

Chapter 125

CONSERVATION EASEMENT

GENERAL REFERENCES

Environmental Commission — See Ch. 13.	Conservation	Nature preserves — See Ch. 152.
Farming — See Ch. 102.		Subdivision of land — See Ch. 179.
Freshwater wetlands and stream protection — See Ch. 124.		Zoning — See Ch. 208.
		Planned development districts — See Ch. A217.

§ 125-1. Title. [Amended 12-1-2008 by L.L. No. 8-2008]

This chapter shall hereinafter be known and cited as the "Land Conservation and Historic Preservation Easement Law of the Town of Clifton Park."

§ 125-2. Purpose. [Amended 12-1-2008 by L.L. No. 8-2008]

It is the purpose of this chapter to provide for the acquisition of interests or rights in real property for the conservation, protection and preservation of historic, scenic and cultural resources including buildings, landmarks, landscapes; open space resources; farmland resources; and any other publicly valued resources identified in public planning documents, and areas which shall constitute a public purpose for which public funds may be expended or advanced after due notice and a public hearing, by which the Town of Clifton Park may acquire, by purchase, gift, grant, bequest, devise, lease or otherwise, the fee or any lesser interest, development right, easement, covenant or other contractual right necessary to acquire open space or open area or historic buildings or landmarks as the same are defined in § 125-5 herein. This law shall allow for both term and permanent easements secured by the Town of Clifton Park.

§ 125-3. Legislative authority.

In accordance with § 247 of the General Municipal Law of the State of New York, the Town Board of the Town of Clifton Park has the authority to acquire such interests or rights in land. Pursuant to the above authority, the Town Board has prepared and adopted this chapter setting forth standards to be followed in the acquisition of such interest.

§ 125-4. Jurisdiction.

This chapter shall apply to the entire area of the Town of Clifton Park.

§ 125-5. Definitions.

For the purpose of this chapter, the terms used herein are defined as follows:

FARM or FARMING — As defined in §§ 208-7 and 208-8 of the Town Code.

HISTORIC PROPERTY — As described in Article XIII of Chapter 208, § 208-78, of the Town Code. **[Amended 12-1-2008 by L.L. No. 8-2008]**

LOT — As defined in § 208-7 of the Town Code.

OPEN SPACE or OPEN AREA — Any space or area characterized by natural scenic beauty or whose existing openness, natural condition or present state of use, if retained, would enhance the present or potential value of abutting or surrounding urban development or would maintain or enhance the conservation of natural or scenic resources. For the purposes of this section, natural resources shall include but not be limited to agricultural lands defined as open lands actually used in bona fide agricultural production.

§ 125-6. Procedure for granting term easement. [Amended 5-3-2004 by L.L. No. 1-2004; 12-1-2008 by L.L. No. 8-2008]

- A. Eligible property. A term easement may be requested for property in the Town of Clifton Park based on the following criteria: an historic building or landmark for an historic preservation easement, a minimum of 15 acres per lot, or a minimum of 7.5 acres each for any two adjoining lots.
- B. Types of term easements. The following types of term easements may be proposed:
 - (1) Open space term conservation easement. A minimum of 15 acres per lot or a minimum of 7.5 acres each for any two adjoining lots is required. For an open space term conservation easement, the applicant agrees that land under easement will not be developed, built upon or otherwise changed during the term of the easement.
 - (2) Farmland term conservation easement (farming purposes): the same as Subsection A(1), except that farm structures as described in §§ 208-7 and 208-8 of the Town Code which are used as part of an active agricultural operation are permitted and are granted the same percentage of easement value remaining taxable on the land. The land and buildings under easement shall be principally and actively used for farming purposes for the term of the easement, but approved farming easement applicants can also apply for other tax saving programs without penalty. The Town's term conservation easement will be applied first and cannot be shifted from one program to another.

- (3) Historic preservation term easement: The applicant shall preserve the historic property as described in Article XIII of Chapter 208, § 208-78, of the Town Code.

C. Owner application requirements.

- (1) Any owner or owners of eligible property shall complete a term conservation easement application and submit it to the Town Clerk, who shall refer such application to the Town Board. The term easement application form is available in the Town Clerk's office. The application shall also include a copy of a full-size Tax Map showing the property, if the entire parcel is being encumbered, or a copy of a survey map and metes and bounds description of the proposed area if it is part of a parcel.
- (2) Application fee. The owner shall pay to the Town an application fee of \$15, which shall be deemed a reasonable sum to cover the costs of administration, no part of which shall be returnable to the applicant.

D. Review procedures.

- (1) Town Board referrals. The Town Board shall refer such applications to the Open Space Coordinator and the Planning Department, and also to the applicable advisory committees such as the Historic Preservation Commission and/or the Open Space, Trails and Riverfront Committee, for review and comments within 45 days, if deemed necessary and/or appropriate. **[Amended 5-11-2020 by L.L. No. 5-2020]**
- (2) Review and recommendations. Upon receipt of each proposal, the Open Space Coordinator and representatives of each applicable advisory committee and the Planning Board shall investigate the subject property to determine if the proposal would be of benefit to the people of the Town of Clifton Park. If the Historic Preservation Commission and Planning Board, if such a referral has been made by the Town Board, determines that it is in the public interest to accept such a proposal, each shall recommend to the Town Board that it hold a public hearing for the purpose of determining whether or not the Town should accept such proposal. **[Amended 1-12-2015 by L.L. No. 2-2015]**
- (3) Public hearing by Town Board. The Town Board shall, within 45 days of receipt of such advisory opinion, hold a public hearing concerning such proposal at a place within the Town of Clifton Park. At least 10 days' notice of the time and place of such hearing shall be published in a paper of general circulation in such Town, by the Town Clerk. A written notice of such proposal shall be mailed by the applicant to all adjacent property owners and to any municipality whose boundaries are within 500 feet of the boundaries of said proposed area and to the school district in which

it is located. Receipts of mailing shall be submitted to the Town Clerk's office prior to the date of the public hearing.

- (4) Determination. The Town Board, after receiving the advisory reports and after such public hearing, may adopt the request for a term easement proposal or any modification thereof it deems appropriate or may reject it in its entirety.
- (5) Recording agreement. If such proposal is adopted by the Town Board, it shall be executed by the owner or owners in written form and in a form suitable for recording in the Town Clerk's office.
- (6) Cancellation. Said agreement may not be canceled by either party. However, the owner or owners thereof may petition the Town Board for cancellation upon good cause shown, and such cancellation may be granted only upon payment of the penalties provided in § 125-8 herein.

§ 125-7. Valuation for taxation for property with term conservation easement. [Amended 12-1-2008 by L.L. No. 8-2008]

After acquisition of any such interest pursuant to this chapter, the valuation placed upon such area for purposes of real estate taxation shall take into account and be limited by the limitation on the future use of the land, using New York State Office of Real Property Services (ORPS) accepted assessment practices to determine the amount by which a property's market value has been reduced.

§ 125-8. Penalty for violation or cancellation. [Amended 5-3-2004 by L.L. No. 1-2004; 12-1-2008 by L.L. No. 8-2008]

If there is a substantial violation of the terms and conditions of the term easement agreement or if said agreement is canceled by the Town Board upon petition, the Town will assess rollback taxes and a penalty, and the current owner(s) of said property must pay to the Town of Clifton Park the amounts calculated pursuant to Subsection B below. In the following subsection, "substantial" will be defined as a one-hundred-percent increase in the density of the parcel which will trigger a review and final determination by the combined efforts of the Town Assessor, Director of Planning and Open Space Coordinator. The determination of substantial as it relates to historic resources will be referred to the Historic Preservation Commission, as it has expertise in this area and will review the project to make a determination on the penalty.

- A. Cancellation. A request to cancel the owner's term easement agreement must be made in writing to the Town Assessor. The Assessor will calculate the penalty in consultation with the Town Attorney, Director of Planning, Open Space Coordinator and Historic Preservation Commission as is applicable and make recommendations to the Town Board for terms and conditions of acceptance.

B. Penalty calculation.

- (1) The penalty calculation will be applied to all taxes granted abatement under and pursuant to the easement agreement, and said taxes are to include the state, county, town, school districts and all special improvement districts and other taxing units to which the property is subject. Said back taxes shall be limited as follows: Any easement broken before its 11th year will be subject to a five-year maximum rollback; an easement broken between its 11th and 15th year will be subject to a four-year maximum rollback; an easement broken in its 16th year or later will be subject to a three-year maximum rollback.
- (2) The penalty will be calculated on the basis of the previous year's tax abatement multiplied by a factor equal to the term of the easement divided by the current year of the easement. This factor shall not exceed five.
- (3) The penalty shall be assessed against all land under easement.

C. Penalty exceptions.

- (1) Property covered by a conservation easement that is destroyed by fire or natural disaster will not be penalized unless the future use of the land or buildings is changed.
- (2) The penalty shall be assessed against all the land under easement except in the case of the death of a sole owner, in which case the penalty will be assessed only against that portion which is to be developed or changed in use within one year of the date of death. Thereafter, the penalty and back taxes will be levied upon the land under easement.
- (3) The penalty shall not be assessed against land under easement where the owner and Town Board express an agreement, in writing, for the conveyance of a permanent easement or easement over such lands to the Town, and the acceptance of such easement by the Town Board. **[Added 2-11-2019 by L.L. No. 2-2019]**

D. Funds collected by the Town as penalties under this section shall be deposited into the Town's dedicated Open Space Capital Reserve Fund.

§ 125-9. Sale of land. [Amended 5-3-2004 by L.L. No. 1-2004; 12-1-2008 by L.L. No. 8-2008]

Land covered by a term conservation easement may be sold or transferred at any time, but the terms and conditions of the easement shall run with the land pursuant to the terms and conditions of the original application as maintained by the Town Assessor.

§ 125-10. Duration; renewals. [Amended 12-1-2008 by L.L. No. 8-2008; 2-6-2012 by L.L. No. 1-2012]

- A. Term easements proposed must be subject to a minimum term of 15 years. The maximum term for conservation easements under this section is 25 years.
- B. Renewals of existing term easements. The Town Assessor's office will notify owners of real property subject to existing conservation easements by November 15 of each year immediately prior to the expiration of each such easement. Holders of existing conservation easements with terms set to expire shall have until March 1 of the next succeeding year to apply to renew their existing term conservation easements. Renewal applications shall be developed by the Assessor's office, shall be provided to holders within such notification.
- C. Renewal applications shall be filed with the Town Clerk, and referred to the Town Assessor, who shall list properties subject to expiring term conservation easements and advise the Town Board of applications for renewal for each expiring term easement. The Town Board shall act upon all applications for renewal of existing term conservation easements prior to May 1 of each year with advice from the Town Assessor and Open Space Coordinator regarding the continued suitability of any renewal application consistent with the goals and intent of this chapter. **[Amended 5-11-2020 by L.L. No. 5-2020]**
- D. The renewal application fee shall be \$10, and shall be deposited into the Open Space Capital Reserve Account.
- E. Owners of real property subject to prior existing term conservation easements who do not file a renewal application by March 1 in the year after expiration of the existing term, who wish to re-apply for a new term conservation easement under this chapter must follow the procedure in § 125-6, effective for the succeeding tax year following application.

§ 125-11. Valuation percentages. [Amended 12-1-2008 by L.L. No. 8-2008]

The Town Assessor is legally required to take into account and be limited by the limitation on the future use of the land resulting from the easement using accepted assessment practices to determine the amount by which a property's market value has been reduced. The following table of tax assessment is presently in use:

Percent of Pre-Easement Value Remaining Taxable			
Years	Conservation	Farming Purposes	Historic Preservation
15	20	15	15
16	19	14	14
17	18	13	13
18	17	12	12
19	16	11	11

Percent of Pre-Easement Value Remaining Taxable

Years	Conservation	Farming Purposes	Historic Preservation
20	15	10	10
21	14	10	10
22	13	10	10
23	12	10	10
24	11	10	10
25 +	10	10	10

§ 125-12. Exceptions. [Amended 5-3-2004 by L.L. No. 1-2004]

Other than for historic preservation easements, it will be required that a parcel which includes a principal dwelling exclude a one-acre (43,560 square feet) area with a maximum of three acres (130,680 square feet) encompassing the dwellings and designate that area as an exception to the easement.

§ 125-13. (Reserved)¹

§ 125-14. (Reserved)

§ 125-15. Permanent conservation easements. [Added 12-1-2008 by L.L. No. 8-2008]

- A. Distinguished. In addition to the term conservation easement option for landowners, the Town of Clifton Park has initiated a program for securing and acquiring permanent conservation easements as another conservation tool and approach towards achieving the public conservation goals identified in the Town of Clifton Park’s open space plan, adopted in 2003. A permanent conservation easement or other transfer of interests in land may be acquired by donation; through the site plan approval process pursuant to § 208-113 et seq.; or, in some cases, by purchase.
- B. Eligibility. A permanent conservation easement may be requested for any property identified as material to significant public conservation goals as expressed in the Town’s open space plan. The Town of Clifton Park may explore a permanent conservation easement with interested, willing property owners based on criteria established by the Town for the following resources of Town-wide significance: historic, scenic and cultural resources; farmland resources; and parkland and trail resources. A property for which a permanent conservation easement has been placed on the land, held by either the Town or any other qualified conservation entity, may not be eligible for the Town of Clifton

1. Editor's Note: Former § 125-13, Cancellation, was repealed 12-1-2008 by L.L. No. 8-2008.

Park's term conservation easement program absent a showing that the application advances a further conservation goal.

- C. The Town Board reserves the right to pursue, consider or reject any application or project proposal based on the criteria and public priorities, landowner readiness, grant resources and funding availability.

§ 125-16. Valuation for taxation for property with permanent conservation easement. [Added 12-1-2008 by L.L. No. 8-2008]

After acquisition of any such interest pursuant to this chapter, the valuation placed upon such area for purposes of real estate taxation shall take into account and be limited by the limitation on the future use of the land using New York State Office of Real Property Services (ORPS) accepted assessment practices to determine the amount by which a property's market value has been reduced.

§ 125-17. Interests run with land. [Added 12-1-2008 by L.L. No. 8-2008]

Interests secured through a deed of permanent conservation easement shall run with the land. The Town of Clifton Park Open Space Coordinator and the Planning Department shall monitor the interests of the Town secured through permanent conservation easements on behalf of and report to the Town Board.