



Southampton Town Board

116 Hampton Road
Southampton, NY 11968

Meeting: 09/08/20 01:00 PM

Department: Town Attorney

Category: Local Laws

Prepared By: Christine Preston Scalera

Initiator: Christine Preston Scalera

Sponsors: Supervisor Jay Schneiderman

DOC ID: 34691

ADOPTED

TOWN BOARD RESOLUTION 2020-759

**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 an "unlisted 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 as a result of a Negative Declaration adopted by this Town Board pursuant to Resolution No. 2020-770, no further review under New York Conservation Law, Article 8, is necessary; now therefore be it

RESOLVED, that Local Law No. 7 of 2020 is hereby adopted as follow

LOCAL LAW NO. 7 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. 7 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

RESULT:	ADOPTED AS AMENDED [UNANIMOUS]
MOVER:	Jay Schneiderman, Supervisor
SECONDER:	John Bouvier, Councilman
AYES:	Schneiderman, Lofstad, Martel, Bouvier, Schiavoni