ORDINANCE NO. 404

AN ORDINANCE OF THE TOWNSHIP OF LOWER MAKEFIELD, BUCKS COUNTY, PENNSYLVANIA ENACTING CHAPTER 84A OF THE LOWER MAKEFIELD TOWNSHIP CODE TO PROVIDE FOR THE REGULATION OF PLANTING, CONTROLLING AND REMOVAL OF BAMBOO, INCLUDING PENALTIES AND OTHER REMEDIES FOR VIOLATIONS

WHEREAS, the enactment of weed control ordinances are properly within the police powers of the Board of Supervisors of Lower Makefield Township ("Township Supervisors");

WHEREAS, Lower Makefield Township Code of Ordinances Chapter 84 Brush, Grass and Weeds regulates weed control within the Township;

WHEREAS the Township Supervisors has determined that certain additional protections are necessary to preserve and protect private and public property from the damaging effects of uncultivated gardens, tall grasses, unabated weeds, and the spread of certain invasive, non-native plantings such as bamboo; to protect indigenous plant materials from the invasive spread of non-native plantings such as bamboo; and to maintain the general welfare of residents of Lower Makefield Township;

NOW THEREFORE, in consideration of the foregoing be it **ENACTED** and **ORDAINED** by Board of Supervisors of Lower Makefield Township, Bucks County, Pennsylvania, as follows:

I. Enact Chapter 84A, entitled "Bamboo," of the Lower Makefield Township Code of Ordinances as follows:

84A-1. **Purpose and Intent.**

The purpose of this Chapter is to preserve and protect private and public property from the damaging effects of the spread of certain invasive, non-native plantings such as bamboo; to protect indigenous plant materials from the invasive spread of non-native plantings such as bamboo; and to maintain the general welfare of the residents of Lower Makefield Township.

84A-2. **Definitions.**

For the purpose of this Chapter, the following definitions shall apply:

A. BAMBOO – Any monopodial (running) tropical or semi-tropical grasses from the genera Phyllostachys or Pseudosasa, including, but not limited to, *Phyllostachys aureosulcata* – Yellow Groove Bamboo. In addition, this definition includes Common Bamboo, Golden Bamboo and Arrow Bamboo.

B. BAMBOO OWNER – Any Owner/Occupant who has planted and/or grows Bamboo on their property; who maintains Bamboo on their property; or who permits Bamboo to

grow or remain on their property, even if the Bamboo has spread from an adjoining property. A property owner and/or resident will not be considered to be a Bamboo owner if:

1. He/She has provided satisfactory proof to the Township that, within a reasonable period of time after discovering the encroachment of Bamboo onto the subject property from an adjoining or neighboring property, he/she advised the owner of such property of his/her objection to the encroachment of the Bamboo; and

2. he/she has initiated steps for the removal of the Bamboo from the subject property, including seeking available remedies at law and/or equity.

C. PERSON – Any person owning or occupying any premises within Lower Makefield Township. For purposes of this Chapter, Bamboo Owner responsibilities shall apply to the owner in the case of vacant premises or premises occupied by the owner, or to the occupant of the premises in case of premises occupied by other than the owner.

84A-3. **Bamboo Restrictions.**

A. Any Bamboo growing upon any premises in the Township in violation of any of the provisions of this section is hereby declared to be a nuisance and detrimental to the health, safety, cleanliness and comfort of the inhabitants of the Township.

B. The planting or growing of Bamboo shall be prohibited within the Township, unless:

1. The root system of such Bamboo plant is entirely contained within a planter, barrier, or other vessel, located entirely above ground-level, and of such design, material, and location as to entirely prevent the spread/growth of the Bamboo'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 permit is issued by the Township:

a. the barrier shall be composed of high density polypropylene or polyethylene, forty (40) mil or heavier;

b. portions or sheets 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 entire perimeter of the barrier shall be more than thirty (30) inches below ground level and more than three (3) inches above ground level; and

d. when installed, the barrier shall slant outward from the bottom to the top.

Any person who hereafter plants or grows, or causes to be planted or grown, Bamboo within the Township, except as under the conditions set forth in subparagraph (1) and (2) above, shall be deemed to be in violation of this Chapter, and shall be subject to such penalties as are set forth herein.

For purposes of this Chapter, Bamboo found growing upon a property shall constitute presumptive evidence that the Bamboo was planted and/or grown by and/or with the consent of the Bamboo Owner.

C. Property Lines and Removal of Bamboo.

1. Bamboo shall not be planted, maintained, or otherwise be permitted to exist within forty (40) feet of the edge of the pavement or traveled portion of any public roadway in the Township. Any Bamboo Owner whose property contains Bamboo shall remove and abate the growth of the Bamboo within forty (40) feet of edge of the pavement or traveled portion of public road in the Township.

2. Whether planted or in existence before the effective date of this chapter, and/or planted or growing in a container or contained within a barrier, 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 (10) feet to any property line.

3. When removing and destroying Bamboo, all rhizome (underground plant stem capable of producing the shoot and root systems of a new plan) disposal must be by incineration only. No composting or trash disposal of rhizomes shall be allowed.

84.A-4. Bamboo **Owner Responsibilities**.

A. The Bamboo Owner shall remove, trim, or cut all Bamboo growing or remaining upon such premises in violation of the provisions of § 84A-3 of this Chapter.

B. The Bamboo Owner shall be responsible for the cost of removal and/or abatement of Bamboo that has encroached upon an adjoining property in violation of this Chapter.

C. Pre-Existing Bamboo.

1. Any Bamboo that has been planted or otherwise permitted to grow on any property within the Township prior to the effective date of this Ordinance may remain on such property, subject to the compliance with this Chapter.

2. Each Bamboo Owner shall be responsible to ensure that the Bamboo planted or growing on his/her property prior to the effective date of this Ordinance does not encroach or grow upon any adjoining or neighboring property, including all public property and right-of-ways. Such Bamboo Owners shall be required to take such measures as are reasonably expected to prevent such invasion or encroachment, including, but not limited to, the installation of sheathing compromised of metal or other

material impenetrable by Bamboo at a sufficient depth within the property line or lines where the Bamboo is planted or is growing to prevent the growth or encroachment upon adjoining or neighboring property by the Bamboo.

3. Replanting Prohibited. Any Bamboo existing on a property prior to effective date of this Ordinance may not be replanted or replaced in kind once such Bamboo is or has become, for any reason, dead, destroyed, uprooted or otherwise removed except in compliance with the Provisions of this Chapter.

84A-5. **Bamboo Removal from Township Property**.

A. Encroachment. In the event that Bamboo growing on a Bamboo Owner's property invades or grows onto Township property, including, but not limited to right-of-ways, the Township shall notify the Bamboo Owner in writing that Bamboo has invaded the Township property and that the Bamboo Owner is responsible for the removal of such Bamboo from the Township property. This Encroachment Notice shall be sent by certified mail, return receipt requested and by regular mail to the last known address of the Bamboo Owner, and a copy of the Notice shall also be posted in a conspicuous location on the Bamboo Owner's property.

B. In the event that the Bamboo Owner does not remove the Bamboo from the Township property, or does not make an arrangement with the Township for removal of such Bamboo within fifteen calendar (15) days from the date of the Encroachment Notice, the Township, at its discretion, may remove such Bamboo from the Township property. The Bamboo Owner shall be liable and responsible to the Township for all costs associated with removing the Bamboo from the Township property. Such costs may be assessed against the property of the Bamboo Owner, and in the event that the costs remain unpaid more than thirty (30) days after the demand and payment has been made by the Township on the Bamboo Owner, the Township may lien the property of the Bamboo Owner for these costs, plus interest, fees, and expenses, as allowed by law.

C. In the event that the Township is compelled to undertake the removal of Bamboo, as provided for above, neither the Township nor its employees, contractors or agents shall have any liability to the Bamboo Owner for any damages or other claims arising out of the removal of such Bamboo. In the event such removal entails or causes damages to the property of any person or entity other than the Bamboo Owner, the Bamboo Owner shall be responsible for such damages.

84A-6. **Notice of Violation.**

A. In the event that there is any Bamboo growing or remaining upon such premises in violation of the provisions of §84A-3 of this Chapter, the Township shall notify the Bamboo Owner in writing of the existence of such violation. Notice of Violation shall be served by handing it directly to the Bamboo Owner; by mailing it to the last known address of the Bamboo Owner; or by posting Notice of Violation on the premises at a conspicuous location.

B. Any Bamboo Owner receiving a Notice of Violation shall bring their property into compliance with this Chapter within fifteen (15) calendar days of the Bamboo Owner's receipt of said Notice. If the Bamboo Owner fails to bring his/her property into compliance with the Notice and this Chapter, then the Township may issue a non-traffic citation against the Bamboo Owner.

84A-7. **Violation and Penalties.**

Any person who violates any of the provisions of this chapter shall, upon conviction, in a summary proceeding before any Magisterial District Judge of Bucks County, be punishable by a fine of not more than $300 and costs of prosecution for each and every offense or, upon default in payment of the fine and costs not caused by indigence or lack of sufficient assets, by imprisonment in the Bucks County prison for a period not to exceed thirty (30) days, provided that anyone violating a provision of this Chapter may, within five (5) days of the Notice of Violation or Encroachment Notice, pay to the Township Treasurer, under such rules and regulations as the Township Supervisors may prescribe, the sum of twenty dollars ($20) for each offense as a penalty for and in full satisfaction of such violation. Each day that such violation is continued shall constitute a new and separate offense, punishable by like fine, penalty and imprisonment.

In addition, the Township Supervisors may institute suits, in equity or at law, to restrain, prevent, or abate a violation of this Chapter. Such proceedings may be initiated before any court of competent jurisdiction. The expense of such proceedings shall be recoverable from the violator in any manner as may now or hereafter be provided by law.

II. **Partial Repealer**

All other provisions of the Township's Code of Ordinances, as amended, shall remain in full force and effect. All other Ordinances or provisions of the Ordinance inconsistent herewith or in conflict with any of the terms hereof are, to the extent of said inconsistencies or conflicts, are hereby specifically repealed.

III. **Severability**

The provisions of this Ordinance are severable. If any section, clause, sentence part or provision thereof shall be held illegal, invalid, or unconstitutional by a court of competent jurisdiction, such decision of the court shall not affect or impair any of the remaining sections, clauses, sentences, parts or provisions of this Ordinance. It is hereby declared to be the intent of

the Township Supervisors that this Ordinance would have been adopted if such illegal, invalid or unconstitutional section, clause, sentence or part of a provision had not been included herein.

IV. **Effective Date**

All provisions of this Ordinance shall be in full force and effect five (5) days after the approval and adoption.

Ordained and Enacted this 20th day of July, 2016

BOARD OF SUPERVISORS
TOWNSHIP OF LOWER MAKEFIELD

By: _____
Jeffrey Benedetto, Chairperson

ATTEST:

_____
Terry Fedorchak, Township Manager