

Town of Marbletown

Local Law No. 5 of 2022

A Local Law establishing a Community Preservation Fund and creating a Community Preservation Fund Advisory Board as authorized by General Municipal Law § 6-s for the purpose of preserving natural, scenic, historic, and open space resources within the Town.

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

SECTION I. - LEGISLATIVE FINDINGS:

The Town of Marbletown is distinguished by its unique landscape setting, including the Shawangunk Ridge, Ashokan Reservoir and Watershed, the Rondout Creek, the Esopus Creek, woodlands, wetlands, farmland, and scenic features.

The Town of Marbletown's historic features are fundamental to our unique community character and are integral to our landscape and sense of place. 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 The Town of Marbletown 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 Town of Marbletown Town Code is hereby amended to add the following provisions, to be found at **Article I of Chapter 127** ("Community Preservation") of the Town Code, said provisions to read as follows:

Article I Community Preservation Fund

§ 127-1 Definitions.

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

ADVISORY BOARD

The Town of Marbletown Community Preservation Fund Advisory Board created under this article.

COMMUNITY PRESERVATION

Preservation of community character shall involve one or more of the following:

- A. Establishment of parks, nature preserves, or recreational areas.
- B. Preservation of open space.
- C. Preservation of lands of exceptional scenic value.
- D. Preservation of fresh and saltwater marshes or other wetlands.
- E. Preservation of aquifer recharge areas.
- F. Preservation of undeveloped beach-lands or shoreline along streams and rivers.
- G. Establishment of wildlife refuges for the purpose of maintaining native animal species diversity, including the protection of habitat essential to the recovery of rare, threatened or endangered species.
- H. Preservation of unique or threatened ecological areas.
- I. Preservation of rivers or river areas in natural, free-flowing condition.
- J. Preservation of forested land.
- K. Preservation of public access to lands for public use, including stream rights and waterways.
- L. Preservation of historic places and properties listed on the New York State Register of Historic Places and/or protected under a municipal historic preservation ordinance or law.
- M. Undertaking any of the purposes of this article in furtherance of the establishment of a greenbelt.
- N. Preservation of land, which is predominantly viable agricultural land, as defined in subdivision 7 of Section 301 of the Agriculture and Markets Law, or unique and irreplaceable agricultural land, as defined in subdivision 6 of Section 301 of the Agriculture and Markets Law.

FUND

The Town of Marbletown Community Preservation Fund established by this article.

§ 127-2 Fund established.

- A. The Town of Marbletown Community Preservation Fund is hereby established pursuant to § 6-s of the General Municipal Law.
- B. Deposits into the Fund may include revenues of the Town from whatever source and shall include all revenues from the real estate transfer tax imposed by the Town pursuant to **Article III** of this chapter as authorized by § 6-s of the General Municipal Law and Article 33-B of the Tax Law of the State of New York.

- C. The Fund shall also be authorized to accept gifts of any such interests in land or of 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 article shall be construed to prevent the financing, in whole or in part, pursuant to the Local Finance Law of the State of New York, of any acquisition authorized pursuant to this article. Monies from the Fund may be utilized to repay any indebtedness or obligations incurred pursuant to the Local Finance Law of the State of New York, consistent with effectuating the purposes of this article.

§ 127-3 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 § 6-s of the General Municipal Law and this article;
 - (2) To acquire interests or rights in real property for the preservation of community character within the Town, including villages therein, in accordance with such plan;
 - (3) To establish a bank pursuant to a transfer of development rights program consistent with § 261-a of the Town Law;
 - (4) To provide a management and stewardship program for such interests and rights, consistent with subdivision 9 of § 6-s of the General Municipal Law and this article and in accordance with such plan designed to preserve community character; and
 - (5) To make payments to school, fire, fire protection and ambulance districts in connection with lands within the Town that are owned by the state or any municipal corporation subject to the limitations of subdivision 3 of § 6-s of the General Municipal Law and Subsection **D** of **§ 127-3** of this article.
- 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 **§ 127-3**.
- D. Any payments to be made pursuant to Subsection **A(5)** of this **§ 127-3** may only be made to districts where more than 25% of the assessed value of such district is wholly exempt from real property taxation pursuant to the Real Property Tax Law because it is owned by the state or a municipal corporation. Not more than 10% of the Fund may be used for such purpose in any calendar year. Such payment shall be made to the extent provided for in the plan approved pursuant to § 6-s of the General Municipal Law. Such payments from the Fund shall not exceed the actual tax liability that would have been due if such lands of the state or of a municipal corporation had been subject to real property taxation. Where more than one district is eligible for such a payment under this subsection, and such payment is less than the actual tax liability that would have been due if such lands of the state or a

municipal corporation had been subject to real property taxation, the Town shall apportion such annual payment on the basis of the total tax levied by each district within the Town for the year such payment is made. Such payment made by the Town shall be used solely to reduce the property tax liability of the remaining taxpayers of the district within such Town.

- E. If the implementation of the Community Preservation Project Plan adopted by the Town Board as provided in subdivision 6 of § 6-s of the General Municipal Law has been completed, and funds are no longer required for the purposes outlined in this article, any remaining monies in the Fund shall be applied to reduce any bonded indebtedness or obligations incurred to effectuate the purposes of this article.
- F. Any monies expended from the Fund shall be consistent with the purposes set forth in § 127-3, the definition of "community preservation" set forth in § 127-1, and the Community Preservation Project Plan adopted by the Town Board in accordance with subdivision 6 of Section 6-s of the General Municipal Law.
- G. The Town Board shall study and consider establishing a transfer of development rights program to protect community character as provided for by § 261-a of the Town Law. If at any time during the life of the Fund such a transfer of development rights program is established, the Town may utilize monies from the Fund in order to create and fund a central bank of the transfer of development rights program. If at any time during the life of the Fund a transfer of development rights program is repealed by the Town, all monies from the central bank shall be returned to the Fund.

§ 127-4 Advisory Board established.

- A. An Advisory Board is hereby established to review and make recommendations on proposed acquisitions of interests in real property using monies from the Fund.
- B. Such Board shall consist of seven members who shall be legal residents of the Town and who shall serve without compensation. No member of the Town Board shall serve on the Advisory Board. Members initially appointed to the Board shall serve staggered terms as follows: one member shall be appointed for a term expiring at the end of the municipal official year in which initially appointed, and the terms of the remaining members shall expire at the end of each official year thereafter. At the expiration of the term of each member first appointed, their successor shall be appointed for a term of seven years.
- C. A majority of the members appointed shall have demonstrated experience with conservation or land-preservation activities. The Town Board shall make a reasonable effort to appoint at least one active farmer to the Board. The Town Board shall further make a reasonable effort to appoint one or more members of the existing volunteer Town Boards or Commissions.
- D. The Board shall act in an advisory capacity to the Town Board.

§ 127-5 Public hearing prior to land acquisition; exception.

- A. No interest or right in real property shall be acquired pursuant to this article until a public hearing is held as required by § 247 of the General Municipal Law.

- B. Nothing herein shall prevent the Town Board from entering into a conditional purchase agreement before a public hearing is held.
- C. Any resolution of the Town Board approving an acquisition of land pursuant to this article shall find that acquisition was the best alternative for the protection of community character of all the reasonable alternatives available to the Town.

§ 127-6 Management of Acquired Lands.

- A. Rights or interests in real property acquired under this article shall be administered and managed in a manner which:
 - (1) Allows public use and enjoyment in a manner compatible with the natural, scenic, historic, and open space character of such lands;
 - (2) Preserves the native biological diversity of such lands;
 - (3) With regard to open spaces, limits improvements to enhancing access for passive use of such lands, such as nature trails, boardwalks, bicycle paths, hiking trails, snowshoe trails, cross-country ski trails, and peripheral parking areas, provided that such improvements do not degrade the ecological value of the land or threaten essential wildlife habitat; and
 - (4) Preserves cultural property consistent with accepted standards for historic preservation.
- B. Notwithstanding any other provision of this article there shall be no right to public use and enjoyment of land used in conjunction with a farm operation as defined by subdivision 11 of Section 301 of the Agriculture and Markets Law.
- C. The Town may enter into agreements with corporations, organized under the Not-For-Profit Corporations Law that engage in land trust activities to manage lands, including less than fee interests acquired pursuant to this article.
- D. Any such agreement shall contain a provision that such corporation shall keep the lands accessible to the public unless such corporation shall demonstrate to the satisfaction of the Town that public accessibility would be detrimental to the lands or any natural features associated therewith. Any such agreement shall contain a provision that such corporation shall keep and manage the lands consistent with this article.

§ 127-7 Disposal of lands acquired with Fund monies.

- A. Rights or interests in real property 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 article without the express authority of an act of the State Legislature, which shall provide for the substitution of other lands of equal environmental value and fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the State Legislature.
- B. Any conservation easements created under Title 3 of Article 49 of the Environmental Conservation Law, which are acquired with monies from such Fund, may only be modified

or extinguished as provided in § 49-0307 of such law.

- C. Nothing in this article shall preclude the Town, by local law, from establishing additional restrictions to the alienation of lands acquired pursuant to this article. This § **127-7** shall not apply to the sale of development rights by the Town acquired pursuant to this article, where said sale is made by a development rights bank created by the Town, 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 that:
- (1) The lands from which said development rights were 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) The proceeds from such sale shall be deposited in the Fund.

SECTION III. 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 IV. EFFECTIVE DATE:

This local law shall take effect on the date it is filed with the Secretary of State as provided in section twenty-seven of the Municipal Home Rule Law.