

# STATE OF NEW YORK

8386--A

2023-2024 Regular Sessions

## IN ASSEMBLY

December 13, 2023

Introduced by M. of A. CUNNINGHAM, SIMONE, LEVENBERG, MITAYNES, FORREST, GALLAGHER, SIMON, HEVESI, BORES, SHRESTHA, GONZALEZ-ROJAS, BICHOTTE HERMELYN, MAMDANI, L. ROSENTHAL, LEE, DAVILA, THIELE, CRUZ, ZACCARO, GIBBS, JACKSON, MEEKS, FAHY, KELLES, WEPRIN, RAJKUMAR, DARLING, TAYLOR, CLARK, CHANDLER-WATERMAN, RAGA, DAIS, RAMOS, EICHENSTEIN, DICKENS, JEAN-PIERRE, VANEL, BURGOS -- read once and referred to the Committee on Local Governments -- recommitted to the Committee on Local Governments in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 Assembly, 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 as of the effective date of this  
14 section.

15 (b) "Religious corporation" shall have the same meaning as defined in  
16 the religious corporations law and shall also include nonprofit corpo-

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

LBD13656-08-4

1 rations that include in their purpose worship or the training or  
2 conducting of religious rituals or the reading or study of religious  
3 texts incorporated under the not-for-profit corporation law or foreign  
4 corporations subject to such law.

5 (c) "Buildings department" shall mean the city, town, or village  
6 department, division, or other agency or office having primary super-  
7 vision of the construction of buildings and issuance of building  
8 permits.

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

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

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

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

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

31 (i) "Construction" and variations thereof shall mean the construction  
32 of new residential buildings as well as the addition to or alteration of  
33 existing buildings.

34 2. Notwithstanding the provisions of any local law, ordinance, resol-  
35 ution or regulation, each village, town, and city shall allow the  
36 construction and occupation of residential buildings on any covered site  
37 up to the specified densities provided in this subdivision. Each  
38 village, town, and city shall allow such construction and occupation on  
39 an as-of-right, ministerial basis, without site plan review. Addi-  
40 tionally, this section shall not reduce or disallow development rights  
41 or options provided under local zoning laws.

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

47 (b) On any covered site located within a village, town or city with  
48 fifty thousand or more inhabitants but fewer than one million inhabit-  
49 ants, residential buildings shall be allowed up to a height of fifty-  
50 five feet or the height of the tallest existing building on the covered  
51 site, whichever is taller, and up to a density of fifty residential  
52 units per acre, provided, however, that if the covered site is located  
53 in a city with fifty thousand or more inhabitants but fewer than one  
54 million inhabitants and within eight hundred feet of a zoning district  
55 that permits a height or density for residential use greater than what  
56 is otherwise provided for in this paragraph, then such city shall allow

1 residential buildings on the covered site up to the maximum height and  
2 density permitted in such zoning district, or allow such residential  
3 buildings to utilize any other optional rules or regulations regulating  
4 residential bulk and height in such zoning district, provided, however  
5 the residential building shall not have to comply with any other regu-  
6 lations provided for in such zoning district other than bulk and height  
7 regulations.

8 (c) On any covered site located within a city with one million or more  
9 inhabitants, residential buildings shall be allowed up to a height of  
10 fifty-five feet or the height of the tallest existing building on the  
11 covered site, whichever is taller, and a density of a floor area ratio  
12 of 2.2 square feet, as defined by such city's zoning ordinances,  
13 provided, however, that if the covered site is located within eight  
14 hundred feet of a zoning district that permits a height or density for  
15 residential use greater than what is otherwise provided for in this  
16 paragraph, then the city shall allow residential buildings on the  
17 covered site up to the maximum height and density permitted in such  
18 zoning district, or allow such residential buildings to utilize any  
19 other optional rules or regulations regulating residential bulk and  
20 height in such zoning district, provided, however the residential build-  
21 ing shall not have to comply with any other regulations provided for in  
22 such zoning district other than bulk and height regulations.

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

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

49 (a) the construction of sidewalks up to five feet in width and up to  
50 five feet of street lawn or road verge along the parcel's street fron-  
51 tage, including up to one street tree per twenty-five feet of frontage,  
52 with standards to conform to the standard specifications for  
53 construction and materials promulgated by the department of transporta-  
54 tion;

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

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

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

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

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

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

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

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

18 (f) the imposition of any mandatory affordability requirements or  
19 minimum income or asset standards other than what is otherwise provided  
20 for in subdivision seven of this section;

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

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

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

29 6. (a) Notwithstanding the provisions of any local law, ordinance,  
30 resolution or regulation, the building department shall ministerially  
31 and without discretionary review or a hearing process an application for  
32 a building permit within sixty days of receipt of an application pursu-  
33 ant to this section.

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

38 (c) Nothing in this section shall be construed to restrict the use or  
39 size of buildings permitted at a greater height and/or bulk than that  
40 allowed by this section under local law, regulation, or resolution.

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

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

53 (f) (i) Notwithstanding article eight of the environmental conserva-  
54 tion law and its implementing regulations, no environmental impact  
55 statement for a residential building shall be required if it conforms to  
56 the provisions of this section, provided the following studies and

1 certifications are completed and submitted to the building department  
2 and any state or local agencies as designated by the commissioner: a  
3 Phase I Environmental Site Assessment (ESA) pursuant to the federal  
4 Comprehensive Environmental Response, Compensation and Liability Act (42  
5 U.S.C. Chapter 103); soil and water testing consistent with standards  
6 promulgated by the commissioner of environmental conservation; and a  
7 certification from a qualified environmental professional, where such  
8 term shall be defined by the commissioner of environmental conservation  
9 pursuant to regulation, that such action, as proposed, will not violate  
10 any state wetland laws or drinking water laws under article eleven of  
11 the public health law, or any rules or regulations promulgated thereto.

12 (ii) Provided further that environmental impact statements completed  
13 pursuant to article eight of the environmental conservation law for  
14 proposed actions other than the construction and occupation of residen-  
15 tial buildings made possible by this section, which are completed on or  
16 after the effective date of this section, shall not be required to  
17 consider the as-of-right construction and occupation of residential  
18 buildings made possible by this section on such other actions.

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

24 7. (a) All residential buildings constructed pursuant to this section  
25 in a town, village, or city with fewer than one million inhabitants  
26 shall set aside at least twenty percent of the residential floor area  
27 for households earning an average of eighty percent of the area median  
28 income. In a city with one million or more inhabitants, a residential  
29 building shall provide affordable housing by complying with one of the  
30 following options:

31 (i) the residential building shall set aside at least twenty-five  
32 percent of its residential floor area for households earning an average  
33 of sixty percent of the area median income provided that a minimum of  
34 five percent of units are affordable to households at forty percent of  
35 the area median income;

36 (ii) the residential building shall set aside at least thirty percent  
37 of its residential floor area for households earning an average of  
38 eighty percent of the area median income; or

39 (iii) the residential building shall set aside at least twenty percent  
40 of its residential floor area for households earning an average of forty  
41 percent of the area median income.

42 (b) The amount of affordable floor area shall be calculated by multi-  
43 plying gross residential floor area by the percentage of the floor area  
44 that must be affordable pursuant to this paragraph. The resulting floor  
45 area must be devoted to affordable housing, less the applicable propor-  
46 tion of the building devoted to residential circulation and common  
47 space, not to exceed twenty-five percent of the affordable floor area.  
48 The number of required affordable units shall be the affordability  
49 percentage multiplied by the total number of residential units in the  
50 development, with the product rounded to the nearest whole number. To  
51 achieve the affordability levels specified in this paragraph, buildings  
52 may contain units affordable to a variety of incomes, provided that on  
53 average the affordability levels meet the requirements of this paragraph  
54 and no affordable unit shall be rented to any household with an income  
55 greater than one hundred percent of the area median income. Nothing in  
56 this subdivision shall be construed to prohibit the inclusion of addi-

1 tional affordable floor area in a residential building on a covered  
2 site, at the discretion of the owner of such building.

3 (c) A property containing any affordable units must be restricted  
4 using a mechanism such as a declaration of restrictive covenants or a  
5 regulatory agreement with a local or state agency that shall ensure that  
6 the affordable units shall remain subject to affordable regulations for  
7 the life of the building. Such covenants shall require that the unit be  
8 the primary residence of the household selected to occupy the unit. Upon  
9 approval, such declaration or regulatory agreement shall be recorded  
10 against the property containing the affordable unit prior to the issua-  
11 ance of a certificate of occupancy for the development.

12 (d) The affordable units shall be physically integrated into the  
13 design of the development and shall be distributed among various sizes  
14 (efficiency, one-, two-, three- and four-bedroom units) in the same  
15 proportion as all other units in the development. The minimum gross  
16 floor area per affordable unit shall not be less than ninety percent of  
17 the average floor area of non-restricted housing units of equivalent  
18 size (efficiency, one-, two-, three- and four-bedroom units) in the  
19 development. Affordable units shall be distributed evenly among floors.

20 (e) The affordable units shall not be distinguishable from other units  
21 from the outside or building exteriors. Interior finishes and  
22 furnishings shall be indistinguishable from the other units in the  
23 building. Affordable units shall not have a separate entrance or  
24 differing access to common amenities. Buildings constructed pursuant to  
25 this section may not charge residents of affordable units additional  
26 fees for access to common amenities, if such charges would mean that  
27 total housing costs for such units would exceed thirty percent of the  
28 specified percentage of the area median income.

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

33 8. Nothing in this section shall be interpreted to override the New  
34 York State Uniform Fire Prevention and Building Code Act, the Freshwater  
35 Wetlands Act, the public health law, or any regulations, restrictions,  
36 limitations, or conditions, existing as of the effective date of this  
37 section, which have been placed upon a site, building, or structure  
38 designated as a landmark or containing an interior landmark or in a  
39 historic district under any local law, regulation, resolution, or ordi-  
40 nance governing the demolition, construction, reconstruction, alter-  
41 ation, and/or other work on or near such site, building, or structure.

42 9. (a) Upon a failure of a local government to timely act upon an  
43 application to construct or occupy residences in accordance with this  
44 section, or denial of such application in violation of this section, any  
45 party aggrieved by any such failure or denial may commence a special  
46 proceeding against the subject local government and the officer pursuant  
47 to article seventy-eight of the civil practice law and rules, in the  
48 supreme court within the judicial district in which the local government  
49 or the greater portion of the territory is located, to compel compliance  
50 with the provisions of this section.

51 (b) If, upon commencement of such proceeding, it shall appear to the  
52 court that testimony is necessary for the proper disposition of the  
53 matter, the court may take evidence and determine the matter. Alterna-  
54 tively, the court may appoint a hearing officer pursuant to article  
55 forty-three of the civil practice law and rules to take such evidence as  
56 it may direct and report the same to the court with the hearing offi-

1 cer's findings of fact and conclusions of law, which shall constitute a  
2 part of the proceedings upon which the determination of the court shall  
3 be made. The court may reverse or affirm, wholly or partly, or may modi-  
4 fy any decision brought to the court for review.

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

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

15 11. The division of housing and community renewal, the attorney gener-  
16 al, and the department of environmental conservation shall have the  
17 authority to promulgate any rules and regulations necessary to implement  
18 the provisions of this section. No later than one year from the effec-  
19 tive date of this section, the division of housing and community renewal  
20 shall promulgate rules and regulations including but not limited to the  
21 following:

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

25 (b) occupancy standards for affordable units;

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

28 (d) marketing standards for affordable units constructed pursuant to  
29 this section, provided, however, that a city of one million or more  
30 inhabitants may regulate the marketing and leasing of such affordable  
31 units according to the standard marketing guidelines promulgated by such  
32 city's department of housing preservation and development, and provided  
33 further that marketing standards for all units constructed pursuant to  
34 this section must include a requirement that they be leased or sold  
35 without consideration of an applicant's religious beliefs and/or prac-  
36 tices; and

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

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

44 § 3. This act shall take effect immediately.