STATE OF NEW YORK

139

2017-2018 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 4, 2017

Introduced by M. of A. GANTT -- read once and referred to the Committee on Housing

AN ACT to amend the executive law, the public housing law, the town law, the village law and the general city law, in relation to creation of a fair share housing act

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 31 of the executive law is amended by adding a new subdivision 11 to read as follows:

11. Council on affordable housing.

§ 2. The executive law is amended by adding a new article 13-B to read as follows:

ARTICLE 13-B

COUNCIL ON AFFORDABLE HOUSING

Section 268. Council on affordable housing.

§ 268. Council on affordable housing. The chairperson of the council on affordable housing appointed pursuant to the provisions of article twelve-A of the public housing law, shall be the head of the council on affordable housing and shall have and exercise all the functions, powers and duties vested in him or her by such article or any other provision of law. The chairperson of the council on affordable housing shall receive a salary to be fixed by the governor within the amount appropriated therefor.

§ 3. The public housing law is amended by adding a new article 12-A to read as follows:

ARTICLE XII-A

FAIR SHARE HOUSING ACT

Section 320. Short title.

321. Legislative findings.

322. Legislative declarations and intention.

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

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§ 320. Short title. This article shall be known and may be cited and referred to as the "fair share housing act".

§ 321. Legislative findings. The legislature hereby finds it to be in the interests of the general welfare of the regional communities of New York state to increase to the maximum extent possible and feasible the opportunities for all residents to secure, consistent with their choice and means, adequate housing in a safe and healthy environment, within convenient access to their places of employment and to necessary community facilities.

The legislature finds that discriminatory and exclusionary zoning regulations enforced in municipalities throughout the state deny large numbers of citizens of this state access to adequate and decent housing accommodations. The legislature further finds that such zoning abuses hinder the development of rational regional planning and growth; discriminate against persons of moderate and low income; inhibit the economic opportunities of private developers by directly making unprofitable the construction of low and moderate income housing; and create an inequitable distribution of costs to local areas for providing services to citizens of this state.

The legislature therefore declares it to be the objective and policy of the state to prohibit local zoning regulations which are discriminatory or exclusionary in purpose or effect, in order to encourage greater diversity and a better distribution of housing opportunities throughout the state.

§ 322. Legislative declarations and intention. The legislature declares that the statutory scheme set forth in this article is in the public interest in that it comprehends a low and moderate income housing planning mechanism in accordance with regional considerations and sound planning concepts. The legislature declares that the state's preference for resolution of existing and future disputes involving exclusionary zoning is the mediation and review process created in this article and

not litigation, and that it is the intention of this article to provide a legislative solution for achieving fair share housing.

§ 323. Definitions. For the purposes of this article the following words and phrases shall have the following meanings, unless a different meaning clearly appears from the context:

1. "Conversion" means the conversion of existing commercial, industrial or residential structures for low and moderate income housing purposes where a substantial percentage of the housing units are provided for a reasonable income range of low and moderate income households.

2. "Council" means the council on affordable housing established in section three hundred twenty-four of this article, which shall have primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations within the state.

3. "Development" means any development of real property for which permission may be required pursuant to local zoning ordinances.

4. "Division" means the division of housing and community renewal created by section ten of this chapter.

5. "Exclusionary zoning litigation" means actions or proceedings brought in a court of competent jurisdiction challenging a municipality's zoning and land use ordinances on the basis that such ordinances do not make realistically possible the opportunity for an appropriate variety and choice of housing for all categories of people living within the municipality's housing region, including those of low and moderate income, who may desire to live in the municipality.

6. "Housing region" means a geographic area of not less than two nor more than five contiguous, whole counties which exhibit significant social, economic and income similarities, and which constitute to the greatest extent practicable the primary metropolitan statistical areas as last defined by the United States Census Bureau prior to the effective date of this article.

7. "Inclusionary development" means a residential housing development in which a substantial percentage of housing units are provided for a reasonable income range of low and moderate income households.

8. "Low income housing" means housing which is affordable according to the federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to fifty percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

9. "Moderate income housing" means housing which is affordable according to the federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to more than fifty percent but less than eighty percent of the median gross household income for households of the same size within the housing region in which the housing is located.

10. "Prospective need" means a projection of housing needs based on development and growth which is reasonably likely to occur in a region or municipality as a result of actual determination of public and private entities. In determining prospective need, consideration shall be given to approvals of development applications, real property transfers and economic projections.

11. "Resolution of participation" means a resolution adopted by a municipality in which the municipality prepares a fair share plan and housing element pursuant to this article.

§ 324. Council on affordable housing; creation. 1. There shall be established within the executive department, a council on affordable housing to consist of nine members appointed by the governor; of whom four shall be elected public officers representing interests of local government, one of whom shall be representative of an urban municipality having a population in excess of seventy-five thousand persons and a population density in excess of three thousand persons per square mile, one of whom shall be representative of the interests of county government, one of whom shall be representative of the interests of town government, and one of whom shall be representative of the interests of village government; four shall represent the interests of households in need of low and moderate income housing, at least one of whom shall represent the interests of the builders of low and moderate income housing, and shall have an expertise in land use practices and housing issues; and one shall be the commissioner, serving ex officio. The membership shall be balanced to the greatest extent practicable among the various housing regions of the state.

2. The non ex officio members shall serve for terms of six years, except that of the members first appointed, three shall serve for terms of four years, three for terms of five years, and three for terms of six years. All members shall serve until their respective successors are appointed and shall have qualified. Vacancies shall be filled in the same manner as the original appointments, but for the remainders of the unexpired terms only.

3. The members, excluding the commissioner, shall be compensated at a rate to be determined by the governor and all members shall be reimbursed for all necessary expenses incurred in the discharge of their lawful duties.

4. The governor shall nominate the members within thirty days of the effective date of this article and shall designate a member to serve as chairperson throughout the member's term of office and until his or her successor shall have been appointed and qualified.

5. Any member may be removed from office by the governor for misconduct in office, willful neglect of duty, or other conduct evidencing unfitness for the office, or for incompetence. A member or employee of the council shall automatically forfeit his office or employment upon conviction of any crime.

§ 325. Council on affordable housing; organization. 1. The council may establish, and from time to time alter, such plan of organization as it may deem expedient, and may incur expenses within the limits of funds available to it.

2. The council shall elect annually by a majority of its members one of its members, other than the chairperson, to serve as vice-chairperson for a term of one year and until his or her successor is elected. The vice-chairperson shall carry out all of the responsibilities of the chairperson as prescribed in this article during the chairperson's absence, disqualification or inability to serve.

3. The council shall appoint and fix the salary of an executive director who shall serve at its pleasure. The council may employ such other personnel as it deems necessary. The council may employ legal counsel who shall represent it in any proceeding to which it is a party, and who shall render legal advice to the council. The council may contract for

the services of other professional, technical and operational personnel and consultants as may be necessary to the performance of its duties.

§ 326. Council on affordable housing; duties. It shall be the duty of the council, six months after the confirmation of the last member initially appointed to the council and from time to time thereafter, to:

1. determine housing regions of the state;

2. estimate the present and prospective need for low and moderate income housing at the state and regional levels;

3. adopt criteria and guidelines for:

a. determination by the council of each municipality's present and prospective fair share of the housing need in a given region; and

b. phasing of present and prospective fair share housing requirements pursuant to section three hundred forty-one of this article;

4. provide population and household projections for the state and housing regions; or

5. may in its discretion, place a limit, based on a percentage of existing housing stock in a municipality and any other criteria including employment opportunities which the council deems appropriate, upon the aggregate number of units which may be allocated to a municipality as its fair share of the region's present and prospective need for low and moderate income housing.

In carrying out the above duties, including, but not limited to, present and prospective need estimations, the council shall give appropriate consideration to pertinent research studies, government reports, decisions of other branches of government and public comment. The council shall develop procedures for periodically adjusting regional need based upon the low and moderate income housing that is provided in the region through any federal, state, municipal or private housing program.

§ 327. Procedural rules. Within four months after the confirmation of the last member of the initially appointed council, the council shall adopt its own procedural rules with the consent of the attorney general.

§ 328. Notice of intent to submit fair share housing plan. 1. Within four months after the effective date of this article, each municipality shall, by a duly adopted resolution of participation, notify the council of its intent to submit to the council its fair share housing plan. Within five months after the council's adoption of its criteria and guidelines, the municipality shall prepare and file with the council a housing element and any fair share housing ordinances adopted which implement the housing element based on the council's criteria and guidelines.

2. The council shall and any person affected thereby may bring an action in supreme court against any municipality failing to submit a fair share housing plan to the council pursuant to subdivision one of this section. Such cause of action shall demand a court order to the municipality to submit a fair share housing plan to the council.

§ 329. Housing element of municipality. A municipality's housing element shall be designed to achieve the goal of access to affordable housing to meet present and prospective housing needs, with particular attention to low and moderate income housing. Such housing element shall provide specifically for housing units affordable to the income levels of the households in need, and shall contain at least:

1. an inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics, and type, including the number of units affordable to low and moderate income households and substandard housing capable of being rehabilitated, and in conducting this inventory the municipality shall have access, on a confidential

basis for the sole purpose of conducting the inventory, to all necessary property tax assessment records and information in the assessor's office, including but not limited to the property record cards;

2. a projection of the municipality's housing stock, including the probable future construction of low and moderate income housing, for the next six years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands;

3. an analysis of the municipality's demographic characteristics, including but not necessarily limited to, household size, income level and age;

4. an analysis of the existing and probable future employment characteristics of the municipality;

5. a determination of the municipality's present and prospective fair share for low and moderate income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low and moderate income housing; and

6. a consideration of the lands that are most appropriate for construction of low and moderate income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low and moderate income housing, including a consideration of lands of developers who have expressed a commitment to provide low and moderate income housing.

§ 330. Housing element; provision of low and moderate income housing. 1. In adopting its housing element, the municipality may provide for its fair share of low and moderate income housing by means of any technique or combination of techniques which provide a realistic opportunity for the provision of the fair share. The housing element shall contain an analysis demonstrating that it will provide such a realistic opportunity, and the municipality shall establish that its land use and other relevant ordinances have been revised to incorporate the provisions for low and moderate income housing. In preparing the housing element, the municipality shall consider the following techniques for providing low and moderate income housing within the municipality, as well as such other techniques as may be published by the council or proposed by the municipality:

a. rezoning for densities necessary to assure the economic viability of any inclusionary developments, either through mandatory set-asides or density bonuses, as may be necessary to meet all or part of the municipality's fair share;

b. determination of the total residential zoning necessary to assure that the municipality's fair share is achieved;

c. determination of measures that the municipality will take to assure that the low and moderate income units remain affordable to low and moderate income households for a period of at least thirty years;

d. a plan for infrastructure expansion and rehabilitation if necessary to assure the achievement of the municipality's fair share of low and moderate income housing;

e. donation or use of municipally owned land or land condemned by the municipality for purposes of providing low and moderate income housing;

f. tax abatements for purposes of providing low and moderate income housing;

g. utilization of funds obtained from any state or federal subsidy toward the construction of low and moderate income housing; and

h. utilization of municipally generated funds toward the construction of low and moderate income housing.

2. The municipality may provide for a phasing schedule for the achievement of its fair share of low and moderate income housing which is not inconsistent with section three hundred forty-one of this article.

3. The municipality may propose that a portion of its fair share be met through a regional contribution agreement. The housing element shall demonstrate, however, the manner in which that portion will be provided within the municipality if the regional contribution agreement is not entered into. The municipality shall provide a statement of its reasons for the proposal.

4. Nothing in this article shall require a municipality to raise or expend municipal revenues in order to provide low and moderate income housing.

§ 331. Regional contribution agreement. 1. A municipality may propose the transfer of up to twenty-five percent of its fair share to another municipality within its housing region by means of a contractual agreement into which two municipalities voluntarily enter. A municipality proposing to transfer to another municipality shall provide the council with the housing element and statement required under subdivision three of section three hundred thirty of this article, and shall request the council to determine a match with a municipality filing a statement of intent pursuant to subdivision five of this section. Except as provided in subdivision two of this section, the agreement may be entered into upon obtaining substantive certification under section three hundred thirty-three of this article, or anytime thereafter. The regional contribution agreement entered into shall specify how the housing shall be provided by the second municipality, hereinafter the receiving municipality, and the amount of contributions to be made by the first municipality, hereinafter the sending municipality.

2. A municipality which is a defendant in an exclusionary zoning suit and which has not obtained substantive certification pursuant to this article may request the court to be permitted to fulfill a portion of its fair share by entering into a regional contribution agreement. If the court believes the request to be reasonable, the court shall request the council to review the proposed agreement and to determine a match with a receiving municipality or municipalities pursuant to this section. The court may establish time limitations for the council's review, and shall retain jurisdiction over the matter during the period of council review. If the court determines that the agreement provides a realistic opportunity for the provision of low and moderate income housing within the housing region, it shall provide the sending municipality a credit against its fair share for housing to be provided through the agreement in the manner provided in this section.

The agreement shall be entered into prior to the entry of a final judgment in the litigation. In cases in which a final judgment was entered prior to the date this article takes effect and in which an appeal is pending, a municipality may request consideration of a regional contribution agreement; provided that it is entered into within one hundred twenty days after this article takes effect. In a case in which a final judgment has been entered, the court shall consider whether or not the agreement constitutes an expeditious means of providing part of the fair share.

3. Regional contribution agreements shall be approved by the council, after review by the county planning board or agency of the county in which the receiving municipality is located. The council shall determine whether or not the agreement provides a realistic opportunity for the

provision of low and moderate income housing within convenient access to employment opportunities. The council shall refer the agreement to the county planning board or agency which shall review whether or not the transfer agreement is in accordance with sound, comprehensive regional planning. In its review, the county planning board or agency shall consider the master plan and zoning ordinance of the sending and receiving municipalities and its own county master plan. In the event that there is no county planning board or agency in the county in which the receiving municipality is located, the council shall determine whether or not the agreement is in accordance with sound, comprehensive regional planning. After it has been determined that the agreement provides a realistic opportunity for low and moderate income housing within convenient access to employment opportunities, and that the agreement is consistent with sound, comprehensive regional planning, the council shall approve the regional contribution agreement by resolution. All determinations of a county planning board or agency shall be in writing and shall be made within such time limits as the council may prescribe, beyond which the council shall make those determinations and no fee shall be paid to the county planning board or agency pursuant to this subdivision.

4. In approving a regional contribution agreement, the council shall set forth in its resolution a schedule of the contributions to be appropriated annually by the sending municipality.

5. The council shall maintain current lists of municipalities which have stated an intent to enter into regional contribution agreements as receiving municipalities, and shall establish procedures for filing statements of intent with the council. No receiving municipality shall be required to accept a greater number of low and moderate income units through an agreement than it has expressed a willingness to accept in its statement, but the number stated shall not be less than a reasonable minimum number of units, not to exceed one hundred, as established by the council. The council shall require a project plan from a receiving municipality prior to the entering into of the agreement, and shall submit the project plan to the division for its review as to the feasibility of the plan prior to the council's approval of the agreement. The division may recommend and the council may approve as part of the project plan a provision that the time limitations for contractual guarantees or resale controls for low and moderate income units included in the project shall be less than thirty years, if it is determined that modification is necessary to assure the economic viability of the project.

6. The council shall establish guidelines for the duration and amount of contributions in regional contribution agreements. In doing so, the council shall give substantial consideration to the average of:

a. the median amount required to rehabilitate a low and moderate income unit up to code enforcement standards;

b. the average internal subsidization required for a developer to provide a low income housing unit in an inclusionary development; and

c. the average internal subsidization required for a developer to provide a moderate income housing unit in an inclusionary development.

Contributions may be prorated in municipal appropriations occurring over a period not to exceed three years and may include an amount agreed upon to compensate or partially compensate the receiving municipality for infrastructure or other costs generated to the receiving municipality by the development. Appropriations shall be made and paid directly to the receiving municipality or municipalities.

7. The council shall require receiving municipalities to file annual reports with the division setting forth the progress in implementing a project funded under a regional contribution agreement, and the division shall provide the council with its evaluation of each report. The council shall take such actions as may be necessary to enforce a regional contribution agreement with respect to the timely implementation of the project by the receiving municipality.

§ 332. Certification of housing element. A municipality which has filed a housing element shall, at any time during a three year period following the filing of the housing element, petition the council for a substantive certification of its element and ordinances or institute an action for declaratory judgment granting it a one year repose in supreme court. The municipality shall publish notice of its petition in a newspaper of general circulation within the municipality and county and shall make available to the public information on the element and ordinances in accordance with such procedures as the council shall establish. The council shall also establish a procedure for providing public notice of each petition which it receives.

§ 333. Review of petition. Unless an objection to the substantive certification is filed with the council by any person within forty-five days of the publication of the notice of the municipality's petition, the council shall review the petition and shall issue a substantive certification if it shall find that:

1. The municipality's fair share plan is consistent with the rules and criteria adopted by the council and not inconsistent with achievement of the low and moderate income housing needs of the region as adjusted pursuant to the council's criteria and guidelines adopted pursuant to subdivision three of section three hundred twenty-six of this article; and

2. The combination of the elimination of unnecessary housing cost-generating features from the municipal land use ordinances and regulations, and the affirmative measures in the housing element and implementation plan make the achievement of the municipality's fair share of low and moderate income housing realistically possible after allowing for the implementation of any regional contribution agreement approved by the council.

In conducting its review, the council may meet with the municipality and may deny the petition or condition its certification upon changes in the element or ordinances. Any denial or conditions for approval shall be in writing and shall set forth the reasons for the denial or conditions. If, within sixty days of the council's denial or conditional approval, the municipality refiles its petition with changes satisfactory to the council, the council shall issue a substantive certification.

Once substantive certification is granted, the municipality shall have forty-five days in which to adopt its fair share housing ordinance approved by the council.

§ 334. Mediation and review process by council. 1. The council shall engage in a mediation and review process in the following situations:

a. if an objection to the municipality's petition for substantive certification is filed with the council within the time specified in section three hundred thirty-three of this article; or

b. if a request for mediation and review is made pursuant to section three hundred thirty-five of this article.

2. In cases in which an objection is filed to substantive certification the council shall meet with the municipality and the objectors

and attempt to mediate a resolution of the dispute. If the mediation is successful, the council shall issue a substantive certification if it finds that the criteria of section three hundred thirty-three of this article have been met.

3. If the mediation efforts are unsuccessful, the matter shall be appealed to supreme court pursuant to article seventy-eight of the civil practice law and rules.

§ 335. Jurisdiction of litigation. 1. For those exclusionary zoning cases instituted more than sixty days before the effective date of this article, any party to the litigation may file a motion with the court to seek a transfer of the case to the council. In determining whether or not to transfer, the court shall consider whether or not the transfer would result in a manifest injustice to any party to the litigation. If the municipality fails to file a housing element and fair share plan with the council within five months from the date of transfer, or promulgation of criteria and guidelines by the council pursuant to section three hundred twenty-six of this article, whichever occurs later, jurisdiction shall revert to the court.

2. Any person who institutes litigation less than sixty days before the effective date of this article or after the effective date of this article challenging a municipality's zoning ordinance with respect to the opportunity to provide for low or moderate income housing, shall file a notice to request review and mediation with the council pursuant to sections three hundred thirty-three and three hundred thirty-four of this article. In the event that the municipality adopts a resolution of participation within the period established in subdivision one of section three hundred twenty-eight of this article, the person shall exhaust the review and mediation process of the council before being entitled to a trial on his complaint.

§ 336. Presumption of validity of approved housing element. 1. In any exclusionary zoning case filed against a municipality which has a substantive certification and in which there is a requirement to exhaust the review and mediation process pursuant to section three hundred thirty-five of this article, there shall be a presumption of validity attaching to the approved housing element and ordinances implementing the housing element. To rebut the presumption of validity, the complainant shall have the burden of proof to demonstrate by clear and convincing evidence that the approved housing element and ordinances implementing the housing element do not provide a realistic opportunity for the provision of the municipality's fair share of low and moderate income housing after allowing for the implementation of any regional contribution agreement approved by the council.

2. There shall be a presumption of validity attaching to any regional contribution agreement approved by the council. To rebut the presumption of validity, the complainant shall have the burden of proof to demonstrate by clear and convincing evidence that the agreement does not provide for a realistic opportunity for the provision of low and moderate income housing within the housing region.

3. The council shall be made a party to any exclusionary zoning suit against a municipality which receives substantive certification, and shall be empowered to present to the court its reasons for granting substantive certification.

§ 337. Obligation to exhaust remedies. If a municipality which has adopted a resolution of participation pursuant to section three hundred twenty-eight of this article fails to meet the deadline for submitting its housing element to the council prior to the institution of exclu-

sionary zoning litigation, the obligation to exhaust administrative remedies contained in subdivision two of section three hundred thirty-five of this article automatically expires. The obligation also expires if the council rejects the municipality's request for substantive certification or conditions its certification upon changes which are not made within the period established in this article or within an extension of that period agreed to by the council and all litigants.

§ 338. Failure of council to complete review process in timely manner. If the council has not completed its review and mediation process for a municipality within six months of receipt of a request by a party who has instituted litigation, the party may file a motion with a court of competent jurisdiction to be relieved of the duty to exhaust administrative remedies. In the case of review and mediation requests filed within nine months after the effective date of this article, the six-month completion date shall not begin to run until nine months after the effective date of this article.

§ 339. State affordable housing programs. Notwithstanding any provisions of law to the contrary, the division, the office of temporary and disability assistance, the New York state housing finance agency, the New York state urban development corporation and the state of New York mortgage agency shall, to the extent practicable and consistent with existing statutes and regulations governing programs which seek to directly or indirectly increase the supply of affordable housing, seek to award grants, loans, payments or subsidies pursuant to such programs within municipalities whose housing elements have received substantive certification from the council, within receiving municipalities in cases where the council has approved a regional contribution agreement and a project plan developed by the receiving municipality.

§ 340. Municipality with settlement in exclusionary zoning litigation. Any municipality which has reached a settlement of any exclusionary zoning litigation prior to the effective date of this article shall not be subject to any exclusionary zoning suit for a six year period following the effective date of this article. Any such municipality shall be deemed to have a substantively certified housing element and ordinances, and shall not be required during that period to take any further actions with respect to provisions for low and moderate income housing in its land use ordinances or regulations.

§ 341. Phase-in of obligation for fair share of low and moderate income housing; order of court. 1. A municipality which has an action pending or a judgment entered against it after the effective date of this article, or which had a judgment entered against it prior to that date and from which an appeal is pending, or which brings an action for declaratory judgment pursuant to section three hundred thirty-two of this article, shall upon municipal request be allowed to phase-in its obligation for a fair share of low and moderate income housing. If such a phase-in is requested by the municipality, the court shall implement a phase-in for the issuance of final approvals for low and moderate income housing, which shall be based on an analysis of the following factors:

a. the size of the municipal fair share;

b. the present and projected capacity of the community's infrastructure, taking into account expansion and rehabilitation of existing facilities;

c. vacant developable land;

d. likely absorption rate for housing in light of market forces;

e. reasonable development priorities among areas of the community; and

f. past performance in providing low and moderate income housing, including credit for low and moderate income senior or disabled citizen housing.

2. The court shall, where appropriate, also implement a phase-in schedule for the market units in the inclusionary development which are not low and moderate income, giving due consideration to the plan for low and moderate income housing established in this section and the need to maintain the economic viability of the development.

3. In entering the phase-in order, the court shall consider whether or not it is necessary to condition the phase-in order upon a phase-in schedule for the construction of other developments in the municipality to minimize an imbalance between available housing units and available jobs, or to prevent the sites which are the most appropriate or the only possible sites for the construction of low and moderate income housing from being used for other purposes, or to prevent limited public infrastructure capacities from being entirely utilized for other purposes.

4. In entering a phasing order, the court, upon municipal request, shall implement a specific phasing schedule for the issuance of final approvals in inclusionary developments. The court shall take into account the six analysis factors enumerated in subdivision one of this section, giving particular attention to:

a. the size of the municipal fair share which is to be provided in inclusionary developments;

b. the extent and projected capacity of the community's infrastructure, taking into account expansion and rehabilitation of existing facilities; and

c. the extent and pattern of growth within the municipality and region during the six years prior to the implementation of the phase-in plan.

The following time periods shall be guidelines for a phasing schedule for the issuance of final approvals in inclusionary developments, subject, however, to upward or downward modification based upon a review of the analysis factors:

Any municipality which has a fair share obligation to provide five thousand or more low and moderate income units in inclusionary developments shall be entitled to consideration of a phase-in schedule for the issuance of final approvals in inclusionary developments of at least twenty years from the effective date of this article.

Any municipality which has a fair share obligation to provide between thirty-five hundred and forty-nine hundred ninety-nine low and moderate income units in inclusionary developments shall be entitled to consideration of a phase-in schedule for the issuance of final approvals in inclusionary developments of at least fifteen years from the effective date of this article.

Any municipality which has a fair share obligation to provide between two thousand and thirty-four hundred ninety-nine low and moderate income units in inclusionary developments shall be entitled to consideration of a phase-in schedule for the issuance of final approvals in inclusionary developments of at least ten years from the effective date of this article.

Any municipality which has a fair share obligation to provide between five hundred and one thousand nine hundred ninety-nine low and moderate income units in inclusionary developments shall be entitled to consideration of a phase-in schedule for the issuance of final approvals in inclusionary developments of at least six years from the effective date of this article.

Any municipality which has a fair share obligation to provide less than five hundred low and moderate income units in inclusionary developments shall be entitled to consideration of a phase-in schedule for the issuance of final approvals in inclusionary developments for such period of time, including a period of at least six years, as is determined to be reasonable pursuant to the analysis factors.

5. As part of a phasing order concerning inclusionary developments, the court may approve a municipal plan, or implement another plan, concerning priorities among developers and sites, and the timing in the issuance of final approvals to particular developers. Any plan concerning priorities and the timing of final approvals shall take into consideration:

a. the location of various sites and their suitability for development pursuant to environmental protection and sound planning criteria, including their consistency with reasonable provisions of municipal master plans;

b. infrastructure capacity or the ability to provide the capacity for the site, and the readiness of a particular developer to commence construction; and

c. any settlements or court orders establishing priorities among developers.

Consistent with the overall phasing schedule adopted pursuant to the analysis factors, the municipality shall make a good faith effort to time the issuance of final approvals for particular developments which it approves in a manner which enables the realistic and economically viable construction of the development. To this end, the municipality shall take into consideration the need for sufficient development in a particular project to permit timely recovery of infrastructure costs, and, in the case of a development which will have a homeowners' association, to prevent the imposition of excessive homeowners' fees because of the failure to achieve economies of scale. In the case of developers who have previously constructed residential developments in this state, a municipality shall also take into consideration the greatest number of units which the developer has constructed in any one development in the state within any one year period; this factor shall be considered if the municipality seeks to phase the issuance of final approvals for the inclusionary development over a period greater than one year.

§ 342. Purchase, lease or acquisition by gift of real property. Notwithstanding any other law to the contrary, a municipality may purchase, lease or acquire by gift real property and any estate or interest therein, which the municipal governing body determines necessary or useful for the construction or rehabilitation of low and moderate income housing or conversion to low and moderate income housing.

The municipality may provide for the acquisition, construction and maintenance of buildings, structures or other improvements necessary or useful for the provision of low and moderate income housing, and may provide for the reconstruction, conversion or rehabilitation of those improvements in such manner as may be necessary or useful for those purposes.

Notwithstanding the provisions of any other law regarding the conveyance, sale or lease of real property by municipalities, the municipal governing body may, by resolution, authorize the private sale and conveyance or lease of a housing unit or units acquired or constructed pursuant to this section, where the sale, conveyance or lease is to a low or moderate income household or nonprofit entity and contains a

contractual guarantee that the housing unit will remain available to low and moderate income households for a period of at least thirty years.

§ 343. Annual report of council. Within twelve months after the effective date of this article and every year thereafter, the council shall report to the governor and the legislature on the effect of this article in promoting the provision of low and moderate income housing in the several housing regions of this state. The report may include recommendations for any revisions or changes in this article which the council believes necessary to more nearly effectuate this end.

Within thirty-six months after the effective date of this article, the council shall report to the governor and the legislature concerning the actions necessary to be taken at the state, regional, county and municipal levels to provide for the implementation and administration of this article on a regional basis, including any revisions or changes in the law necessary to accomplish that end. The council may include in the report any recommendations or considerations it may wish to provide regarding the advisability of implementing and administering this article on a regional basis.

§ 4. Section 261 of the town law, as amended by chapter 458 of the laws of 1997, is amended to read as follows:

§ 261. Grant of power; appropriations for certain expenses incurred under this article. For the purpose of promoting the health, safety, morals, or the general welfare of the **regional** community, the town board is hereby empowered by local law or ordinance to regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes; provided that such regulations shall apply to and affect only such part of a town as is outside the limits of any incorporated village or city; **provided that such regulations do not inhibit and make economically infeasible the development of affordable housing for low and moderate income persons as provided in article twelve-A of the public housing law; and** provided further, that all charges and expenses incurred under this article for zoning and planning shall be a charge upon the taxable property of that part of the town outside of any incorporated village or city. The town board is hereby authorized and empowered to make such appropriation as it may see fit for such charges and expenses, provided however, that such appropriation shall be the estimated charges and expenses less fees, if any, collected, and provided, that the amount so appropriated shall be assessed, levied and collected from the property outside of any incorporated village or city. Such regulations may provide that a board of appeals may determine and vary their application in harmony with their general purpose and intent, and in accordance with general or specific rules therein contained.

§ 5. Section 263 of the town law, as amended by chapter 602 of the laws of 2003, is amended to read as follows:

§ 263. Purposes in view. Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, flood, panic and other dangers; to promote health and general welfare **of the regional community**; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefor; to facilitate the

practice of forestry; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

§ 6. Section 282 of the town law, as amended by chapter 310 of the laws of 1962 and the opening paragraph as amended by chapter 459 of the laws of 1991, is amended to read as follows:

§ 282. Court review. [~~Any~~] **Except as provided in article twelve-A of the public housing law in relation to the development of low and moderate income housing, any** person or persons, jointly or severally aggrieved by any decision of the planning board concerning such plat or the changing of the zoning regulations of such land, or any officer, department, board or bureau of the town, may have the decision reviewed by a special term of the supreme court in the manner provided by article seventy-eight of the civil practice law and rules provided the proceeding is commenced within thirty days after the filing of the decision in the office of the town clerk.

Commencement of the proceeding shall stay proceedings upon the decision appealed from.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the planning board, unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

All issues in any proceeding under this section shall have preference over all other civil actions and proceedings.

§ 7. Section 7-700 of the village law is amended to read as follows:

§ 7-700 Grant of power. For the purpose of promoting the health, safety, morals, or the general welfare of the **regional** community, the board of trustees of a village is hereby empowered, by local law, to regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes. As a part of the comprehensive plan and design, the village board is empowered by local law, to regulate and restrict certain areas as national historic landmarks, special historic sites, places and buildings for the purpose of conservation, protection, enhancement and perpetuation of these places of natural heritage. **Such regulations shall not inhibit or make economically infeasible the development of affordable housing for low and moderate income persons as provided in article twelve-A of the public housing law.** Such regulations shall provide that a board of appeals may determine and vary their application in harmony with the general purpose and intent, and in accordance with general or specific rules therein contained.

§ 8. Section 7-704 of the village law, as amended by chapter 742 of the laws of 1979, is amended to read as follows:

§ 7-704 Purposes in view. Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, floods and other dangers; to promote health and the general welfare **of the regional community**; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefor; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, **as to the regional need for affordable housing for low and moderate income persons** and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

§ 9. Section 7-740 of the village law, as amended by chapter 391 of the laws of 2000, is amended to read as follows:

§ 7-740 Review of decisions of planning board. [~~Any~~] **Except as provided in article twelve-A of the public housing law in relation to development of low and moderate income housing, any** officer, department, board or bureau of the village, with the approval of the board of trustees, or any person or persons, jointly or severally aggrieved by any decision of the planning board concerning such plat or the changing of the zoning regulations of such land, may bring a proceeding to review in the manner provided by article seventy-eight of the civil practice law and rules in a court of record on the ground that such decision is illegal, in whole or in part. Such proceeding must be commenced within thirty days after the filing of the decision in the office of the village clerk.

Commencement of the proceeding shall stay proceedings upon the decision appealed from.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the planning board, unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

All issues in any proceeding under this section shall have preference over all other civil actions and proceedings.

§ 10. Subdivisions 24 and 25 of section 20 of the general city law, subdivision 24 as amended by chapter 742 of the laws of 1979 and subdivision 25 as added by chapter 483 of the laws of 1917, are amended to read as follows:

24. To regulate and limit the height, bulk and location of buildings hereafter erected, to regulate and determine the area of yards, courts and other open spaces, and to regulate the density of population in any given area, and for said purposes to divide the city into districts. Such regulations shall be uniform for each class of buildings throughout any district, but the regulations in one or more districts may differ from those in other districts. Such regulations shall be designed to secure safety from fire, flood and other dangers and to promote the public health and **general** welfare **of the regional community**, including,

so far as conditions may permit, provision for adequate light, air, convenience of access, and the accommodation of solar energy systems and equipment and access to sunlight necessary therefor, and shall be made with reasonable regard to the character of buildings erected in each district, the value of land and the use to which it may be put, to the end that such regulations may promote public health, safety and **general** welfare **of the regional community** and the most desirable use for which the land of each district may be adapted and may tend to conserve the value of buildings and enhance the value of land throughout the city. **Such regulations shall not inhibit or make economically infeasible the development of affordable housing for low and moderate income persons as provided in article twelve-A of the public housing law.**

25. To regulate and restrict the location of trades and industries and the location of buildings, designed for specified uses, and for said purposes to divide the city into districts and to prescribe for each such district the trades and industries that shall be excluded or subjected to special regulation and the uses for which buildings may not be erected or altered. Such regulations shall be designed to promote the public health, safety and general welfare **of the regional community** and shall be made with reasonable consideration, among other things, to the character of the district, its peculiar suitability for particular uses, the conservation of property values and the direction of building development, in accord with a well considered plan. **Such regulations shall not inhibit or make economically infeasible the development of affordable housing for low and moderate income persons as provided in article twelve-A of the public housing law.**

§ 11. This act shall take effect on the one hundred eightieth day after it shall have become a law.