

ORDINANCE NO. 05-06

**MUNICIPAL OPEN SPACE, RECREATION
AND HISTORIC PRESERVATION TRUST FUND**

WHEREAS, on November 2, 2004, the majority of registered voters of the Borough of West Paterson approved a referendum to establish an annual levy at the rate of \$.01 per every \$100 dollars of said property value of real property located in the Borough and to annually appropriate that revenue for any or all the following purposes or any combination thereof:

- a. Acquisition of land for recreation and conservation purposes;
- b. Development of land acquired for recreation and conservation purposes;
- c. Maintenance of land acquired for recreation and conservation purposes;
- d. Historic preservation of historic properties, structures, facilities, sites, areas or objects and the acquisition of such properties, structures, facilities, sites, areas or objects for historic preservation purposes; or
- e. Payment of debt service on indebtedness issued or incurred by the Borough for any of the purposes set forth in paragraphs a, b, c, or d above.

NOW, THEREFORE, the Borough of West Paterson hereby amends and supplements the Ordinances of the Borough of West Paterson in include the following new Article entitled "Municipal Open Space, Recreation and Historic Preservation Trust Fund":

1. All real property located in the Borough shall be assessed an annual levy of \$.01 per \$100.00 of assessed real property value. The Borough's Division of Tax Collection shall be responsible for the collection of the levy.
2. Within thirty (30) days of the passage of this Ordinance, the Borough shall create a "Municipal Open Space, Recreation and Historic Preservation Trust Fund".
3. Amounts raised by the levy imposed pursuant to this Ordinance shall be deposited into the "Municipal Open Space, Recreation and Historic Preservation Trust Fund" (hereinafter referred to as "Trust Fund" and used exclusively for the purposes set forth in paragraph (4) of this Ordinance. Any interest earned on monies deposited into said Trust Fund shall be credited to the Trust Fund to be used for the same purposes as the principal. Separate accounts may be created for the deposit of monies to be expended for the purposes specified in paragraph (4) of this Ordinance.
4. The Mayor and Council shall annually appropriate amounts raised by the levy imposed pursuant to this Ordinance for any or all of the following purposes, or any combination thereof:
 - a. Acquisition of lands for recreation and conservation purposes;
 - b. Development of lands acquired for recreation and conservation purposes;
 - c. Maintenance of lands acquired for recreation and conservation purposes;
 - d. Historic preservation of historic properties, structures, facilities, sites, areas or objects and the acquisition of such properties, structures, facilities, sites, areas or objects for historic preservation purposes; or
 - e. Payment of debt service on indebtedness issued or incurred by the Borough for any of the purposes set forth in paragraphs a, b, c, or d above.

5. The Mayor and Council shall by majority vote determine the appropriate amount or rate of the annual revenue levy to be allocated to any of the respective purposes specified in paragraph (4) of this Ordinance after conducting at least one public hearing thereon.
6. The Mayor and Council may submit to the voters of the municipality in a general or special election a proposition amending or supplementing a proposition previously submitted, approved and implemented pursuant to L.1997, c. 24, § 7 (C. 40:12-15.7) (1) changing the amount or rate of the annual levy, or (2) adding or removing purposes authorized pursuant to L.1997, c. 24, § 7 (C. 40:12-15.7) which a levy may be expended. Upon approval of the amendatory or supplementary proposition by a majority of the votes cast by the voters of the Borough, the Mayor and Council shall implement it in the same manner as set forth in this Ordinance.
7. Upon petition to the Mayor and Council signed by the voters of the Borough equal in number to at least fifteen percent (15%) of the votes cast therein at the last preceding general election, filed with the Mayor and Council at least 90 days before a general or special election, for submission to the voters of the municipality in a general or special election of a proposition amending or supplementing a proposition previously submitted, approved and implemented pursuant to L.1997, c. 24, § 7 (C. 40:12-15.7) (1) changing the amount or rate of the annual levy, or (2) adding or removing purposes authorized pursuant to L.1997, c. 24, § 7 (C. 40:12-15.7) which a levy may be expended, the Mayor and Council shall submit to the voters of the municipality in the general or special election said proposition. Upon approval of the amendatory or supplementary proposition by a majority of the votes cast by the voters of the Borough, the Mayor and Council shall implement it in the same manner as set forth in this Ordinance.
7. Land acquired by the Borough using revenue raised pursuant to the Ordinance shall be held in trust and shall be used exclusively for the purposes authorized in paragraph 4.
8. After conducting at least one public hearing thereon and upon the finding the purposes of this act might otherwise be better served or that any land acquired by the municipality pursuant thereto is required for another public use, which finding shall be set forth in an ordinance adopted by the governing body of the municipality, the governing body may convey to sell, exchange, transfer or otherwise dispose of the land or a lesser interest in that land, provided that the Borough shall replace any land conveyed under this section by land of at least equivalent fair market value and reasonably equivalent usefulness, size, quality, and location to the land conveyed, and any money drawn from the conveyance shall be deposited into a municipal open space, recreation and farm land and historic preservation cross fund pursuant to this Ordinance for use for the purposes authorized by this Ordinance for monies in the Trust Fund. Any such conveyance shall be made in accordance with the "Local Land and Building Law" P.L. 1971, C. 1999 (C. 48:12-1 et seq.). In the event of conveyance by exchange, land or improvement thereon to be transferred to the Trust should be at least equal in fair market value and of reasonably equivalent usefulness size, quality and location to the land or improvements transferred to the trust.

9. As used in this Ordinance:

"Acquisition" means the securing of a fee simple or a lesser interest in land, including but not limited to an easement restricting development, by gift, purchase, installment purchase agreement, devise or condemnation.

"Debt service" means annual payments of principal and interest on loans used for the acquisition of land.

"Development" means any improvement to land acquired for recreation and conservation purposes designed to expand and enhance its utilization for those purposes.

"Easement" means an easement, covenant, restriction or other interest in real property, which limits or restricts development, management or use of such real property for the express purpose of preserving or maintaining the scenic, open, historic, architectural, forest or natural condition, character, significance or amenities of the real property in a manner consistent with public policy and purpose, whether created under common law or pursuant to the provisions of State Law. An easement may include affirmative rights of public access, management and use.

"Historic preservation" means the performance of any work relating to the stabilization, repair, rehabilitation, renovation, restoration, improvement, protection, or preservation of an historic property, structure, facility, site, area or object;

"Historic property, structure, facility, site, area, or object" means any property, structure, facility, site, area, or object approved for inclusion, or which meets the criteria for inclusion, in the New Jersey Register of Historic Places pursuant to P.L. 1970, c. 268 (C. 13:1B-15.128 et seq.);

"Land" or "lands" means real property, including improvements thereof or thereon, rights-of-way, water, lakes, riparian and other rights, easements, privileges and all other rights and interests of any kind or description in, relating to or connected with real property.

"Open space" means land or water areas to be retained in largely natural or undeveloped state, for the purpose of, among other things, providing parkland or green spaces, protecting ecologically sensitive areas, preserving flora and wildlife, or protecting or preserving areas of scenic, historic and cultural value, while at the same time affording, whenever practical, public outdoor recreational opportunities.

"Public indoor recreation" means public recreation in enclosed structures or facilities, and includes but is not limited to swimming pools, basketball courts, and ice skating rinks open for public use;

"Recreational land" means land and water areas which provide opportunities for outdoor active or passive recreational activities.

"Recreation and conservation purposes" means the use of lands and water areas

for parks, open space, natural areas, ecological and biological study, forests, water reserves, wildlife preserves, fishing, hunting, camping, boating, winter sports, or similar uses for public outdoor recreation or conservation of natural resources, or both, or the use of lands for public indoor recreation;

"Real Property" means all real property within the jurisdiction of the Borough of West Paterson. Such property shall be valued and assessed at the taxable value prescribed by law. Notwithstanding the foregoing, real property, as defined herein, shall not be construed to repeal or in any way alter any exemption from, or any exception to, real property taxation otherwise provided by statutory law.

10. Acquisitions ineligible for funds from the Trust Fund include but are not limited to the following:
 - a. Sites which will remain predominantly covered by buildings or structures;
 - b. Former landfill sites;
 - c. Sites which at the time of application are municipally designated for compliance with Mt. Laurel court settlements or Council on Affordable Housing substantive certification;

11. A five (5) member committee shall review, prioritize and make recommendations to the Mayor and Council on the funding of projects that qualify for funds from the Trust Fund. The committee shall be comprised of the Class III Planning Board Member, Recreation Commission Chairperson, Council Chair of the Recreation and Community Relations Committee and two (2) Borough residents.

Introduced: March 2, 2005

Adopted: April 20, 2005