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

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I N A S S E M B L Y

April 8, 2016

Introduced by M. of A. BENEDETTO -- read once and referred to the Committee on Cities

AN ACT to amend the general municipal law, in relation to the site selection of community facilities in cities with a population of one million or more

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

Section 1. The general municipal law is amended by adding a new section 239-j to read as follows:

S 239-J. SITE SELECTION OF COMMUNITY FACILITIES IN CITIES WITH A POPULATION OF ONE MILLION OR MORE. 1. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING DEFINITIONS SHALL APPLY:

(A) "COMMUNITY FACILITY" SHALL INCLUDE THE FOLLOWING FACILITIES:

(I) "GROUP HOMES" SHALL MEAN SUPPORTIVE LIVING FACILITIES WITH FOUR TO FOURTEEN RESIDENTS OR A SUPERVISED LIVING FACILITY SUBJECT TO LICENSURE BY THE OFFICE OF MENTAL HEALTH OR THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES WHICH PROVIDES A RESIDENCE FOR UP TO FOURTEEN INDIVIDUALS WITH MENTAL DISABILITIES, INCLUDING RESIDENTIAL TREATMENT FACILITIES FOR CHILDREN AND YOUTH;

(II) HOMELESS SHELTERS;

(III) "DETENTION CENTERS" SHALL MEAN ANY PLACE OPERATED BY THE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION AND DESIGNATED BY THE COMMISSIONER OF CORRECTIONS AND COMMUNITY SUPERVISION AS A PLACE FOR THE CONFINEMENT OF PERSONS UNDER SENTENCE OF IMPRISONMENT OR PERSONS COMMITTED FOR FAILURE TO PAY A FINE;

(IV) DRUG REHABILITATION/DETOXIFICATION CENTERS;

(V) HALFWAY HOUSES;

(VI) WASTEWATER TREATMENT PLANTS;

(VII) SEWAGE FACILITIES;

(VIII) WASTE TRANSFER STATIONS;

(IX) LANDFILLS;

(X) POWER PLANTS; AND

(XI) CHEMICAL PROCESSING PLANTS;

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

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(B) "SPONSORING AGENCY" SHALL MEAN AN AGENCY OR UNIT OF GOVERNMENT, A VOLUNTARY AGENCY OR ANY OTHER PERSON OR ORGANIZATION WHICH INTENDS TO ESTABLISH OR OPERATE A COMMUNITY FACILITY;

(C) "MUNICIPALITY" SHALL MEAN THE CITY, IF SUCH CITY HAS A POPULATION OF ONE MILLION OR MORE, EXCEPT THAT IN THE CITY OF NEW YORK, THE COMMUNITY BOARD WITH JURISDICTION OVER THE AREA IN WHICH SUCH A FACILITY IS TO BE LOCATED SHALL BE CONSIDERED THE MUNICIPALITY;

(D) "COMMISSIONER" MEANS THE COMMISSIONER OF THE OFFICE OF THE DEPARTMENT RESPONSIBLE FOR ISSUANCE OF LICENSE AND OPERATING CERTIFICATE TO THE PROPOSED COMMUNITY FACILITY.

2. IF A SPONSORING AGENCY INTENDS TO ESTABLISH A COMMUNITY FACILITY WITHIN A MUNICIPALITY BUT DOES NOT HAVE A SPECIFIC SITE SELECTED, IT MAY NOTIFY THE CHIEF EXECUTIVE OFFICER OF THE MUNICIPALITY IN WRITING OF ITS INTENTIONS AND INCLUDE IN SUCH NOTICE A DESCRIPTION OF THE NATURE, SIZE AND COMMUNITY SUPPORT REQUIREMENTS OF THE PROGRAM. PROVIDED, HOWEVER, NOTHING IN THIS SUBDIVISION SHALL PRECLUDE THE PROPOSED ESTABLISHMENT OF A SITE PURSUANT TO SUBDIVISION THREE OF THIS SECTION.

3. (A) WHEN A SITE HAS BEEN SELECTED BY THE SPONSORING AGENCY, IT SHALL NOTIFY THE CHIEF EXECUTIVE OFFICER OF THE MUNICIPALITY IN WRITING AND INCLUDE IN SUCH NOTICE THE SPECIFIC ADDRESS OF THE SITE, THE TYPE OF COMMUNITY RESIDENCE, THE NUMBER OF RESIDENTS AND THE COMMUNITY SUPPORT REQUIREMENTS OF THE PROGRAM. SUCH NOTICE SHALL ALSO CONTAIN THE MOST RECENTLY PUBLISHED DATA COMPILED PURSUANT TO SECTION FOUR HUNDRED SIXTY-THREE OF THE SOCIAL SERVICES LAW WHICH CAN REASONABLY BE EXPECTED TO PERMIT THE MUNICIPALITY TO EVALUATE ALL SUCH FACILITIES AFFECTING THE NATURE AND CHARACTER OF THE AREA WHEREIN SUCH PROPOSED FACILITY IS TO BE LOCATED.

(B) THE MUNICIPALITY SHALL HAVE FORTY DAYS AFTER THE RECEIPT OF SUCH NOTICE TO:

(I) APPROVE THE SITE RECOMMENDED BY THE SPONSORING AGENCY;

(II) SUGGEST ONE OR MORE SUITABLE SITES WITHIN ITS JURISDICTION WHICH COULD ACCOMMODATE SUCH A FACILITY; OR

(III) OBJECT TO THE ESTABLISHMENT OF A FACILITY OF THE KIND DESCRIBED BY THE SPONSORING AGENCY BECAUSE TO DO SO WOULD RESULT IN SUCH A CONCENTRATION OF SUCH COMMUNITY FACILITIES IN THE MUNICIPALITY OR IN THE AREA IN PROXIMITY TO THE SITE SELECTED OR A COMBINATION OF SUCH FACILITIES WITH OTHER SIMILAR COMMUNITY FACILITIES LICENSED BY OTHER AGENCIES OF STATE GOVERNMENT, THAT THE NATURE AND CHARACTER OF THE AREAS WITHIN THE MUNICIPALITY WOULD BE SUBSTANTIALLY ALTERED.

SUCH RESPONSE SHALL BE FORWARDED TO THE SPONSORING AGENCY AND THE COMMISSIONER. IF THE MUNICIPALITY DOES NOT RESPOND WITHIN FORTY DAYS, THE SPONSORING AGENCY MAY ESTABLISH A COMMUNITY FACILITY AT A SITE RECOMMENDED IN ITS NOTICE.

(C) PRIOR TO FORWARDING A RESPONSE TO THE SPONSORING AGENCY AND THE COMMISSIONER, THE MUNICIPALITY MAY HOLD A PUBLIC HEARING PURSUANT TO LOCAL LAW.

(D) IF THE MUNICIPALITY APPROVES THE SITE RECOMMENDED BY THE SPONSORING AGENCY, THE SPONSORING AGENCY SHALL SEEK TO ESTABLISH THE FACILITY AT THE APPROVED SITE.

(E) (I) IF THE SITE OR SITES SUGGESTED BY THE MUNICIPALITY ARE SATISFACTORY WITH REGARD TO THE NATURE, SIZE AND COMMUNITY SUPPORT REQUIREMENTS OF THE PROGRAM OF THE PROPOSED FACILITY AND THE AREA IN WHICH SUCH SITE OR SITES ARE LOCATED DOES NOT ALREADY INCLUDE AN EXCESSIVE NUMBER OF SUCH COMMUNITY FACILITIES OR SIMILAR FACILITIES LICENSED BY OTHER STATE AGENCIES, THE SPONSORING AGENCY SHALL SEEK TO ESTABLISH ITS FACILITY AT ONE OF THE SITES DESIGNATED BY THE MUNICIPALITY.

(II) IF THE MUNICIPALITY SUGGESTS A SITE OR SITES WHICH ARE NOT SATISFACTORY TO THE SPONSORING AGENCY, THE AGENCY SHALL SO NOTIFY THE MUNICIPALITY WHICH SHALL HAVE FIFTEEN DAYS TO SUGGEST AN ALTERNATIVE SITE OR SITES FOR THE PROPOSED COMMUNITY FACILITY.

(F)(I) IN THE EVENT THE MUNICIPALITY OBJECTS TO ESTABLISHMENT OF A FACILITY IN THE MUNICIPALITY BECAUSE TO DO SO WOULD RESULT IN A CONCENTRATION OF SUCH COMMUNITY FACILITIES AND OTHER FACILITIES LICENSED BY OTHER STATE AGENCIES THAT THE NATURE AND CHARACTER OF AREAS WITHIN THE MUNICIPALITY WOULD BE SUBSTANTIALLY ALTERED; OR THE SPONSORING AGENCY OBJECTS TO THE ESTABLISHMENT OF A FACILITY IN THE AREA OR AREAS SUGGESTED BY THE MUNICIPALITY; OR IN THE EVENT THAT THE MUNICIPALITY AND SPONSORING AGENCY CANNOT AGREE UPON A SITE, EITHER THE SPONSORING AGENCY OR THE MUNICIPALITY MAY REQUEST AN IMMEDIATE HEARING BEFORE THE COMMISSIONER TO RESOLVE THE ISSUE. THE COMMISSIONER SHALL PERSONALLY OR BY A HEARING OFFICER CONDUCT SUCH A HEARING WITHIN FIFTEEN DAYS OF SUCH A REQUEST.

(II) IF THE OBJECTION IS A RESULT OF ANTICIPATED COMMUNITY FACILITY CONCENTRATION, THE SPONSORING AGENCY SHOULD AMEND THEIR REQUEST PRIOR TO SUCH HEARING TO INCLUDE A COMMUNITY BENEFITS AGREEMENT THAT HAS BEEN APPROVED BY THE CITY. SUCH CITY SHOULD MAKE EVERY EFFORT TO REACH SUCH AGREEMENT. SUCH AGREEMENT SHALL OFFER THREE ADDITIONAL IMPROVEMENTS OF EQUAL OR GREATER VALUE AS THE INITIAL COMMUNITY FACILITY REQUEST FOR THE MUNICIPALITY TO CHOOSE FROM. THE MUNICIPALITY WILL THEN HAVE THE OPPORTUNITY TO REASSESS THE SPONSORING AGENCY'S REQUEST. ANY AND ALL FUNDING FOR SUCH ADDITIONAL IMPROVEMENTS OUTLINED IN THE COMMUNITY BENEFITS AGREEMENT SHALL BE THE RESPONSIBILITY OF THE CITY. IF AFTER REEVALUATION THE MUNICIPALITY CONTINUES TO OBJECT, THE HEARING PROCESS SHALL CONTINUE AS ESTABLISHED.

(III) IN REVIEWING ANY SUCH OBJECTIONS, THE NEED FOR SUCH FACILITIES IN THE MUNICIPALITY SHALL BE CONSIDERED AS SHALL THE EXISTING CONCENTRATION OF SUCH FACILITIES AND OTHER SIMILAR FACILITIES LICENSED BY OTHER STATE AGENCIES IN THE MUNICIPALITY OR IN THE AREA IN PROXIMITY TO THE SITE SELECTED AND ANY OTHER FACILITIES IN THE MUNICIPALITY OR IN THE AREA IN PROXIMITY TO THE SITE SELECTED PROVIDING SUCH SERVICES. THE COMMISSIONER SHALL SUSTAIN THE OBJECTION IF HE DETERMINES THAT THE NATURE AND CHARACTER OF THE AREA IN WHICH THE FACILITY IS TO BE BASED WOULD BE SUBSTANTIALLY ALTERED AS A RESULT OF ESTABLISHMENT OF THE FACILITY. THE COMMISSIONER SHALL MAKE A DETERMINATION WITHIN THIRTY DAYS OF THE HEARING.

4. REVIEW OF A DECISION RENDERED BY A COMMISSIONER PURSUANT TO THIS SECTION MAY BE HAD IN A PROCEEDING PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES COMMENCED WITHIN THIRTY DAYS OF THE DETERMINATION OF THE COMMISSIONER.

5. A LICENSING AUTHORITY SHALL NOT ISSUE AN OPERATING CERTIFICATE TO A SPONSORING AGENCY FOR OPERATION OF A FACILITY IF THE SPONSORING AGENCY DOES NOT NOTIFY THE MUNICIPALITY OF ITS INTENTION TO ESTABLISH A PROGRAM AS REQUIRED BY SUBDIVISION THREE OF THIS SECTION. ANY OPERATING CERTIFICATE ISSUED WITHOUT COMPLIANCE WITH THE PROVISIONS OF THIS SECTION SHALL BE CONSIDERED NULL AND VOID AND CONTINUED OPERATION OF THE FACILITY MAY BE ENJOINED.

S 2. This act shall take effect immediately.