

**Town of Lexington
Motion
Special Town Meeting 2020-2**

written notice by certified mail within a year of the Encroachment being discovered, of an objection to the Encroachment of the Running Bamboo, and provides a copy of such written notice to the Town Manager within 5 days of mailing to the abutting property owner, shall not be considered a Running Bamboo Owner with respect to the abutting property so noticed, but may be considered a Running Bamboo Owner with respect to any other abutting properties, and shall be required to comply with the provisions of section 131-4 of this Chapter with respect to any such other abutting properties.

The Town Manager may, but is not required to, consider the following as additional evidence to determine whether a property owner is a Running Bamboo Owner:

- a. Photographic evidence that the Running Bamboo began on the Running Bamboo Owner's property and encroached onto the neighboring property;
- b. The absence of an adequate Running Bamboo barrier system on the Running Bamboo Owner's property; and
- c. Any other evidence provided to the Town Manager demonstrating that the Running Bamboo was not planted on the owner's property.

§ 131-3 Applicability.

A. The provisions of this bylaw shall apply to any Running Bamboo Owner. The provisions of this bylaw shall not apply to any Running Bamboo that has already encroached from a Running Bamboo Owner's property onto any private or Town-owned property or right of way before (insert date the bylaw passes). Any new bamboo encroachments from a Running Bamboo Owner's property onto any private or Town-owned property or right of way on or after (insert date the bylaw passes) shall be subject to this bylaw.

B. The Town Manager or their designee may, but is not required to, consider the following as additional evidence to determine if a bamboo encroachment on any private or Town owned property or right of way occurred before or after the passage of this bylaw:

- a. Photographic evidence that the Running Bamboo encroachment onto the neighboring property occurred after the passage of this bylaw;
- b. The absence of an adequate Running Bamboo barrier system on the Running Bamboo Owner's property; and
- c. Any other evidence provided to the Town Manager or their designee demonstrating that the Running Bamboo encroachment onto the neighboring property occurred after the passage of this bylaw.

§ 131-4 Requirements.

A. All Running Bamboo Owners shall confine Running Bamboo in a manner that will prevent the Running Bamboo from any Encroachment onto any other property or right of way. The following shall constitute an adequate barrier system confining the Running Bamboo:

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1. A seamless barrier composed of high density polypropylene, or polyethylene, or a metal barrier with sealed, overlapping and reinforced seams, or an impermeable joint free concrete barrier. The barrier must extend at least 36 inches below the ground surface, and the barrier must extend at least 2 inches above the ground surface for the entire length of the installation, and the installation must extend such that the possibility of flanking the barrier system is not possible;
2. The placement of the Running Bamboo in a fully enclosed above ground pot or planter; or
3. Any other adequate barrier system approved by the Town Manager or their designee.

B. Running Bamboo Owners with Running Bamboo within four feet of the boundary line of the Running Bamboo Owner's property must install and maintain a barrier preventing the spread of the Running Bamboo beyond the Running Bamboo Owner's property.

C. The Town Manager or their designee shall have the authority to promulgate regulations to accomplish any of the provisions of this bylaw.

D. All planting, replanting, transplanting, installation, or reinstallation of Running Bamboo in the Town of Lexington subsequent to the effective date of this bylaw is prohibited.

§ 131-5 Enforcement.

A. The Town Manager or their designee shall have the authority to enforce the provisions of this bylaw.

B. Any Running Bamboo Owner that is found to have violated the provisions of this bylaw may be subject to penalties pursuant to § 131-6 of this Chapter.

C. In the event Running Bamboo Encroaches onto Town-owned property or any Town-owned right of way, the Town Manager or their designee shall notify the Running Bamboo Owner in writing by certified mail, return receipt requested, of such Encroachment and/or other violation of this Chapter, which order shall:

1. Provide notice of the requirement to prevent Running Bamboo from Encroaching onto Town owned property or a Town owned right of way;
2. Specify the nature and location of the violation;
3. When applicable, order that the Running Bamboo Owner remove all portions of the Running Bamboo from the Town property or the Town owned right of way, and construct an adequate barrier system to prevent any further Encroachment; and
4. State that the failure to comply with the notice and order will lead to the Running Bamboo Owner being held liable to the Town for the cost of removal of the Encroachment, fines that may be imposed pursuant to § 131-6, and the Town's cost to install a barrier pursuant to the provisions of this bylaw.

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D. The Running Bamboo Owner must obtain and comply with all applicable federal, state, and local permits, licenses and other requirements necessary to remove the Running Bamboo from any Town property or the Town right of way.

E. If the Running Bamboo Owner fails to remove the Running Bamboo as directed in the order sent pursuant to this Section, the Town may remove the Running Bamboo that has Encroached onto Town-owned property or onto a Town-owned right of way. The Town may also construct a barrier designed to contain the Running Bamboo and prevent further intrusion. The cost of the removal of the Running Bamboo and the installation of a barrier shall be charged to the Running Bamboo Owner. The Town shall not be liable to the Running Bamboo Owner for damages caused as a result of the Running Bamboo removal and the Running Bamboo Owner shall be liable for any and all damages to Town-owned property or rights of way or property owned by any third party, and expenses related thereto.

F. If the Town causes Running Bamboo to be removed from Town-owned property or from a Town-owned right of way, or causes a barrier to be installed, a statement of cost thereof shall be mailed to the Running Bamboo Owner by certified mail, return receipt requested with a demand for immediate payment to the Town for all such costs.

§ 131-6 Penalty.

Any Running Bamboo Owner that is in violation of this bylaw may be fined \$100.00 per day for each day that the Running Bamboo remains unconfined on the Running Bamboo Owner's property, or is in violation of any other provisions of this chapter. Any such penalty or penalties may be enforced through non-criminal disposition as provided by G.L. c. 40, § 21D.

§ 131-7 Severability

The provisions of this Chapter are severable. If any section, provision or portion of this bylaw is determined to be invalid by a court of competent jurisdiction, the remaining provisions of this bylaw shall continue to be valid.

and further, that the Code of the Town of Lexington be amended by adding the following in Chapter 1-6, Noncriminal Disposition in the appropriate numerical order:

Chapter 131, Running Bamboo.

Fine schedule: \$100 per violation per day.

(Revised 10/20/2020)