PART F

Section 1. Short title. This article shall be known and cited as the "new homes targets and fast-track approval act".

§ 2. Article 20 of the general municipal law is renumbered to be article 21, sections 1000 and 1001 are renumbered to be sections 1020 and 1021, and a new article 20 is added to read as follows:

ARTICLE 20 NEW HOMES TARGETS AND FAST TRACK APPROVAL

§ 1000. Legislative findings and declarations. The legislature hereby finds, determines, and declares that:

1. The lack of housing, especially affordable and supportive housing, is a critical problem that threatens the economic, environmental, and social quality of life throughout New York state and disproportionately burdens various vulnerable populations that disproportionately need more affordable housing options including, but not limited to, low- and moderate-income, racial and ethnic minority, and elderly households.

2. Housing in the state of New York is among the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by a lack of new housing production due to the prevalence of local governmental land use policies that limit the opportunities for and place procedural impediments on the approval of housing developments and thereby increase development costs and restrict the housing supply.

3. Local governmental limitations on and barriers to housing development are especially common for multi-family housing development, which constrains the supply of affordable and supportive housing that often require multi-family development to be economically feasible.

4. Among the consequences of the prevalence of local restrictions on housing development are the lack of housing to support employment growth; imbalance in number of jobs and housing supply, with the former outstripping the latter; sprawl; excessive commuting; and the potential for discrimination against low-income and minority households who disproportionately require affordable housing opportunities.

5. Many local governments do not give adequate attention to the local and broader regional economic, environmental, and social costs of local policies and actions that have the effect of stagnating or reducing the supply of housing, including affordable and supportive housing, or how such policies and actions thereby produce threats to the public health, safety, and general welfare.

6. Additionally, many local governments do not give adequate attention to the local and broader regional economic, environmental, and social costs of local policies and actions that result in disapprovals or inhibition of proposals for housing development projects that would benefit the public health, safety, and general welfare; a reduction in density of such housing projects; and creation of excessive land use and other barriers for such housing developments to be built.

7. Legislation is necessary to forestall restrictive land use practices that inhibit and limit housing development, and to forestall undue local disapprovals of housing development projects, especially affordable and supportive housing, given that such practices and disapprovals produce threats to the public health, safety, and general welfare.

8. The state of New York must ensure that local governments give adequate attention to the local and broader regional economic, environmental, and social costs of land use zoning and planning policies and actions, as well as the denial of applications to build new housing, which collectively and individually may result in a dearth of appropriate housing to meet the needs of all residents in the community or region.

9. In furtherance of overall housing production goals and to promote the greatest efficiency and coordinated development efforts of localities within the state, it is both a matter of state concern and the policy of the state that local governments address their land use policies, practices, and decisions that make

housing developments, and especially multi-family, affordable, and supportive housing developments, impossible or infeasible.

10. To further address the shortage of affordable and supportive housing in New York and encourage reduction of land use restrictions and the production of much needed housing, this article creates an impartial forum and a process for specially designating judges to resolve conflicts arising from local decisions on the development of affordable and supportive housing.

11. In order to prevent housing insecurity, hardship, and dislocation, the provisions of this act are necessary and designed to protect the public health, safety, and general welfare of the residents of New York state.

§ 1001. Definitions. The following definitions apply for the purposes of this article:

1. "Accessory dwelling unit" shall mean an attached or a detached residential dwelling unit that provides housing for one or more persons which is located on a lot with a proposed or existing primary residential dwelling unit and shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same lot as the primary single-family or multi-family dwelling.

2. "Affordable housing" shall mean any income restricted housing, whether intended for rental or homeownership, that is subject to a regulatory agreement with a local, state or federal governmental entity.

3. "Application" shall mean an application for a building permit, variance, waiver, conditional use permit, special permit, zoning text amendment, zoning map amendment, amendment to zoning districts, certification, authorization, site plan approval, subdivision approval, or other discretionary land use determination by a lead agency equivalent.

4. "Division" shall mean the division of housing and community renewal.

5. "Economically infeasible" shall mean any condition brought about by any single factor or combination of factors to the extent that it makes it substantially unlikely for an owner to proceed in building a residential housing project and still realize a reasonable return in building or operating such housing without substantially changing the rent levels, residential dwelling unit sizes, or residential dwelling unit counts proposed by the owner.

6. "Housing review board" shall mean the housing review board established pursuant to this article.

7. "Land use action" shall mean any enactment of or amendment to a provision of a zoning local law, ordinance, resolution, policy, program, procedure, comprehensive plan, site plan, subdivision plan, criteria, rule, regulation, or requirement of a local agency.

8. "Land use requirements" shall mean any and all local laws, ordinances, resolutions, or regulations, that shall be adopted or enacted under this chapter, the municipal home rule law, or any general, special or other law pertaining to land use, and shall include but not be limited to a locality's:

a. written or other comprehensive plan or plans;

b. zoning ordinance, local laws, resolutions, or regulations;

c. special use permit, special exception permit, or special permit ordinance, local laws, resolutions, or regulations;

d. subdivision ordinance, local laws, resolutions, or regulations;

e. site plan review ordinance, local laws, resolutions, or regulations; and

f. policies or procedures, or any planning, zoning, or other regulatory tool that controls or establishes standards for the use and occupancy of land, the area and dimensional requirements for the development of land, or the intensity of such development.

9. "Lead agency equivalent" shall be defined as any legislative body of a locality, planning board, zoning board of appeals, planning division, planning commission, board of standards and appeals, board of zoning appeals, or any official or employee, or any other agency, department, board or other entity related to a locality with the authority to approve or disapprove of any specific project or amendment to any land use requirements as defined in this article.

10. "Locality" shall refer to all cities, towns, or villages that regulate land use pursuant to the general city law, the town law, the village law, or other state law, as applicable. Provided further that in a city with a population of one million or more, "locality" shall refer to a community district as defined by chapter sixty-nine of the charter of the city of New York. Provided further that "locality" shall

refer to any city, town, or village within a county, where such county regulates or otherwise has approval authority over land use requirements.

11. "Metropolitan transportation commuter district" shall refer to the counties of the Bronx, Kings (Brooklyn), New York, Richmond (Staten Island), Queens, Westchester, Orange, Putnam, Dutchess, Rockland, Nassau, and Suffolk.

12. "Objective standards" shall be defined as standards that involve no personal or subjective judgment by a public official or employee and are uniformly verifiable by reference to a publicly available and uniform benchmark or criterion available and knowable by both the development applicant and the public official or employee before submittal of a residential land use application.

13. "Previously disturbed land" shall mean a parcel or lot of land that was occupied or formerly occupied by a building or otherwise improved or utilized that is not located in a 100-year floodplain or was not being used for commercial agricultural purposes as of the effective date of this article.

14. "Qualifying project" shall refer to an application that is for at least ten dwelling units in localities not located in the metropolitan transportation commuter district or at least twenty dwelling units in localities located in the metropolitan transportation commuter district and at least twenty percent of the dwelling units are affordable housing units restricted to households at or below fifty percent of the area median income or supportive dwelling units, or at least twenty-five percent of the dwelling units are affordable housing units restricted to households at or below eighty percent of the area median income or supportive dwelling units.

15. "Residential dwelling unit" shall mean any building or structure or portion thereof which is legally occupied in whole or in part as the home, residence or sleeping place of one or more human beings, however the term does not include any class B multiple dwellings as defined in section four of the multiple dwelling law or housing that is intended to be used on a seasonal basis.

16. "Safe harbor" shall mean that a locality's denials of applications are not subject to appeal pursuant to section one thousand four, one thousand five or one thousand six of this article for a three-year cycle as set forth in section one thousand three of this article.

17. "Supportive housing" shall mean residential dwelling units with supportive services for tenants.

18. "Three-year cycle" shall mean a term of three calendar years with the first cycle beginning on January first, two thousand twenty-four, and each cycle commencing three calendar years thereafter.

§ 1002. Applicability. This article shall apply to all localities as defined in subdivision ten of section one thousand one of this article.

§ 1003. Safe harbor. 1. Determinations. a. The division, using the information submitted pursuant to this section, may make and publish a determination as to whether a locality is in safe harbor as a result of such locality achieving its growth targets, as defined in subdivision three of this section. Such determination may only be reviewed by a court or the housing review board as part of an appeal of a denial of a specific qualifying project.

b. Safe harbor, as defined in section one thousand one of this article, shall be granted to localities based upon a three-year cycle with the first cycle beginning on January first, two thousand twenty-four, provided further that all localities shall be deemed in safe harbor for the duration of the first cycle beginning on January first, two thousand twenty-four and terminating after December thirty-first, two thousand twenty-six.

(i) A locality shall be deemed to be in safe harbor if such locality satisfactorily enacts at least two preferred actions, as set forth in subdivision four of this section. Except as otherwise set forth in this article, any determination issued by the division that a locality is in safe harbor based on the enactment of preferred actions, as set forth in subdivision four of this section, shall be in effect from the effective date of such determination through the end of the three-year cycle that is current on the date on which such determination is issued, provided further, however, that any determination as to whether safe harbor should apply based on the locality's enactment of such preferred actions shall be based on such preferred actions enacted during the three-year cycle immediately preceding the three-year cycle in which the determination was issued. In the event that a locality rescinds any such preferred action that contributed to a locality being determined to be in safe harbor within ten years of such preferred action's enactment, such locality shall be ineligible for safe harbor for ten years, starting on the date such locality was initially deemed to be in safe harbor as a result of such rescinded preferred action.

(ii) A locality shall be deemed to be in safe harbor if such locality met or exceeded their growth targets as set forth in subdivision three of this section. Except as otherwise set forth in this article, any determination issued by the division that a locality is in safe harbor based on the locality meeting or

exceeding their growth targets set forth in subdivision three of this section shall be in effect from the effective date of such determination through the end of the three-year cycle that was current at the time such determination was issued by the division; provided further, however, that any determination as to whether safe harbor should apply shall be based on the locality meeting or exceeding their growth targets in the three-year cycle immediately preceding the three-year cycle in which the determination was issued.

(iii) A locality shall be determined to be in safe harbor for the three-year cycle beginning on January first, two thousand twenty-seven, and ending on December thirty-first, two thousand twenty-nine, if, from a period beginning on January first, two thousand twenty-one, and ending on December thirty-first, two thousand twenty-three, such locality met or exceeded their growth targets as set forth in subdivision three of this section.

2. Local reporting requirements. Each locality subject to this article shall submit housing production information to the division. Such information shall be submitted pursuant to the deadlines set forth by section twenty-a of the public housing law and shall contain the information prescribed in such section. Notwithstanding any other provision of this section, any failure of a locality to provide such information pursuant to this subdivision to the division shall result in the locality being deemed ineligible for safe harbor until such time as the information is properly submitted.

3. Growth targets. a. A locality may be determined to be in safe harbor for a three-year cycle, if, in the previous three-year cycle, a locality located outside of the metropolitan transportation commuter district permitted the construction of new eligible residential dwelling units in an amount equal to one percent of the amount of residential housing units existing in the locality as reported in the most recently published United States decennial census.

b. A locality may be determined to be in safe harbor for a three-year cycle, if, in the previous three-year cycle, a locality located inside of the metropolitan transportation commuter district permitted the construction of new eligible residential dwelling units in an amount equal to three percent of the amount of residential housing units existing in the locality as reported in the most recently published United States decennial census.

c. Subject to paragraph d of this subdivision, the number of eligible residential dwelling units shall be calculated using the following formula:

(i) a permitted new residential dwelling unit shall be counted as one eligible residential dwelling unit, provided that a permitted new residential dwelling unit that is income restricted to households earning no more than an amount that is determined pursuant to a regulatory agreement with a federal, state, or local governmental entity shall be counted as two eligible residential dwelling units; and

(ii) every permitted residential dwelling unit that became suitable for occupancy and that previously had been deemed abandoned pursuant to article nineteen-A of the real property actions and proceedings law shall be counted as one and one-half eligible residential dwelling units.

For the purposes of this subdivision, a project shall be considered to be permitted if it has received all necessary local authorizations required prior to requesting a building permit.

d. The following permitted residential dwelling units shall not be counted as eligible residential dwelling units:

(i) any permitted residential dwelling unit where more than twelve months have passed between the authorization granting permission and the commencement of construction; and

(ii) any permitted residential dwelling unit where more than twenty-four months have passed between the authorization granting permission and the issuance of a certificate of occupancy or temporary certificate of occupancy.

e. In the event a permitted residential dwelling unit is not counted as an eligible residential unit pursuant to paragraph d of this subdivision, such residential dwelling unit may be counted as an eligible residential dwelling unit when the certificate of occupancy or temporary certificate of occupancy is issued for such residential dwelling unit. Provided, further, that in no event shall an eligible residential dwelling unit be counted towards a locality's growth target in more than one three-year cycle.

4. Preferred actions. a. Accessory dwelling units. It shall be considered to be a preferred action pursuant to this section if a locality enacts by local law the provisions of this paragraph. For any locality within a city with a population of one million or more, it shall be considered to be such a preferred action if such city enacts by local law the provisions of this paragraph throughout such locality. For any locality located within a county wherein such county is empowered to approve or amend some or all of the land use requirements applicable within

the locality, to the extent the county is so empowered, it shall be considered such a preferred action if such county enacts by local law the provisions of this paragraph to be in effect throughout such locality.

(i) Definitions. For the purposes of this paragraph:

A. "Local government" shall mean a county, city, town or village.

B. "Nonconforming zoning condition" shall mean a physical improvement on a property that does not conform with current zoning standards.

C. "Proposed dwelling" shall mean a dwelling that is the subject of a permit application and that meets the requirements for permitting.

(ii) A local government shall, by local law, provide for the creation of accessory dwelling units. Such local law shall:

A. designate areas within the jurisdiction of the local government where accessory dwelling units shall be permitted. Designated areas shall include all areas that permit single-family or multi-family residential use, and all lots with an existing residential use;

B. authorize the creation of at least one accessory dwelling unit per lot;

C. provide reasonable standards for accessory dwelling units that may include, but are not limited to, height, landscape, architectural review and maximum size of a unit. In no case shall such standards unreasonably restrict the creation of accessory dwelling units; and

D. require accessory dwelling units to comply with the following:

(1) such accessory dwelling unit may be rented separate from the primary residential dwelling unit, but shall not be sold or otherwise conveyed separate from the primary residential dwelling unit;

(2) such accessory dwelling unit shall be located on a lot that includes a proposed dwelling or existing residential dwelling unit;

(3) such accessory dwelling unit shall not be rented for a term of less than thirty days; and

(4) if there is an existing primary residential dwelling unit, the total floor area of an accessory dwelling unit shall not exceed fifty percent of the existing

primary residential dwelling unit, unless such limit would prevent the creation of an accessory dwelling unit that is no greater than six hundred square feet.

(iii) A local government shall not establish by local law any of the following:

A. in a local government having a population of one million or more, a minimum square footage requirement for an accessory dwelling unit greater than two hundred square feet, or in a local government having a population of less than one million, a minimum square footage requirement for an accessory dwelling unit that is greater than five hundred fifty square feet;

B. a maximum square footage requirement for an accessory dwelling unit that is less than fifteen hundred square feet;

C. any other minimum or maximum size for or other limits on an accessory dwelling unit that does not permit at least an eight hundred square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with other local standards, including any such minimum or maximum size based upon a percentage of the proposed dwelling or existing primary residential dwelling unit, or any such other limits on lot coverage, floor area ratio, open space, and minimum lot size. Notwithstanding any other provision of this section, a local government may provide, where a lot contains an existing residential dwelling unit, that an accessory dwelling unit located within and/or attached to the primary residential dwelling unit shall not exceed the buildable envelope for the existing residential dwelling unit, and that an accessory dwelling unit that is detached from an existing residential dwelling unit shall be constructed in the same location and to the same dimensions as an existing structure, if such structure exists;

D. a ceiling height requirement greater than seven feet, unless the local government can demonstrate that such a requirement is necessary for the preservation of health and safety;

E. any requirement that a pathway exist or be constructed in conjunction with the creation of an accessory dwelling unit, unless the local government can demonstrate that such requirement is necessary for the preservation of health and safety;

F. any setback for an existing residential dwelling unit or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, or any setback of more than four feet from the side

and rear lot lines for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure; or

G. any health or safety requirements on accessory dwelling units that are not necessary to protect health and safety. Nothing in this provision shall be construed to prevent a local government from requiring that accessory dwelling units are, where applicable, supported by septic capacity necessary to meet state health, safety and sanitary standards, that the creation of such accessory dwelling units comports with flood resiliency policies or efforts, and that such accessory dwelling units are consistent with the protection of wetlands and watersheds.

(iv) No parking requirement shall be imposed on an accessory dwelling unit; provided, however, that where no adjacent public street permits year-round on-street parking and the accessory dwelling unit is greater than one-half mile from access to public transportation, a local government may require up to one off-street parking space per accessory unit.

(v) A local government shall not require that off-street parking spaces be replaced if a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit.

(vi) Notwithstanding any local law, ordinance, resolution, or regulations, a permit application to create an accessory dwelling unit in conformance with a local law adopted pursuant to this paragraph shall be considered ministerially, without discretionary review or a hearing. If there is an existing single-family or multi-family residential dwelling unit on the lot, the permitting local government shall act on the application to create an accessory dwelling unit within ninety days from the date the local agency receives a completed application or, in a local government having a population of one million or more, within sixty days. If the permit application to create an accessory dwelling unit is submitted with a permit application to create a new primary residential dwelling unit on the lot, the permitting local government may delay acting on the permit application for the accessory dwelling unit until the permitting local government acts on the permit application to create the new primary residential dwelling unit, but the application to create the accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the time period for review shall be tolled for the period of the delay. Such review shall include all necessary permits and approvals including, without limitation, those related to health and safety. A local government shall not require an additional or amended

certificate of occupancy in connection with an accessory dwelling unit. A local government may charge a fee not to exceed one thousand dollars per application for the reimbursement of the actual costs such local agency incurs pursuant to the local law enacted pursuant to this paragraph.

(vii) Local governments shall establish an administrative appeal process to a local agency for applications to create accessory dwelling units. The jurisdiction of the local agency to decide such appeals shall be limited to reviewing any order, requirement, decision, interpretation, or determination issued under the local law adopted pursuant to this paragraph and deciding the matter from which any such appeal was taken. When a permit to create an accessory dwelling unit pursuant to a local law adopted pursuant to this paragraph is denied, the local agency that denied the permit shall issue a notice of denial which shall contain the reason or reasons such permit application was denied and instructions on how the applicant may appeal such denial. Such notice shall be made part of the record of appeals. All appeals shall be submitted to the local agency authorized by the governing body of the local government to decide such appeals, in writing within thirty days of any order, requirement, decision, interpretation, or determination related to the creation of accessory dwelling units.

(viii) No other local law, ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this paragraph except to the extent necessary to protect health and safety and provided such law, policy, or regulation is consistent with the requirements of this paragraph.

(ix) A local government shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit, the correction of nonconforming zoning conditions, noncomplying zoning conditions, or other minor violations of any local law.

(x) Where an accessory dwelling unit requires a new or separate utility connection directly between the accessory dwelling unit and the utility, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures upon the water or sewer system. Such fee or charge shall not exceed the reasonable cost of providing such utility connection. A local government shall not impose any other fee in connection with an accessory dwelling unit.

(xi) A property owner who is denied a permit by a local government in violation of this paragraph shall have a private cause of action in a court of competent jurisdiction.

(xii) Any amendment undertaken pursuant to this paragraph shall be exempt from any environmental review requirements pursuant to article eight of the environmental conservation law and any rules and regulations promulgated pursuant thereto, and any substantially equivalent local law, regulation or rule to article eight of the environmental conservation law, including, but not limited to, in a city with a population greater than one million people, city environmental quality review.

b. Lot splits. It shall be considered to be a preferred action pursuant to this section if a locality enacts by local law the provisions of this paragraph. For any locality within a city with a population of one million or more, it shall be a considered to be such a preferred action if such city enacts by local law the provisions of this paragraph throughout such locality. For any locality located within a county wherein such county is empowered to approve or amend some or all of the land use requirements applicable within the locality, to the extent the county is so empowered, it shall be considered such a preferred action if such county enacts by local law the provisions of this paragraph to be in effect throughout such locality.

(i) Notwithstanding any other provision of state or local law, rule or regulation, a lead agency equivalent shall ministerially approve, as set forth by the local law adopted to establish a preferred action in accordance with this paragraph, a lot to be split if the lead agency equivalent determines that the lot meets all of the following requirements:

A. the lot to be split creates no more than two new lots of approximately equal lot area, provided that one lot shall not be smaller than forty percent of the lot area of the original lot proposed for the subdivision;

B. the lot to be split is located in an area where single-family residential use is permitted;

C. the lot was not created from a previous lot split permitted pursuant to the local law that was enacted pursuant to this paragraph; and

D. the proposed lot split would not require demolition or alteration of any of the following types of housing:

(1) housing that is subject to a recorded covenant, ordinance, law or regulatory agreement that restricts rents to levels affordable to persons and families of a set income;

(2) housing that is subject to the emergency rent stabilization law or the emergency tenant protection act; or

(3) housing that is listed on the state registry of historic places or had an application pending to be listed on such registry as of the effective date of this article.

(ii) An application for a lot split shall be approved in accordance with the following requirements:

A. A lead agency equivalent shall approve or deny an application for a lot split ministerially without discretionary review.

B. A lead agency equivalent shall not require dedications of rights-of-way or the construction of offsite improvements for the lots being created as a condition of approving a lot split pursuant to a local law adopted pursuant to this paragraph.

C. A lead agency equivalent shall not impose land use standards, zoning standards, subdivision standards, design review standards, or other development standards that would have the effect of physically precluding the construction of two units, one on each of the resulting lots, or that would result in a unit size of less than eight hundred square feet, provided further that no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.

D. Notwithstanding clause C of this subparagraph, a lead agency equivalent may require a setback of up to four feet from the side and rear lot lines.

(iii) A lead agency equivalent may deny a lot split if the lead agency equivalent makes a written finding, based upon a preponderance of the evidence, that a proposed residential dwelling unit on one of the new lots would have a specific, adverse impact upon public health or safety for which there is no feasible method to satisfactorily mitigate the specific adverse impact.

(iv) A lead agency equivalent may require any of the following conditions when considering an application to undertake a lot split:

A. easements required for the provision of public services and facilities;

B. a requirement that the lots have access to, provide access to, or adjoin the public right-of-way; and

C. off-street parking of up to one space per residential dwelling unit, except that a lead agency equivalent shall not impose parking requirements in either of the following instances:

(1) where year-round parking is permitted on an adjacent street; or

(2) where the split lot is within one-half mile of access to public transportation.

(v) A lead agency equivalent shall not impose owner occupancy requirements on a lot split authorized pursuant to a local law adopted pursuant to this paragraph.

(vi) A lead agency equivalent shall require that a rental of any unit created pursuant to a local law adopted pursuant to this paragraph be for a term longer than thirty days.

(vii) A lead agency equivalent shall not require, as a condition for ministerial approval of a lot split pursuant to a local law adopted pursuant to this paragraph, correction of nonconforming or noncomplying zoning conditions.

(viii) A request for a lot split pursuant to a local law adopted pursuant to this paragraph shall not be denied solely because it proposed adjacent or connected structures, provided that the structures meet building code safety standards and are sufficient to allow separate conveyance.

(ix) Any amendment undertaken pursuant to this paragraph shall be exempt from any environmental review requirements pursuant to article eight of the environmental conservation law and any rules and regulations promulgated pursuant thereto, and any substantially equivalent local law, regulation or rule to article eight of the environmental conservation law, including, but not limited to, in a city with a population of one million or more, city environmental quality review.

c. Remove exclusionary measures. It shall be considered to be a preferred action pursuant to this section if a locality enacts by local law the provisions of this paragraph. For any locality within a city with a population of one million or more, it shall be considered to be such a preferred action if such city enacts by

local law the provisions of this paragraph throughout such locality. For any locality located within a county wherein such county is empowered to approve or amend some or all of the land use requirements applicable within the locality, to the extent the county is so empowered, it shall be considered such a preferred action if such county enacts by local law the provisions of this paragraph to be in effect throughout such locality.

(i) No locality shall, as part of its land use laws, ordinances, rules or regulations, including, but not limited to, zoning laws, ordinances, rules or regulations, site plan review laws, ordinances, rules or regulations, subdivision laws, rules or regulations, or comprehensive planning laws, rules or regulations, impose:

A. minimum lot size requirements for mixed-use or residential uses;

B. height limits that preclude or unduly restrict the ability to build residential accommodations, including multi-family residential buildings;

C. lot coverage restrictions that preclude or unduly restrict the ability to build residential accommodations, including multi-family residential buildings; or

D. parking minimums on any site that exceed one parking space per residential dwelling unit, provided, further, that no parking minimums may be imposed for any site that includes residential dwelling units when such site is located within one-half mile from access to public transportation.

(ii) Any amendment undertaken pursuant to this paragraph shall be exempt from any environmental review requirements pursuant to article eight of the environmental conservation law and any rules and regulations promulgated pursuant thereto, and any substantially equivalent local law, regulation or rule to article eight of the environmental conservation law, including, but not limited to, in a city with a population of one million or more, city environmental quality review.

d. Smart growth rezonings. It shall be considered to be a preferred action pursuant to this section if a locality enacts by local law the provisions of this paragraph. Such preferred action shall be designed and implemented in such a manner that it complies with federal and state fair housing laws, including the requirement to affirmatively further fair housing, which shall include compliance with the requirements set forth in subdivision three of section six hundred of the public housing law. For any locality within a city with a population of one million or more, it shall be considered to be such a preferred

action if such city enacts by local law the provisions of this paragraph throughout such locality. For any locality located within a county wherein such county is empowered to approve or amend some or all of the land use requirements applicable within the locality, to the extent the county is so empowered, it shall be considered such a preferred action if such county enacts by local law the provisions of this paragraph to be in effect throughout such locality.

(i) A lead agency equivalent shall undertake a land use action to amend its land use requirements, as applicable, to permit the construction of residential housing with an aggregate density of at least twenty-five residential dwelling units per acre over an area or areas consisting solely of previously disturbed land that, in the aggregate, are equal to one-third of the previously disturbed land mass of the locality.

(ii) Such land use action shall not include any measure that makes the development of residential housing economically infeasible, including, but not limited to, unduly restrictive height limits, excessive yard or open space requirements, the imposition of minimum or maximum residential dwelling unit size limits, or restrictions on the total number of permitted residential dwelling units within a residential housing project based on lot size or other criteria other than the aggregate density.

(iii) Such land use action shall permit commercial uses on a reasonable percentage of the lots impacted by the amendment with the goal of granting residents access to amenities, goods, and services within walking distance of their residences.

(iv) Any amendment undertaken pursuant to this paragraph shall be exempt from any environmental review requirements pursuant to article eight of the environmental conservation law and any rules and regulations promulgated pursuant thereto, and any substantially equivalent local law, regulation or rule to article eight of the environmental conservation law, including, but not limited to, in a city with a population greater than one million people, city environmental quality review.

(v) Any proposed project that provides residential housing and complies with a locality's land use requirements, after such land use requirements have been amended pursuant to this paragraph, shall be exempt from review requirements pursuant to article eight of the environmental conservation law and any rules and regulations promulgated thereto, and any substantially equivalent local law, regulation or rule to article eight of the environmental conservation law,

including, but not limited to, in a city with a population greater than one million people, city environmental quality review.

(vi) Project specific review of any project that provides residential housing and complies with a locality's land use requirements, after such requirements have been amended pursuant to this paragraph, shall:

A. be completed with written approval or denial being delivered to the applying party within one hundred twenty days of the application being submitted; and

B. be limited to a review of the following:

(1) the capacity of local infrastructure to provide adequate drinking water and wastewater services to the proposed project;

(2) the capacity of local infrastructure to provide adequate utility services to the proposed project; and

(3) the aesthetics of the proposed project, provided that any aesthetic review must be based on published objective standards. If no objective standards are published, no project specific review may consider aesthetics. Provided further that no aesthetic requirements may increase the cost of a project to make such project as proposed economically infeasible.

C. Unless specifically set forth by this paragraph, nothing set forth in this subparagraph shall be interpreted to override or otherwise waive any permitting required pursuant to state or federal laws or regulations.

e. Adaptive reuse rezonings. It shall be considered to be a preferred action pursuant to this section if a locality enacts by local law the provisions of this paragraph. Such preferred action shall be designed and implemented in such a manner that it complies with federal and state fair housing laws, including the requirement to affirmatively further fair housing, which shall include compliance with the requirements set forth in subdivision three of section six hundred of the public housing law. For any locality within a city with a population greater than one million people, it shall be considered to be such a preferred action if such city enacts by local law the provisions of this paragraph throughout such locality. For any locality located within a county wherein such county is empowered to approve or amend some or all of the land use requirements applicable within the locality, to the extent the county is so empowered, it shall be considered such a preferred action if such county

enacts by local law the provisions of this paragraph to be in effect throughout such locality.

(i) A lead agency equivalent shall undertake a land use action to amend its land use requirements to permit the construction and occupancy of residential housing with an aggregate density of at least twenty-five residential dwelling units per acre in an area that, prior to such amendment, permitted only commercial use.

A. Such land use action must encompass an area of at least one hundred acres.

B. Such land use action shall not include any measure that makes the development of residential housing economically infeasible, including, but not limited to, unduly restrictive height limits, excessive yard or open space requirements, the imposition of minimum or maximum unit size limits, or restrictions on the total number of permitted residential dwelling units within a residential housing project based on lot size or other criteria other than the aggregate density.

C. Such land use action shall permit commercial uses on a reasonable percentage of the lots impacted by the amendment with the goal of granting residents access to amenities, goods, and services within walking distance of their residences.

(ii) Any amendment undertaken pursuant to this paragraph shall be exempt from any environmental review requirements pursuant to article eight of the environmental conservation law and any rules and regulations promulgated pursuant thereto, and any substantially equivalent local law, regulation or rule to article eight of the environmental conservation law, including, but not limited to, in a city with a population greater than one million people, city environmental quality review.

(iii) Any proposed project that provides residential housing and complies with land use requirements, after such land use requirements have been amended pursuant to this paragraph, shall be exempt from review requirements pursuant to article eight of the environmental conservation law and any rules and regulations promulgated pursuant thereto, and any substantially equivalent local law, regulation or rule to article eight of the environmental conservation law, including, but not limited to, in a city with a population greater than one million people, city environmental quality review.

(iv) Any project that provides residential housing and complies with applicable land use requirements, after such land use requirements have been amended pursuant to this paragraph, shall be buildable as of right, and any project specific review relating to such project shall:

A. be completed with written approval or denial being delivered to the applying party within one hundred twenty days of the application being submitted; and

B. be limited to a review of the following:

(1) the capacity of local infrastructure to provide adequate drinking water and wastewater services to the proposed project;

(2) the capacity of local infrastructure to provide adequate utility services to the proposed project; and

(3) the aesthetics of the proposed project, provided that any aesthetic review must be based on published objective standards. If no objective standards are published, no project specific review may consider aesthetics. Provided further that no aesthetic requirements may increase the cost of a project to make such project as proposed economically infeasible.

C. unless specifically set forth by this paragraph, nothing set forth in this subparagraph shall be interpreted to override or otherwise waive any permitting required pursuant to state or federal laws or regulations.

§ 1004. Local procedures outside of safe harbor/general appeal process. Effective January first, two thousand twenty-seven, when a locality is not in safe harbor:

1. An applicant may propose a qualifying project to a lead agency equivalent, regardless of whether the qualifying project complies with the land use requirements applicable to the site where the qualifying project is proposed. No lead agency equivalent may reject a proposed qualifying project due to such project failing to comply with the land use requirements on the site where the qualifying project is proposed, unless such qualifying project is not located on previously disturbed land.

2. The lead agency equivalent must approve or deny the application for the qualifying project within one hundred twenty days if the proposed qualifying project contains at least ten residential dwelling units but less than one hundred

residential dwelling units, and within one hundred eighty days if the proposed qualifying project contains one hundred or more residential dwelling units. Failure to approve or deny an application within the time periods specified in this subdivision shall be deemed to be a constructive denial, provided further that the imposition of conditions on the project by the lead agency equivalent that render the project economically infeasible shall be deemed to be a constructive denial, and subject to appeal pursuant to this section, section one thousand five or section one thousand six of this article.

3. Any project specific review related to a proposed qualifying project shall be exempt from review requirements pursuant to article eight of the environmental conservation law and any rules and regulations promulgated pursuant thereto, and any substantially equivalent local law, regulation or rule to article eight of the environmental conservation law, including, but not limited to, in a city with a population of one million or more, city environmental quality review, and shall be limited to a review of the following:

a. The capacity of local infrastructure to provide adequate drinking water and wastewater services to the proposed project;

b. The capacity of local infrastructure to provide adequate utility services to the proposed project; and

c. The aesthetics of the proposed project, provided that any aesthetic review must be based on published objective standards. If no objective standards are published, no project specific review may consider aesthetics. Provided further that no aesthetic requirements may increase the cost of a project to make such project as proposed economically infeasible.

Nothing set forth in this subdivision shall be interpreted to override or otherwise waive any permitting required pursuant to state or federal laws or regulations, unless specifically set forth in this article.

4. Any denial of an application must be accompanied by the specific reasons for the denial set forth in writing.

5. When an applicant is denied permission to proceed with a qualifying project, the applicant may file an appeal of the denial pursuant to section one thousand five or one thousand six of this article within sixty days of the denial. An applicant may only file one such appeal per qualifying project and may only file either pursuant to section one thousand five or one thousand six.

§ 1005. Housing review board. 1. Structure and powers of the housing review board.

a. There is hereby established, within the division, a housing review board, to effectuate the provisions of this article.

b. The housing review board shall consist of five members. Three members shall be appointed by the governor, one member shall be appointed by the speaker of the assembly, and one member shall be appointed by the temporary president of the senate. The board members shall serve five year terms, and shall only be relieved for cause. Any vacancies on the board shall be filled within a reasonable time period by the official who appointed the board member whose absence has caused the vacancy.

c. The housing review board shall have the power and duties to conduct hearings, take oaths, issue orders, and otherwise perform any function necessary to operate in conformity with the provisions of this article. The powers of the housing review board shall include, but not be limited to, the powers granted to the commissioner of housing by subdivision one of section fourteen of the public housing law, and the statutes, rules, regulations and other documents governing the administration of housing by the division of homes and community renewal.

d. The division shall provide any administrative and staff support, including, but not limited to, administrative law judges, to the housing review board necessary for the effective implementation of the provisions of this article.

e. If the division determines that a locality does or does not qualify for safe harbor, the housing review board, or any court hearing an appeal related to such locality shall take judicial notice of the division's determination. If the division has not issued a determination as to whether a locality is in safe harbor based on the three-year cycle that was completed immediately prior to the applicable three-year cycle, and such a determination is necessary to adjudicate an appeal before the housing review board or a court, such housing review board or court may make such a determination that applies only to the application pending before the housing review board or the court, provided further, however, that if the housing review board or a court makes a determination that a locality is in safe harbor as a result of the locality enacting preferred actions pursuant to subdivision four of section one thousand three of this article, such determination shall be applied to future proceedings pursuant to this section and section one thousand six of this article for the remainder of the three-year cycle for which such determination was made. The division, at its discretion, may take

notice of such determination and the facts underlying such determination, and issue its own determination as to the application of safe harbor that would be applied to all further appeals relating to such locality for the duration that safe harbor applies.

2. Appeals before the housing review board. a. Beginning on January first, two thousand twenty-seven, any applicant whose application relating to a qualifying project is denied by a lead agency equivalent may appeal such denial to the housing review board within sixty days of the issuance of the denial.

b. If an appeal is brought before the housing review board and the division has already determined that the locality at issue is in safe harbor for the applicable three-year cycle, then the appeal shall be denied and the determination by the lead agency equivalent shall be maintained. If no determination has been made as to whether the locality is in safe harbor, the housing review board shall determine as a threshold issue whether such locality is in safe harbor.

c. If a locality is found to not be in safe harbor, the housing review board shall issue a determination as to whether the lead agency equivalent properly denied the application at issue in the appeal pursuant to the requirements set forth in section one thousand four of this article.

d. In issuing a determination, the housing review board may:

(i) remand the proceeding to the lead agency equivalent and direct such lead agency equivalent to issue a comprehensive permit or approval to the applicant;

(ii) deny the appeal and uphold the lead agency equivalent's denial of the application; or

(iii) remand the proceeding to the lead agency equivalent and direct such lead agency equivalent to consider the application as amended to address any legitimate concerns raised by the lead agency equivalent. The housing review board may require that the lead agency equivalent consider any such amended application on an expedited basis.

e. In considering the denial of an application, the housing review board may only consider the reasons for the denial given by the lead agency equivalent at the time the application was denied.

f. Once a determination has been issued by the housing review board, such determination may be appealed within sixty days to an administrative law judge

designated to hear such matters. Any determination issued by an administrative law judge shall be considered to be a final agency determination and may be appealed pursuant to article seventy-eight of the civil practice law and rules.

3. Burden of proof before the housing review board. a. (i) During a proceeding before the housing review board, the locality which denied the permit for the qualifying project shall initially carry the burden of proof to demonstrate, based upon clear and convincing evidence, that the permit was properly denied pursuant to one or more of the reasons set forth in subdivision three of section one thousand four of this article, that the locality is in safe harbor, or that the project at issue is not a qualifying project.

(ii) Notwithstanding any other provision in this article, a locality that is not in safe harbor may raise as an affirmative defense that the amount of eligible residential dwelling units, as weighted pursuant to subdivision three of section one thousand three of this article, constructed in the three-year cycle during which the appeal was filed, combined with the amount of eligible residential dwelling units constructed in the three-year cycle immediately preceding the cycle in which the appeal was filed, constitute an amount of eligible residential dwelling units to qualify the locality for safe harbor for the three-year cycle in which the appeal was filed. Provided, further that eligible residential dwelling units shall only be credited for one three-year cycle, regardless of when such dwelling units were permitted or built. Such defense must be demonstrated by clear and convincing evidence, and must be substantiated by documentation such as temporary or final certificates of occupancy for the housing. If the locality meets the burden set forth in this paragraph, unless the applicant successfully rebuts the evidence or reasons for rejection provided by the locality pursuant to paragraph b of this subdivision, such locality shall be deemed to be in safe harbor for the remainder of the three-year cycle in effect at the time the appeal was filed, effective the date such determination is made.

b. If the locality meets the burden set forth in paragraph a of this subdivision, the applicant shall be given an opportunity to rebut the evidence and reasons for rejection provided by the locality.

c. If the division issues a determination as to whether a locality is in safe harbor, the housing review board and administrative law judges shall take notice of such determination. If no such determination has been issued by the division, except as provided in paragraph e of subdivision one of this section, the housing review board and administrative law judges may make a determination as to whether a locality is in safe harbor, based on the three-year cycle that was completed immediately prior to the applicable three-year cycle, solely for the

purposes of issuing a determination regarding the application that is the subject of the appeal being considered.

4. Costs shall not be allowed against the local government and the officer or officers whose failure or refusal gave rise to the special proceeding, unless it shall appear to the court that the local government and its officers acted with gross negligence or in bad faith or with malice.

§ 1006. Land use appeals before the supreme court. 1. Judges of the supreme court that are specially designated as land use judges by the chief administrator of the courts shall hear land use appeals. Such judges shall be selected from a list of qualified candidates as created by the land use advisory council. Only such land use judges shall be empowered to adjudicate land use appeals pursuant to this section arising anywhere in the State of New York, regardless of what county the judge serves in over the course of their normal duties.

2. There shall be established a land use advisory council. a. The land use advisory council shall be composed of five members. Three members shall be appointed by the governor, one member shall be appointed by the speaker of the assembly, and one member shall be appointed by the temporary president of the senate. The members shall serve five year terms, and shall only be relieved for cause. Any vacancies on the council shall be filled within a reasonable time period by the official who appointed the member whose absence has caused the vacancy.

b. The land use advisory council shall meet at least four times a year, and on such additional occasions as they may require or as may be required by the administrative judge. Members shall receive no compensation.

c. The land use advisory council shall publish a list of supreme court judges qualified to hear land use appeals based on training, experience and judicial temperament.

3. Appeals before a land use judge. a. Beginning on January first, two thousand twenty-seven, any applicant whose application related to a qualifying project is denied by a lead agency equivalent may appeal such denial before a land use judge designated pursuant to this section in supreme court. The applicant shall choose the forum in which to file the appeal.

b. If an appeal is brought before such land use judge and the division has already determined that the locality at issue is in safe harbor for the applicable three-year cycle, then the appeal shall be denied and the determination by the

lead agency equivalent shall be maintained. If no determination has been made as to whether the locality is in safe harbor, such land use judge shall determine as a threshold issue whether such locality is in safe harbor based on the three-year cycle that was completed immediately prior to the applicable three-year cycle.

c. If a locality is found to not be in safe harbor, such land use judge shall issue a determination as to whether the lead agency equivalent properly denied the application at issue in the appeal pursuant to the requirements set forth in section one thousand four of this article.

d. In issuing a determination, such land use judge may:

(i) remand the proceeding to the lead agency equivalent and direct such lead agency equivalent to issue a comprehensive permit or approval to the applicant;

(ii) deny the appeal and uphold the lead agency equivalent's denial of the application; or

(iii) remand the proceeding to the lead agency equivalent and direct such lead agency equivalent to consider the application as amended to address any legitimate concerns raised by the lead agency equivalent. Such land use judge may require that the lead agency equivalent consider any such amended application on an expedited basis.

e. In considering the denial of an application, such land use judge may only consider the reasons for the denial given by the lead agency equivalent at the time the application was denied.

4. Burden of proof before a court. a. (i) During a proceeding before a land use judge designated pursuant to this section, the locality which denied the permit for the qualifying project shall initially carry the burden of proof to demonstrate, based upon clear and convincing evidence, that the permits were properly denied pursuant to one or more of the reasons set forth in subdivision three of section one thousand four of this article, that the locality is in safe harbor, or that the project at issue is not a qualifying project.

(ii) Notwithstanding any other provision in this article, a locality that is not in safe harbor may raise as an affirmative defense that the amount of eligible residential dwelling units, as weighted pursuant to subdivision three of section one thousand three of this article, constructed in the three-year cycle during which the appeal was filed, combined with the amount of eligible residential

dwelling units constructed in the three-year cycle immediately preceding the cycle in which the appeal was filed, constitute an amount of eligible residential dwelling units needed to qualify the locality for safe harbor for the three-year cycle in which the appeal was filed. Provided, further, that eligible residential dwelling units shall only be credited for one three-year cycle, regardless of when such dwelling units were permitted or built. Such defense must be demonstrated by clear and convincing evidence, and must be substantiated by documentation such as temporary or final certificates of occupancy for the housing. If the locality meets the burden set forth in this paragraph, unless the applicant successfully rebuts the evidence or reasons for rejection provided by the locality pursuant to paragraph b of this subdivision, such locality shall be deemed to be in safe harbor for the remainder of the three-year cycle in effect at the time the appeal was filed, effective the date such determination is made.

b. If the locality meets the burden set forth in paragraph a of this subdivision, the applicant shall be given an opportunity to rebut the evidence and reasons for rejection provided by the locality.

c. If the division issues a determination as to whether a locality is in safe harbor, such land use judge shall take notice of such determination. If no such determination has been issued by the division, except as provided in paragraph e of subdivision one of section one thousand five of this article, such land use judge may make a determination as to whether a locality is in safe harbor, based on the three-year cycle that was completed immediately prior to the applicable three-year cycle, solely for the purposes of issuing a determination regarding the application that is the subject of the appeal being considered.

5. Any final order issued by a land use judge designated pursuant to this section shall be appealed in a manner consistent with the civil practice law and rules.

6. The chief administrator of the court shall promulgate rules and regulations to carry out the mandate of this section.

7. Costs shall not be allowed against the local government and the officer or officers whose failure or refusal gave rise to the special proceeding, unless it shall appear to the court that the local government and its officers acted with gross negligence or in bad faith or with malice.

8. Employees and agents of localities may only be sued in their official capacity for non-compliance with this article.

§ 3. Section 14 of the public housing law is amended by adding a new subdivision 8 to read as follows:

8. The division shall have the authority to promulgate regulations, rules and policies related to land use by cities, towns, and villages as it relates to the development of housing, including, but not limited to, the administration and enforcement of article twenty of the general municipal law, the Transit-Oriented Development Act of 2023, and section twenty-a of the public housing law. Such enforcement authority shall include, but not be limited to, all of the powers granted by subdivision one of this section, in addition to the statutes, rules, regulation and other documents regarding the authority of the division, and, where applicable, the power to issue orders and administer funding and grants to localities to assist with land use planning.

§ 4. Severability. In the event it is determined by a court of competent jurisdiction that any phrase, clause, part, subdivision, paragraph or subsection, or any of the provisions of this article is unconstitutional or otherwise invalid or inoperative, such determination shall not affect the validity or effect of the remaining provisions of this article. § 5. This act shall take effect immediately.