

*Local Law Filing*

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Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

Town of Gardiner

Local Law No. 5 of 2022

A LOCAL LAW TO PROTECT THE WATER QUALITY OF RIVERS, LAKES, AND STREAMS, INCLUDING THE WALLKILL RIVER; PROTECT THE WATER QUALITY OF GARDINER'S DRINKING WATER; PRESERVE WORKING FARMS; ESTABLISH PARKS AND RECREATIONAL AREAS; AND PROTECT HISTORIC RESOURCES AND NATURAL AREAS BY CREATING A ONE AND ONE QUARTER PERCENT REAL ESTATE TRANSFER TAX ON THE CONVEYANCE OF INTERESTS IN REAL PROPERTY IN THE TOWN, WITH REVENUES FROM THIS TAX TO BE DEPOSITED IN THE TOWN OF GARDINER COMMUNITY PRESERVATION FUND, WHICH MAY BE MATCHED BY STATE AND FEDERAL FUNDING AND WHICH WILL REQUIRE FULL PUBLIC DISCLOSURE OF ALL SPENDING.

BE IT ENACTED by the Town Board of the Town of Gardiner, Ulster County, New York, as follows:

**SECTION 1. - LEGISLATIVE FINDINGS:**

The Town of Gardiner is distinguished by its unique landscape setting, including the Wallkill River Valley, Shawangunk Ridge, Shawangunk Kill, woodlands, wetlands, farmland, and scenic features.

The protection of our natural resources provides clean water, fresh local food and resiliency in the face of climate impacts.

These features contribute to the quality of life for all Town residents and visitors and are important to the economic future of the community.

The Town Board finds that this Local Law is necessary and in the best interests of the

Town in order to achieve the balance between development and conservation which is needed to ensure the preservation of the Town's community character.

**SECTION II. - TOWN CODE AMENDED:**

The Gardiner Town Code is hereby amended to add thereto the following provisions, to be found at Article III of Chapter 101 ("Community Preservation") of the Town Code, said provisions to read as follows:

**CHAPTER 101  
COMMUNITY PRESERVATION**

**ARTICLE III  
Real Estate Transfer Tax**

**§ 101-10. Definitions.**

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

CONSIDERATION - shall mean 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.

(1) 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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** - shall mean (i.) in the case of a corporation, either fifty percent (50%) or more of the total combined voting power of all classes of stock of such corporation, or fifty percent (50%) or more of the capital, profits, or beneficial interest in such voting stock of such corporation, and (ii.) in the case of a partnership, association, trust, or other entity, fifty percent (50%) or more of the capital, profits, or beneficial interest in such partnership, association, trust or other entity.

**CONVEYANCE** - shall mean 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 forty-nine (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 conveyance pursuant to devise, bequest, or inheritance; 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 chapter or the Internal Revenue Code.

**FUND** - shall mean the Town of Gardiner Community Preservation Fund created and established pursuant to Section 6-s of the New York General Municipal Law and Article I of this chapter.

**BUYER** - shall mean the person who obtains real property or an interest therein as a result of a conveyance.

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 such officer shall compute and collect such tax on the amount of consideration or the value of the interest conveyed as such amounts are provided to such officer by the person paying the tax.

**§ 101-20. Refunds.**

Whenever the Commissioner of Finance 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 requirements as he may prescribe, provided that any application for such refund is filed with the Commissioner of Finance within two (2) years from the date the erroneous payment was made.

**§101-21. 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 Commissioner of Finance or such officer's 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 Commissioner of Finance. Moneys in such fund shall be deposited and secured in the manner provided by Section 10 of the General Municipal Law. Pending expenditure from such fund, moneys therein may be invested in the manner provided in Section 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 Commissioner of Finance 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 Commissioner of Finance shall pay any refunds of such taxes to those taxpayers entitled to a refund pursuant to the provisions of this article.

C. The Commissioner of Finance, after reserving such funds, shall on or before the twelfth 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 Commissioner of Finance pursuant to this article during the next preceding calendar month. The amount so payable shall be certified to the Town Supervisor by the Commissioner of Finance, 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 Commissioner of Finance 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 Commissioner of Finance, 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 Commissioner of Finance 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 Commissioner of Finance 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 Commissioner of Finance by the Town Supervisor shall be deposited in the Community Preservation Fund established pursuant to Article I of this Chapter.

**§ 101-22. 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 (4) 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 Financial Services 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 such petitioner 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 Commissioner of Finance, and such Commissioner of Finance 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 (4) 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 Commissioner of Finance 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.

**§ 101-23. 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 seller and the buyer enter into a written agreement, signed by both the seller and the buyer, which sets forth a reasonable allocation of consideration, that allocation of consideration may be used to compute the tax due. If the seller and the buyer do not enter into such an agreement, or if the allocation of consideration set forth in such agreement is deemed unreasonable by the Commissioner of Finance, 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 Commissioner of Finance may require the seller and buyer to allocate the consideration under such method as such officer prescribe, so long as the prescribed method results in a fair and equitable allocation.

**§ 101-24. 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 Commissioner of Finance 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 ninety (90) days after the giving of notice of such determination, shall petition the Town Supervisor for a hearing, or unless the Commissioner of Finance, on the Commissioner of Finance's own motion, shall redetermine 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 Commissioner of Finance. Such determination may be reviewed in

accordance with the provisions of § 101-22 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 Commissioner of Finance and there shall be filed with the Commissioner of Finance an undertaking, issued by a surety company authorized to transact business in New York State and approved by the State Superintendent of Financial Services 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 Commissioner of Finance 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 the petitioner 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 of § 101-24 hereof has been made) shall be entitled to have the tax due finally and irrevocably fixed prior to the ninety (90) day period referred to in subsection A by filing with the Commissioner of Finance a signed statement consenting thereto, in writing and in such form as the Commissioner of Finance shall prescribe.

C. The remedies provided by this section and § 101-22 of this article shall be the exclusive remedies available to any person for the review of tax liability imposed by this article.

#### **§ 101-25. 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 or Attorneys designated by the Town shall, upon the request of the Commissioner of Finance, 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 Commissioner of Finance may issue a warrant, directed to the Sheriff of Ulster County, commanding such officer to levy upon and sell any real and personal property of a seller or buyer 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 Commissioner of Finance and to pay the Commissioner of Finance the money collected by virtue thereof within sixty (60) days after the receipt of the warrant. The Sheriff shall, within five (5) 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 and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien on the title to and interest in real and personal property of the person against whom 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 Commissioner of Finance, 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 Commissioner of Finance shall have the same remedies to enforce the amount due thereunder as if the County of Ulster had recovered the judgment therefor.

**§ 101-26. Interest and civil penalties.**

A. Any seller or buyer failing to file a return or to pay any tax within the time required by this article shall be subject to a penalty of ten percent (10%) of the amount of the tax due plus an interest penalty of two percent (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 twenty-five percent (25%) in the aggregate. If the Commissioner of Finance determines that such failure or delay was due to reasonable cause and not due to willful neglect, the Commissioner of Finance shall remit, abate or waive all of such penalty and interest penalty.

B. If any amount of tax is not paid on or before the last date prescribed in § 101-12 hereof for payment, interest on such amount shall be paid for the period from such last date to the date paid at the underpayment rate set by the Commissioner of Taxation and Finance on underpayment of the taxes imposed by Article 31 of the Tax Law. If the County Commissioner of Finance determines that there has been an overpayment of tax, interest at the overpayment rate set by the State Commissioner of Taxation and Finance for payments due pursuant to Article 31 of the Tax Law shall be paid by the County Commissioner of Finance to the seller or buyer, on any refund paid pursuant to the provisions of this article.

C. The penalties and interest provided for in this section shall be paid to the County Commissioner of Finance and shall be determined, assessed, collected and distributed in the same manner as the tax imposed by this article, and any reference to tax in this article shall be deemed to refer to the penalties and interest imposed in this section.

**§ 101-27. Confidentiality of transfer tax returns.**

A. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any officer or employee of the County or the Town, or any person engaged or retained on an independent contract basis, to divulge or make known in any manner the particulars set forth or disclosed in any return required under this article. However, nothing in this section shall prohibit the recording officer from making a notation on an instrument effecting a conveyance indicating the amount of tax paid. No recorded instrument effecting a conveyance shall be considered a return for the purposes of this section.



B. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the County or the Town in any action or proceeding involving the collection of a tax due under this article to which the County or the Town or an officer or employee of the County or the Town is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of this article when the returns or facts shown thereby are directly involved in such action or proceeding; in any of which events the court may require the production of and may admit in evidence so much of said returns or of the facts shown thereby as are pertinent to the action or proceeding and no more.

C. Nothing herein shall be construed to prohibit the delivery to a seller or buyer of an instrument effecting a conveyance, or to the duly authorized representative of such seller or buyer, of a certified copy of any return filed in connection with such instrument or to prohibit the publication of statistics so classified as to prevent the identification of particular returns or the items thereof or to prohibit the inspection by the legal representatives of the County or the Town of the return of any taxpayer who shall bring action to set aside or review the tax based thereon.

**§ 101-27. Intergovernmental Agreements Authorized.**

The Town Board shall be authorized to, by resolution, enter into any intergovernmental agreement with the County of Ulster deemed necessary for the effective and efficient administration and enforcement of this local law.

**SECTION III. - FORM OF PROPOSITION:**

Pursuant to Section 1561 of the New York Tax Law and Section 23 of the New York Municipal Home Rule Law, this Local Law is subject to mandatory referendum. Therefore, the following proposition shall be submitted to the electors of the Town of Gardiner at the general election to be held on November 8, 2022:

TO PROTECT THE WATER QUALITY OF RIVERS, LAKES, AND STREAMS, INCLUDING THE WALLKILL RIVER; PROTECT THE WATER QUALITY OF GARDINER'S DRINKING WATER; PRESERVE WORKING FARMS; ESTABLISH PARKS AND RECREATIONAL AREAS, AND PROTECT HISTORIC RESOURCES AND NATURAL AREAS; SHALL LOCAL LAW NO. [D] [PROPOSED] OF 2022 CREATING A ONE AND ONE QUARTER PERCENT REAL ESTATE TRANSFER TAX ON THE CONVEYANCE OF INTERESTS IN REAL PROPERTY IN THE TOWN, WITH REVENUES FROM THIS TAX TO BE DEPOSITED IN THE TOWN OF GARDINER COMMUNITY PRESERVATION FUND, WHICH MAY BE MATCHED BY STATE AND FEDERAL FUNDING AND WHICH WILL REQUIRE FULL PUBLIC DISCLOSURE OF ALL SPENDING, BE APPROVED?

**SECTION IV. - SEVERABILITY:**

If any clause, sentence, paragraph, section, or part of this Local Law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

**SECTION V. - EFFECTIVE DATE; REPEAL DATE:**

This local law shall take effect on the later of the February 1, 2023 upon approval by the affirmative vote of the qualified electors of the Town of Gardiner upon the proposition set forth in Section III hereof, and after it is filed with the Secretary of State as provided in section twenty-seven of the Municipal Home Rule Law.