S T A T E O F N E W Y O R K

S. 6789 A. 9626

S E N A T E - A S S E M B L Y

March 22, 2012

IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

IN ASSEMBLY -- Introduced by M. of A. THIELE, RAIA, REILLY, LOSQUADRO -- Multi-Sponsored by -- M. of A. BRENNAN, GLICK, P. RIVERA -- read once and referred to the Committee on Local Governments

AN ACT to amend the town law, the village law, and the general city law, in relation to authorizing the enactment of zoning laws and ordinances to regulate formula retail uses

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative Findings. The state legislature has delegated to its local governments the authority to enact zoning and land use regulations pursuant to a duly adopted comprehensive plan. It is well established that such regulations may be enacted to promote such valid public purposes as the protection of historic character, community aesthetics, distinctive community character, and the maintenance of diverse and vibrant commercial areas.

The legislature finds that these valid public purposes are being threatened in communities across the state by the phenomenon of formula retail businesses which may serve to erode such resources as historic character, aesthetics, unique community character, and commercial diversity that create a sameness that destroys community identity.

Many communities across the nation have enacted laws to regulate formula retail uses in order to mitigate these adverse impacts. However, in New York, the statutes which delegate zoning and land use authority to local governments are silent with regard to this new threat to community character. As a result, local governments have been reluctant to enact regulations, fearing the uncertainty and potential litigation that such laws may engender because of the lack of specific authority in the state enabling acts.

It is the purpose of this act to clarify that local governments have the authority to adopt comprehensive plans and local laws and ordinances

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD14748-01-2

regulating these uses to promote the legitimate public purposes related to community character enumerated herein.

S 2. The town law is amended by adding a new section 261-d to read as follows:

S 261-D. FORMULA RETAIL USES. 1. FOR THE PURPOSES OF THIS SECTION, THE TERM "FORMULA RETAIL USE" SHALL MEAN A RETAIL SALES ESTABLISHMENT WHICH, ALONG WITH TEN OR MORE OTHER RETAIL SALES ESTABLISHMENTS LOCATED IN THE UNITED STATES, MAINTAINS TWO OR MORE OF THE FOLLOWING FEATURES: A STANDARDIZED ARRAY OF MERCHANDISE, A STANDARDIZED FACADE, A STANDARDIZED DECOR AND COLOR SCHEME, A UNIFORM APPAREL, STANDARDIZED SIGNAGE, A TRADEMARK OR A SERVICEMARK.

2. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, ZONING REGULATIONS ENACTED PURSUANT TO SECTION TWO HUNDRED SIXTY-FOUR OF THIS ARTICLE MAY INCLUDE THE REGULATION, RESTRICTION OR PROHIBITION OF FORMULA RETAIL USES WHERE ENACTED PURSUANT TO A COMPREHENSIVE PLAN AND A VALID PUBLIC PURPOSE.

S 3. The village law is amended by adding a new section 7-703-b to read as follows:

S 7-703-B FORMULA RETAIL USES. 1. FOR THE PURPOSES OF THIS SECTION, THE TERM "FORMULA RETAIL USE" SHALL MEAN A RETAIL SALES ESTABLISHMENT WHICH, ALONG WITH TEN OR MORE OTHER RETAIL SALES ESTABLISHMENTS LOCATED IN THE UNITED STATES, MAINTAINS TWO OR MORE OF THE FOLLOWING FEATURES: A STANDARDIZED ARRAY OF MERCHANDISE, A STANDARDIZED FACADE, A STANDARDIZED DECOR AND COLOR SCHEME, A UNIFORM APPAREL, STANDARDIZED SIGNAGE, A TRADEMARK OR A SERVICEMARK.

2. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, ZONING REGULATIONS ENACTED PURSUANT TO SECTION 7-700 OF THIS ARTICLE MAY INCLUDE THE REGULATION, RESTRICTION OR PROHIBITION OF FORMULA RETAIL USES WHERE ENACTED PURSUANT TO A COMPREHENSIVE PLAN AND A VALID PUBLIC PURPOSE.

S 4. The general city law is amended by adding a new section 81-g to read as follows:

S 81-G. FORMULA RETAIL USES. 1. FOR THE PURPOSES OF THIS SECTION, THE TERM "FORMULA RETAIL USE" SHALL MEAN A RETAIL SALES ESTABLISHMENT WHICH, ALONG WITH TEN OR MORE OTHER RETAIL SALES ESTABLISHMENTS LOCATED IN THE UNITED STATES, MAINTAINS TWO OR MORE OF THE FOLLOWING FEATURES: A STANDARDIZED ARRAY OF MERCHANDISE, A STANDARDIZED FACADE, A STANDARDIZED DECOR AND COLOR SCHEME, A UNIFORM APPAREL, STANDARDIZED SIGNAGE, A TRADEMARK OR A SERVICEMARK.

2. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, ZONING REGULATIONS ENACTED PURSUANT TO SECTION EIGHTY-THREE OF THIS ARTICLE MAY INCLUDE THE REGULATION, RESTRICTION OR PROHIBITION OF FORMULA RETAIL USES WHERE ENACTED PURSUANT TO A COMPREHENSIVE PLAN AND A VALID PUBLIC PURPOSE.

S 5. This act shall take effect immediately.