or public way, it shall, prior to taking any other action to enforce compliance with this article, give written notice (delivered in person or by certified mail, return receipt requested, properly addressed and with sufficient postage, and posted upon the subject property,) to the person(s) or legal entity(s) causing such condition to exist, which notice shall:

- (1) Specify the nature and location of the violation;
- (2) Provide notice of the need to remove and/or correct such condition within 30 days from the effective date of such notice;
- (3) Require that the removal and/or correction of such condition includes:
 - a. The removal and eradication of any bamboo plant or root from any adjoining or nearby lot(s) or public way to which it has spread from its original planting site, and the correction and repair of any property damage sustained to said adjoining or nearby lot(s) or public way, in removing such bamboo; and
 - b. The containment of the bamboo plant causing said encroachment, by mandatory and full compliance with section ~~74-55(1)~~ 74-71(1) and/or section ~~74-55(2)(a-f)~~ 74-71(2)(a-f);
- (4) State that upon failure to comply with the notice and order for removal and/or containment, the town may:
 - a. Remove and eradicate such bamboo upon the land of any nearby or abutting property owner, public way and/or upon the property of the person(s) or entity(s) planting or causing such bamboo to grow, as provided in section ~~74-58~~ 74-74; and/or
 - b. Institute proceedings against such person(s) or legal entity(s) to collect a civil penalty for violation of this article.
- (5) Set forth the criminal penalties for violations.
- (6) Include notice of the appeals procedures outlined in this section.

The effective date of notice under section ~~74-57(2)~~ 74-73(2) shall be the later of: (a) the date of personal delivery, or, if mailed, the date the return receipt is signed, or if not signed, the date the notice is stamped refused, unclaimed, or otherwise undeliverable by the U.S. Postal Service; or (b) the date the property is posted. The fact that such notice was not actually received by the alleged violator shall not be a defense to the town's subsequent enforcement of this article. The property owner or responsible party seeking to appeal the notice of violation shall file a written appeal with the town manager within ten (10) business days of the effective date. The town manager shall review the appeal and provide the appellant with an opportunity to present his/her case to the town manager. The town manager shall issue a written determination within twenty (20) business days of receipt of the appeal.

Sec. 74-74. - Removal of bamboo.

- (a) If the violation is not remedied within the time set forth in the notice and order as outlined above, the town is hereby authorized to remove or have removed any encroaching bamboo and to take all reasonable steps to eradicate its re-growth from said adjacent or nearby property or public way, and to restore any such lands to its natural condition prior to such removal and eradication (including fill, grading, and seeding).
- (b) The town shall also be authorized to remove and eradicate the plant(s) causing the encroachment, upon the responsible party(s)' failure to properly contain the plant in accordance with section ~~74-55~~ 74-71, after complaint and notice.

The cost of corrective action taken by the town under subparagraphs (a) and (b) above, together with any civil penalties and costs, shall be recoverable from the entity responsible and shall constitute a lien against any lot or parcel of ground belonging to the entity responsible upon which such bamboo had been planted or from which the bamboo had encroached. Such costs and fines may be collected as any other fine or cost is collected. ("Costs" shall include court costs and reasonable attorneys fees, whenever permitted by law).

SYNOPSIS

