

# STATE OF NEW YORK

8386

2023-2024 Regular Sessions

## IN ASSEMBLY

December 13, 2023

Introduced by M. of A. CUNNINGHAM -- read once and referred to the  
Committee on Local Governments

AN ACT to amend the general municipal law, in relation to enacting the  
"faith-based affordable housing act" and residential development on  
religious land

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

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "faith-based affordable housing act".

3 § 2. The general municipal law is amended by adding a new section 96-c  
4 to read as follows:

5 § 96-c. Residential development on religious land. 1. For the purposes  
6 of this section, the following terms shall have the following meanings:

7 (a) "Covered site" shall mean any parcel of land, or group of one or  
8 more contiguous parcels of land, that lies within an urban area as  
9 defined by the U.S. Census Bureau but does not lie within a locally  
10 designated manufacturing or industrial zoning district, where such  
11 parcel or group of one or more contiguous parcels of land is owned sole-  
12 ly, directly or indirectly (e.g. via a wholly owned limited liability  
13 company) by a religious corporation or corporations as of the effective  
14 date of this section.

15 (b) "Religious corporation" shall have the same meaning as defined in  
16 the religious corporations law and shall also include nonprofit corpo-  
17 rations that include in their purpose worship or the training or  
18 conducting of religious rituals or the reading or study of religious  
19 texts incorporated under the not-for-profit corporation law or foreign  
20 corporations subject to such law.

21 (c) "Buildings department" shall mean the city, town, or village  
22 department, division, or other agency or office having primary super-  
23 vision of the construction of buildings and issuance of building  
24 permits.

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

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1 (d) "Commissioner" shall mean the commissioner of the division of  
2 housing and community renewal.

3 (e) "Residential building" shall mean any structure used in part or  
4 entirely for full-time, non-transient residential occupation that  
5 contains at least four residential units; that is connected to community  
6 or public water and sewerage systems, including sewage treatment works,  
7 upon date of initial occupancy; and in which no more than thirty-five  
8 percent of the floor area is devoted to religious or educational use or  
9 charitable or community facility use, provided that any existing reli-  
10 gious, educational, charitable, or community facility floor area shall  
11 not be counted toward such thirty-five percent in the case that the  
12 residential building is an addition or an enlargement of an existing  
13 building.

14 (f) "Affordable unit" shall mean a housing unit affordable to a  
15 specific percentage of the applicable area median income, as defined  
16 annually by the U.S. Department of Housing and Urban Development. Such  
17 units may either be homeownership or rental units.

18 (g) "Affordability percentage" shall mean the percentage of a residen-  
19 tial building's gross floor area required to be set aside as affordable  
20 housing.

21 (h) "Affordable floor area" shall mean the amount of a residential  
22 building's floor area to be set aside for affordable units.

23 2. Notwithstanding the provisions of any local law, ordinance, resol-  
24 ution or regulation, each village, town, and city shall allow the  
25 construction and occupation of residential buildings on any covered site  
26 up to the specified densities provided in this subdivision. Each  
27 village, town, and city shall allow such construction and occupation on  
28 an as-of-right, ministerial basis, without site plan review. Addi-  
29 tionally, this section shall not reduce or disallow development rights  
30 or options provided under local zoning laws.

31 (a) On any covered site located within a village, town, or city with  
32 fewer than fifty thousand inhabitants, residential buildings shall be  
33 allowed up to a height of thirty-five feet or the height of the tallest  
34 existing building on the covered site, whichever is taller, and up to a  
35 density of thirty residential units per acre or such proportion thereof.

36 (b) On any covered site located within a village, town or city with  
37 fifty thousand or more inhabitants but fewer than one million inhabit-  
38 ants, residential buildings shall be allowed up to a height of fifty-  
39 five feet or the height of the tallest existing building on the covered  
40 site, whichever is taller, and up to a density of fifty residential  
41 units per acre, provided, however, that if the covered site is located  
42 in a city with fifty thousand or more inhabitants but fewer than one  
43 million inhabitants and within eight hundred feet of a zoning district  
44 that permits a height or density for residential use greater than what  
45 is otherwise provided for in this paragraph, then such city shall allow  
46 residential buildings on the covered site up to the maximum height and  
47 density permitted in such zoning district, or allow such residential  
48 buildings to utilize any other optional rules or regulations regulating  
49 residential bulk and height in such zoning district, provided, however  
50 the residential building shall not have to comply with any other regu-  
51 lations provided for in such zoning district other than bulk and height  
52 regulations.

53 (c) On any covered site located within a city with one million or more  
54 inhabitants, residential buildings shall be allowed up to a height of  
55 fifty-five feet or the height of the tallest existing building on the  
56 covered site, whichever is taller, and a density of a floor area ratio

1 of 2.2 square feet, as defined by such city's zoning ordinances,  
2 provided, however, that if the covered site is located within eight  
3 hundred feet of a zoning district that permits a height or density for  
4 residential use greater than what is otherwise provided for in this  
5 paragraph, then the city shall allow residential buildings on the  
6 covered site up to the maximum height and density permitted in such  
7 zoning district, or allow such residential buildings to utilize any  
8 other optional rules or regulations regulating residential bulk and  
9 height in such zoning district, provided, however the residential build-  
10 ing shall not have to comply with any other regulations provided for in  
11 such zoning district other than bulk and height regulations.

12 3. If a religious corporation disposes of land via sale or lease for  
13 development of a residential building pursuant to this section, an offi-  
14 cer or key person, as defined in section one hundred two of the not-for-  
15 profit corporation law, of such religious corporation who will be  
16 involved in such sale or lease on behalf of the religious corporation  
17 must have attended and received a certificate of completion of a train-  
18 ing course on real estate development and affordable housing. Such  
19 training course must include content regarding the development process,  
20 timeline and funding sources for affordable and mixed-income housing,  
21 the types and selection of vendors and consultants related to such  
22 development, a review of the statutory requirements for such sale or  
23 lease by a religious corporation and other information relevant to hous-  
24 ing development as determined by the commissioner. Pursuant to the proc-  
25 ess required by section twelve of the religious corporations law and/or  
26 section five hundred ten of the not-for-profit corporation law, as  
27 applicable, the religious corporation shall submit to the court or to  
28 the attorney general a copy of such certificate of completion for such  
29 training as a condition of a sale or lease of land for housing develop-  
30 ment pursuant to this section. Such training may be conducted by any  
31 governmental entity, religious corporation, or nonprofit, or any number  
32 or combination of the foregoing, approved by the commissioner.

33 4. For buildings constructed pursuant to this section, a village,  
34 town, or city may regulate the following, provided the regulation is  
35 reasonable and applied equally to all residential developments and shall  
36 not impede the full development of the floor area and height provided in  
37 subdivision two of this section:

38 (a) the construction of sidewalks up to five feet in width and up to  
39 five feet of street lawn or road verge along the parcel's street fron-  
40 tage, including up to one street tree per twenty-five feet of frontage,  
41 with standards to conform to the standard specifications for  
42 construction and materials promulgated by the department of transporta-  
43 tion;

44 (b) up to twenty feet of rear yard and up to ten feet of side yards at  
45 the boundaries of the covered site; and

46 (c) appropriate placement of curb cuts for accessory parking or load-  
47 ing that ensure public safety while also allowing reasonable access to  
48 the parcel and the residential building.

49 5. For residential buildings constructed pursuant to this section, a  
50 village, town, or city shall not require any development standards or  
51 conditions of approval, other than state law, building, and fire codes,  
52 or in the case of a city with one million or more inhabitants, local  
53 fire and building codes. No village, town, or city shall require the  
54 following and any such requirements shall be void:

55 (a) the provision of accessory off-street parking;

56 (b) minimum, maximum, or average unit sizes;

1 (c) the regulation of the number of allowable housing units based on  
2 lot size or any other criteria, other than the densities prescribed in  
3 subdivision two of this section;

4 (d) the prioritization of housing units to residents of certain neigh-  
5 borhoods or jurisdictions;

6 (e) the prioritization of housing units for any age group;

7 (f) the imposition of any mandatory affordability requirements or  
8 minimum income or asset standards other than what is otherwise provided  
9 for in subdivision six of this section;

10 (g) minimum purchase price for any homeownership units;

11 (h) the adherence to any local building or fire code beyond the stand-  
12 ards specified by the New York State Uniform Fire Prevention and Build-  
13 ing Code Act, except in a city with one million or more inhabitants; and

14 (i) any other requirement that is determined by a court, pursuant to  
15 proceedings brought under subdivision nine of this section, to impede  
16 the full development of permissible residential buildings on a covered  
17 site.

18 6. (a) Notwithstanding the provisions of any local law, ordinance,  
19 resolution or regulation, the building department shall ministerially  
20 and without discretionary review or a hearing approve an application for  
21 a building permit within sixty days of receipt of an application pursu-  
22 ant to this section.

23 (b) A village, town, or city shall not impose any substantial burden  
24 on buildings constructed pursuant to this section, as compared with new  
25 single-family residential buildings, including the provision of municip-  
26 al services and utility access.

27 (c) Nothing in this section shall be construed to restrict the use or  
28 size of buildings permitted by local laws, regulations, or resolutions.

29 (d) The approval by the building department shall only take into  
30 consideration conformance with this section and applicable state laws  
31 and state building, fire, and energy codes. No other local law, policy,  
32 regulation, or resolution shall be the basis for the denial of a permit,  
33 except in a city of one million or more inhabitants, where adherence to  
34 local building and fire codes may be required.

35 (e) No payment greater than one quarter dollar per square foot of  
36 floor area shall be required in total for building and other permits  
37 issued for residential developments constructed pursuant to this  
38 section. A town, village, or city shall not charge impact fees, recre-  
39 ation fees, or any other fees beyond the amount provided in this para-  
40 graph.

41 (f) Notwithstanding article eight of the environmental conservation  
42 law and its implementing regulations, no review or study of the environ-  
43 mental impact of the residential building shall be required if it  
44 conforms to the provisions of this section, provided the following  
45 studies and certifications are completed and submitted to the building  
46 department and any state or local agencies as designated by the commis-  
47 sioner: a Phase I Environmental Site Assessment (ESA) pursuant to the  
48 federal Comprehensive Environmental Response, Compensation and Liability  
49 Act (42 U.S.C. Chapter 103); soil and water testing consistent with  
50 standards promulgated by the commissioner of environmental conservation;  
51 and a certification from a qualified environmental professional, where  
52 such term shall be defined by the commissioner of environmental conser-  
53 vation pursuant to regulation, that such action, as proposed, will not  
54 violate any state wetland laws or drinking water laws under article  
55 eleven of the public health law, or any rules or regulations promulgated  
56 thereto.

1 (g) For the purposes of fees and building permits, for buildings  
2 constructed pursuant to this section, a village, town, or city shall not  
3 discriminate between rental units and condominium or cooperative units.  
4 No permit or additional fee shall be required as a condition for use as  
5 a rental apartment building.

6 7. (a) All residential buildings constructed pursuant to this section  
7 in a town, village, or city with fewer than one million inhabitants  
8 shall set aside twenty percent of the residential floor area for house-  
9 holds earning an average of eighty percent of the area median income. In  
10 a city with one million or more inhabitants, a residential building  
11 shall provide affordable housing by complying with one of the following  
12 options:

13 (i) the residential building shall set aside twenty-five percent of  
14 its residential floor area for households earning an average of sixty  
15 percent of the area median income provided that a minimum of five  
16 percent of units are affordable to households at forty percent of the  
17 area median income;

18 (ii) the residential building shall set aside thirty percent of its  
19 residential floor area for households earning an average of eighty  
20 percent of the area median income; or

21 (iii) the residential building shall set aside twenty percent of its  
22 residential floor area for households earning an average of forty  
23 percent of the area median income.

24 (b) The amount of affordable floor area shall be calculated by multi-  
25 plying gross residential floor area by the percentage of the floor area  
26 that must be affordable pursuant to this paragraph. The resulting floor  
27 area must be devoted to affordable housing, less the applicable propor-  
28 tion of the building devoted to residential circulation and common  
29 space, not to exceed twenty-five percent of the affordable floor area.  
30 The number of required affordable units shall be the affordability  
31 percentage multiplied by the total number of residential units in the  
32 development, with the product rounded to the nearest whole number. To  
33 achieve the affordability levels specified in this paragraph, buildings  
34 may contain units affordable to a variety of incomes, provided that on  
35 average the affordability levels meet the requirements of this paragraph  
36 and no affordable unit shall be rented to any household with an income  
37 greater than one hundred percent of the area median income.

38 (c) A property containing any affordable units must be restricted  
39 using a mechanism such as a declaration of restrictive covenants or a  
40 regulatory agreement with a local or state agency that shall ensure that  
41 the affordable units shall remain subject to affordable regulations for  
42 the life of the building. Such covenants shall require that the unit be  
43 the primary residence of the household selected to occupy the unit. Upon  
44 approval, such declaration or regulatory agreement shall be recorded  
45 against the property containing the affordable unit prior to the issu-  
46 ance of a certificate of occupancy for the development.

47 (d) The affordable units shall be physically integrated into the  
48 design of the development and shall be distributed among various sizes  
49 (efficiency, one-, two-, three- and four-bedroom units) in the same  
50 proportion as all other units in the development. The minimum gross  
51 floor area per affordable unit shall not be less than ninety percent of  
52 the average floor area of non-restricted housing units of equivalent  
53 size (efficiency, one-, two-, three- and four-bedroom units) in the  
54 development. Affordable units shall be distributed evenly among floors.

55 (e) The affordable units shall not be distinguishable from other units  
56 from the outside or building exteriors. Interior finishes and

1 furnishings shall be indistinguishable from the other units in the  
2 building. Affordable units shall not have a separate entrance or  
3 differing access to common amenities. Buildings constructed pursuant to  
4 this section may not charge residents of affordable units additional  
5 fees for access to common amenities, if such charges would mean that  
6 total housing costs for such units would exceed thirty percent of the  
7 specified percentage of the area median income.

8 (f) For affordable homeownership units, the title to said property  
9 shall be restricted so that in the event of any resale by the home buyer  
10 or any successor, the resale price shall not exceed an amount affordable  
11 to a household at the specified percentage of the area median income.

12 8. Nothing in this section shall be interpreted to override the New  
13 York State Uniform Fire Prevention and Building Code Act, the Freshwater  
14 Wetlands Act, the public health law, or regulations promulgated in  
15 accordance with any such act or law, nor require the alteration or demo-  
16 lition of buildings designated as historical sites or landmarks as of  
17 the effective date of this section pursuant to the New York State  
18 Historic Preservation Act of 1980, as amended, or the National Historic  
19 Preservation Act of 1966, as amended, or the New York City Landmarks Law  
20 of 1965, as amended.

21 9. (a) Upon a failure of a local government to timely act upon an  
22 application to construct or occupy residences in accordance with this  
23 section, or denial of such application in violation of this section, any  
24 party aggrieved by any such failure or denial may commence a special  
25 proceeding against the subject local government and the officer pursuant  
26 to article seventy-eight of the civil practice law and rules, in the  
27 supreme court within the judicial district in which the local government  
28 or the greater portion of the territory is located, to compel compliance  
29 with the provisions of this section.

30 (b) If, upon commencement of such proceeding, it shall appear to the  
31 court that testimony is necessary for the proper disposition of the  
32 matter, the court may take evidence and determine the matter. Alterna-  
33 tively, the court may appoint a hearing officer pursuant to article  
34 forty-three of the civil practice law and rules to take such evidence as  
35 it may direct and report the same to the court with the hearing offi-  
36 cer's findings of fact and conclusions of law, which shall constitute a  
37 part of the proceedings upon which the determination of the court shall  
38 be made. The court may reverse or affirm, wholly or partly, or may modi-  
39 fy any decision brought to the court for review.

40 (c) Attorneys' fees and costs shall be allowed against the local  
41 government whose failure or refusal gave rise to the special proceeding  
42 in cases in which the denial of building permits is overturned by the  
43 court.

44 10. Notwithstanding the provisions of subdivision five of this  
45 section, a city, state, or federal housing agency may regulate the  
46 design, construction, occupancy, marketing, and leasing of affordable  
47 housing developed pursuant to this section when such agency is subsidiz-  
48 ing the operations, development, or preservation of the housing and  
49 entering into a regulatory agreement with the owner thereof.

50 11. The division of housing and community renewal, the attorney gener-  
51 al, and the department of environmental conservation shall have the  
52 authority to promulgate any rules and regulations necessary to implement  
53 the provisions of this section. No later than one year from the effec-  
54 tive date of this section, the division of housing and community renewal  
55 shall promulgate rules and regulations including but not limited to the  
56 following:

1 (a) the percentage of a household's income that may be devoted to  
2 housing costs when initially occupying an affordable unit and which  
3 expenses shall be included in the calculation of housing costs;

4 (b) occupancy standards for affordable units;

5 (c) enforcement mechanisms to ensure permanent affordability of  
6 affordable units developed pursuant to this section;

7 (d) marketing standards for affordable units constructed pursuant to  
8 this section, however, notwithstanding the provisions of this section, a  
9 city of one million of more inhabitants may regulate the marketing and  
10 leasing of such affordable units according to the standard marketing  
11 guidelines promulgated by such city's department of housing preservation  
12 and development; and

13 (e) the content of training that must be received by the religious  
14 corporation as a condition of the sale or lease of land for the develop-  
15 ment of a residential building pursuant to this section.

16 12. The division of housing and community renewal shall provide tech-  
17 nical assistance to municipal governments to aid in the adherence to the  
18 provisions of this section and with the applicable revisions to local  
19 land use regulations and plans.

20 § 3. This act shall take effect immediately.