

Certificate of Resolution

TOWN OF ROCHESTER
PO BOX 65
ACCORD, NY 12404
845-626-7384

I, the undersigned Deputy Town Clerk of the Town of Rochester, Ulster County, New York,

DO HEREBY CERTIFY:

That I have compared the attached proceedings of the Town Board of the Town of Rochester, a true and correct copy of the said original as recorded in the minutes held by the Town Board meeting dated April 10, 2025, and filed in the office of the Town Clerk.

**ADOPTION OF LOCAL LAW 4 OF 2025: EXTENSION OF SUPERVISOR TERM:
Resolution # 160-2025:**

Motion: Deputy Supervisor Coleman

Second: Councilwoman Smiseth

The Town of Rochester Town Board adopts Local Law # 4-2025: Extension of the Supervisor's term.

Section 1 –Legislative Authority; Title This local law is enacted pursuant to New York State Municipal Home Rule Law (MHRL) Section 10(1)(ii)(a)(1) and Section 23(2)(e), which authorize a town to adopt and amend local laws relating to the terms of office for its elected officials, subject to mandatory referendum.

Section 2 –Purpose and Intent Pursuant to New York State Town Law § 24, the term of office for a town supervisor is set at two (2) years unless altered by local law and approved by a mandatory referendum. The Town Board has determined that extending the Town Supervisor's term to four (4) years will improve government continuity, efficiency, and long-term planning for the Town of Rochester. The purpose of this local law is to extend the elective term for the office of Town Supervisor from two (2) years to four (4) years; however, such extension is subject to referendum. Under this Local Law, balloting for the term extension shall take place at the general election to be held on Tuesday, November 4, 2025, in accordance with New York State Election Law.

Section 3 –Restatement of Existing Terms and Extension of Terms for Elected Officers. The table below restates the Town of Rochester's elective offices' terms and the extended terms, subject to local referendum approval: Position Proposed + Current Term Town Supervisor Four (4) year term, if approved by a majority of electors voting in the referendum at the general election on November 4, 2025; otherwise, the term shall remain two (2) years.

Section 4 –Voter Approval and Effective Date. This local law shall take effect immediately upon filing with the Secretary of State. However, the operational effectiveness of the term change for the office of Town Supervisor shall be determined in

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the general election to be held on Tuesday, November 4, 2025, in accordance with New York State Election Law. The results of the referendum voting shall mean: A. If a majority of qualified electors voting in the referendum on November 4, 2025, approve the extension of the Town Supervisor's term, the elected candidate shall serve a four (4) year term, commencing January 1, 2026. Otherwise, the elected candidate shall serve a two (2) year term, in accordance with New York State Town Law § 24.B. If the referendum is not approved, the winning candidate shall be deemed elected to a two (2) year term.

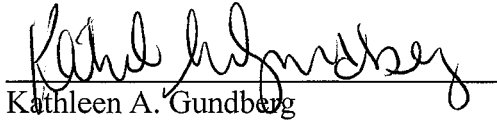
Section 5 –Severability If any provision of this local law or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or applications of this local law which can be given effect without the invalid provision or application, and to this end, the provisions of this local law are declared to be severable.

Section 6- Effective Date: This Local Law shall become effective upon the filing in the office of the New York Secretary of State pursuant to section 27 of the Municipal Home Rule Law.

Aye: 3 Nay: 0 Abstain: 0 Motion carried

Albaugh-absent

Enouen- recused


Kathleen A. Gundberg

Town Clerk

[SEAL]

Local Law No. 4 of the Year 2025

To be known as Extension of Term for Town Supervisor

LOCAL LAW FILING

Town of Rochester, County of Ulster, Local Law No. 4 of the year 2025

Be it enacted by the Town Board of the Town of Rochester as follows:

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I, the undersigned Deputy Town Clerk of the Town of Rochester, Ulster County, New York,

DO HEREBY CERTIFY:

That I have compared the attached proceedings of the Town Board of the Town of Rochester, a true and correct copy of the said original as recorded in the minutes held by the Town Board meeting dated July 24, 2025, and filed in the office of the Town Clerk.

**ADOPTION OF LOCAL LAW 6 OF 2025: IMPOSING REAL ESTATE
TRANSFER TAX:**

Resolution #254 -2025:

Motion: Councilman Win

Second: Councilman Coleman

WHEREAS, the Town Board of the Town of Rochester has proposed a local law to impose a Real Estate Transfer Tax for the purpose of funding a Community Preservation Fund, pursuant to Section 6-S of the General Municipal Law and Section 1449-yyy of the Tax Law of the State of New York; and

WHEREAS, the proposed local law is subject to a mandatory referendum in accordance with the provisions of Section 6-S(1) of the General Municipal Law and Article 9 of the New York State Municipal Home Rule Law; and

WHEREAS, a public hearing was duly noticed and held on July 10, 2025, and closed on July 24, 2025; and

WHEREAS, the Town Board conducted an environmental review pursuant to SEQRA, classified the action as a Type I action, declared itself Lead Agency on June 26, 2025, and issued a Negative Declaration on July 24, 2025;

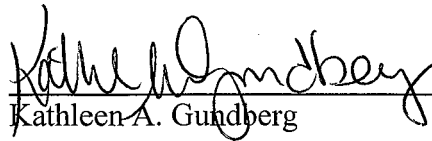
NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Rochester hereby:

- 1) Adopts Local Law 5 of 2025, entitled "A Local Law Imposing a Real Estate Transfer Tax to Establish a Community Preservation Fund", subject to a mandatory referendum; and
- 2) Requests that the local law be submitted for approval by the qualified electors as a proposition on the ballot of the November 4, 2025 general election pursuant to Municipal home rule law section 23 of the NYS Municipal Home rule law; and

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- 3) Requests the Town Clerk to certify and file the local law with the New York State Department of State only after the referendum is held and the law is approved by a majority of voters.

Aye: 4 nay: 1-Smiseth abstain: 0
4-1, motion carried


Kathleen A. Gundberg

Town Clerk

[SEAL]

Local Law No. 6 of 2025

A Local Law imposing a 1 percent Real Estate Transfer Tax on the conveyance of interests in real property in the Town, with the revenues derived from this tax to be deposited in the Town of Rochester Community Preservation Fund for the purpose of preserving natural, scenic, historic, and open space resources for the preservation of community character within the Town

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

SECTION I. - LEGISLATIVE FINDINGS:

The Town of Rochester is distinguished by its unique landscape setting, including the Shawangunk Ridge, the foothills of the Catskill Mountains, the Rondout Creek, the Peter's Kill, the Rochester Creek, the Mombaccus Creek, Coxing Kill, Saunders Kill, Stony Kill, Rochester Creek, Mettakahonts Creek, Vernoooy Kill, and the Vly Swamp, wetlands, farmland, habitat areas, and scenic features.

The Town of Rochester'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 Rochester 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 Rochester Town Code is hereby amended to add the following provisions, to be found in a new Article III of Chapter 72 ("Community Preservation") of the Town Code, said provisions to read as follows:

Real Estate Transfer Tax

§ 72-9 Definitions.

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

BUYER

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

COMMISSIONER OF FINANCE

The Commissioner of Finance of the County of Ulster, or such successor as by law may be authorized to serve as Commissioner of Finance of the County of Ulster.

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 sublease hold 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 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 article or the Internal Revenue Code.

FUND

The Town of Rochester Community Preservation Fund created and established pursuant to § 6-s of the New York General Municipal Law and Article I of this chapter.

INTEREST IN REAL PROPERTY

Shall include 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, limited-liability company, 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 Ulster.

SELLER

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, "seller" shall mean the entity with an interest in real property or a shareholder or partner transferring stock or partnership interest.

TOWN

The Town of Rochester.

TOWN SUPERVISOR

The Town Supervisor of the Town of Rochester.

§ 72-10 Imposition of real estate transfer tax.

There is hereby imposed in the Town of Rochester a tax on each conveyance of real property or interest therein, as authorized by Article 33-B of New York Tax Law, the rate of such tax to be 1 % of the consideration for the conveyance. Revenues from such tax shall be deposited in the Town of Rochester 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 February 1, 2025, but shall not apply to conveyances made on or after such date pursuant to binding 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 Commissioner of Finance.

§ 72-11 Payment of tax.

- A. The real estate transfer tax imposed pursuant to this article shall be paid to the Commissioner of Finance, or to the Recording Officer acting as the agent of the Commissioner of Finance upon designation as such agent by the Commissioner of Finance. 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 Commissioner of Finance or Recording Officer shall endorse upon each deed or instrument effecting a conveyance a receipt for the amount of the tax so paid.
- B. A return shall be required to be filed with such Commissioner of Finance 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 Commissioner of Finance 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 New York Tax Law, except that the

Commissioner of Finance 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 Commissioner of Finance or Recording Officer orders them to be destroyed.

- C. The Recording Officer shall not record an instrument effecting 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.

§ 72-12 Liability for tax.

- A. **The real estate transfer tax required hereunder shall be paid by the buyer.** If the buyer has failed to pay the tax imposed pursuant to this article, or if the buyer is exempt from such tax, the seller shall have the duty to pay the tax. Where the seller has the duty to pay the tax because the buyer has failed to pay, such tax shall be the joint and several liability of the buyer and seller.
- B. For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, 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.

§ 72-13 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 is the subject of one or more of the following development restrictions:
 - (a) An agricultural, conservation, scenic, or open space easement;
 - (b) Covenants or restrictions which prohibit the development where the property being conveyed has had its development rights permanently removed;
 - (c) A purchase of development rights agreement where the property being conveyed has had its development rights permanently removed;
 - (d) A transfer of development rights agreement, where the property being conveyed has had its development rights permanently removed;
 - (e) Real property subject to any locally adopted land preservation agreement;
- (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 restriction precludes the conversion of the property to a nonagricultural use for at least eight years from the date of transfer, and said development restriction is evidenced by an easement, agreement, or other suitable instrument which is to be 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, parks or historic preservation purposes.

§ 72-14 Additional exemption.

There shall be allowed an exemption of an amount equal to the median sales price of

residential real property within the Town of Rochester, as determined by the State Commissioner of Taxation and Finance, on the consideration of the conveyance of improved or unimproved real property or an interest therein.

§ 72-15 Credit for prior tax paid on creation of leasehold or grant of option or contract to purchase.

A buyer shall be allowed a credit against the tax due on a conveyance of real property to the extent that tax was paid by such buyer 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 buyer. 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 seller on the date of the subsequent conveyance (and which such seller 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.

§ 72-16 Cooperative housing corporation transfers.

- A. Notwithstanding the definition of "controlling interest" contained in § 72-9 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 a 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 evidence 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 Commissioner of Finance 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 Commissioner of Finance may deem necessary, including, but not limited to, the names, addresses, and employee identification numbers or social security numbers of the seller and the buyer, the number of shares conveyed, the date of the conveyance, and the consideration paid for such conveyance.

§ 72-17 Designation of agent by County Commissioner of Finance.

The Commissioner of Finance is authorized by law to designate the Recording Officer to act as such officer's agent for the purpose of collecting the tax authorized by this article. The Commissioner of Finance shall provide for the manner in which such person may be designated as such officer's agent subject to such terms and conditions as such officer shall prescribe. The real estate transfer tax shall be paid to such agent as provided in § 72-11 hereof.

§ 72-18 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 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.

§ 72-19 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 years from the date the erroneous payment was made.

§ 72-20 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 § 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 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 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 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.

§ 72-21 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 article, 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 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.

§ 72-22 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 prescribes, so long as the prescribed method results in a fair and equitable allocation.

§ 72-23 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 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 § 72-21 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 § 72-23 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 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 § 72-21 of this article shall be the exclusive remedies available to any person for the review of tax liability imposed by this article.

§ 72-24 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 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 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.

§ 72-25 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 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 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 § 72-11 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.

§ 72-26 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.

SECTION III. MANDATORY REFERENDUM

This local law is subject to mandatory referendum pursuant to New York State Municipal Home Rule Law.

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 IV. EFFECTIVE DATE:

This local law shall take effect upon the approval of the electors at a November General Election on the date it is filed with both the Secretary of State as provided in section twenty-seven of the Municipal Home Rule Law, and the New York State Commissioner of Taxation and Finance as provided in section 1561 of the New York State Tax Law.