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ENACTMENT: ADOPT LOCAL LAW INTRODUCTORY NO. 2-2013, ADDING CHAPTER 156A TO THE CODE OF THE TOWN OF HUNTINGTON (BAMBOO)

Resolution for Town Board Meeting Dated: April 9, 2013

The following resolution was offered by: Councilwoman Berland  
and seconded by: **SUPERVISOR PETRONE**

THE TOWN BOARD having held a public hearing on the 9<sup>th</sup> day of April, 2013 at 7:00 p.m. to consider adopting Local Law Introductory No. 2-2013 amending the Code of the Town of Huntington, by adding Chapter 156A (Bamboo) and due deliberation having been had,

HEREBY ADOPTS

Local Law Introductory No. 2-2013 amending the Code of the Town of Huntington by adding Chapter 156A; as follows:

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF HUNTINGTON, AS FOLLOWS:

LOCAL LAW NO 8-2013  
AMENDING THE CODE OF THE TOWN OF HUNTINGTON  
BY ADDING CHAPTER 156A (BAMBOO)

CHAPTER 156A (BAMBOO)

Section 1. Amendment to the Code of the Town of Huntington by adding a new Chapter 156A (BAMBOO) as follows:

CHAPTER 156A

BAMBOO

§156A-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 indigenous plant materials from the invasive spread of running bamboo and maintain the general welfare of the residents of the Town of Huntington.

§156A-2. Definitions:

(A) Bamboo:

(1). "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.

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(2). "Clumping bamboo" hereinafter defined as any tropical or semi-tropical or sympodial (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, Thyrostachys and Yushania.

(B). "Bamboo Owner". 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:

(1) Did not plant or grow or cause Bamboo to be planted or grown on his property, and

(2) Has provided satisfactory proof to the Town of Huntington that, within a reasonable period of time after discovering the encroachment of Bamboo onto the property from an adjoining or neighboring property, advised the owner of such property of an objection to the encroachment of the Bamboo, and

(3) Has initiated steps for the removal of the Bamboo from the property, including remedies at law.

§156A-3. Presumption. In the event 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." This presumption shall be rebuttable.

§156A-4. Applicability. 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.

§156A-5. Prohibition. Upon the effective date of this provision the planting of "running bamboo" shall be prohibited within the Town of Huntington. Any person who thereafter plants or causes to be planted any such "running bamboo" within the Town of Huntington shall be deemed to be in violation of this Section and shall be subject to such penalties as are set forth hereunder.

§156A-6. Duty to confine bamboo. In the event any species of Bamboo is located upon any property within the Town of Huntington, the owner or occupant of said property shall confine such species to prevent the encroachment, spread, invasion or intrusion of same onto any other property or right of way.

§156A-7. Regulation. Any Bamboo that has been planted or otherwise permitted to grow on any property within the Town of Huntington prior to the effective date of this Section may remain on such property subject to compliance with this Section.

(A). Bamboo shall not be planted, maintained or otherwise be permitted to exist within 10 feet of the edge of the pavement or traveled portion of any public roadway in the Town of Huntington, and

(B). Any Bamboo Owner whose property contains Bamboo shall remove and abate the growth of the Bamboo within 10 feet of the edge of the pavement or traveled portion of a public road in the Town of Huntington, and

(C). Each Bamboo Owner shall be responsible to ensure that the 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 Town of Huntington right-of-ways, and

(D). Each Bamboo Owner shall be required to take such measures as are reasonably expected to prevent such Bamboo from invading or growing onto adjoining or neighboring properties. Such measures shall include, but not be limited to, installation of sheathing impenetrable by 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 Bamboo, and

(E). The Town Board may from time to time prescribe such rules and regulations as may be necessary to give effect to this Section.

§156A-8. Removal from Town Property.

(A). Notice. In the event that Bamboo growing on a Bamboo Owner's property invades or grows on an adjoining or neighboring property that is owned or held on behalf of the Town of Huntington or its Trustees, the Director of Public Safety on behalf of the Town of Huntington or its Trustees shall notify the Bamboo Owner in writing that the Bamboo has invaded the Town of Huntington property and that the Bamboo Owner is responsible for the removal of such bamboo from the Town of Huntington property within 30 days. Such period may be extended for good cause shown, as long as it can be demonstrated that remedial measures have been started and the delay is not under the control of or due to the actions of the person to whom the notice has been issued. The Bamboo Owner shall be liable and responsible to the Town of Huntington for all costs incurred in removing the bamboo from the Town of Huntington property. Such costs may be assessed against the property of the Bamboo Owner.

(B). Service of the notice. The notice shall be served either personally in accordance with the CPLR or by registered or certified mail, return receipt requested, and addressed to the property owner at the last address shown on the most current assessment roll of the Town Assessor and/or Receiver of Taxes, or to the owner's agent at the last known address, or to the occupant of the property, or person having a vested or contingent interest in the property as shown on the most current assessment roll of the Town Assessor and/or Receiver of Taxes. A copy of the notice shall also be posted at the Bamboo Owner's property.

(C). Action upon noncompliance. Upon the failure, neglect or refusal of such owner, agent, or person or business entity occupying the premises to remove, remedy or abate the bamboo nuisance within the specified period of time; or if the mailing is returned by the Post Office because of the inability to make delivery for any reason, as long as the notice was properly addressed, the Director of Public Safety may refer the matter to the Administrative Hearing Officer appointed by the Town Board for further action. The

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Administrative Hearing Officer shall conduct a hearing concerning the premises within fifteen (15) days of receipt of a referral from the Director of the Department of Public Safety.

(D). Administrative Hearing. Upon referral to the Administrative Hearing Officer, the Public Safety Department code enforcement officer shall present a report on the status of the property where the bamboo nuisance is alleged to exist; the owner and/or agent of the owner of the affected property shall have the opportunity to present relevant evidence to the Administrative Hearing Officer, with or without legal counsel. A record shall be kept of such hearing including without limitation all documentary evidence presented together with a record of the testimony offered by any witnesses, who shall be duly sworn by the Administrative Hearing Officer prior to offering testimony. The decision of the Administrative Hearing Officer shall be issued within fifteen (15) days of the last day of the hearing conducted, thereon, and, it shall be filed with the Office of the Huntington Town Clerk and mailed to the person(s) to whom the original notice was served by regular mail and by registered or certified mail, return receipt requested, within five (5) days of the date of the decision.

(E). Action of the Administrative Hearing Officer. The Administrative Hearing Officer appointed by the Town Board, may direct the Bamboo Owner whose property has caused the bamboo nuisance to remove, remedy or abate the bamboo nuisance within thirty (30) days of receipt of a copy of the decision of the Administrative Hearing Officer, and upon the failure, neglect or refusal of such person or business entity to comply with the decision of the Administrative Hearing Officer, the Director of Public Safety may direct Town personnel, to remove, remedy or abate the nuisance, by whatever means deemed necessary or proper by the Town, at the expense of the property owner, or his agent and/or the occupier of land. A copy of the Public Safety Director's directive to Town personnel to proceed shall be mailed by certified or registered mail, return receipt requested, and addressed to the property owner at the last address shown on the most current assessment role on file in the Office of the Town Assessor and/or the Receiver of Taxes, or to the owner's agent at the last known address, and/or to the person or business entity occupying the land at the location of the property.

(F). Removal of the nuisance. Upon the failure, neglect or refusal of the owner, his agent, or person, or business entity occupying the premises to remove, remedy or abate such nuisance within the period provided by the decision of the Administrative Hearing Officer, or if the mailing is returned by the Post Office because of the inability to make delivery for any reason, as long as the notice was properly addressed, Town personnel may enter the property, upon reasonable notice, and take all necessary action to remove or abate the nuisance at the expense of the property owner, his agent, or occupier of the land as set forth in this article.

(G). Any person or business entity who resists, obstructs or impedes the agents, servants, officers and/or employees of the Town of Huntington in the remediation or removal process shall be in violation of this article and shall be subject to the fines and penalties provided herein.

(H). Liability for the costs of removal and/or abatement. The property owner, or his agent, and/or person or business entity who occupies the land shall be liable for the direct and indirect costs of abating the nuisance and all expenses incidental thereto, including but not limited to, an administrative fee equal to twenty-five (25%) percent of the total cost of said removal, remediation and/or disposal process. Said administrative fee is intended to reimburse the Town for the monies and time expended by its employees in abating the nuisance and collecting the sums due, including but not limited to, notifying the appropriate party, certifying the amounts due to the Town, and/or charging same against the property.

(I). The costs incurred by the Town as set forth herein shall be certified by the Director of each Town department providing services and the Town Attorney shall mail written notice of such costs by certified or registered mail, return receipt requested, to the owner of the premises at the last address shown on the most current assessment role on file in the Office of the Town Assessor, or to the owner's agent at the last known address, and/or to the occupier of the premises at the location of the property. Said notice shall further state that upon the failure of the property owner, his agent, and/or occupier to pay such sums within ten (10) days of receipt of such written notice by cash, certified or bank check, or money order, shall be sufficient cause to add the amount due to the tax bill without further notice.

(J). Recovery of costs and tax lien. In the event the property owner, his agent and/or the occupier of the land fails, refuses and/or neglects to pay the monies due and owing to the Town within said ten-day period, or if the mailing is returned by the Post Office because of the inability to make delivery for any reason, as long as the notice was properly addressed, such certification of costs shall be provided to the Town of Huntington Tax Receiver who shall cause the costs as shown thereon to be charged against such lands without further notice. The amount so charged shall forthwith become a lien against such lands and shall be added to and become part of the taxes next to be assessed and levied upon such lands, the same to bear interest at the same rate as taxes, and shall be collected and enforced by the same officers and in the same manner as taxes.

§156A-9. Replanting Prohibited. Any 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.

§156A-10. Penalties for offenses.

(A) Any person or corporation violating any provisions of Chapter 156A-5 and 156A-9, prohibiting the planting and/or replanting of running bamboo shall be deemed guilty of a violation and, upon conviction, by a fine of \$1,000.00. Each month's continued violation shall constitute a separate additional violation.

(B) Any person or corporation violating any provisions of Chapter 156A-6, 156A-7 and 156A-8 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,

by a fine of \$250.00 to \$500.00. Each month's continued violation shall constitute a separate additional violation.

(C) The penalty provisions of this section shall not take effect for a 6 month period following the date this Local Law is filed in the Office of the Secretary of State of the State of New York.

Section 2. Severability.

If any clause, sentence, paragraph, subdivision, section or other part of this Local Law shall for any reason be adjudged by any court of competent jurisdiction to be unconstitutional or otherwise invalidated, such judgment shall not affect, impair or invalidate the remainder of this Local Law, and it shall be construed to have been the legislative intent to enact this Local Law without such unconditional, or invalid parts therein.

Section 3. Authority.

The Town Board is vested with the authority to make these amendments by local law pursuant to Municipal Home Rule Law §20 and §130.

Section 4. Effective Date.

This Local Law shall take effect immediately upon filing in the Office of the Secretary of State of the State of New York.

ADDITIONS ARE INDICATED BY UNDERLINING.  
\* \* \* INDICATES NO CHANGE IN PRESENT TEXT.  
DELETIONS ARE INDICATED BY [BRACKETS].

VOTE:	AYES: 3	NOES: 2	ABSENTIONS: 0
Supervisor Frank P. Petrone		AYE	
Councilwoman Susan A. Berland		AYE	
Councilman Eugene Cook		NO	
Councilman Mark A. Cuthbertson		NO	
Councilman Mark Mayoka		AYE	

THE RESOLUTION WAS THEREUPON DECLARED DULY ADOPTED.