

STATE OF NEW YORK

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IN ASSEMBLY

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Introduced by M. of A. CUNNINGHAM, SIMONE, LEVENBERG, MITAYNES, FORREST, GALLAGHER, SIMON, HEVESI, BORES, SHRESTHA, GONZALEZ-ROJAS, BICHOTTE HERMELYN, MAMDANI, ROSENTHAL, LEE, DAVILA, CRUZ, ZACCARO, GIBBS, JACKSON, MEEKS, KELLES, WEPRIN, RAJKUMAR, TAYLOR, CLARK, CHANDLER-WATERMAN, RAGA, DAIS, RAMOS, EICHENSTEIN, VANEL, DE LOS SANTOS, LASHER, KIM, SANTABARBARA, TAPIA, ROMERO, ZINERMAN -- read once and referred to the Committee on Local Governments -- 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-
17 rations that include in their purpose worship or the training or

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

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1 conducting of religious rituals or the reading or study of religious
2 texts incorporated under the not-for-profit corporation law or foreign
3 corporations subject to such law.

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

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

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

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

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

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

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

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

41 (a) On any covered site located within a village, town, or city with
42 fewer than one million inhabitants, residential buildings with the
43 affordable floor area prescribed in subdivision seven of this section
44 shall be allowed up to a height of ten feet above the maximum height
45 otherwise applicable to the covered site as of the effective date of
46 this section and a density of a floor area up to thirty residential
47 units per acre.

48 (b) On any covered site located within a village, town, or city with
49 fewer than one million inhabitants, residential buildings with the
50 affordable floor area prescribed in subdivision seven of this section
51 which have received a loan from a municipal, state, or federal entity
52 and which enter into a regulatory agreement with such entity guarantee-
53 ing the provision of housing accommodations for persons and families of
54 low income shall be allowed up to a height of twenty feet above the
55 maximum height otherwise applicable to the covered site as of the effec-

1 tive date of this section and a density of up to fifty residential units
2 per acre.

3 (c) On any covered site located within a city with one million or more
4 inhabitants, residential buildings with the affordable floor area
5 prescribed in subdivision seven of this section shall be allowed up to a
6 height of ten feet above the maximum height otherwise applicable to the
7 covered site as of the effective date of this section and a density of a
8 floor area ratio of 2.2 square feet; provided, however, that if the
9 covered site is located within eight hundred feet of a zoning district
10 that permits a height or density for residential use greater than what
11 is otherwise provided for in this paragraph, then the city shall allow
12 residential buildings on the covered site up to the maximum height and
13 density permitted in such zoning district, or allow such residential
14 buildings to utilize any other optional rules or regulations regulating
15 residential bulk and height in such zoning district, provided, however
16 the residential building shall not have to comply with any other regu-
17 lations provided for in such zoning district other than bulk and height
18 regulations.

19 (d) On any covered site located within a city with one million or more
20 inhabitants, residential buildings with the affordable floor area
21 prescribed in subdivision seven of this section which have received a
22 loan from a municipal, state, or federal entity and which enter into a
23 regulatory agreement with such entity guaranteeing the provision of
24 housing accommodations for persons and families of low income shall be
25 allowed up to a height of twenty feet above the maximum height otherwise
26 applicable to the covered site as of the effective date of this section
27 and a density of a floor area ratio of three square feet, provided,
28 however, that if the covered site is located within eight hundred feet
29 of a zoning district that permits a height or density for residential
30 use greater than what is otherwise provided for in this paragraph, then
31 the city shall allow residential buildings on the covered site up to the
32 maximum height and density permitted in such zoning district, or allow
33 such residential buildings to utilize any other optional rules or regu-
34 lations regulating residential bulk and height in such zoning district,
35 provided, however the residential building shall not have to comply with
36 any other regulations provided for in such zoning district other than
37 bulk and height regulations.

38 For the purposes of this subdivision, the term "persons and families
39 of low income" shall have the meaning set forth in section two of the
40 private housing finance law.

41 3. If a religious corporation disposes of land via sale or lease for
42 development of a residential building pursuant to this section, an offi-
43 cer or key person, as defined in section one hundred two of the not-for-
44 profit corporation law, of such religious corporation who will be
45 involved in such sale or lease on behalf of the religious corporation
46 must have attended and received a certificate of completion of a train-
47 ing course on real estate development and affordable housing. Such
48 training course must include content regarding the development process,
49 timeline and funding sources for affordable and mixed-income housing,
50 the types and selection of vendors and consultants related to such
51 development, a review of the statutory requirements for such sale or
52 lease by a religious corporation and other information relevant to hous-
53 ing development as determined by the commissioner. Pursuant to the proc-
54 ess required by section twelve of the religious corporations law and/or
55 section five hundred ten of the not-for-profit corporation law, as
56 applicable, the religious corporation shall submit to the court or to

1 the attorney general a copy of such certificate of completion for such
2 training as a condition of a sale or lease of land for housing develop-
3 ment pursuant to this section. Such training may be conducted by any
4 governmental entity, religious corporation, or nonprofit, or any number
5 or combination of the foregoing, approved by the commissioner.

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

11 (a) the construction of sidewalks up to five feet in width and up to
12 five feet of street lawn or road verge along the parcel's street fron-
13 tage, including up to one street tree per twenty-five feet of frontage,
14 with standards to conform to the standard specifications for
15 construction and materials promulgated by the department of transporta-
16 tion;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (f) (i) Notwithstanding article eight of the environmental conserva-
17 tion law and its implementing regulations, no environmental impact
18 statement for a residential building shall be required if it conforms to
19 the provisions of this section, provided the following studies and
20 certifications are completed and submitted to the building department
21 and any state or local agencies as designated by the commissioner: a
22 Phase I Environmental Site Assessment (ESA) pursuant to the federal
23 Comprehensive Environmental Response, Compensation and Liability Act (42
24 U.S.C. Chapter 103); soil and water testing consistent with standards
25 promulgated by the commissioner of environmental conservation; and a
26 certification from a qualified environmental professional, where such
27 term shall be defined by the commissioner of environmental conservation
28 pursuant to regulation, that such action, as proposed, will not violate
29 any state wetland laws or drinking water laws under article eleven of
30 the public health law, or any rules or regulations promulgated thereto.

31 (ii) Provided further that environmental impact statements completed
32 pursuant to article eight of the environmental conservation law for
33 proposed actions other than the construction and occupation of residen-
34 tial buildings made possible by this section, which are completed on or
35 after the effective date of this section, shall not be required to
36 consider the as-of-right construction and occupation of residential
37 buildings made possible by this section on such other actions.

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

43 7. (a) All residential buildings constructed pursuant to this section
44 in a town, village, or city with fewer than one million inhabitants
45 shall set aside at least twenty percent of the residential floor area
46 for households earning an average of eighty percent of the area median
47 income. In a city with one million or more inhabitants, a residential
48 building shall provide affordable housing by complying with one of the
49 following options:

50 (i) the residential building shall set aside at least twenty-five
51 percent of its residential floor area for households earning an average
52 of sixty percent of the area median income provided that a minimum of
53 five percent of units are affordable to households at forty percent of
54 the area median income;

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

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

7 (b) The amount of affordable floor area shall be calculated by multi-
8 plying gross residential floor area by the percentage of the floor area
9 that must be affordable pursuant to this paragraph. The resulting floor
10 area must be devoted to affordable housing, less the applicable propor-
11 tion of the building devoted to residential circulation and common
12 space, not to exceed twenty-five percent of the affordable floor area.
13 The number of required affordable units shall be the affordability
14 percentage multiplied by the total number of residential units in the
15 development, with the product rounded to the nearest whole number. To
16 achieve the affordability levels specified in this paragraph, buildings
17 may contain units affordable to a variety of incomes, provided that on
18 average the affordability levels meet the requirements of this paragraph
19 and no affordable unit shall be rented to any household with an income
20 greater than one hundred percent of the area median income. Nothing in
21 this subdivision shall be construed to prohibit the inclusion of addi-
22 tional affordable floor area in a residential building on a covered
23 site, at the discretion of the owner of such building.

24 (c) A property containing any affordable units must be restricted
25 using a mechanism such as a declaration of restrictive covenants or a
26 regulatory agreement with a local or state agency that shall ensure that
27 the affordable units shall remain subject to affordable regulations for
28 the life of the building. Such covenants shall require that the unit be
29 the primary residence of the household selected to occupy the unit. Upon
30 approval, such declaration or regulatory agreement shall be recorded
31 against the property containing the affordable unit prior to the issu-
32 ance of a certificate of occupancy for the development.

33 (d) The affordable units shall be physically integrated into the
34 design of the development and shall be distributed among various sizes
35 (efficiency, one-, two-, three- and four-bedroom units) in the same
36 proportion as all other units in the development. The minimum gross
37 floor area per affordable unit shall not be less than ninety percent of
38 the average floor area of non-restricted housing units of equivalent
39 size (efficiency, one-, two-, three- and four-bedroom units) in the
40 development. Affordable units shall be distributed evenly among floors.

41 (e) The affordable units shall not be distinguishable from other units
42 from the outside or building exteriors. Interior finishes and
43 furnishings shall be indistinguishable from the other units in the
44 building. Affordable units shall not have a separate entrance or
45 differing access to common amenities. Buildings constructed pursuant to
46 this section may not charge residents of affordable units additional
47 fees for access to common amenities, if such charges would mean that
48 total housing costs for such units would exceed thirty percent of the
49 specified percentage of the area median income.

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

54 8. Nothing in this section shall be interpreted to override the New
55 York State Uniform Fire Prevention and Building Code Act, the Freshwater
56 Wetlands Act, the public health law, or any regulations, restrictions,

1 limitations, or conditions, existing as of the effective date of this
2 section, which have been placed upon a site, building, or structure
3 designated as a landmark or containing an interior landmark or in a
4 historic district under any local law, regulation, resolution, or ordi-
5 nance governing the demolition, construction, reconstruction, alter-
6 ation, and/or other work on or near such site, building, or structure.

7 9. (a) Upon a failure of a local government to timely act upon an
8 application to construct or occupy residences in accordance with this
9 section, or denial of such application in violation of this section, any
10 party aggrieved by any such failure or denial may commence a special
11 proceeding against the subject local government and the officer pursuant
12 to article seventy-eight of the civil practice law and rules, in the
13 supreme court within the judicial district in which the local government
14 or the greater portion of the territory is located, to compel compliance
15 with the provisions of this section.

16 (b) If, upon commencement of such proceeding, it shall appear to the
17 court that testimony is necessary for the proper disposition of the
18 matter, the court may take evidence and determine the matter. Alterna-
19 tively, the court may appoint a hearing officer pursuant to article
20 forty-three of the civil practice law and rules to take such evidence as
21 it may direct and report the same to the court with the hearing offi-
22 cer's findings of fact and conclusions of law, which shall constitute a
23 part of the proceedings upon which the determination of the court shall
24 be made. The court may reverse or affirm, wholly or partly, or may modi-
25 fy any decision brought to the court for review.

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

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

36 11. The division of housing and community renewal, the attorney gener-
37 al, and the department of environmental conservation shall have the
38 authority to promulgate any rules and regulations necessary to implement
39 the provisions of this section. No later than one year from the effec-
40 tive date of this section, the division of housing and community renewal
41 shall promulgate rules and regulations including but not limited to the
42 following:

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

46 (b) occupancy standards for affordable units;

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

49 (d) marketing standards for affordable units constructed pursuant to
50 this section, provided, however, that a city of one million or more
51 inhabitants may regulate the marketing and leasing of such affordable
52 units according to the standard marketing guidelines promulgated by such
53 city's department of housing preservation and development, and provided
54 further that marketing standards for all units constructed pursuant to
55 this section must include a requirement that they be leased or sold

1 without consideration of an applicant's religious beliefs and/or prac-
2 tices; and

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

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

10 § 3. This act shall take effect immediately.