

WHEREAS the Borough of Newtown is a duly organized municipality under the laws of the State of Connecticut and

WHEREAS, General Statutes Section 7-148(c)(7)(E) provides that any municipality may define nuisances within the municipality and

WHEREAS SEC. 23 of the Charter of the Borough of Newtown provides that the board of warden and burgesses, or a majority of them, may, at any regular or special meeting, make, alter, repeal and enforce such by-laws, ordinances and enactments as they shall see fit in relation to... the prevention of nuisance of all kinds arising from any cause whatever and for summary abatement by any person or persons thereto appointed by said board;

WHEREAS it is found that certain types of bamboo, specifically of the genus *Phyllostachys*, (hereinafter referred to as Running Bamboo) by their nature, spread rapidly underground through their root systems and underground rhizomes, thereby infesting and damaging nearby properties, that they are not native to Connecticut but nevertheless, that there presently exists within the Borough Running Bamboo that has escaped the borders of the properties upon which it was originally grown and is causing damage to adjoining property and

WHEREAS such Running Bamboo will, by its nature, invade, infest and damage to other plants, roads, sidewalks, buildings and structures in nearby areas and properties and

WHEREAS it is found that Running Bamboo is not readily controlled by customary or readily available agricultural measures;

IT IS FOUND, THEREFORE, that

- 1) the presence of Running Bamboo in the Borough of Newtown is a nuisance,
- 2) Running Bamboo that is presently growing within the Borough of Newtown and that may be introduced into the Borough in the future, needs to be regulated and controlled so that it does not invade or infest properties within the Borough and does not create or present a danger to the safety and well-being of its citizens and their property

NOW, THEREFORE, the Board of Warden and Burgesses, according to the powers invested in them under the laws of the State of Connecticut and the Charter of the Borough of Newtown, adopt the following Ordinance, which may be referred to as the Invasive Bamboo Ordinance:

Section 1. Purpose and Intent.

The purpose of this ordinance is to preserve and protect both public and private property from the damaging effects of certain non-native plants, to protect indigenous plant life, to prevent damage therefrom, to maintain property values and provide for the general welfare of the Freeman, residents and property owners of the Borough of Newtown.

Section 2. Definitions.

A. Running Bamboo means any bamboo plant of the genus *Phyllostachys*

B. Bamboo Owner means any property owner or occupant who has planted and/or grows Running Bamboo, or who maintains Running Bamboo on property owned or occupied or controlled by him, or who permits or allows Running Bamboo to grow to remain on such property, even if it has spread from an adjoining property.

Section 3. No person or legal entity shall plant or cause to grow Running Bamboo on any property within the Borough of Newtown unless done so pursuant to plans for containment designed by, and signed and sealed by a licensed arborist or forester and approved by the Borough's \_\_\_\_\_, which plans shall provide, in the opinion of the Borough official, for an effective barrier to prevent the spread of such Running Bamboo to any land within 40 feet of the property boundary on which it is to be planted or grown.

Section 4. Any Running Bamboo that is planted or otherwise permitted or allowed to grow on any property within the Borough, whether such running Bamboo existed before or comes into existence after the effective date of this ordinance shall not: (A) be planted, maintained or otherwise be permitted to exist within forty (40) feet of the traveled portion of any public street or sidewalk or within forty (40) feet of the boundary of the property on which it exists, (B) be permitted or suffered to encroach or grow upon any adjoining or neighboring property, including all public property and rights of way.

Section 5. Notice to Bamboo Owners. Removal of Running Bamboo. Enforcement.

A. Each Bamboo Owner shall be responsible for ensuring that any Running Bamboo on property owned or occupied or controlled by him or her does not violate the provisions of this ordinance and for ensuring that Running Bamboo that originated on

property owned, occupied or controlled by him does not invade neighboring or adjoining properties. In the event there is found Running Bamboo growing or existing in violation of this ordinance, the Borough or its authorized representative may notify the Bamboo Owner(s) in writing of the existence of the violation. Notice, when given, shall specify the corrective measures to be taken, whether such remedial measures are required upon property of the Bamboo Owner or on properties to which Running Bamboo originating on the Bamboo Owner's property has spread. Notice shall be sent to the Bamboo Owner(s) by certified mail to the Bamboo Owner(s). Such notice shall be sufficient if it is directed to the property address upon which the violation exists (if improved) and/or the address of the property owner on file with the Newtown Tax assessor.

B. Bamboo Owners to whom such notice of violation is directed shall cause to be removed from the property on which the violation occurs all such running Bamboo, including underground roots systems and rhizomes that are in violation of this ordinance within such time as the Borough or its representative determines is reasonable, given the extent of the violation among other factors.

C. In the event the Bamboo Owner(s) does not remedy and correct the violations set forth in the Notice of Violation within the allotted time, the Borough of Newtown may remove so much of such Running Bamboo as is in violation of this ordinance, take any actions it deems reasonable to prevent its regrowth and restore the property to its natural condition prior to such measures. All Running Bamboo removed or uprooted or otherwise separated from the ground for any reason whatsoever, including its underground roots, structures and rhizomes, shall be disposed of only by incineration and shall not be composted, deposited in any landfill or otherwise disposed of.

D. All costs incurred by the Borough in removing Running Bamboo that exists in violation of this ordinance or in remedying any violation of this ordinance, which condition is not corrected by the Bamboo Owner(s) within the time allotted in the Notice of Violation is chargeable to the Bamboo Owner(s). Such expense as is charged to the Bamboo Owner(s) shall become a lien upon the property upon which the violation existed

E. In addition to the foregoing remedies, continuing violations of this ordinance beyond the time specified in the Notice of Violation are subject to a fine of \$100.00 for each day such violation continues by way of the Borough's citation process and are subject to such other remedies as are available at law or in equity.

#### Section 6. Miscellaneous.

A. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other

provisions or applications, and to that end, the provisions of this ordinance are declared to be severable.

B. It is the expressed intent of this ordinance that it may be enforced both by the Borough of Newtown and its agents and by individual Freeman, citizens and property owners of the Borough whose property has been invaded by Running Bamboo originating on property other than on that they own or occupy by means of a civil action or otherwise as provided by law, regardless of when the Running Bamboo was originally planted or grown.

C. This ordinance shall become effective fifteen (15) days after publication thereof as provided by law.

Edited 6/28/14

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WHEREAS it is found that certain types of bamboo, specifically of the genus *Phyllostachys*, (hereinafter referred to as Running Bamboo) by their nature, spread rapidly underground through their root systems and underground rhizomes, thereby infesting and damaging nearby properties, that they are not native to Connecticut but nevertheless, that there presently exists within the Borough Running Bamboo that has escaped the borders of the properties upon which it was originally grown and is causing damage to adjoining property and

WHEREAS such Running Bamboo will, by its nature, invade, infest and damage to other plants, roads, sidewalks, buildings and structures in nearby areas and properties and

WHEREAS it is found that Running Bamboo is not readily controlled by customary or readily available agricultural measures;

IT IS FOUND, THEREFORE, that

- 1) the uncontrolled and unrestricted presence of Running Bamboo in the Borough of Newtown is a nuisance,
- 2) Running Bamboo that is presently growing within the Borough of Newtown and that may be introduced into the Borough in the future, needs to be regulated and

controlled so that it does not invade or infest properties within the Borough and does not create or present a danger to the safety and well-being of its citizens and their property

NOW, THEREFORE, the Board of Warden and Burgesses, according to the powers invested in them under the laws of the State of Connecticut and the Charter of the Borough of Newtown, adopt the following Ordinance, which may be referred to as the Invasive Bamboo Ordinance:

Section 1. Purpose and Intent.

The purpose of this ordinance is to preserve and protect both public and private property from the damaging effects of certain non-native plants, to protect indigenous plant life, to prevent damage therefrom, to maintain property values and provide for the general welfare of the Freemen, residents and property owners of the Borough of Newtown.

Section 2. Definitions.

A. Running Bamboo means any bamboo plant of the genus *Phyllostachys*

B. Bamboo Owner means any property owner or occupant who has planted and/or grows Running Bamboo, or who maintains Running Bamboo on property owned or occupied or controlled by him, or who permits or allows Running Bamboo to grow to remain on such property, even if it has spread from an adjoining property.

Section 3. No person or legal entity shall plant or cause to grow Running Bamboo on any property within the Borough of Newtown unless done so pursuant to plans for containment designed by, and signed and sealed by a licensed arborist or forester and approved by the Borough's Tree Warden or appointed official, which plans shall provide, in the opinion of the Borough official, for an effective barrier to prevent the spread of such Running Bamboo to any land within 40 feet of the property boundary on which it is to be planted or grown.

Section 4. Any Running Bamboo that is planted or otherwise permitted or allowed to grow on any property within the Borough, whether such running Bamboo existed before or comes into existence after the effective date of this ordinance shall not: (A) be planted, maintained or otherwise be permitted to exist within forty (40) feet of the traveled portion of any public street or sidewalk or within forty (40) feet of the boundary of the property on which it exists, (B) be permitted or suffered to encroach or grow upon any adjoining or neighboring property, including all public property and rights of way.

Section 5. Notice to Bamboo Owners. Removal of Running Bamboo.  
Enforcement.

A. Each Bamboo Owner shall be responsible for ensuring that any Running Bamboo on property owned or occupied or controlled by him or her does not violate the provisions of this ordinance and for ensuring that Running Bamboo that originated on property owned, occupied or controlled by him does not invade neighboring or adjoining properties. If it is determinable, by a fair preponderance of the evidence, that running bamboo has infringed on the property of abutting property owners, the originating Bamboo owner shall be responsible for removal and remedy of said Running Bamboo infringement. Failure to remove and remedy shall be violation of this ordinance. In the event there is found Running Bamboo growing or existing in violation of this ordinance, the Borough or its authorized representative may notify the Bamboo Owner(s) in writing of the existence of the violation. Notice, when given, shall specify the corrective measures to be taken, whether such remedial measures are required upon property of the Bamboo Owner or on properties to which Running Bamboo originating on the Bamboo Owner's property has spread. Notice shall be sent to the Bamboo Owner(s) by certified mail to the Bamboo Owner(s). Such notice shall be sufficient if it is directed to the property address upon which the violation exists (if improved) and/or the address of the property owner on file with the Newtown Tax assessor.

B. Bamboo Owners to whom such notice of violation is directed shall cause to be removed from the property on which the violation occurs all such running Bamboo, including underground roots systems and rhizomes that are in violation of this ordinance within such time as the Borough or its representative determines is reasonable, given the extent of the violation among other factors.

C. In the event the Bamboo Owner(s) does not remedy and correct the violations set forth in the Notice of Violation within the allotted time, the Borough of Newtown may remove so much of such Running Bamboo as is in violation of this ordinance, take any actions it deems reasonable to prevent its regrowth and restore the property to its natural condition prior to such measures. All Running Bamboo removed or uprooted or otherwise separated from the ground for any reason whatsoever, including its underground roots, structures and rhizomes, shall be disposed of only by incineration and shall not be composted, deposited in any landfill or otherwise disposed of.

D. All costs incurred by the Borough in removing Running Bamboo that exists in violation of this ordinance or in remedying any violation of this ordinance, which condition is not corrected by the Bamboo Owner(s) within the time allotted in the Notice of Violation is chargeable to the Bamboo Owner(s). Such expense as is charged to the Bamboo Owner(s) shall become a lien upon the property upon which the violation existed

E. In addition to the foregoing remedies, continuing violations of this ordinance beyond the time specified in the Notice of Violation are subject to a fine of \$100.00 for each day such violation continues by way of the Borough's citation process and are subject to such other remedies as are available at law or in equity.

F. Allowing running bamboo to grow beyond the boundaries of a parcel of property that a person owns shall be deemed to be a nuisance, except if it is proved by a fair preponderance of the evidence that the bamboo originated from an abutting property owner.

G. A Bamboo Owner who has been served with a notice of violation may request an administrative hearing to contest the notice of violation. Said request must be in writing, identify the matter contested and be received by the Clerk of the Borough within 10 days of receipt of notice. Said hearing shall proceed in accordance to administrative hearing procedures established by the Borough. All hearing shall be conducted within 30 days of receipt of the notice to contest.

#### Section 6. Miscellaneous.

A. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications, and to that end, the provisions of this ordinance are declared to be severable.

B. It the expressed intent of this ordinance that it may be enforced both by the Borough of Newtown and its agents and by individual Freeman, citizens and property owners of the Borough whose property has been invaded by Running Bamboo originating on property other than on that they own or occupy by means of a civil action or otherwise as provided by law, regardless of when the Running Bamboo was originally planted or grown.

C. This ordinance shall become effective fifteen (15) days after publication thereof as provided by law.