

REVISED AS OF 1/25/2021

Intro. Res. No. 1981-2020

Laid on Table 12/1/2020

Introduced by Presiding Officer, on request of the County Executive

RESOLUTION NO. -2020, ADOPTING LOCAL LAW NO. -2020, A LOCAL LAW TO AMEND, UPDATE AND REORGANIZE CHAPTER 475 ARTICLE II OF THE SUFFOLK COUNTY CODE

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on 2020, a proposed local law entitled, "**A LOCAL LAW TO ADOPTING LOCAL LAW NO. -2020, A LOCAL LAW TO AMEND, UPDATE AND REORGANIZE CHAPTER 475 ARTICLE II OF THE SUFFOLK COUNTY CODE**"; and said local law in final form is the same as when presented and introduced; now, therefore be it

RESOLVED, that said local law be enacted in form as follows:

LOCAL LAW NO. -2020, SUFFOLK COUNTY, NEW YORK

A LOCAL LAW TO ADOPTING LOCAL LAW NO. -2020, A LOCAL LAW TO AMEND, UPDATE AND REORGANIZE CHAPTER 475 ARTICLE II OF THE SUFFOLK COUNTY CODE

BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF SUFFOLK, as follows:

Section 1. Legislative Intent.

This Legislature hereby finds and determines that New York State ceded all rights, title and interest to certain underwater lands of Peconic and Gardiners Bays formerly owned by the People of the State of New York to the County for purposes of Shellfish Cultivation, under New York Environmental Conservation Law §13-0302.

This Legislature also finds that New York Environmental Conservation Law §13-0302 required adoption of a local law in order to establish the Suffolk County Shellfish Aquaculture Lease Program for the underwater lands in Peconic and Gardiners Bays.

This Legislature finds that Suffolk County duly adopted Local Law 25-2009, which established the Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay.

This Legislature further finds that the County satisfied the requirement of the Environmental Conservation Law § 13-0302 (3) by executing and entering into five (5) Shellfish Aquaculture Leases prior to December 31, 2010; and further secured the right of the County to lease the underwater lands ceded to it by New York State.

This Legislature finds that the Suffolk County Shellfish Aquaculture Lease Program is authorized in Chapter 475, Article II of the Suffolk County Code.

This Legislature also finds and agrees that there are economic benefits from the Suffolk County Shellfish Aquaculture Lease Program for both in-State and out-of-State residents, including:

- Provision of additional opportunity for existing and new shellfish farmers and commercial fishermen to maintain their economic viability;
- Increased employment in shellfish cultivation and marine related industries; and
- Provision of income from the sale of shellfish and increased sales tax revenue to the County.

This Legislature finds that the County's Shellfish Aquaculture Lease Program is consistent with established conservation principles and provides water quality and environmental benefits to the County and its residents, such as:

- Exerting a positive influence on water quality by helping to control nutrient cycling;
- Augmenting the spawning potential of native shellfish populations; and
- Providing increased substrate for flora and fauna on both on-and/off-bottom aquaculture structures

This Legislature finds that the Suffolk County Shellfish Aquaculture Lease Program complements and works together with other County initiatives seeking to achieve similar environmental goals.

This Legislature finds that the Suffolk County Shellfish Aquaculture Lease Program provides cultural benefits, by strengthening the historic tradition of shellfish aquaculture in Suffolk County waters.

This Legislature finds that the Suffolk County Aquaculture Lease Program will provide additional public benefit of increasing access to underwater lands in the Peconic and Gardiners Bays for raising shellfish, while minimizing conflicts with other bay users.

This Legislature finds that the Ten-Year Review of the Suffolk County Shellfish Aquaculture Lease Program was conducted by the Department of Economic Development and Planning with extensive input from the Suffolk County Shellfish Aquaculture Lease Program Ten-Year Review Advisory Group, government officials, experts, bay user groups and the public, over a period of two years.

This Legislature finds that the Ten-Year Review process fully complies with the requirements of Suffolk County Code Chapter 475 Article II to review, revise, and update the Shellfish Cultivation Zone; as well as to review and recommend revisions to limits on lease issuance and Shellfish Aquaculture Lease Program administrative procedures.

Therefore, the purpose of this local law is to revise and update the Shellfish Cultivation Zone as required by Environmental Conservation Law §13-0302(4) and Suffolk County Code § 475-13; and update program provisions and the administrative procedures of the Suffolk County Shellfish Aquaculture Lease Program included in Chapter 475, Article II of the Suffolk County Code and the Administrative Guidance.

Section 2. Amendments.

I. Chapter 475 of the SUFFOLK COUNTY CODE is hereby amended as follows:

CHAPTER 475

FISHING AND SHELLFISHING

* * * *

ARTICLE II

SHELLFISH AQUACULTURE LEASE PROGRAM

* * * *

§ 475-7 Definitions.

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

2010 Lease Acreage Cap Limit

Limitation of 600 acres of new lease acreage that could be leased during the first ten years of the Suffolk County Shellfish Aquaculture Lease Program implementation; this cap did not include leases issued for former Temporary Marine Area Use Assignments or private oyster grants. The first ten years of the Suffolk County Shellfish Aquaculture Lease Program began upon the first execution of aquaculture leases in 2010 and ended in 2019. Although the Program was enacted in 2009, no leases were issued until 2010, therefore the Program's start date is 2010.

Administrative Guidance

The document entitled "Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiner's Bay Revised Administrative Guidance," dated [May 20, 2009] [November 20, 2020] January 25, 2021, prepared by the Department, incorporated by reference and made a part hereof as Exhibit A, as adopted herein and as may be amended from time to time. The Administrative Guidance, as revised herein, contains updates to previously-adopted administrative procedures [and forms] for implementation of the Suffolk County Shellfish Aquaculture Lease Program and directives for conducting shellfish aquaculture under the lease program.

* * * *

Department

Suffolk County Department of Economic Development and Planning.

Director

The Director of the Division of Planning and Environment within the Suffolk County Department of Economic Development and Planning.

Division

Suffolk County Division of Planning and Environment within the Suffolk County Department of Economic Development and Planning.

* * * *

Shellfish Cultivation Zone Map

The revised map, dated [May 20, 2009] [November 20, 2020] January 25, 2021 prepared by the Department [and the Suffolk County Department of Environment and Energy], which [depicting] depicts the revised Shellfish Cultivation Zone, incorporated by reference and made a part hereof as Exhibit B, as adopted herein and as may be amended from time to time.

Substantial Shellfish Aquaculture Activity

A good faith effort to prepare an aquaculture site; acquire financing, permits, equipment and/or seed; plant, cultivate, or harvest cultivated shellfish product; or conduct other shellfish aquaculture-related activity [related to] on a shellfish aquaculture lease. In addition to shellfish cultivation activities, substantial shellfish aquaculture activity may include documentation in the form of receipts for shellfish aquaculture equipment and/or shellfish seed purchases, landings reports, records of shellfish product sales, photographs, or other relevant documents. If substantial shellfish aquaculture activity (as described herein) for two consecutive years is not documented by the lessee upon request of the Department, a lessee shall be deemed by the Department not to have conducted substantial shellfish aquaculture activity.

Suffolk County Shellfish Aquaculture Lease Program

The program established herein pursuant to Local Law 25-2009, as amended, for conveyance of [s]Shellfish [a]Aquaculture [l]Leases, and all written County policies, as amended, concerning the Suffolk County Shellfish Aquaculture Lease [p]Program, including without limitation, this article and the Administrative Guidance.

* * * *

§ 475-12 Administrative Guidance regulations.

A. The document entitled "Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiner's Bay Revised Administrative Guidance," dated [May 20, 2009] [November 20, 2020] January 25, 2021 prepared by the Department, incorporated by reference and made a part hereof as Exhibit A, is hereby approved and shall constitute, in substantial form, the regulations of the Suffolk County Shellfish Aquaculture Lease Program, including the [model forms and documents,] annual lease rental fee and other fees therein.

* * * *

D. The Department may establish procedures, timelines and [additional] model forms and documents, and may make non-substantive changes to the [model forms and documents included in the] Administrative Guidance, as necessary for implementation of the program or as deemed necessary by the Suffolk County Department of Law.

* * * *

§ 475-13 Shellfish Cultivation Zone Map.

A. The Shellfish Cultivation Zone Map, dated [May 20, 2009] [November 20, 2020] January 25, 2021, prepared by the Department [and the Suffolk County Department of Environment and Energy], incorporated by reference and made a part hereof as Exhibit B, is hereby approved. The Shellfish Cultivation Zone Map shall depict the Shellfish Cultivation Zone.

* * * *

§ 475-14 Lease premises.

* * * *

D. No more than 600 acres shall be leased at any one time over the [first] second ten-year period, also known as Phase 2, of the program (beginning upon filing of the Local Law [insert number]-2021, "A Local Law to Amend, Update, and Reorganize Chapter 475 Article II of the Suffolk County Code" with the Secretary of State), exclusive of [leases issued for former temporary marine area use assignment sites] lease acreage issued during the first ten years of the program under the 2010 Lease Acreage Cap, private oyster grants and leases for experimental, educational and resource restoration purposes.

* * * *

§ 475-16 Additional terms and conditions of lease.

A. A lease may be issued for a maximum term of 10 years, with [one] an option to renew, for an additional 10 years, within the sole discretion of the County. The lease may be renewed thereafter at the sole discretion of the County. A renewal shall be subject to the terms and conditions of the Suffolk County Shellfish Aquaculture Lease Program, the Administrative Guidance, the application fee and the annual lease rental fee as they exist at the time of renewal.

* * * *

H. A lease shall contain provisions for assignment [and subletting].

* * * *

K. [A lessee shall not be required to post a bond.] In the discretion of the County, the Director may require a lessee to post a bond to secure the lessee's performance on the lease throughout the lease term. The bond shall be conditioned upon the lessee's satisfactory performance of the terms of the lease, with surety satisfactory to the County. The bond shall be paid to the County in the event that the lessee defaults in payment of the annual lease rental fee or in the event that lessee's equipment in, on over or under the lease premises is abandoned on the lease premises after expiration or termination of the lease, or where such equipment creates a dangerous condition, necessitating County removal of such equipment. In the event that a bond is to be required, the Director shall determine the amount of the bond, which shall apply prospectively to leases and lease renewals executed after imposition of the requirement. The Director may, in his or her discretion, exempt leases for experimental, educational and resource restoration purposes from the bond requirement.

* * * *

§ 475-17 Fees and rent.

A. The lease application fee shall be \$100 [and shall be nonrefundable, except that the fee shall be refunded if an applicant is eliminated in the random selection process referred to in § 475-15D of this article.] A nonrefundable application fee shall be paid for initial lease applications, applications for subsequent leases held by the same lessee, and applications to renew a lease, expand the lease premises acreage, and assign [or

sublet] a lease where applicable. When a lessee desires to change the location of the lease premises at its convenience, an application fee shall also be paid.

B. [The annual lease rental fee shall be \$200 plus \$5 per acre, except for oyster grant lands which shall not be charged an additional fee for acreage.] Payment of annual lease rental fees by a lessee shall be required for each year of a lease.

* * * *

F. The fee schedule for the fees, as required by this section, including, but not limited to the annual lease rental fee, is included within the Administrative Guidance, which is incorporated by reference and made a part hereof as Exhibit A.

§ 475-18 Aquaculture Lease Board.

* * * *

B. The members of the Aquaculture Lease Board shall consist of the Commissioner of the Department of Economic Development and Planning (who shall act as chairperson), the Director of the Division of Planning and Environment in the Department of Economic Development and Planning, and the Commissioner of the Department of Health Services, or their designees[.], [one representative appointed by the Suffolk County Legislator from District 1, one representative appointed by the Suffolk County Legislator from District 2,] one representative from each of the Towns of East Hampton, Town of Riverhead, Town of Shelter Island, Town of Southampton, and Town of Southold, to be designated by the County Executive, and selected from the following user groups: the shellfishing industry, member of a recreational boating organization, and commercial harvester/baymen, and one representative from a[n] marine organization that works in the Peconic Estuary to be designated by the County Executive.

* * * *

F. The Aquaculture Lease Board may advise the Director, upon request of the Director, on any matter relating to shellfish aquaculture [.] including the development of guidelines and standards for reviewing new lease applications, renewing lease applications, relocating lease sites, lease assignments, and emergency lease relocations.

§ 475-19 Monitoring program.

Subject to available funding, the Department shall implement an environmental and administrative compliance monitoring program and shall seek the cooperation of the Suffolk County Department[s] of Health Services [and Environment and Energy] in formulating and implementing [the] a monitoring program. The monitoring program shall include collection of data on water quality and other ecological factors to assess potential beneficial or adverse impacts of the Shellfish Aquaculture Lease Program on the Peconic Estuary[.], as well as collection of field information regarding the use of the lease sites and monitoring of compliance with the Program's Administrative Guidance.

* * * *

§ 475-21 Equipment removal and disposition.

A. Any equipment determined by the Department to be on underwater lands ceded to the County of Suffolk by New York Environmental Conservation Law § 13-0302 (L. 2004, c. 425), and accepted by this article without a lease in violation of this article, shall be subject to removal. [Upon such removal, the County shall hold the equipment for 10 calendar days. Upon the expiration of such ten-day period, if no claims of ownership are received and no attempt is made to secure return of the equipment, the equipment shall be deemed abandoned and may be disposed of by the County in any manner the County deems fit, including, but not limited to, sale, donation or destruction of such property. The County shall retain any sale proceeds.]

B. [Upon such removal, if the equipment is legibly tagged with the name of the owner and an address, the Department shall notify the owner by regular mail.] Subsequent to the termination, revocation, or expiration of a Lease, any equipment left by a former leaseholder on the Lease premises shall be deemed abandoned and subject to removal. Upon such removal, the former lessee shall be liable for all fees and costs associated with the removal, transport, and disposal of such property.

C. [The owner may commence the process for return of the equipment by contacting the Department in writing to claim ownership. The written claim must be received before the expiration of the ten-day period in Subsection A hereof. The Department shall return the equipment to the owner/claimant upon claimant's payment of the County of Suffolk's costs to remove, transport and store the equipment. The storage cost for such equipment shall be \$50 per day.] Upon removal under Subsections A or B of this Section, the County shall hold the equipment for 10 calendar days. Upon the expiration of such 10-day period, if no claims of ownership are received and no attempt is made to secure return of the equipment, the equipment shall be deemed abandoned and may be disposed of by the County in any manner the County deems fit, including, but not limited to, sale, donation or destruction of such property. The County shall retain any sale proceeds.

D. [The claimant shall have 20 calendar days after the Department's receipt of a claim of ownership to complete all steps necessary for return of the equipment. After such twenty-day period, the equipment shall be deemed abandoned and may be disposed of in any manner the County deems fit, including, but not limited to, sale, donation or destruction of such property. The County shall retain any sale proceeds.] The owner may commence the process for return of the equipment by contacting the Department in writing to claim ownership under Sections A and B. The written claim must be received before the expiration of the 10-day period in Subsection C hereof. The Department shall return the equipment to the owner/claimant upon claimant's payment to the County of Suffolk of the County's costs to remove, transport and store the equipment. The owner shall be charged the full cost incurred by the County to remove, transport and store such equipment.

* * * *

Section 3. SEQRA Determination.

This Legislature, as Lead Agency under the State Environmental Quality Review Act, N.Y. Env'tl. Conserv. Law Art. 8 ("SEQRA") and Chapter 450 of the Suffolk County Code, classified the Suffolk County Shellfish Aquaculture Lease Program as a Type I Action and completed a Generic Environmental Impact Statement (GEIS), for which a Findings Statement was adopted by Suffolk County Resolution Number 1028-2008 on December 15, 2008; and

Pursuant to Title 6 NYCRR Part 617 and Chapter 450 of the Suffolk County Code, a Full Environmental Assessment Form (EAF) was prepared to review potential

environmental impacts associated with the Suffolk County Shellfish Aquaculture Lease Program – Ten-Year Review revisions, included herein, which may not have been specifically addressed in the GEIS for the Suffolk County Aquaculture Lease Program; and

Pursuant to Title 6 NYCRR Part 617 and Chapter 450 of the Suffolk County Code, the Suffolk County Council on Environmental Quality (CEQ), considered the EAF and related information received regarding on the Suffolk County Aquaculture Lease Program – Ten-Year Review and the proposed revisions to the Suffolk County Aquaculture Lease Program at its October 21, 2020 meeting and recommended to the Suffolk County Legislature, via CEQ Resolution Number 58-2020, that said revisions would not have a significant adverse impact on the environment; and

This Legislature has independently considered the above mentioned GEIS and Findings Statement, completed in 2008 for the Suffolk County Aquaculture Lease Program, the EAF and the CEQ recommendation for the SEQRA review of the Suffolk County Aquaculture Lease Program – Ten-Year Review revisions and any relevant testimony concerning the same; and

This Legislature, as Lead Agency under SEQRA, N.Y. Env'tl. Conserv. Law Art. 8 and Chapter 450 of the Suffolk County Code, in accordance with the GEIS for the Suffolk County Aquaculture Lease Program and the EAF, hereby classifies this proposed local law as a Type I Action under the provisions of Title 6 NYCRR Sections 617.4 and 617.10; and

Pursuant to Title 6 NYCRR Sections 617.7 and 617.10(d)(3) and Chapter 450 of the Suffolk County Code, this Legislature, as SEQRA Lead Agency, hereby finds and determines that this proposed local law will not have any significant adverse impacts on the environment for the following reasons:

1. The proposed action will not exceed any of the criteria in 6 NYCRR, Section 617.7, which sets forth thresholds for determining significant effect on the environment as demonstrated in the Environmental Assessment Form;
2. The proposal does not significantly threaten any unique or highly valuable environmental or cultural resources as identified in or regulated by the Environmental Conservation Law of the State of New York or the Suffolk County Charter and Code;
3. The Suffolk County Shellfish Aquaculture Program – Ten-Year Review process incorporated substantial input from interested governmental agencies, stakeholders, and the general public to ensure that the revisions to the Program would not result in significant adverse impacts to environmentally sensitive areas, commercial fisheries, recreational and boating interests and local residents;
4. All necessary and required governmental permits and approvals shall continue to be required prior to the commencement of shellfish aquaculture activity at Suffolk County Shellfish Aquaculture Lease sites in the Peconic Bay and Gardiners Bay;
5. The Suffolk County Shellfish Aquaculture Lease Program Ten-Year Review revisions will result in increased environmental benefits to the Peconic and Gardiners Bays including

water quality improvement associated with an increasing number of filter feeding shellfish, as well as an increase in species abundance and diversity; and

This Legislature hereby adopts a determination of non-significance (negative declaration) and the Council of Environmental Quality is hereby directed to circulate and file all necessary notices in accordance with this resolution.

Section 4. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 5. Applicability.

- A. The deletion on subletting included in § 475-16 Additional terms and conditions of lease., as amended, shall apply to new leases and renewal leases executed after the effective date of this law.
- B. The annual rental fees, as established by § 475-17 Fees and rent., as amended, and the Administrative Guidance, as amended, shall apply to new leases and renewal leases executed after the effective date of this law.
- C. The remaining provisions of this law shall be applicable on or after the effective date of this law

Section 6. Effective Date.

This law shall take effect immediately upon its filing in the Office of the Secretary of State.

[] Brackets denote deletion of language.
__ Underlining denotes addition of new language.

DATED:

APPROVED BY:

County Executive of Suffolk County

Date: