

**INCORPORATED VILLAGE OF OLD WESTBURY
BOARD OF TRUSTEES**

LOCAL LAW NO. 5 OF 2021

**CREATING CHAPTER 65, "BAMBOO" OF THE CODE OF
THE VILLAGE OF OLD WESTBURY**

WHEREAS, the Board of Trustees has recommended the enactment of a local law relating to the regulation of bamboo in the Village of Old Westbury; and

WHEREAS, the Board of Trustees finds that the preservation and protection of private and public property from the damaging spread of certain Running Bamboo grasses (the "Bamboo Action"), is in the public interest; and

WHEREAS, to achieve the objectives of the Bamboo Action, the Board of Trustees has recommended the enactment of a Local Law creating Chapter 65, "Bamboo"; and

WHEREAS, this Local Law was introduced by the Board of Trustees on September 20, 2021; and

WHEREAS, the Board finds that this Local Law is a Type II Action pursuant to the New York State Environmental Quality Review Act ("SEQRA"); and

WHEREAS, this Local Law was the subject of a duly noticed public hearing in accordance with New York State Village Law and the Village Code before the Board on October 18, 2021.

BE IT ENACTED by the Board of Trustees of the Incorporated Village of Old Westbury as follows:

Section 1. Chapter 65, "Bamboo" of the Village Code of the Village of Old Westbury be and is hereby created to read as follows:

§ 65-1 **Purpose and intent.**

The purpose of this chapter is to preserve and protect private and public property from the damaging spread of certain Running Bamboo grasses, protect plant materials from the invasive spread of bamboo and maintain the general welfare of the residents of the Village of Old Westbury (the "Village").

§ 65-2 **Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

BAMBOO

A. RUNNING BAMBOO

Hereinafter defined as any tropical or semi-tropical grasses with monopodial (leptomorph) rhizome (root) systems which typically send off rhizomes far away from the plant, including, but not limited to, the following plant genera: Arrow Bamboo, Arundinaria, Bambusa, Chimonobambusa, Common Bamboo, Golden Bamboo, Phyllostachys, Pleioblastus, Pseudosasa, Sasa, Sasaella, and Semiarundinaria.

B. CLUMPING BAMBOO

Hereinafter defined as any tropical or semi-tropical or sympodial podial (pachymorph) grasses which typically send off rhizomes near the base of the plant, including, but not limited to, Bambusa, Chusquea, Dendrocalamus, Drepanostachyum, Fargesia, Himalayacalamus, Otatea, Thamnocalamus, Thyrsostachys and Yushania.

BAMBOO OWNER

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

- A. Has provided satisfactory proof to the Village that, within one year of discovering the encroachment of Running Bamboo onto his or her property from an adjoining neighboring property, advised the owner of such property of an objection to the encroachment of the Running Bamboo; or
- B. Can otherwise prove to the satisfaction of the Superintendent of the Building Department, or his or her designee, that the Running Bamboo originated from an adjacent property owner, spread onto his or her property without his or her consent, and the resident took reasonable measures to mitigate the further spreading of the Running Bamboo on his or her property within one year of discovery.

§ 65-3 Presumption.

In the event any bamboo is found to have encroached, spread, invaded, or intruded upon any other property or right-of-way, said species shall be presumed to be classified as "Running Bamboo." For the purposes of this section, 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.

§ 65-4 **Prohibition.**

Upon the effective date of this provision the planting of Running Bamboo shall be prohibited within the Village. Any person, owner, agent for such owner, firm or corporation in possession of any improved or unimproved real property, who thereafter plants or causes to be planted any such Running Bamboo within the Village, shall be deemed to be in violation of this section and shall be subject to such penalties as are set forth hereunder.

§ 65-5 **Duty to confine Running Bamboo.**

In the event any species of Running Bamboo is located upon any property within the Village, the owner of said property shall confine such species to prevent the encroachment, spread, invasion, or intrusion of same onto any property or right-of-way.

§ 65-6 **Regulation of preexisting Running Bamboo.**

Any Running Bamboo that has been planted or otherwise permitted to grow on any property within the Village prior to the effective date of this section may remain on such property subject to compliance with this section.

- A. Running Bamboo shall not be planted, maintained or otherwise be permitted to exist within 10 feet of the Village's right-of-way along any road in the Village.
- B. Any bamboo owner whose property contains Running Bamboo shall remove and abate the growth of the Running Bamboo within 10 feet of the Village's right-of-way along any road in the Village.
- C. Each bamboo owner shall be responsible to ensure that the Running Bamboo planted or growing on the property prior to the effective date of this section does not encroach or grow upon any adjoining or neighboring property or properties, including all public property and Village rights-of-way.
- D. Each bamboo owner shall be required to take such measures as are reasonably expected to prevent such Running Bamboo from invading or growing onto adjoining or neighboring properties. Such measures shall include, but not be limited to, installation of sheathing impenetrable by Running Bamboo at a sufficient depth within the property line or lines where the Running Bamboo is planted or is growing to prevent the growth or encroachment upon adjoining or neighboring property by the Running Bamboo.
- E. All Running Bamboo which migrates onto adjacent properties shall be deemed a public nuisance, and no resident of the Village or property owner shall have any vested or nonconforming right to continue maintenance of that Running Bamboo that has migrated onto an adjacent property, whether or not it preexisted the adoption of this regulation.

- F. An owner, tenant, or occupier of property, after being given written notice of the occurrence of a migration or trespass upon adjacent property by Running Bamboo planted upon and originating from his or her property, shall be required to take appropriate measures to remove the Running Bamboo and prevent any further migration.
- G. An owner, tenant, or occupier of property, after being given written notice of the occurrence of a migration or trespass upon adjacent property by Running Bamboo planted upon and originating from his or her property shall be responsible for the cost of removing the Running Bamboo from the adjacent property, and for any damage to the adjacent property reasonably caused by the Running Bamboo and its removal.

§ 65-7 Replanting prohibited.

Any Running Bamboo either planted or caused to be planted or existing on a property prior to the effective date of this chapter may not be replanted or replaced in kind once such Running Bamboo is or has become, for any reason, dead, destroyed, uprooted or otherwise removed. In addition, all dead, destroyed, uprooted or otherwise removed Running Bamboo shall be disposed off site in a manner that will not permit the removed plants to repropagate in the Village.

§ 65-8 Notice and Village's Right to Remove.

The Village shall notify the owner, tenant, or occupier of any property which is in violation of any section of this chapter, and the notice shall specify a time, not less than 15 days, to comply with the provisions therein. Said notice shall be in writing and served personally or by certified mail or nationally recognized courier. Service shall be deemed complete on the day the delivery or mail is completed.

If an owner, tenant, or occupant of property fails, neglects, or refuses to comply with such written notice and demand of the Village within five days after service of such notice, the Village may, in its discretion, enter upon the affected property and the property which is the source of the bamboo and remove all bamboo from the site. The cost of such removal, plus 50% for supervision and administration, shall be charged to the bamboo owner(s) property. The cost for such removal shall be certified by the Superintendent of the Building Department to the Village Clerk, and shall thereupon become and be a lien upon the property in which such violation of this section occurs, and shall be added to and become and form part of the taxes next to be assessed and levied upon said lot or land, and shall bear interest at the same rate as taxes and shall be enforced by the same officer, and in the same manner, as taxes.

§ 65-9 Penalties for offenses.

- A. Any person or corporation violating any provisions of §§ 65-4 and 65-7 of this chapter, prohibiting the planting and replanting of Running Bamboo, or §§ 65-5 and 65-6 of this chapter, prohibiting the maintaining, growing, or failure to

remove Running Bamboo in violation of these regulations, shall be deemed guilty of a violation and, upon conviction, shall be punishable by a fine of not less than \$1,500 and no more than \$10,000.

- B. Each quarter-annual period of continued violation shall constitute a separate additional violation, for which separate and additional fines and punishment or civil penalties may be imposed and recovered.
- C. In the event the penalty sought is within the monetary jurisdiction of the Justice Court, as established in Article 18 of the Uniform Justice Court Act, such action to recover such penalty may, as shall be determined by the Village Attorney, be commenced in the appropriate court as a small claim action.
- D. The imposition of a penalty or fine as provided above or as specifically provided in any chapter of the Village Code or local law, ordinance, rule or regulation of the Village shall be in addition to any injunctive or remedial relief for any civil penalty which is authorized under the laws of the Village of Old Westbury, with the same force and effect as though provided for herein. Such penalty or fine shall not be deemed to be in lieu of any provision for revocation or suspension of any license or permit.

§ 65-10 **Severability.**

If any section or provision of this chapter shall be adjudged to be invalid by any court of competent jurisdiction, such judgment shall not affect, impair or invalidate any other part of this chapter or the remainder thereof, but shall be confined in its operation to the section or provision or part thereof directly involved in the controversy in which such judgment shall be rendered.

Section 2. **Severability.** If a court determines that any clause, sentence, paragraph subdivision, or part of this local law or the application thereof to any person, firm or corporation or circumstance is invalid or unconstitutional, the Court's order or judgment shall not affect, impair or invalidate the remainder of this local law, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or part of this local law or in its application to the person, individual, firm or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

Section 3. **Effective Date.** This Local Law shall take effect immediately upon filing with the Secretary of State.

On motion made by Trustee Brown, seconded by Trustee Baker, the foregoing Local Law was enacted upon the following vote:

Edward Novick, Mayor	-	Aye
Cory Baker, Deputy Mayor	-	Aye
Marina Chimerine, Trustee	-	Aye
Jeffrey Brown, Trustee	-	Aye
Andrew Weinberg, Trustee	-	Aye

Dated: Old Westbury, New York
October 18, 2021

Filed: Old Westbury, New York
October 19, 2021