Bill VSC 2205

A local law to establish a new Chapter in the Village Code to provide for regulation of bamboo and invasive plant species.

 Section One. A new Chapter 42 is added to the Village Code, to read as follows:

“Chapter 42. Bamboo and Invasive Plant Species

§ 42-1. Purpose and intent.

Bamboo and invasive plant species have an adverse impact on the environment and the economy. Bamboo and invasive plant species out-complete native species, thus diminishing biological diversity and potentially changing and challenging ecological integrity. The Board finds that the control of the growth of bamboo and invasive plant species will preserve and protect private and public property and the ecology in and around the Village.

§ 42-2. Definitions.

For purposes of this article, the following terms shall have the meanings indicated:

[**BAMBOO**](https://ecode360.com/print/32989905#32989905)

Woody grass of the subfamily Bambusoideae, tribe Bambuseae, including varieties classified as "running bamboo" and "clumping bamboo" as defined in this article.

[**OWNER**](https://ecode360.com/print/32989906#32989906)

A property owner in the Village of Sea Cliff who has planted or grown or caused the planting or growing of bamboo or invasive plant species on his property and/or has permitted or permits the growing of bamboo or invasive plant species that has encroached onto his property after originating on and spreading from an adjoining or neighboring property.

[**CLUMPING BAMBOO**](https://ecode360.com/print/32989907#32989907)

A plant of any species of bamboo with a pachymorph or sympodial rhizome system, in which the rhizomes tend to curve upward in close proximity to their point of origin and the lateral spread of the rhizomes tends to be limited, generally, to only a few inches or less each year. Clumping bamboo genera include: Ampelocalamus, Bambusa, Borinda, Chusquea, Dendrocalamus, Dinochloa, Drepanostachyum, Fargesia, Himalayacalamus, Otatea, Thamnocalamus, Thyrostachys, and Yushania.

**INVASIVE PLANT SPECIES**

Any plant identified as a prohibited invasive species in the New York State Department of Environmental Conversation regulations, presently located at 6 New York Code of Rules and Regulations (NYCRR), Part 575, §575.3(d)(2).

[**RUNNING BAMBOO**](https://ecode360.com/print/32989908#32989908)

A plant or any portion of a plant of any species of bamboo with a leptomorph or monopodial rhizome system, in which the rhizomes tend to grow laterally outward from their point of origin, at rates measured in multiple feet per year in many cases. By virtue of this aggressive rhizome growth pattern, running bamboo generally is viewed as being invasive and is the predominant variety of bamboo that creates a nuisance and causes damage to adjacent properties. Running bamboo genera include: Acidosasa, Arundinaria, Bashania, Brachystachyum, Chimonobambusa, Gelidocalamus, Indocalamus, Indosasa, Ochlandra, Phyllostachys, Pleioblastus, Pseudosasa, Sasa, Sasaella, Semiarundinaria, Shibataea, and Sinobambusa.

§ 42-3. Owner Responsibility/Presumptions.

For purposes of this Chapter, the occurrence of bamboo or invasive plant species growing upon a property shall constitute presumptive evidence that the growing of bamboo on the property shall have occurred with the consent and knowledge of the owner of such property, except that such property owner shall not be presumed to be a bamboo owner if the property owner did not plant or grow or cause said bamboo to be planted or grown on his property, and he shall provide the Building Department, that within 60 days after he first learned of the encroachment of bamboo onto his property from an adjoining or neighboring property, he advised the owner of such adjoining or neighboring property of his objection to the encroachment of bamboo onto his property and/or initiated steps for the removal of the bamboo from his property.

§ 42-4. Prohibitions.

A. It shall be unlawful to plant, replant, transplant, install, reinstall, discard or dump running bamboo or on any property in the Village of Sea Cliff subsequent to the effective date of this Chapter.

B. It shall be unlawful to plant, replant, transplant, install, reinstall, discard, dump or maintain invasive plant species on any property in the Village of Sea Cliff.

§ 42-5. Regulations.

[A.](https://ecode360.com/print/32989912#32989912) Any running bamboo that is present on a property in the Village of Sea Cliff on the effective date of this Chapter shall be allowed to remain on such property, provided that the following conditions are complied with:

[(1)](https://ecode360.com/print/32989913#32989913) The root and rhizome system of such bamboo 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 and rhizome system beyond the container in which it is planted, and such plant, barrel or other vessel is located no closer than 10 feet from any adjoining; or

[(2)](https://ecode360.com/print/32989914#32989914) The root and rhizome system of such bamboo is contained within a barrier, constructed in accordance with the following specifications, and only after a permit is issued by the Building Department, and planted in accordance with the following requirements:

1. The barrier itself shall be composed of high-density polypropylene or polyethylene, 40 mil or heavier;
2. 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;
3. The barrier shall be installed not less than 30 inches deep;
4. The barrier shall be circular or oblong shaped;
5. Not less than three inches of the barrier shall protrude above ground level around the entire perimeter of the barrier; and
6. When installed, the barrier shall slant outward from the bottom to the top.

[(3)](https://ecode360.com/print/32989921#32989921) Whether planted or growing in a container [under Subsection [A(1)](https://ecode360.com/print/32989913#32989913)above] or contained within a barrier [under Subsection [A(2)](https://ecode360.com/print/32989914#32989914)above], any and all running bamboo that is allowed to remain in place on any property in the Village of Sea Cliff pursuant to this section shall be located, trimmed, and maintained so that no part of such bamboo (including stalks, branches, stems, leaves, roots, and/or rhizomes) shall be located nearer than 10 feet from any property line.

[B.](https://ecode360.com/print/32989922#32989922) If that bamboo is found to have invaded, spread or encroached onto any adjoining or neighboring private or public property or right-of-way, such bamboo shall be presumed to be classified as running bamboo. This presumption shall be rebuttable.

[C.](https://ecode360.com/print/32989923#32989923) Any person who grows running bamboo or allows running bamboo to grow within the Village of Sea Cliff after the effective date of this article, except as under the conditions set forth in Subsection [A](https://ecode360.com/print/32989912#32989912)above, shall be deemed to be in violation of this Chapter, and shall be subject to such penalties as are set forth hereunder.

[D.](https://ecode360.com/print/32989924#32989924) Any running bamboo existing on a property in the Village of Sea Cliff prior to the effective date of this Chapter may not be replanted or replaced in-kind, or replaced with any other species of running bamboo, once such bamboo is or has become, for any reason, dead, destroyed, uprooted or otherwise removed.

[E.](https://ecode360.com/print/32989925#32989925) The growing, planting, replanting, transplanting, installation, and reinstallation of clumping bamboo shall be allowed in the Village of Sea Cliff, provided that the following conditions are complied with:

1. A permit for such bamboo is issued by the Building Department;
2. Such bamboo shall be located, trimmed, and maintained so that no part of the plant (including stalks, branches, stems, leaves, roots, and/or rhizomes) shall be located nearer than 10 feet from any property line;
3. If the growing or planting of clumping bamboo results in encroachment of such bamboo onto an adjoining or neighboring property or right-of-way, in addition to requiring the removal by the bamboo owner of all such bamboo that encroaches onto said adjoining or neighboring property or right-of-way in accordance with §42-5and §42-6herein, the Building Department shall have the authority to direct and require that the bamboo owner undertake appropriate measures to prevent the future encroachment of bamboo across the property line, including, but not limited to, the installation of a barrier as specified in §[42-5(A)(2**)**](https://ecode360.com/print/32989914#32989914)herein.

[F.](https://ecode360.com/print/32989929#32989929) Clumping bamboo planted in a portable container or portable containers shall be exempted from the permitting provisions of §42-5([E)(1)](https://ecode360.com/print/32989926#32989926)herein. A portable container for the purposes of this provision shall be defined as 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 and rhizome system beyond the container in which it is planted.

[G.](https://ecode360.com/print/32989930#32989930) Each owner shall be responsible to ensure that the bamboo planted or growing on his property does not at any time encroach or grow upon any adjoining or neighboring property or properties, including all public property and rights-of-way held by the Village of Sea Cliff or any other public entity, and 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 composed 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 said bamboo, as set forth in §[42-5(A)(2)](https://ecode360.com/print/32989914#32989914)herein. The Building Department may from time to time prescribe such rules and regulations as may be necessary to give effect to this Chapter.

[H.](https://ecode360.com/print/32989931#32989931) Removal of bamboo encroaching onto property other than Village of Sea Cliff property or any other public entity:

[(1)](https://ecode360.com/print/32989932#32989932) If bamboo growing on a bamboo owner's property invades, spreads or encroaches from his property onto an adjoining or neighboring property, other than property that is publicly owned, and the adjoining or neighboring property owner notifies the Village of such encroachment of bamboo onto his property, the Village shall then notify the bamboo owner that the bamboo which said bamboo owner had planted or caused to be planted or had grown or permitted to grow on his property has encroached onto the adjoining or neighboring property, and that the bamboo owner is responsible, at his sole cost, for the removal of such bamboo from the adjoining or neighboring property. This notice shall be sent to the bamboo owner in the manner specified in §[42-8](https://ecode360.com/print/26875811#26875811).

[(2)](https://ecode360.com/print/32989933#32989933) The failure of the bamboo owner to remove all bamboo on the adjoining or neighboring property that has encroached thereon from the bamboo owner's property within 30 days from the date the Village first deposited the notice as provided in Subsection [H(1)](https://ecode360.com/print/32989932#32989932)above shall be a violation of this Chapter.

(3) The failure of the bamboo owner’s contractor or agent, to remove all bamboo on the adjoining or neighboring property that has encroached thereon from the bamboo owner's property within 30 days from the date the Village first deposited the notice as provided in Subsection [H(1)](https://ecode360.com/print/32989932#32989932)above shall be a violation of this Chapter.

I. Removal of Invasive Plant Species. Every owner shall forthwith remove from the owner’s premises any invasive plant species. If such invasive plant species shall have encroached onto a neighboring property, and the adjoining or neighboring property owner notifies the Village of such encroachment of invasive plant species onto his property, the Village shall then notify the owner that the invasive plant species which said owner had planted or caused to be planted, had grown or permitted to grow on his property or maintained on his property has encroached onto the adjoining or neighboring property, and that the owner is responsible, at his sole cost, for the removal of such invasive plant species from the adjoining or neighboring property. This notice shall be sent to the owner in the manner specified in §[42-8](https://ecode360.com/print/26875811#26875811).

[(1)](https://ecode360.com/print/32989933#32989933) The failure of the owner to remove all invasive plant species on the adjoining or neighboring property that has encroached thereon from the owner's property within 30 days from the date the Village first deposited the notice as provided in Subsection [H(1)](https://ecode360.com/print/32989932#32989932)above shall be a violation of this Chapter.

(2) The failure of the owner’s contractor or agent, to remove all bamboo on the adjoining or neighboring property that has encroached thereon from the owner's property within 30 days from the date the Village first deposited the notice as provided in Subsection [H(1)](https://ecode360.com/print/32989932#32989932)above shall be a violation of this Chapter.

§ 42-6. Removal of bamboo or invasive plant species encroaching onto Village of Sea Cliff property.

1. If bamboo or invasive plant species growing on an owner's property invades, spreads, or encroaches onto an adjoining or neighboring property or right-of-way that is owned or held on behalf of the Village of Sea Cliff, the Village shall notify the owner that the bamboo or invasive plant species said owner had planted or caused to be planted or had grown or permitted to grow on his property has invaded Village property, and that the owner, at his sole cost, is responsible for the removal of such bamboo or invasive plant species from the Village property. This notice shall be sent to the owner in the manner specified in §42-8.
2. If owner, or the owner's contractor or agent, does not remove said bamboo or invasive plant species from the Village property, or does not make an arrangement with the Village for removal of such bamboo or invasive species within 30 days from the date the Village first deposited the notice as provided in §42-6(A)above with the United States Postal Service, then the Village, at its discretion, may remove or arrange for the removal of such bamboo and invasive plant species from the Village property. The owner shall be liable and responsible to the Village for the Village's costs in removing the bamboo or invasive plant species from the Village property. If the costs remain unpaid more than 30 days after demand for payment has been made by the Village on the owner, such costs may be assessed against the property of the owner in the same manner as a real property tax.
3. If the Village is compelled to undertake the removal or to contract for the removal of bamboo, as provided for in §[42-6(B](https://ecode360.com/print/32989936#32989936))above, neither the Village nor its employees shall have any liability for damages or other claims to the owner by reason of the removal of such bamboo or invasive plant species. In the event such removal entails or causes damages to the flora or other property of a person other than the property of the bamboo owner, the bamboo owner in violation of this Chapter shall be responsible for such damages.

§ 42-7. Permits.

1. Applications for permits pursuant to this article shall be of a content and format as determined by the Building Department.
2. Fees for permits issued pursuant to this article shall be in accordance with a fee schedule established by the Building Department.

§ 42-8. Notification.

Within 30 days after the effective date of this Chapter, the Village shall give notice by reasonable means to all property owners in the Village advising them of the enactment of this Chapter and requesting that each property owner who would be deemed a owner hereunder as of the effective date of this Chapter notify the Village in writing no later than 60 days after the date of the aforementioned notice from the Village that bamboo and/or invasive plant species is present on the property of such property owner and such other information as may be requested in the notice from the Village.

§ 42-9. Violations and penalties.

1. Violations. Any owner who violates any of the provisions of this Chapter shall be guilty of a violation thereof. Each and every week that a violation of this Chapter shall exist shall constitute a separate additional violation of this Chapter.
2. Penalties.
3. A violation of any provision of this Chapter shall be subject to a fine not exceeding $350 for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than $350 nor more than $700; and upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than $700 nor more than $1,000. Each week's continued violation shall constitute a separate additional violation. Any fine imposed under this section shall be exclusive of costs to be charged to the owner of the property under this Chapter.
4. The Village may also pursue civil or injunctive relief irrespective of any determination to prosecute for a violation of this article.

§ 42-10. Violation of directives.

In addition to and notwithstanding any other remedy for a violation under this Chapter, any owner violating a directive issued by the Building Department or his/her duly authorized representative, made pursuant to the provisions of this Chapter, shall be guilty of a violation punishable by a fine not exceeding $1,000.

 Section two. Any local law, ordinance, or resolution of the Village of Sea Cliff in conflict with this local law is hereby repealed to the extent of such conflict, except that such repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of such local law, ordinance or resolution prior to the effective date of this local law.

Section three. If any clause, sentence, paragraph, section, article, or part of this local law 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 local law, or the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, article, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Section four. This local law shall take effect upon the filing of the law with the New York Secretary of State.