

Chapter 80

BAMBOO

GENERAL REFERENCES

Nuisances — See Ch. 222.

Property maintenance — See Ch. 254.

§ 80-1. Purpose and intent.

- A. Purpose. The purpose of this chapter is to promote and protect the property, property values and welfare of the residents of the Village of Massapequa Park and their guests, and of the visitors to the Village, and to protect the property and preserve the aesthetic qualities of the environment of the Village of Massapequa Park.
- B. Intent. It is the finding of the Board of Trustees that the planting and/or the growing of bamboo, a plant not indigenous to Long Island, New York, within the Village of Massapequa Park has been and will continue to be destructive to the natural environment, including indigenous flora, and destructive to structures and walks on properties within the Village adjoining and neighboring those properties where bamboo has been planted and/or permitted to grow; that because of these effects the planting and the growing of bamboo threatens the value and physical integrity of both public and private property in the Village; and that therefore, in order to protect and preserve said environment and values, the Village declares it necessary to regulate or prohibit the planting and/or growing of bamboo within the Village.

§ 80-2. Definitions.

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

BAMBOO — Any tropical or semitropical grass of the genera *Bambusa*, *Dendrocalamus* or of any other related genera.

BAMBOO PROPERTY OWNER — A property owner in the Village who has planted or grown or caused the planting or growing of bamboo on his property and/or permitted or permits the growing of bamboo on his property that had initially encroached onto his property from an adjoining or neighboring property.

§ 80-3. Applicability.

For purposes of this chapter, if bamboo is found growing upon a property, that shall constitute presumptive evidence that the growing of bamboo on the property shall have occurred with the consent of the owner of such property, except that such property owner shall not be presumed to be a bamboo property owner if the property owner did not plant or grow or cause said bamboo to be planted or grown in his property, and he shall provide the Building Inspector with proof, satisfactory to the Building Inspector, that within a reasonable period of time 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.

§ 80-4. Prohibited acts.

Effective upon the date this provision shall become law, the planting or growing of bamboo shall be prohibited within the Village of Massapequa Park. Any person who thereafter plants or grows, or causes to be planted to grow, bamboo within the Village shall be deemed to be in violation of this chapter, and shall be subject to such penalties as are set forth hereunder.

§ 80-5. Growth provisions.

- A. Any bamboo which has been planted or otherwise permitted to grow in any property within the Village of Massapequa Park prior to the effective date of this chapter may remain on such property, subject to compliance with this section. Each bamboo property owner shall be responsible to ensure that the bamboo planted or growing on his property prior to the effective date of this chapter does not encroach or grow upon any adjoining or neighboring property or properties, including all public property and rights-of-way held by the Village, 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 installation of sheathing comprised 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. The Board of Trustees may, from time to time, prescribe such rules and regulations as may be necessary to give effect to this.
- B. No bamboo property owner within the Village of Massapequa Park shall cause, suffer, or allow bamboo to be planted, maintained, or otherwise permitted to exist within 10 feet of any property line, street, sidewalk, or public right-of-way in a fashion that blocks or otherwise impedes lines of sight at intersections or impedes pedestrian access to Village sidewalks, thoroughfares and rights-of-way.

§ 80-6. Removal.

- A. In the event that bamboo growing on a bamboo property owner's property invades or grows on an adjoining or neighboring property that is owned or held on behalf of the Village of Massapequa Park, the Village shall notify the bamboo property owner that the bamboo said owner had planted or caused to plant or had permitted to grow on his property has invaded Village property, and that the bamboo property owner is responsible for the removal of such bamboo from the Village property (subject to coordination and approval with the Village on the means and manner of such removal). This notice shall be sent by certified mail, return receipt requested, and by regular mail to the latest address of the bamboo property owner on file with the Village Clerk and a copy of the notice shall also be left in a conspicuous location on the bamboo property owner's property in the Village of Massapequa Park.
- B. In the event that the bamboo property owner does not remove or contract for the removal of said bamboo from the Village property or does not make an arrangement with the Village for removal of such bamboo within 30 days from the date the Village first deposited the notice as provided in Subsection A above with the United States Postal Service, then the Village, at its discretion, may remove or arrange for the removal of such bamboo from the Village property. The bamboo property owner shall be liable and responsible to the Village for the Village's costs in removing the bamboo from the Village property. Such costs may be assessed against the property of the bamboo property owner as a tax payable by such

bamboo property owner in the event that the costs remain unpaid more than 30 days after demand for payment has been made by the Village on the bamboo property owner.

- C. In the event that the Village is compelled to undertake the removal or to contract for the undertaking of removal of bamboo, as provided for in Subsection B above, neither the Village nor its employees shall have any liability for damages or other claims to the bamboo property owner by reason of the removal of such bamboo. 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 property owner, the bamboo property owner in violation of this section shall be responsible for such damages.
- D. In the event that bamboo growing on a bamboo property owner's property invades or grows on an adjoining or neighboring private property, the neighbor so affected shall notify the bamboo property owner that the bamboo said owner had planted or caused to plant or had permitted to grow on his property has invaded his property, and that the bamboo property owner is responsible for the removal of such bamboo from his neighbor's property. This notice shall be sent by certified mail, return receipt requested, and regular mail to the latest address of the bamboo property owner on file with the Building Department records or as available through other records of the Village of Massapequa Park, with a copy of said notice required to be sent to the Village.
- E. Notice. If the provisions of Subsection D of the foregoing sections are not complied with, then the Village shall serve written notice, in person or by mail, upon the owner, lessee or occupant or any person having the care or control of such lot or land to comply with the provisions of this chapter.
- F. Noncompliance with notice. If the person upon whom the notice is served fails, neglects or refuses so to comply with such written notice and demand of the Village within five days after service of such notice, the Village may cause such condition to be remedied, and the actual cost of such work, plus 50% for supervision and administration in connection therewith, shall be certified by the Superintendent of Public Works to the Treasurer, and shall thereupon become and be a lien upon the property in which such violation of this chapter 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.

§ 80-7. 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 bamboo is or has become, for any reason, dead, destroyed, uprooted or otherwise removed.

§ 80-8. 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 bamboo property 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 is present on the property of such property owner and such other information as may be requested in the notice from the Village.

§ 80-9. Violations and penalties.

- A. Violations. Any property owner who violates any of the provisions of this chapter shall be guilty of a violation thereof. Each and every day that a violation of this chapter shall exist shall constitute a separate violation of this chapter.
- B. Penalties.
- (1) A violation of any provision of this chapter shall be punishable by a fine not to exceed \$250 (i.e., per day of violation).
 - (2) The Village may also pursue civil or injunctive relief, or pursue criminal penalties, irrespective of any determination to prosecute for a violation of this chapter.

§ 80-10. Severability.

In the event that any portion or portions of this chapter shall be determined to be invalid or unenforceable for any reason, the remainder of the chapter and its provisions shall remain in full force and effect.