



~ Agenda ~

**Regular Town Board Meeting of September 8, 2020**  
**Southampton, New York**

**I. Pledge of Allegiance**

**II. Call to Order**

The September 8, 2020 - 1:00 PM Town Board Meeting at Town Hall - Town Board Room, 116 Hampton Road, Southampton, NY 11968.

<b>Attendee Name</b>	<b>Present</b>	<b>Absent</b>	<b>Late</b>	<b>Arrived</b>
Supervisor Jay Schneiderman				
Councilwoman Julie Lofstad				
Councilman Rick Martel				
Councilman John Bouvier				
Councilman Tommy John Schiavoni				

**III. Minutes Approval**

- 1. Regular Town Board Meeting August 25, 2020 6:00 PM**

**IV. Communications**

**A. Public Notices**

**1. Town of East Hampton**

- a. Public Hearing Notice
  - (1) Ch. 255 (Zoning) Add Affordable Housing Overlay #286 and #290 Three Mile Harbor Road, East Hampton

**2. Town of Riverhead**

- a. Public Hearing Notice
  - (1) Special Permit Application, Peconic County Brewing Co., LLC, 221 East Main Street, Riverhead
- b. Notice of Adoption
  - (1) Ch. 301 (Zoning and Land Development) Article LIII, Water Conservation in Landscaping

**3. Town of Southold**

- a. Public Hearing Notice
  - (1) Amend Zoning Map of the Town of Southold by Changing the Zoning Designation of SCTM 1000-15.-9-9 from Marine II to Marine III

**Authorize the Town Attorney to Accept an Affidavit of Judgment by Confession from Eduard Harman for Restitution of Damages to Town Property in the amount of \$16,260.00 to be Paid in Increments of \$350.00 Per Month until Satisfied in Full**

BE IT RESOLVED, that the Town Attorney's Office is hereby authorized to accept an Affidavit of Judgment by Confession from Eduard Harman to accept monthly payments in the amount of \$350.00 to commence on August 27, 2020, and to continue until the full amount of the Town's claim in the amount of \$16,260.00 for replacement of a Southampton Town Light Pole and Traffic Signal Cabinet damaged by Mr. Harman on January 12, 2019 is satisfied.

**Financial Impact:**

None

Vote Record - Town Board Resolution RES-2020-758					
		Yes/Aye	No/Nay	Abstain	Absent
Adopted					
Adopted as Amended	Jay Schneiderman				
Defeated	Julie Lofstad				
Tabled	Rick Martel				
Withdrawn	John Bouvier				
Failed To Move	Tommy John Schiavoni				

**Town Board Resolution 2020-759**

**Category:** Local Laws  
**Sponsors:** Supervisor Jay Schneiderman  
**Department:** Town Attorney

**Resolution of Adoption Amending Town Code Chapter 330 (Zoning) To Add Section 330-333 Entitled, "Protection of Unmarked Graves"**

WHEREAS, the Town Board of the Town of Southampton is considering amending Town Code Chapter 330 (Zoning) to add Section 330-333, entitled "Protection of Unmarked Graves"; and

WHEREAS, public comment was taken at either virtual meetings conducted via Zoom, or in person, on March 24, April 28, May 26, July 28, and August 25, 2020, with written comments received until September 1, 2020, for persons either for or against said enactment to be heard; and

WHEREAS, the Department of Land Management has advised the Town Board that this proposed local law is considered a "Type II Action" under 6 NYCRR Part 617.5, provisions of the New York State Environmental Quality Review Act (SEQRA) and Chapter 157 of the Town Code, and that no further review under New York Conservation Law, Article 8, is necessary; now therefore be it

RESOLVED, that Local Law No. of 2020 is hereby adopted as follow

LOCAL LAW NO. OF 2020

A LOCAL LAW amending Chapter 330 of the Code of the Town of Southampton in order to provide for Section 333, the protection of unmarked Graves.

BE IT ENACTED by the Town Board of the Town of Southampton as follows:

**SECTION 1. Legislative Intent.**

Protecting the sanctity of burial sites of individuals interred within this Town is a fundamental responsibility of all our residents. All of our ancestors played a role in our community regardless of race, gender or social status and in order to honor their memory and contributions, it is imperative that their resting places be properly protected.

This is no less so in the case of a burial or gravesite which has gone unmarked, yet New York remains one of only four states in the country without legislation regulating such protection. Burial practices throughout the Town's history have changed and many early graves are in fact unmarked, or their markings have been removed or have disappeared. The Town of Southampton recognizes the importance of avoiding the inadvertent or accidental desecration of these sites during construction activities. As such, the Town Board finds it crucial that a process must be outlined so that all residents and parties most directly affected understand the importance of preserving the integrity of such discoveries, are encouraged to report such findings, and that the Town be seen as a facilitator in that regard.

Further, it is widely understood that a large part of the Town of Southampton community are members of the Shinnecock Nation Tribe, and that they too have deep rooted interest in insuring the preservation and sanctity of such unmarked gravesites when those remains and funerary objects are that of the ancestors of the Shinnecock Nation. To that end, the Town Board, by Resolution 986-2018, established the "Southampton Town and Shinnecock Indian Nation Joint Cultural Heritage Protection and Stewardship Committee." The establishment of this committee represented the Town and Shinnecock Nation Tribe working together to discuss issues pertaining to the management and protection of several properties described in the above resolution, but of import as it pertains to this legislation, to see the Committee do the same for any properties recommended by the committee as culturally sensitive, or referred to the committee by virtue of this legislation.

With the goal of protection and fairness, while it is understood that the primary desire in most instances is for the re-interment of said remains and continued cessation of activities, it is also understood that individual landowners under our legal system have property rights which must be adhered to. Having said this, balancing the stated policy of protection with prevailing laws this legislation makes most notably:

- 1) Creates the post of Town Archeologist,
- 2) Creates a clear process encouraging participation of all involved,
- 3) Affirmatively puts the Town in the position of facilitator in the process, positioning the committees to work with the landowner, providing for expedited reviews by the Town to the extent they can, and forwarding to the Town Board requests for the waiver of fees, and
- 4) Affirmatively requires that for any Town projects on Town owned lands, the Committees will be consulted with early in the planning practice to establish if there are any particular sensitivities of the site and if so to devise an avoidance or alternate plan to be used, and
- 5) Codifies the Towns willingness, in the instance of a willing landowner, to explore the acquisition of effected property through the Community Preservation Fund at any time the landowner becomes a willing seller.

**SECTION 2. Amendment.**

Chapter 330 of the Southampton Town Code is hereby amended by deleting the stricken words and adding the underlined words as follows:

**§330-333. Protection and Treatment of Unmarked Graves****A. Definitions.**

Unmarked Grave: Any location, not designated as a cemetery, where any human skeletal remains which may or may not be accompanied by associated burial artifacts or any location, including any burial mound or earthen or shell monument, where human skeletal remains inclusive of any associated burial artifacts are discovered or believed to exist on the basis of archaeological or historical evidence, excluding any burial marked or previously marked by a tomb, monument, gravestone, or other structure or thing placed or designed as a memorial of the dead.

Town Archeologist: a certified archeologist/anthropologist appointed by the Town Board in consultation with the Southampton Town and Shinnecock Nation Joint Cultural Heritage Protection Committee and The Southampton Historic Burying Ground Committee.

**B. Reporting Requirements for the discovery of an unmarked burial site and process.**

When any person discovers an unmarked grave on public or private property within the unincorporated portions of Town of Southampton, he or she shall:

(1) Immediately cease all construction activities and secure the site from any further disturbance,

(2) Immediately notify the Southampton Town Police Department,

(3) After the Southampton Town Police Department has investigated the site, with the assistance of any local, state or federal agencies necessary, construction activities may resume only if the Southampton Town Police Department determines that the remains are not human. In the event the remains are found to be human, Suffolk County Medical Examiner will be notified. Upon notification, the Town of Southampton Supervisor or his/her designee will notify the Town Archeologist.

(4) The Town Archeologist will have the following responsibilities:

a) Within 24 hours of being notified he/she shall notify the Southampton Town and Shinnecock Indian Nation Joint Cultural Heritage Protection Committee and Stewardship Committee (hereinafter the "Joint Committee") and the Southampton Historic Burying Ground Committee (hereinafter the "Town Committee") (hereinafter collectively referred to as the "Committees") for guidance and assistance in accomplishing the necessary tasks to properly treat the remains with dignity and respect,

b) As soon as possible upon clearance from the Southampton Town Police Department and/or other appropriate law enforcement agencies, shall inspect the remains and site and determine the boundaries of the burial site.

- c) Determine the lineal decedents and/or culturally affiliated group.
  - d) Work with the landowner, Committee and/or lineal decedents or culturally affiliated group to develop a disposition plan for the remains which may include a re-internment or disturbance avoidance measures.
- (5) Within 36 hours of notification the Committees, a representative from each of the Committees will contact the landowner. Jointly the committees shall obtain the information from the archeologist as to the lineal decedents and/or cultural affiliation of the remains. In the event the remains are not of Native American decent, the Southampton Historic Burying Ground Committee will be charged with stewardship of the remains and notification of the lineal decedents and /or cultural affiliated group for purposes of disposition. In the event the Archeologist is not able to determine the lineal decedents and or culturally affiliated group, the remains will be in the control and stewardship of the committee to develop a disposition plan. In the event said human remains are of Native American Ancestry, within 36 hours of such notification, the Joint Committee will:
- a) Notify the lineal decedents and/or culturally affiliated group and work with them to develop a plan for the disposition of the remains.
  - b) During this time, the Joint committee will make themselves available to the landowner and the landowner is encouraged to work with the Committee during this process to develop such a plan for the disposition of the remains which may consist of a re-interment and/or an avoidance plan and assist in obtaining the necessary permits therefor, and
  - c) Notify the State Office of Parks and Historic Resources
  - d) The Joint Committee will have stewardship of Native American human remains and funerary objects removed from the site from the time it receives notification from the landowner subject to paragraph B.(3) and (4) above until the lineal decedents are notified at which point it shall be up to that group to take stewardship if they choose. It shall be there option if they wish the Committee to retain Stewardship control.
- 6) Where any disposition of remains necessitates an additional review and or approval by the Town of Southampton, such review and approval will be placed on expedited track and it will be given an administrative review where not inconsistent with other laws and upon request, fees in connection therewith will be considered for waiver by Resolution of the Town Board.
- 7) At any time during this process, upon request of the landowner, The Town will make a referral to the Town’s Community Preservation Fund for eligibility determination for preservation.

#### C. Town Referral of Projects on Town Owned Land.

Prior to the preparation or approval of the final design or plan of any project undertaken by a Town agency located on Town owned property, outside the incorporated areas of the Town, said plan shall be referred to the Town Archeologist will undertake a diligent inquiry not inconsistent with the evaluation employed as part of the CPF acquisition program to determine whether any aspect of the project will effect a disturbance of a known or suspected burial site for which a culturally affiliated Native American Tribe or group or

lineal decedents can be identified. In such a case where same can be identified, Archeologist will work with and council the Town as to how same may be avoided.

#### D. Unauthorized Removal of Remains

If not otherwise allowed herein, it shall be unlawful to remove human remains or associated funerary objects from a burial site identified hereunder.

#### E. Unlawful treatment of Remains

It shall be unlawful to deface or destroy a burial site, human remains and associated funerary objects as identified hereunder with intent to sell such remains or artifacts.

#### F. Penalties

- (1) Any person found guilty of failing to report the discovery of an unmarked grave with human remains to the Southampton Police Department in violation of 330-333 of this Chapter shall be guilty of an unclassified misdemeanor which shall be punishable by a fine of not less than \$10,000.00 or by imprisonment for a period fixed by the Court but not to exceed 15 days or both.
- (2) Any person, other than those designated herein as allowed, found guilty of removing human remains or associated funerary objects from the burial site shall be guilty of an unclassified misdemeanor which shall be punishable by a fine of not less than \$10,000.00 or by imprisonment for a period fixed by the Court but not to exceed 15 days or both.
- (3) Any person found guilty of defacing or destroying a burial site, human remains and associated funerary objects with intent to sell such remains or artifacts, or who sells or attempts to sell human remains or funerary objects, shall be guilty of an unclassified misdemeanor which shall be punishable by a fine of not less than \$50,000.00 or imprisonment for a period fixed by the Court but not to exceed 30 days or both.

All in addition to any other crimes, offenses, misdemeanors or felonies which may properly be brought pursuant to the laws of and by the State of New York under separate jurisdiction.

#### **SECTION 3. Authority.**

The Town Board may adopt a local law pursuant to Municipal Home Rule Law §§10(1)(ii)(a)(11) and (12).

#### **SECTION 4. Severability.**

If any section or subsection, paragraph, clause, phrase or provision of this law shall be adjudged invalid or held unconstitutional by any court of competent jurisdiction, any judgment made thereby shall not affect the validity of this law as a whole or any part thereof other than the part or provisions so adjudged to be invalid or unconstitutional.

#### **SECTION 5. Effective Date.**

This local law shall take effect upon filing with the Secretary of State pursuant to Municipal Home Rule Law.

AND BE IT FURTHER RESOLVED, that the Town Clerk is hereby authorized to publish the following Notice of Adoption:

**NOTICE OF ADOPTION**

TAKE NOTICE, that after public hearings were held by the Town Board of the Town of Southampton either virtually or in person on March 24, April 28, May 26, July 28, and August 25, 2020, the Town Board, at its meeting of September 8, 2020, adopted Local Law No. of 2020, as follows: "A LOCAL LAW to enact Chapter 330 Section 333 of the Town Code of the Town of Southampton for the Protection of Unmarked Graves."

Copies of the proposed local law, sponsored by Supervisor Jay Schneiderman are on file in the Town Clerk’s Office, Monday through Friday, from 8:30 a.m. to 4:00 p.m.

BY ORDER OF THE TOWN BOARD  
 TOWN OF SOUTHAMPTON, NEW YORK  
 SUNDY A. SCHERMEYER, TOWN CLERK

**Financial Impact:**

None

Vote Record - Town Board Resolution RES-2020-759					
		Yes/Aye	No/Nay	Abstain	Absent
Adopted	Jay Schneiderman				
Adopted as Amended	Julie Lofstad				
Defeated	Rick Martel				
Tabled	John Bouvier				
Withdrawn	Tommy John Schiavoni				
Failed To Move					

**Town Board Resolution 2020-760**

**Category:** Local Laws  
**Sponsors:** Supervisor Jay Schneiderman  
**Department:** Town Attorney

**Resolution of Adoption Enacting Town Code Chapter 323, Imposing a Moratorium on Certain Development Actions within Particular Areas of the Hamlet of Shinnecock Hills**

WHEREAS, the Town Board of the Town of Southampton is considering enacting Town Code Chapter 323, imposing a moratorium on certain development actions within particular areas of the hamlet of Shinnecock Hills; and

WHEREAS, public comment was taken at either virtual meetings conducted via Zoom, or in person, on April 14, April 28, May 26, July 28, and August 25, 2020, with written comments received until September 1, 2020, for persons either for or against said enactment to be heard; and

WHEREAS, the Department of Land Management has advised the Town Board that this proposed local law is considered a "Type II Action" under 6 NYCRR Part 617.5, provisions of the New York State Environmental Quality Review Act (SEQRA) and Chapter 157 of the Town Code, and that no further review under New York Conservation Law, Article 8, is necessary; now therefore be it

RESOLVED, that Local Law No. of 2020 is hereby adopted as follows:

## LOCAL LAW NO. OF 2020

A LOCAL LAW to consider enacting Town Code Chapter 323, imposing a moratorium on certain development actions within particular areas of the hamlet of Shinnecock Hills.

BE IT ENACTED by the Town Board of the Town of Southampton as follows:

**SECTION 1. Amendment.**

The Southampton Town Code is hereby amended by adding the underlined words as follows:

**Chapter 323****Shinnecock Hills Moratorium****§323-1. Legislative Findings/Purpose.**

As noted in the Town’s Comprehensive Plan Update, the historic and cultural past of Southampton is integral to its sense of place and community, and in order for these resources to be adequately protected, this historic identity must be recognized, preserved, and interwoven into the fabric of the Town. Much of that fabric includes the Shinnecock Nation, a Native American tribe that has occupied Southampton for more than four hundred generations.

Given this rich history, there may be numerous, ancient Native American graves and funerary objects in Southampton that are unmarked, but which carry with them great spiritual, cultural, and historical significance. With nothing to protect them, such sites are vulnerable to unintentional disturbance in the course of construction and other related activities, as well as, regrettably, intentional and deliberate destruction, vandalism, and looting.

The Town Board of the Town of Southampton recognizes that the sanctity of human burial sites is an intrinsic and paramount value among all cultural and religious traditions which practice the custom of burying the dead. Indeed, the Town Board recognizes that there are numerous unmarked burial sites throughout the Town - including, but not limited to, the Sugar Loaf Hill Shinnecock Indian Burial Ground and the Shinnecock Indian Contact Period Village Fort regions - which are of great cultural and historical significance to the people of the Town, particularly to members of the cultural and religious groups affiliated with them. That said, the Town Board also recognizes that the existing laws are inadequate to protect these unmarked burial sites from disturbance, and that New York is one of very few states which has no express statutory protection for unmarked burial sites.

Thus, the purpose of this moratorium is to review the current laws and land use tools available to the Town to address this issue, with the goal of adopting local legislation to ensure that human remains and associated funerary artifacts remain undisturbed to the maximum extent practicable, and are treated with the utmost respect consistent with the wishes of lineal descendants and culturally-affiliated groups.

**§323-2. Moratorium Area.**

- A. The moratorium area shall be defined as those parcels located north of Montauk Highway, which includes the Shinnecock Indian Contact Period Village Fort region (“Moratorium Area A”), and those parcels located south of Montauk Highway, which



includes the Sugar Loaf Hill Shinnecock Indian Burial Ground region ("Moratorium Area B"), within the hamlet of Shinnecock Hills.

- B. Moratorium Area A shall encompass those parcels bounded on the north by the Long Island Rail Road, on the east by Ridge Road, on the south by Montauk Highway, and on the west by Peconic Road, within the hamlet of Shinnecock Hills.
- C. Moratorium Area B shall encompass those parcels bounded on the north by Montauk Highway, on the east by Southway Drive, on the south by Shinnecock Bay East, and on the west by Peconic Road, within the hamlet of Shinnecock Hills.

### **§323-3. Moratorium on Development Actions.**

- A. Except as otherwise provided herein, for a period of six (6) months from the effective date of this local law, no agency of the Town of Southampton shall accept, process, or approve any application for a building permit or demolition permit which involves the excavation, digging, grading, or re-grading of:
  - (i) any unimproved lot within Moratorium Area A, as defined above; or
  - (ii) any improved or unimproved lot within Moratorium Area B, as defined above.
- B. For the purposes of this chapter, grading shall be defined as the subsurface disturbance of at least one (1) foot in depth or more, on average, and at least ten (10) square feet in surface area or more, of a parcel of land.

### **§323-4. Exclusions.**

- A. Applications and actions not expressly listed in Section 3 of this chapter shall be excluded from the moratorium.
- B. Any application or action listed in Section 3 of this chapter that has received a building or demolition permit prior to the effective date of this chapter shall be excluded from the moratorium.
- C. Any applicant that has demonstrated, and submitted proof thereof, that a field study was done of the area proposed to be excavated, dug, or graded using subsurface ground-penetrating radar at a depth of at least 8 feet, showing no buried artifacts, graves, or grave objects, shall be excluded from the moratorium.
- D. Any applicant that has demonstrated, and submitted proof thereof, that a Phase IA and Phase IB Archeological Survey was completed of the area proposed to be excavated, dug, or graded, showing no buried artifacts, graves, or grave objects, shall be excluded from the moratorium.

### **§323-5. Exemptions.**

- A. Notwithstanding any provision herein to the contrary, the Town Board may, during the term of this local law, approve or deny by resolution, an exemption from the provisions of this moratorium following a public hearing. Upon such application, the Town Board shall consider:
  - 1. The size of the subject parcel;

2. The extent of the proposed development and/or disturbance of the subject parcel;
  3. The location of the subject parcel and its proximity to critical environmental areas within the Town;
  4. Public testimony offered during the public hearing process.
- B. In making a determination under this section, the Town Board may obtain and consider written reports from the Department of Land Management, the Southampton Town and Shinnecock Indian Nation Joint Cultural Heritage Protection and Stewardship Committee, qualified experts, and members of the public, as required by the judgment of the Town Board, and consistent with the purpose of this chapter.
- C. No exemption shall be granted hereunder unless the Town Board shall specifically find and determine, and shall set forth in its resolution granting such exemption, that:
- (1) Failure to grant an exemption to the owner will cause the owner undue hardship, which hardship is substantially greater than any harm to the general public welfare resulting from the grant of the exemption; and
  - (2) The grant of the exemption will clearly have no adverse effect upon any of the Town's goals or objectives in adopting this chapter; and
  - (3) The application for which the owner seeks an exemption will be in harmony with the existing character and critical environmental areas in which the affected land is located, and will be consistent with any interim data, recommendations, or conclusions which may be drawn from any planning work or local legislation then in progress or under review.
- D. Any exemption shall also include a detailed finding that the grant of an exemption will be in harmony with and will not be unduly disruptive to the goals and purposes of the grave site protection strategies developed pursuant to this chapter, and not set a future precedent for other potential project applications.

### **§323-6. SEQRA.**

Pursuant to 6 NYCRR §617.5(c)(30), a local law to implement a moratorium is a Type II action under the New York State Environmental Quality Review Act ("SEQRA"), which has been determined not to have a significant impact on the environment and is otherwise precluded from environmental review under Environmental Conservation Law Article 8 and thus, not subject to review.

### **§323-7. Statutory authority; supersession of Town and State laws.**

This chapter is adopted pursuant to, and shall supersede, amend, and take precedence over any inconsistent provisions of New York State Town Law under the Town's municipal home rule powers pursuant to Municipal Home Rule Law §§10(1)(ii)(a)(11), (12), and (14), §10(1)(ii)(d)(3), and §22. In particular, this Local Law shall supersede: (i) any inconsistent provisions set forth in New York State Town Law §130, New York State Town Law Article 16, including, but not limited to, Town Law §§264, 265, 267-a, 267-b, 274-a, 276, 277, 278, and 279, (ii) any inconsistent provisions set forth in the Southampton Town Code, including, but not limited to, Chapter(s) 123, 247, 292, and 330, and (iii) any inconsistent provisions set forth in any and all other local laws of the Town of Southampton.

### **Section 2. Severability.**

If any section or subsection, paragraph, clause, phrase, or provision of this law shall be adjudged invalid or held unconstitutional by any court of competent jurisdiction, any judgment made thereby shall not affect the validity of this law as a whole or any part thereof other than the part or provision so adjudged to be invalid or unconstitutional.

**SECTION 3. Effective Date.**

This Local Law shall take effect immediately upon filing with the Secretary of State pursuant to Municipal Home Rule Law.

AND BE IT FURTHER RESOLVED, that the Department of Land Management is hereby authorized and directed to cause a report to be prepared reviewing strategies and making recommendations to this Board for resultant legislation addressing future development within the moratorium area, with said report reviewable by the Town Board within four months from the effective date of this local law; and be it further

RESOLVED, that the Town Clerk is hereby authorized and directed to publish the following Notice of Adoption:

**Notice of Adoption**

TAKE NOTICE, that after public hearings were held by the Town Board of the Town of Southampton either virtually or in person on April 14, April 28, May 26, July 28, and August 25, 2020, the Town Board, at its meeting of September 8, 2020, adopted Local Law No. of 2020, as follows: "A LOCAL LAW enacting Town Code Chapter 323, imposing a moratorium on certain development actions within particular areas of the hamlet of Shinnecock Hills."

Copies of the proposed law, sponsored by Supervisor Schneiderman, are on file in the Town Clerk’s Office, Monday through Friday, from 8:30 a.m. to 4:00 p.m.

BY ORDER OF THE TOWN BOARD  
TOWN OF SOUTHAMPTON, NEW YORK  
SUNDY A. SCHERMEYER, TOWN CLERK

**Financial Impact:**

None.

Vote Record - Town Board Resolution RES-2020-760						
		Yes/Aye	No/Nay	Abstain	Absent	
Adopted	Jay Schneiderman					
Adopted as Amended	Julie Lofstad					
Defeated	Rick Martel					
Tabled	John Bouvier					
Withdrawn	Tommy John Schiavoni					
Failed To Move						

**Town Board Resolution 2020-761**

**Category:** Miscellaneous  
**Sponsors:** Supervisor Jay Schneiderman  
**Department:** Community Preservation