

Introduced by Presiding Officer, on request of the County Executive and Legislator Fleming

RESOLUTION NO. 98 -2017, ADOPTING LOCAL LAW NO. 4 -2017, A LOCAL LAW ESTABLISHING THE SUFFOLK COUNTY SEAWEED CULTIVATION PILOT PROGRAM IN PECONIC BAY AND GARDINERS BAY

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on January 3, 2017, a proposed local law entitled, “**A LOCAL LAW ESTABLISHING THE SUFFOLK COUNTY SEAWEED CULTIVATION PILOT PROGRAM IN PECONIC BAY AND GARDINERS BAY**”; now, therefore be it

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

LOCAL LAW NO. 4 -2017, SUFFOLK COUNTY, NEW YORK A LOCAL LAW ESTABLISHING THE SUFFOLK COUNTY SEAWEED CULTIVATION PILOT PROGRAM IN PECONIC BAY AND GARDINERS BAY

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

Section 1. Legislative Intent

This Legislature finds that the State of New York ceded ownership of 110,000 acres of underwater lands in Peconic Bay and Gardiners Bay to Suffolk County for the purpose of establishing a leasing program for shellfish cultivation, pursuant to New York Environmental Conservation Law §13-0302 enacted on September 14, 2004 (L. 2004, c. 425).

This Legislature further finds that the *Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay* (Lease Program) was adopted by Suffolk County pursuant to Local Law No. 25-2009, and all aspects of the Lease Program are described in Chapter 475, Article II of the Suffolk County Code, with reference to *Lease Program Administrative Guidance* and the adopted Shellfish Cultivation Zone.

This Legislature also finds that the Shellfish Aquaculture Lease Program is administered by the Director of Planning, in the Suffolk County Department of Economic Development and Planning.

This Legislature finds that the *Suffolk County Agricultural and Farmland Protection Plan – 2015* was adopted by the County pursuant to Resolution No. 1103-2015, and this plan includes reference to the fact that many shellfish farmers have expressed interest in the cultivation of marine plants, i.e., kelp, in New York State waters, especially in Long Island Sound and Peconic and Gardiners Bays.

This Legislature also finds that the aforementioned *Suffolk County Agricultural and Farmland Protection Plan – 2015* includes a course of action that Suffolk County should coordinate with the New York State Department of Environmental Conservation to propose amendments to State and County Law that would allow for seaweed production on Suffolk County Lease sites.

This Legislature finds that the State of New York amended New York Environmental Conservation Law §13-0302 pursuant to L. 2016, c. 322, adopted on September 9, 2016, by adding section 10, which authorized Suffolk County to allow the underwater lands in Gardiners and Peconic Bays within the Shellfish Cultivation Zone to be used for the implementation of a pilot program to conduct research and scientific assessment of the feasibility of seaweed cultivation; and in accord with New York Environmental Conservation Law §13-0302.10, such a pilot program shall be limited to Lessees holding a Lease from Suffolk County for shellfish cultivation.

This Legislature finds that the County of Suffolk approved a Shellfish Cultivation Zone pursuant to Suffolk County Code §475-13, which is shown on Map No. 1 Shellfish Cultivation Zone Map, dated May 20, 2009, filed as Miscellaneous Map No. A-699, in the Office of the Suffolk County Clerk on January 21, 2010.

This Legislature finds that pursuant to New York Environmental Conservation Law §13-0302.10, the pilot program shall be limited to a total of five acres of such Shellfish Cultivation Zone, provided that any one Lessee may be authorized to conduct seaweed cultivation on no more than one acre of the Lease.

This Legislature further finds that there is a need to develop standards and procedures to implement the Suffolk County Seaweed Cultivation Pilot Program.

This Legislature also finds that the Suffolk County Seaweed Cultivation Pilot Program shall enable the County to assess the feasibility of seaweed cultivation and under the terms of New York Environmental Conservation Law §13-0302.10, the authority for Suffolk County to conduct a seaweed cultivation pilot program shall expire on July 1, 2026.

Therefore, the purpose of this law is to amend Chapter 475 of the Suffolk County Code by adding a new Article authorizing the establishment of the Suffolk County Seaweed Cultivation Pilot Program in Peconic Bay and Gardiners Bay.

Section 2. Amendment

Chapter 475 of the Suffolk County Code is hereby amended by the addition of a new Article III, which shall read as follows

§ 475-24. Definitions.

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

- A. **AUTHORIZATION FORM** – The document that authorizes a Lessee to conduct Seaweed Cultivation.
- B. **DEPARTMENT** – The Suffolk County Department of Economic Development and Planning, Division of Planning and Environment.
- C. **LESSEE** – A person who has a Shellfish Aquaculture Lease (“Lease”) issued in accord with the Suffolk County Shellfish Aquaculture Lease Program, as established by Article II of Chapter 475 of the Suffolk County Code.

- D. **SEAWEED** – Marine plant as defined by Title 6 of the New York Code of Rules and Regulations (“NYCRR”) Part 48.1.(i).
- E. **SEAWEED CULTIVATION** – The controlled, or partially controlled, raising, breeding, growing, and containment of seaweed in any marine hatchery or through on-bottom or off-bottom culture as permitted by the County of Suffolk, New York State Fish and Wildlife Law (New York Environmental Conservation Law Articles 11 and 13), and other applicable federal, state and local laws and regulations. Seaweed Cultivation is the equivalent of seaweed aquaculture.

§ 475-25. Establishment of the Suffolk County Seaweed Cultivation Pilot Program and Departmental Responsibility.

- A. There is hereby established the Suffolk County Seaweed Cultivation Pilot Program, which shall be implemented in accordance with applicable portions of Article II and this Article III of Chapter 475 of the Suffolk County Code, and New York Environmental Conservation Law §13-0302.10, notwithstanding any provision of the New York County Law or the Suffolk County Administrative Code or any other provisions to the contrary.
- B. The Department of Economic Development and Planning, Division of Planning and Environment is designated as the entity responsible for developing and implementing the Suffolk County Seaweed Cultivation Pilot Program. The Department is authorized to study, evaluate, and prepare a strategy to implement a Suffolk County Seaweed Cultivation Pilot Program in accord with New York State and Suffolk County Law.
- C. The Department shall work in partnership with the New York State Department of Environmental Conservation, Division of Marine Resources to resolve any regulatory permit issues associated with use of Lease sites for Seaweed Cultivation pilot projects.
- D. Adoption of this local law for conducting the Suffolk County Seaweed Cultivation Pilot Program shall not commit Suffolk County to establish a commercial-scale Seaweed Cultivation Program in the future.

§ 475-26. Eligibility for an Authorization Form.

Only Lessees who have a current Lease pursuant to Article II of Chapter 475 of the Suffolk County Code shall be eligible for an Authorization Form under this Article III of Chapter 475 of the Suffolk County Code.

§475-27. Prohibition.

No person shall conduct Seaweed Cultivation within the Shellfish Cultivation Zone without obtaining an Authorization Form from the County of Suffolk pursuant to Article III of Chapter 475 of the Suffolk County Code prior to such Cultivation.

§475-28. Requirement for an Authorization Form.

Prior to commencement of Seaweed Cultivation within the Shellfish Cultivation Zone, a Lessee desiring to conduct Seaweed Cultivation within the Shellfish Cultivation Zone shall obtain an Authorization Form from the County of Suffolk to conduct Seaweed Cultivation on or within the Leased Premises.

§475-29. Additional Aspects of the Suffolk County Seaweed Cultivation Pilot Program.

The Suffolk County Seaweed Cultivation Pilot Program shall be subject to the following provisions:

- A. The Suffolk County Seaweed Cultivation Pilot Program shall be limited to a total coverage of five (5) acres within the Shellfish Cultivation Zone.
- B. Authorization Forms to cultivate Seaweed under the Suffolk County Seaweed Cultivation Pilot Program may be given by the County of Suffolk to no more than five persons holding Leases as Lessees from the County of Suffolk at any one time.
- C. Each Lessee given an Authorization Form shall be limited to Seaweed Cultivation on one acre of the Leased Premises under the Lessee's Lease. A Lessee may receive an Authorization Form in connection with only one Lease.
- D. An Authorization Form shall be developed by the Department.
- E. An Authorization Form shall not be subject to assignment or sublet.
- F. The expiration date of an Authorization Form shall not extend beyond the term of the applicable Lease and option to renew, if exercised, or July 1, 2026, whichever is earlier.
- G. A Lessee shall be required to indemnify the County of Suffolk and defend it against all liabilities, fines, judgments and damages arising out of the acts, omissions or negligence of the Lessee or arising out of or in connection with Lessee's use of the premises under the Lease. The form of the indemnification shall be determined by the Department.
- H. The Suffolk County Seaweed Cultivation Pilot Program shall require annual reports by the Lessees concerning such data and topics that the Department determines will be useful to assess and evaluate the feasibility of Seaweed Cultivation. The Department shall develop a schedule and format for the report.
- I. The Suffolk County Seaweed Cultivation Pilot Program and all activities thereunder shall be implemented and conducted in accordance with all applicable federal, state or local laws.

§ 475-30. Guidelines, Procedures and Forms.

The Director of Planning in the Department shall develop and implement written guidelines, procedures and forms for the Suffolk County Seaweed Cultivation Pilot Program including, but not limited to:

- A. A notice to Lessees currently holding Shellfish Aquaculture Leases and future Lessees, where applicable, of the opportunity to conduct Seaweed Cultivation under the Suffolk County Seaweed Cultivation Pilot Program.
- B. Criteria for evaluating acceptability of applications, including but not limited to inclusion of a Seaweed Cultivation plan, past performance under the Shellfish Aquaculture Lease Program, and eligibility for appropriate regulatory permits.

- C. A random selection procedure to select and prioritize potential applicants when the number of applicants for the Suffolk County Seaweed Cultivation Pilot Program exceeds the available acreage.
- D. Necessary model forms, applications and documents.

§ 475-31. Fees.

- A. The fee for an application to conduct Seaweed Cultivation shall be One Hundred (\$100.00) Dollars, and shall be non-refundable.
- B. There shall be no annual rent charged for pilot projects conducted under the Suffolk County Seaweed Cultivation Pilot Program.
- C. Fees collected for the application to conduct Seaweed Cultivation shall be deposited into the County's general fund.
- D. A Lessee shall not be required to post a bond in order to receive an Authorization Form.

§ 475-32. Report on Suffolk County Seaweed Cultivation Pilot Program.

In accord with New York Environmental Conservation Law §13-0302.10, the Director of Planning shall prepare a report on the results of the Suffolk County Seaweed Cultivation Pilot Program, including, but not limited to a scientific assessment of the feasibility of Seaweed Cultivation. The Director of Planning shall submit this report to the New York State Legislature, the New York State Department of Environmental Conservation, this Legislature, and the County Executive of Suffolk County no later than January 1, 2026. A preliminary draft of the report shall be prepared and presented to the County Executive of Suffolk County and the Presiding Officer of the Suffolk County Legislature no later than July 1, 2025, and comments received shall be incorporated into the report prior to finalization.

Section 3. Applicability.

This law shall apply to all actions occurring on or after the effective date of this law.

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. SEQRA Determination.

This Legislature, being the lead agency under the State Environmental Quality Review Act ("SEQRA"), N.Y. Environmental Conservation Law Article 8 and Chapter 450 of the Suffolk County Code, hereby finds and determines that the adoption of this local law constitutes a Type

Il Action pursuant to Section 617.5 (c) (15), (21) and (27) of Title 6 of the New York Code of Rules and Regulations (“NYCRR”) as this legislative decision involves minor temporary uses of land having negligible or no permanent impact on the environment; conduct of concurrent environmental, engineering, economic, feasibility and other studies and preliminary planning and budgetary processes necessary to the formulation of a proposal for action, provided those activities do not commit the agency to commence, engage in or approve such action; and adoption of regulations, policies, procedures and local legislative decisions in connection with any action on this list. As such, this Legislature has no further responsibilities under SEQRA.

Section 6. Effective Date.

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

DATED: March 7, 2017

APPROVED BY:

/s/ Steven Bellone
County Executive of Suffolk County

Date: March 27, 2017

After a public hearing duly held on March 22, 2017
Filed with the Secretary of State on April 14, 2017