

INTRODUCTORY LOCAL LAW NO. ____ OF 2018
A LOCAL LAW ADDING CHAPTER 84 ENTITLED
“COMMUNITY PRESERVATION FUND”
TO THE TOWN CODE OF THE TOWN OF CHESTER

Be it enacted by the Town of Chester in the County of Orange, as follows:

Section 1. Title

This chapter of the Town of Chester Town Code shall be known and may be cited as the "Community Preservation Fund Law."

Section 2. Purpose

The Town of Chester has determined that it is in the best interest of the Town to adopt a Community Preservation Fund local law which help protect and preserve open and undeveloped lands in the Town of Chester. This local law will further protect historic places and properties within the Town of Chester and provide visitors and residents with additional outdoor recreational opportunities.

Section 3. Legislative Intent

This chapter of the Town of Chester Code is adopted in accordance with and pursuant to the provisions contained in New York Town Law §64.

Section 4. Community Preservation Fund

Chapter 84 entitled “Community Preservation Fund” is hereby added to the Town Code of the Town of Chester, to read as follows:

Chapter 84. Community Preservation Fund

Article I. Fund Established

§ 84-1. Title.

This chapter of the Town of Chester Town Code shall be known and may be cited as the "Community Preservation Fund Law."

§ 84-2. Purpose.

This chapter is adopted for the purpose of protecting and preserving open and undeveloped lands in the Town of Chester, including wetlands, woodlands, agricultural lands, and the other natural resources of the Town; for the purpose of protecting historic places and properties within the Town; and for the purpose of providing the Town's visitors and residents with outdoor recreational opportunities, all in accordance with the provisions of §64 of the New York Town Law and as more fully set forth within.

§ 84-3. Definitions.

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

ADVISORY BOARD

The Town of Chester Community Fund Advisory Board established and created by this chapter.

COMMUNITY PRESERVATION

Shall mean and include all of the following:

- A. Preservation of open space, including agricultural lands,
- B. Establishment of parks, nature preserves and recreation areas,
- C. Preservation of lands of exceptional scenic value,
- D. Preservation of wetlands,
- E. Preservation of aquifer recharge areas,
- F. Establishment and/or preservation of public access to waterbodies,
- G. Establishment of wildlife refuges for the purposes of maintaining biodiversity and native animal species diversity, including the protection of habitats essential to rare, endangered, threatened or special concern species,
- H. Preservation of unique or threatened ecological areas,
- I. Preservation of streams and stream buffer areas in a natural, free flowing condition,
- J. Preservation of unique forested lands,
- K. Establishment and/or preservation of public access to lands for public use including trails, stream rights and waterways,
- L. Preservation of historic places and properties listed on the National and/or New York State Registers of Historic Places and/or protected under a municipal historic preservation law; and
- M. Undertaking any of the aforementioned in furtherance of the connecting open spaces and parkland within the Town of Chester.

COMMUNITY PRESERVATION PLAN

The Town of Chester Community Preservation Plan adopted by the Town of Chester Town Board pursuant to New York Town Law §64.

§ 84-4. Community Preservation Fund established.

- A. The Town of Chester Community Preservation Fund is hereby established as authorized by § 64 of the New York Town Law.
- B. Deposits into the fund may include revenues of the Town from whatever source and shall include the revenues from a real estate transfer tax imposed by the Town pursuant to Article 31-F of the New York Tax Law.
- C. The fund shall also be authorized to accept gifts of any such interests in land or funds. Interest accrued by monies deposited in the fund shall be credited to the fund.
- D. In no event shall monies deposited in the fund be transferred into any other account.
- E. Nothing contained in this chapter shall be construed to prevent the financing in whole or in part, pursuant to New York Local Finance Law, of any acquisition authorized pursuant to this chapter. Monies from the fund may be utilized to repay any indebtedness or obligations incurred pursuant to Local Finance Law, consistent with furthering the purposes of this chapter.

§ 84-5. Purposes of fund.

- A. The purposes of the fund shall be exclusively:
 - 1) To implement a plan for the preservation of community character as required by § 64 of the New York Town Law;
 - 2) To acquire interests or rights in real property for the preservation of community character with the Town, in accordance with said plan;
 - 3) To establish a bank pursuant to a transfer of development rights program consistent with § 261-a of the Town Law, at the sole discretion of the Town Board;
 - 4) To provide a management and stewardship program for such rights and interests acquired by the fund, consistent with the provisions of this chapter and in accordance with said plan.
- B. The acquisition of interests and rights in real property under the fund shall be in cooperation with willing sellers.
- C. Not more than 10% of the fund shall be utilized for the management and stewardship program provided for in Subsection A(4) of this section.
- D. Upon the full implementation of the Community Preservation Plan, and funds being no longer required for the purposes set forth in Subsection A above, any remaining monies in the fund shall be applied to reduce any bonded indebtedness or obligations incurred to further the purposes of Subsection A.

§ 84-6. Advisory board established.

- A. The Town of Chester Community Preservation Fund Advisory Board is hereby established to review and make recommendations on proposed acquisitions of interest in real property using monies from the fund, and to act in an advisory capacity to the Town Board with respect to the administration of the fund.
- B. Such board shall consist of seven (7) members, who shall be residents of the Town and who serve without compensation. No member of the Town Board shall serve on the advisory board.
- C. A majority of the members appointed shall have demonstrated experience with conservation or land preservation activities. In addition, at least one member of the advisory board shall be an active farmer.

§ 84-7. Acquisition of interests in property; public hearing and other requirements.

- A. No interest or right in real property shall be acquired by the fund until a public hearing is held as required by §247 of the New York General Municipal Law. However, nothing herein shall prevent the Town Board from entering into a conditional purchase agreement before a public hearing is held.
- B. Any resolution of the Town Board approving an acquisition of land pursuant to this chapter shall include a finding that acquisition was the best alternative for the protection of community character of all reasonable alternatives available to the Town.

§ 84-8. Management of lands acquired pursuant to chapter.

- A. Lands acquired pursuant to this chapter shall be administered and managed in accordance with the following requirements:
- 1) Public use and enjoyment of the lands shall be allowed in a manner which is compatible with the natural, scenic, historic, and open space character of such lands;
 - 2) The native biological diversity of such lands shall be preserved;
 - 3) With regard to lands acquired as open space (as opposed to lands acquired for active recreation use or public water access, or improved lands acquired for historic preservation reasons), improvements shall be limited to those designed to enhance access for passive use of such open space lands, such as nature trails, boardwalks, bicycle paths, and peripheral parking areas, provided that such improvements do not degrade the ecological value of the land or threaten essential wildlife habitat; and
 - 4) With regard to historic properties, historic and cultural resources shall be managed and maintained in a manner which is consistent with accepted standards for historic preservation.
- B. The Town may enter into agreements with corporations organized under the New York Not-For-Profit Corporation Law and engage in land trust activities, in order to provide for the management and supervision of lands acquired by the fund, including less than fee interests in land. Any such agreements shall, however, provide that such corporations shall keep the lands under management accessible to the public unless such corporations shall demonstrate to the satisfaction of the Town Board that public access would be detrimental to the lands or to any natural features associated therewith.

§ 84-9. Alienation of land acquired using fund.

- A. Rights or interests in real property which are acquired with monies from the fund shall not be sold, leased, exchanged, donated, or otherwise disposed of or used for other than the purposes permitted by this chapter without the express authority of an act of the State Legislature, which is required to provide for the substitution of other lands having equal environmental and fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold, or disposed of, and which may impose other requirements too.
- B. This section shall not apply to the sale of development rights by the Town acquired pursuant to this chapter, where said sale is made by a central bank created by the Town and pursuant to a transfer of development rights program established by the Town pursuant to § 261-a of the Town Law. However, said development rights program shall provide:
- 1) That the lands from which development rights are acquired shall remain preserved in perpetuity via a permanent conservation easement or other instrument that similarly preserves community character as defined in this article; and
 - 2) That the proceeds from any such sale shall be deposited in the fund.

Article II. Real Estate Transfer Tax

§ 84-10. Definitions.

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

CONSIDERATION

The price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the deed and whether paid or required to be paid by money, property, or any other thing of value. It shall also include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchase money mortgage, lien, or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to.

- A. In the case of the creation of a leasehold interest or the granting of an option with use and occupancy of real property, consideration shall include, but not be limited to, the value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any amount paid for an option to purchase or renew, and the value of rental or other payments attributable to the exercise of any option to renew.
- B. In the case of the creation of a subleasehold interest, consideration shall include, but not be limited to, the value of the sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew, and the value of rental or other payments attributable to the exercise of any option to renew, less the value of the remaining prime lease rental payments required to be made.
- C. In the case of a controlling interest in any entity that owns real property, consideration shall mean the fair market value of the real property or interest therein, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.
- D. In the case of an assignment or surrender of a leasehold interest or the assignment or surrender of an option or contract to purchase real property, consideration shall not include the value of the remaining rental payments required to be made pursuant to the terms of such lease or the amount to be paid for the real property pursuant to the terms of the option or contract being assigned or surrendered.
- E. In the case of (i.) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor and (ii.) the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, consideration shall include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being conveyed in the cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative housing corporation.

CONTROLLING INTEREST

- A. In the case of a corporation, either 50% or more of the total combined voting power of all classes of stock of such corporation, or 50% or more of the capital, profits, or beneficial interest in such voting stock of such corporation; and
- B. In the case of a partnership, association, trust, or other entity, 50% or more of the capital, profits, or beneficial interest in such partnership, association, trust or other entity.

CONVEYANCE

The transfer or transfers of any interest in real property by any method, including but not limited to sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition of a controlling interest in any entity with an interest in real property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where (i.) the sum of the term of the lease or sublease and any options for renewal exceeds 49 years, (ii.) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (iii.) the lease or sublease is for substantially all of the premises constituting the real property. Notwithstanding the foregoing, conveyance of real property shall not include the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, or an instrument given to perfect or correct a recorded mortgage; or a release of lien of tax pursuant to this article or the Internal Revenue Code.

FUND

The Town of Chester Community Preservation Fund created and established pursuant to §64 of the New York Town Law and Article I of this chapter.

GRANTEE

The person who obtains real property or an interest therein as a result of a conveyance.

GRANTOR

The person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, "grantor" shall mean the entity with an interest in real property or a shareholder or partner transferring stock or partnership interest.

INTEREST IN REAL PROPERTY

Includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. It shall also include an option or contract to purchase real property. It shall not include a right of first refusal to purchase real property.

PERSON

An individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

REAL PROPERTY

Every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, including buildings, structures and other improvements thereon, which are located in whole or in part within the Town. It shall not include rights to sepulture.

RECORDING OFFICER

The County Clerk of the County of Orange. TOWN: The Town of Chester.

TOWN SUPERVISOR

The Town Supervisor of the Town of Chester.

TREASURER (COUNTY TREASURER)

The treasurer of the County of Orange.

§ 84-11. Imposition of real estate transfer tax.

There is hereby imposed in the Town of Chester a tax on each conveyance of real property or interest therein where the consideration exceeds \$500, as authorized by Article 31-F of New York Tax Law, the rate of such tax to be 0.75% of the consideration for the conveyance. Revenues from such tax shall be deposited in the Town of Chester Community Preservation Fund established pursuant to Article I of this chapter and may be used solely for the purpose of said fund. Such tax shall apply to any conveyance occurring on or after _____, 2018, but shall not apply to conveyances made on or after such date pursuant to building written contracts entered into prior to such date, provided that the date of execution of such contract is confirmed by independent evidence such as the recording of the contract, payment of a deposit, or other facts and circumstances as determined by the County Treasurer.

§ 84-12. Payment of tax.

- A. The real estate transfer tax imposed pursuant to this article shall be paid to the Treasurer, or to the Recording Officer acting as the agent of the Treasurer upon designation as such agent by the Treasurer. Such tax shall be paid at the same time as the real estate transfer tax imposed by Article 31 of the New York Tax Law is required to be paid. Such Treasurer or Recording Officer shall endorse upon each deed or instrument affecting a conveyance a receipt for the amount of the tax so paid.
- B. A return shall be required to be filed with such Treasurer or Recording Officer for purposes of the real estate transfer tax imposed pursuant to this article at the same time as a return is required to be filed for purposes of the real estate transfer tax imposed by Article 31 of the Tax Law. The Treasurer shall prescribe the form of return, the information that it shall contain, and the documentation that shall accompany the return. Said form shall be identical to the real estate transfer tax return required to be filed pursuant to § 1409 of the Tax Law, except that the Treasurer shall adapt said form to reflect the provisions of this article which are inconsistent with, different from, or in addition to the provisions of Article 31 of the Tax Law. The real estate transfer tax returns required to be filed pursuant to this section are required to be preserved for three years and thereafter until such Treasurer or Recording Officer orders them to be destroyed.

- C. The Recording Officer shall not record an instrument electing a conveyance unless the return required by this section has been filed and unless the tax imposed pursuant to this article shall have been paid as provided in this section.

§ 84-13. Liability for tax.

- A. The real estate transfer tax required hereunder shall be paid by the grantee. If the grantee has failed to pay the tax imposed pursuant to this article, or if the grantee is exempt from such tax, the grantor shall have the duty to pay the tax. Where the grantor has the duty to pay the tax because the grantee has failed to pay, such tax shall be the joint and several liability of the grantee and grantor.
- B. For the purpose of the proper administration of this article and to prevent evasion of the tax hereby authorized, it shall be presumed that all conveyances are taxable. Where the consideration includes property other than money, it shall be presumed that the consideration is the fair market value of the real property or interest therein. These presumptions shall prevail until the contrary is proven, and the burden of proving the contrary shall be on the person liable for payment of the tax.

§84-14. Exemptions from tax.

- A. Exemption for government agencies. The following entities shall be exempt from payment of the real estate transfer tax imposed by this article:
- 1) The State of New York or any of its agencies, instrumentalities, political subdivisions, or public corporations (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada);
 - 2) The United Nations; and
 - 3) The United States of America and any of its agencies or instrumentalities.
- B. Exemption for certain conveyances. The real estate transfer tax imposed by this article shall not apply to any of the following conveyances:
- 1) Conveyances to the United Nations, the United States of America, the State of New York or any of their instrumentalities; agencies, or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada).
 - 2) Conveyances which are or were used to secure a debt or other obligation.
 - 3) Conveyances which, without additional consideration, confirm, correct, modify, or supplement a prior conveyance.
 - 4) Conveyances of real property without consideration and otherwise than in connection with a sale, including conveyances conveying realty as bona fide gifts.
 - 5) Conveyances given in connection with a tax sale.
 - 6) Conveyances to effectuate a mere change of identity or form of ownership or organization where there is no change in beneficial ownership, other than conveyances to a cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings.
 - 7) Conveyances which consist of a deed of partition.
 - 8) Conveyances given pursuant to the Federal Bankruptcy Act.
 - 9) Conveyances of real property which consist of the execution of a contract to sell real property without the use or occupancy of such property or the granting of an option to purchase real property without the use or occupancy of such property.

- 10) Conveyances of real property, where the entire parcel of real property to be conveyed is the subject of one or more of the following development restrictions:
- a) An agricultural, conservation, scenic, or other open space easement which entirely prohibits the development of the property or which restricts its use solely to agriculture.
 - b) Recorded covenants or restrictions which prohibit the development of the property.
 - c) A purchase of development rights agreement.
 - d) A transfer of development rights agreement, where the property being conveyed has had its development rights removed.
 - e) Development restrictions which result from the inclusion of the property in an agricultural district or its subjection to an individual commitment, pursuant to Article 25-aa of the New York Agriculture and Markets Law.
 - f) Development restrictions which result from the subjection of the property to a local land preservation agreement, such that the development of the property is entirely prohibited or is restricted solely to agriculture.
- 11) Conveyances of real property, where the property is viable agricultural land as defined in Subdivision (7) of § 301 of the Agriculture and Markets Law and the entire property to be conveyed is to be made subject to one of the development restrictions set forth in the preceding Subsection B(10), provided that said development restrictions are evidenced by an easement, agreement, or other suitable instrument which is conveyed to the Town simultaneously with the conveyance of the real property.
- 12) Conveyances of real property for open space, parks, or historic preservation purposes to any not-for-profit tax-exempt corporation operated for conservation, environmental, or historic preservation purposes.

§ 84-15. Additional exemptions.

- A. There shall be allowed an exemption of \$100,000 on the consideration of the conveyance of improved real property or an interest therein.
- B. There shall be allowed an exemption of \$50,000 on the consideration of the conveyance of unimproved real property or an interest therein.

§ 84-16. Credit for prior tax paid on creation of leasehold or grant of option or contract to purchase.

A grantor shall be allowed a credit against the tax due on a conveyance of real property to the extent that tax was paid by such grantor on a prior creation of a leasehold of all or a portion of the same real property or on the granting of an option or contract to purchase all or a portion of the same real property by such grantor. Such credit shall be computed by multiplying the tax paid on the creation of the leasehold or on the granting of the option or contract by a fraction, the numerator of which is the value of the consideration used to compute such tax paid which is not yet due to such grantor on the date of the subsequent conveyance (and which such grantor will not be entitled to receive after such date) and the denominator of which is the total value of the consideration used to compute such tax paid.

§ 84-17. Cooperative housing corporation transfers.

- A. Notwithstanding the definition of "controlling interest" contained in § 84-10 hereof or anything to the contrary found in the definition of "conveyance" contained in said section, the tax imposed pursuant to this article shall apply to the following:

- 1) The original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of proprietary leasehold by the cooperative corporation or cooperative plan sponsor.
 - 2) The subsequent conveyance of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the owner thereof. With respect to any such subsequent conveyance where the property is an individual residential unit, the consideration for the interest conveyed shall exclude the value of any liens on certificates of stock or other evidences of an ownership interest in and a proprietary lease from a corporation or partnership formed for the purpose of cooperative ownership of residential interest in real estate remaining thereon at the time of conveyance. In determining the tax on a conveyance described in Subsection A(1) above, a credit shall be allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings to the extent that such conveyance effectuated a mere change of identity or form of ownership of such property and not a change in the beneficial ownership of such property. The amount of credit shall be determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a percentage representing the extent to which such conveyance effectuated a mere change of identity or form of ownership and not a change in the beneficial ownership of such property, and then multiplying the resulting product by a fraction, the numerator of which shall be the number of shares of stock conveyed in a transaction described in Subsection A(1) and the denominator of which shall be the total number of shares of stock of the cooperative housing corporation (including any stock held by the corporation). In no event, however, shall such credit reduce the tax on a conveyance described in Subsection A(1) below zero, nor shall any such credit be allowed for a tax paid more than 24 months prior to the date on which occurs the first in a series of conveyances of shares of stock in an offering of cooperative housing corporation shares described in Subsection A(1).
- B. Every cooperative housing corporation shall be required to file an information return with the County Treasurer by July 15 of each year covering the preceding period of January 1 through June 30 and by January 15 of each year covering the preceding period of July 1 through December 31. The return shall contain such information regarding the conveyance of shares of stock in the cooperative housing corporation as the Treasurer may deem necessary, including, but not limited to, the names, addresses, and employee identification numbers or social security numbers of the grantor and the grantee, the number of shares conveyed, the date of the conveyance, and the consideration paid for such conveyance.

§ 84-18. Designation of agent by County Treasurer.

The County Treasurer is authorized by law to designate the Recording Officer to act as his agent for the purpose of collecting the tax imposed by this article. The Treasurer shall provide for the manner in which such person may be designated as his agent subject to such terms and conditions as he shall prescribe. The real estate transfer tax shall be paid to such agent as provided in § 84-12 hereof.

§ 84-19. Liability of Recording Officer.

A Recording Officer shall not be liable for any inaccuracy in the amount of tax imposed pursuant to this article that he shall collect so long as he shall compute and collect such tax on the amount

of consideration or the value of the interest conveyed as such amounts are provided to him by the person paying the tax.

§ 84-20. Refunds.

Whenever the Treasurer shall determine that any moneys received under the provisions of this article were paid in error, he may cause such money to be refunded pursuant to such rules and regulations as he may prescribe, provided that any application for such refund is filed with the Treasurer within two years from the date the erroneous payment was made.

§ 84-21. Deposit and disposition of revenue.

- A. All taxes, penalties, and interest imposed by the Town under the authority of this article, which are collected by the Treasurer or his agents, shall be deposited in a single trust fund for the Town and shall be kept in trust and separate and apart from all other monies in possession of the Treasurer. Moneys in such fund shall be deposited and secured in the manner provided by § 10 of the General Municipal Law. Pending expenditure from such fund, moneys therein may be invested in the manner provided in § 11 of the General Municipal Law. Any interest earned or capital gain realized on the moneys so deposited or invested shall accrue to and become part of such fund.
- B. The Treasurer shall retain such amount as he may determine to be necessary for refunds with respect to the tax imposed by the Town under the authority of this article, out of which the Treasurer shall pay any refunds of such taxes to those taxpayers entitled to a refund pursuant to the provisions of this article.
- C. The Treasurer, after reserving such funds, shall, on or before the 12th day of each month, pay to the Town Supervisor the taxes, penalties, and interest imposed by the Town under the authority of this article, collected by the Treasurer pursuant to this article during the preceding calendar month. The amount so payable shall be certified to the Town Supervisor by the Treasurer, who shall not be held liable for any inaccuracy in such certification. However, any such certification may be based on such information as may be available to the Treasurer at the time such certification must be made under this section.
- D. Where the amount so paid over to the Town in any such distribution is more or less than the amount due to the Town, the amount of the overpayment or underpayment shall be certified to the Town Supervisor by the Treasurer, who shall not be held liable for any inaccuracy in such certification. The amount of the underpayment or overpayment shall be so certified to the Town Supervisor as soon after the discovery of the overpayment or underpayment as reasonably possible and subsequent payments and distributions by the Treasurer to such Town shall be adjusted by subtracting the amount of any such overpayment from or by adding the amount of any such underpayment to such number of subsequent payments and distributions as the Treasurer and Town Supervisor shall consider reasonable in view of the underpayment or overpayment and all other facts and circumstances.
- E. All monies received from the Treasurer by the Town Supervisor shall be deposited in the Community Preservation Fund established pursuant to Article I of this chapter.

§ 84-22. Judicial review.

- A. Any final determination of the amount of any tax payable under this article shall be reviewable for error, illegality, or unconstitutionality, or any other reason whatsoever, by a proceeding under Article 78 of the Civil Practice Law and Rules if application therefor is made to the

Supreme Court within four months after the giving of the notice of such final determination; provided, however, that any such proceeding under Article 78 of the Civil Practice Law and Rules shall not be instituted unless:

- 1) The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by this chapter, shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in New York State and approved by the State Superintendent of Insurance as to solvency and responsibility, in such amount as a Justice of the Supreme Court shall approve, to the effect that, if such proceeding shall be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or
 - 2) At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest, and penalties stated in such determination, plus the costs and charges which may accrue against him in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest, or penalties as a condition precedent to the application.
- B. Where any tax imposed hereunder shall have been erroneously, illegally, or unconstitutionally assessed or collected, and application for the refund or revision thereof duly made to the Treasurer, and such Treasurer shall have made a determination denying such refund or revision, such determination shall be reviewable by a proceeding under Article 78 of the Civil Practice Law and Rules; provided, however, that:
- 1) Such proceeding is instituted within four months after the giving of the notice of such denial;
 - 2) A final determination of tax due was not previously made; and
 - 3) An undertaking is filed with the Treasurer in such amount and with such sureties as a Justice of the Supreme Court shall approve, to the effect that if such proceeding is dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

§ 84-23. Apportionment of consideration subject to tax for property located only partly within Town.

- A. Where real property is situated partly within and partly without the boundaries of the Town, the consideration subject to tax is such part of the total consideration as is attributable to the portion of such real property situated within the Town or to the interest in such portion. If the consideration attributable to the property located in the Town is set forth in the contract, such amount may be used to compute the tax due.
- B. If the contract does not set forth the amount of consideration attributable to the portion of real property or interest therein situated within the Town, the consideration shall be reasonably allocated between the portion of such property or interest therein situated within the Town and the portion of such property or interest therein situated without the Town. If the grantor and the grantee enter into a written agreement, signed by both the grantor and the grantee, which sets forth a reasonable allocation of consideration, that allocation of consideration may be used to compute the tax due. If the grantor and the grantee do not enter into such an agreement, or if the allocation of consideration set forth in such agreement is deemed unreasonable by the Treasurer, the allocation of consideration must be computed by multiplying the amount of consideration by a fraction, the numerator of which is the fair market value of the real property or interest therein situated within the Town, and the denominator of which is the total fair market value of all the real property or interest therein being conveyed. Except in the case of a transfer or acquisition of a controlling interest where consideration means fair market

value of the real property or interest therein, the tax shall be computed on the allocated portion of the actual consideration paid, even if that amount is greater or less than the fair market value as determined by appraisal.

- C. Where the methods provided under this section do not allocate the consideration in a fair and equitable manner, the Treasurer may require the grantor and grantee to allocate the consideration under such method as he prescribes, so long as the prescribed method results in a fair and equitable allocation.

§ 84-24. Determination of tax; petition to Town Supervisor.

- A. If a return required by this article is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the Treasurer from such records or information as may be obtainable, including the assessed valuation of the real property or interest therein and other appropriate factors. Notice of such determination shall be given to the person liable for the payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within 90 days after the giving of notice of such determination, shall petition the Town Supervisor for a hearing, or unless the Treasurer, on the Treasurer's own motion, shall determine the same. The Town Supervisor may designate, in writing, a hearing officer to hear such an appeal, which hearing officer shall file a written report and recommendation with the Town Supervisor. In any case before the Town Supervisor under this article, the burden of proof shall be on the petitioner. After such hearing, the Town Supervisor shall give notice of the determination to the person against whom the tax is assessed and to the Treasurer. Such determination may be reviewed in accordance with the provisions of § 84-22 of this article. A proceeding for judicial review shall not be instituted unless:
 - 1) The amount of any tax sought to be reviewed, with penalties and interest thereon, if any, shall be first deposited with the Treasurer and there shall be filed with the Treasurer an undertaking, issued by a surety company authorized to transact business in New York State and approved by the State Superintendent of Insurance as to solvency and responsibility, in such amount and with such sureties as a Justice of the Supreme Court shall approve, to the effect that if such proceeding shall be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of the proceeding; or
 - 2) At the option of the petitioner, such undertaking filed with the Treasurer may be in a sum sufficient to cover the taxes, penalties, and interest thereon stated in such decision, plus the costs and charges which may accrue against him in the prosecution of the proceeding; in which event, the petitioner shall not be required to deposit such taxes, penalties, and interest as a condition precedent to the commencement of the proceeding.
- B. A person liable for the tax imposed by this article (whether or not a determination assessing a tax pursuant to Subsection A hereof has been made) shall be entitled to have the tax due finally and irrevocably fixed prior to the ninety-day period referred to in Subsection A by filing with the Treasurer a signed statement consenting thereto, in writing and in such form as the Treasurer shall prescribe.
- C. The remedies provided by this section and § 84-22 of this article shall be the exclusive remedies available to any person for the review of tax liability imposed by this article.

§ 84-25. Proceedings to recover tax due.

- A. Whenever any person shall fail to pay any tax, penalty, or interest imposed by this article, the Town Attorney shall, upon the request of the Treasurer, bring or cause to be brought an action to enforce the payment of the same on behalf of the Town, in any court of the State of New York or of any other state or of the United States.
- B. As an additional and alternative remedy, the Treasurer may issue a warrant, directed to the Sheriff of Orange County, commanding him to levy upon and sell any real and personal property of a grantor or grantee liable for the tax which may be found within the County, for payment of the amount thereof, with any penalty and interest and the cost of executing the warrant, and to return such warrant to the Treasurer the money collected by virtue thereof within 60 days after the receipt of the warrant. The Sheriff shall, within five days after the receipt of the warrant, file with the Clerk a copy thereof, and thereupon such Clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalty, and interest for which the warrant is issued. Such lien shall not apply to personal property unless such warrant is filed with the Department of State. The Sheriff shall then proceed upon the warrant in the same manner and with like effect as that provided by law in respect to executions issued against property upon judgments of a court of record, and for services in executing the warrant he shall be entitled to the same fees, which he may collect in the same manner. In the discretion of the Treasurer, a warrant of like terms, force, and effect may be issued and directed to any officer or employee of the county; and in the execution thereof, such officer or employee shall have all the powers conferred by law upon Sheriffs but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. Upon such filing of a copy of a warrant, the Treasurer shall have the same remedies to enforce the amount due thereunder as if the County of Orange had recovered the judgment therefor.

§ 84-26. Interest and civil penalties.

Any grantor or grantee failing to file a return or to pay any tax within the time required by this article shall be subject to a penalty of 10% of the amount of the tax due plus an interest penalty of 2% of such amount, for each month of delay or fraction thereof after the expiration of the first month after such return was required to be filed or such tax became due; such interest penalty shall not exceed 25% in the aggregate. If the Treasurer determines that such failure or delay was due to reasonable cause and not due to willful neglect, the Treasurer shall remit, abate or waive all of such penalty and such interest penalty.

Section 4. Severability.

If any clause, sentence, paragraph, subdivision, or part of this Local Law or the application thereof to any person, firm or corporation, or circumstance, shall be adjusted 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, or part of this Local Law or in its application to the person, individual, firm or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

Section 5. Effective date.

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