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<b>Title:</b>	New York State Land Use Enabling Acts
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### ***Abstract***

Parallel provisions of New York State’s Town, Village, and General City Law grant local governments powers to zone similar to those granted by the Standard State Zoning Enabling Act (SZEa) promulgated by the U.S. Department of Commerce in the 1920s. New York State encourages, but does not require, local governments to adopt comprehensive plans, and state statutes enumerate 15 topics that may be included in comprehensive plans. Local governments have considerable additional powers to regulate local land use under the home rule provisions of the state Constitution, the Statute of Local Governments, and the Municipal Home Rule Law (MHRL). The MHRL authorizes a local government to adopt regulations for the “protection and enhancement of its physical and visual environment.”

### ***Resource***

#### **NEW YORK STATE LAND USE ENABLING ACTS**

**Abstract:** *Parallel provisions of New York State’s Town, Village, and General City Law grant local governments powers to zone similar to those granted by the Standard State Zoning Enabling Act (SZEa) promulgated by the U.S. Department of Commerce in the 1920s. New York State encourages, but does not require, local governments to adopt comprehensive plans, and state statutes enumerate 15 topics that may be included in comprehensive plans. Local governments have considerable additional powers to regulate local land use under the home rule provisions of the state Constitution, the Statute of Local Governments, and the Municipal Home Rule Law (MHRL). The MHRL authorizes a local government to adopt regulations for the “protection and enhancement of its physical and visual environment.” This provision is the basis of many innovative local environmental laws in New York State.*

The full text of the New York statutes is available at:  
<http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS>

#### **New York State Land Use Enabling Acts**

## **Town Law**

### **§§ 261, 262, 263, 272-a**

**§ 261. Grant of power; appropriations for certain expenses incurred under this article.** For the purpose of promoting the health, safety, morals, or the general welfare of the community, the town board is hereby empowered by local law or ordinance to regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes; provided that such regulations shall apply to and affect only such part of a town as is outside the limits of any incorporated village or city; provided further, that all charges and expenses incurred under this article for zoning and planning shall be a charge upon the taxable property of that part of the town outside of any incorporated village or city. The town board is hereby authorized and empowered to make such appropriation as it may see fit for such charges and expenses, provided however, that such appropriation shall be the estimated charges and expenses less fees, if any, collected, and provided, that the amount so appropriated shall be assessed, levied and collected from the property outside of any incorporated village or city. Such regulations may provide that a board of appeals may determine and vary their application in harmony with their general purpose and intent, and in accordance with general or specific rules therein contained.

**§ 262. Districts.** For any or all of said purposes the town board may divide that part of the town which is outside the limits of any incorporated village or city into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this act; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of buildings, throughout such district but the regulations in one district may differ from those in other districts.

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

### **§ 272-a. Town comprehensive plan.**

**1. Legislative findings and intent.** The legislature hereby finds and determines that:

**(a)** Significant decisions and actions affecting the immediate and long-range protection, enhancement, growth and development of the state and its communities are made by local governments.

**(b)** Among the most important powers and duties granted by the legislature to a town government is the authority and responsibility to undertake town comprehensive planning and to regulate land use for the purpose of protecting the public health, safety and general welfare of its citizens.

**(c)** The development and enactment by the town government of a town comprehensive plan which can be readily identified, and is available for use by the public, is in the best interest of the people of each town.

**(d)** The great diversity of resources and conditions that exist within and among the towns of the state compels the consideration of such diversity in the development of each town comprehensive plan.

**(e)** The participation of citizens in an open, responsible and flexible planning process is essential to the designing of the optimum town comprehensive plan.

**(f)** The town comprehensive plan is a means to promote the health, safety and general welfare of the people of the town and to give due consideration to the needs of the people of the region of which the town is a part.

**(g)** The comprehensive plan fosters cooperation among governmental agencies planning and implementing capital projects and municipalities that may be directly affected thereby.

**(h)** It is the intent of the legislature to encourage, but not to require, the preparation and adoption of a comprehensive plan pursuant to this section. Nothing herein shall be deemed to affect the status or validity of existing master plans, comprehensive plans, or land use plans.

**2. Definitions.** As used in this section, the term:

**(a)** "town comprehensive plan" means the materials, written and/or graphic, including but not limited to maps, charts, studies, resolutions, reports and other descriptive material that identify the goals, objectives, principles, guidelines, policies, standards, devices and instruments for the immediate and long-range protection, enhancement, growth and development of the town located outside the limits of any incorporated village or city.

**(b)** "land use regulation" means an ordinance or local law enacted by the town for the regulation of any aspect of land use and community resource protection and includes any zoning, subdivision, special use permit or site plan regulation or any other regulation which prescribes the appropriate use of property or the scale, location and intensity of development.

**(c)** "special board" means a board consisting of one or more members of the planning board and such other members as are appointed by the town board to prepare a proposed comprehensive plan and/or an amendment thereto.

**3. Content of a town comprehensive plan.** The town comprehensive plan may include the following topics at the level of detail adapted to the special requirements of the town:

**(a)** General statements of goals, objectives, principles, policies, and standards upon which proposals for the immediate and long-range enhancement, growth and development of the town are based.

**(b)** Consideration of regional needs and the official plans of other government units and agencies within the region.

**(c)** The existing and proposed location and intensity of land uses.

**(d)** Consideration of agricultural uses, historic and cultural resources, coastal and natural resources and sensitive environmental areas.

**(e)** Consideration of population, demographic and socio-economic trends and future projections.

**(f)** The location and types of transportation facilities.

**(g)** Existing and proposed general location of public and private utilities and infrastructure.

**(h)** Existing housing resources and future housing needs, including affordable housing.

**(i)** The present and future general location of educational and cultural facilities, historic sites, health facilities and facilities for emergency services.

**(j)** Existing and proposed recreation facilities and parkland.

**(k)** The present and potential future general location of commercial and industrial facilities.

**(l)** Specific policies and strategies for improving the local economy in coordination with other plan topics.

**(m)** Proposed measures, programs, devices, and instruments to implement the goals and objectives of the various topics within the comprehensive plan.

**(n)** All or part of the plan of another public agency.

(o) Any and all other items which are consistent with the orderly growth and development of the town.

**4. Preparation.** The town board, or by resolution of such town board, the planning board or a special board, may prepare a proposed town comprehensive plan and amendments thereto. In the event the planning board or special board is directed to prepare a proposed comprehensive plan or amendment thereto, such board shall, by resolution, recommend such proposed plan or amendment to the town board.

#### **5. Referrals.**

(a) Any proposed comprehensive plan or amendment thereto that is prepared by the town board or a special board may be referred to the town planning board for review and recommendation before action by the town board.

(b) The town board shall, prior to adoption, refer the proposed comprehensive plan or any amendment thereto to the county planning board or agency or regional planning council for review and recommendation as required by section two hundred thirty-nine-m of the general municipal law. In the event the proposed plan or amendment thereto is prepared by the town planning board or a special board, such board may request comment on such proposed plan or amendment from the county planning board or agency or regional planning council.

#### **6. Public hearings; notice.**

(a) In the event the town board prepares a proposed town comprehensive plan or amendment thereto, the town board shall hold one or more public hearings and such other meetings as it deems necessary to assure full opportunity for citizen participation in the preparation of such proposed plan or amendment, and in addition, the town board shall hold one or more public hearings prior to adoption of such proposed plan or amendment.

(b) In the event the town board has directed the planning board or a special board to prepare a proposed comprehensive plan or amendment thereto, the board preparing the plan shall hold one or more public hearings and such other meetings as it deems necessary to assure full opportunity for citizen participation in the preparation of such proposed plan or amendment. The town board shall, within ninety days of receiving the planning board or special board's recommendations on such proposed plan or amendment, and prior to adoption of such proposed plan or amendment, hold a public hearing on such proposed plan or amendment.

(c) Notice of a public hearing shall be published in a newspaper of general circulation in the town at least ten calendar days in advance of the hearing. The proposed comprehensive plan or amendment thereto shall be made available for public review during said period at the office of the town clerk and may be made available at any other place, including a public library.

**7. Adoption.** The town board may adopt by resolution a town comprehensive plan or any amendment thereto.

**8. Environmental review.** A town comprehensive plan, and any amendment thereto, is subject to the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations. A town comprehensive plan may be designed to also serve as, or be accompanied by, a generic environmental impact statement pursuant to the state environmental quality review act statute and regulations. No further compliance with such law is required for subsequent site specific actions that are in conformance with the conditions and thresholds established for such actions in the generic environmental impact statement and its findings.

**9. Agricultural review and coordination.** A town comprehensive plan and any amendments thereto, for a town containing all or part of an agricultural district or lands receiving agricultural assessments within its jurisdiction, shall continue to be subject to the provisions of article twenty-five-AA of the agriculture and markets law relating to the enactment and administration of local laws, ordinances, rules or regulations. A newly adopted or amended town comprehensive plan shall take into consideration applicable county agricultural and farmland protection plans as created under article twenty-five-AAA of the agriculture and markets law.

**10. Periodic review.** The town board shall provide, as a component of such proposed comprehensive plan, the maximum intervals at which the adopted plan shall be reviewed.

**11. Effect of adoption of the town comprehensive plan.**

**(a)** All town land use regulations must be in accordance with a comprehensive plan adopted pursuant to this section.

**(b)** All plans for capital projects of another governmental agency on land included in the town comprehensive plan adopted pursuant to this section shall take such plan into consideration.

**12. Filing of town comprehensive plan.** The adopted town comprehensive plan and any amendments thereto shall be filed in the office of the town clerk and a copy thereof shall be filed in the office of the county planning agency.

**New York State Land Use Enabling Acts  
Constitution of the State of New York  
Article IX. Local Governments**

**§ 1. Bill of rights for local governments**

Effective local self-government and intergovernmental cooperation are purposes of the people of the state. In furtherance thereof, local governments shall have the following rights, powers, privileges and immunities in addition to those granted by other provisions

of this constitution:

**(a)** Every local government, except a county wholly included within a city, shall have a legislative body elective by the people thereof. Every local government shall have power to adopt local laws as provided by this article.

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## **§ 2. Powers and duties of legislature; home rule powers of local governments; statute of local governments**

**(a)** The legislature shall provide for the creation and organization of local governments in such manner as shall secure to them the rights, powers, privileges and immunities granted to them by this constitution.

**(b)** Subject to the bill of rights of local governments and other applicable provisions of this constitution, the legislature:

**(1)** Shall enact, and may from time to time amend, a statute of local governments granting to local governments powers including but not limited to those of local legislation and administration in addition to the powers vested in them by this article. A power granted in such statute may be repealed, diminished, impaired or suspended only by enactment of a statute by the legislature with the approval of the governor at its regular session in one calendar year and the re-enactment and approval of such statute in the following calendar year.

**(2)** Shall have the power to act in relation to the property, affairs or government of any local government only by general law, or by special law only (a) on request of two-thirds of the total membership of its legislative body or on request of its chief executive officer concurred in by a majority of such membership, or (b), except in the case of the city of New York, on certificate of necessity from the governor reciting facts which in the judgment of the governor constitute an emergency requiring enactment of such law and, in such latter case, with the concurrence of two-thirds of the members elected to each house of the legislature.

**(3)** Shall have the power to confer on local governments powers not relating to their property, affairs or government including but not limited to those of local legislation and administration, in addition to those otherwise granted by or pursuant to this article, and to withdraw or restrict such additional powers.

**(c)** In addition to powers granted in the statute of local governments or any other law, **(i)** every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to its property, affairs or government and, **(ii)** every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to the following subjects, whether or not they relate to the property, affairs or government of

such local government, except to the extent that the legislature shall restrict the adoption of such a local law relating to other than the property, affairs or government of such local government:

(1) The powers, duties, qualifications, number, mode of selection and removal, terms of office, compensation, hours of work, protection, welfare and safety of its officers and employees, except that cities and towns shall not have such power with respect to members of the legislative body of the county in their capacities as county officers.

(2) In the case of a city, town or village, the membership and composition of its legislative body.

(3) The transaction of its business.

(4) The incurring of its obligations, except that local laws relating to financing by the issuance of evidences of indebtedness by such local government shall be consistent with laws enacted by the legislature.

(5) The presentation, ascertainment and discharge of claims against it.

(6) The acquisition, care, management and use of its highways, roads, streets, avenues and property.

(7) The acquisition of its transit facilities and the ownership and operation thereof.

(8) The levy, collection and administration of local taxes authorized by the legislature and of assessments for local improvements, consistent with laws enacted by the legislature.

(9) The wages or salaries, the hours of work or labor, and the protection, welfare and safety of persons employed by any contractor or sub-contractor performing work, labor or services for it.

(10) The government, protection, order, conduct, safety, health and well-being of persons or property therein.

(d) Except in the case of a transfer of functions under an alternative form of county government, a local government shall not have power to adopt local laws which impair the powers of any other local government.

(e) The rights and powers of local governments specified in this section insofar as applicable to any county within the city of New York shall be vested in such city.

### **§ 3. Existing laws to remain applicable; construction; definitions**

(a) Except as expressly provided, nothing in this article shall restrict or impair any power

of the legislature in relation to:

**(1)** The maintenance, support or administration of the public school system, as required or provided by article XI of this constitution, or any retirement system pertaining to such public school system,

**(2)** The courts as required or provided by article VI of this constitution, and

**(3)** Matters other than the property, affairs or government of a local government.

**(b)** The provisions of this article shall not affect any existing valid provisions of acts of the legislature or of local legislation and such provisions shall continue in force until repealed, amended, modified or superseded in accordance with the provisions of this constitution.

**(c)** Rights, powers, privileges and immunities granted to local governments by this article shall be liberally construed.

**(d)** Whenever used in this article the following terms shall mean or include:

**(1)** "General law." A law which in terms and in effect applies alike to all counties, all counties other than those wholly included within a city, all cities, all towns or all villages.

**(2)** "Local government." A county, city, town or village.

**(3)** "People." Persons entitled to vote as provided in section one of article two of this constitution.

**(4)** "Special law." A law which in terms and in effect applies to one or more, but not all, counties, counties other than those wholly included within a city, cities, towns or villages.

**New York State Land Use Enabling Acts  
Statute of Local Governments  
Chapter 58-A of the Consolidated Laws  
Article 1.**

**§ 2. Legislative intent**

In providing for effective local self-government and intergovernmental cooperation which the bill of rights for local governments in article nine of the constitution declares to be purposes of the people of the state of New York, it is the intention of the legislature by the enactment of this chapter to provide a statute of local governments and to grant powers therein to local governments pursuant to paragraph one of subdivision (b) of section two of article nine of the constitution. Powers granted to local governments in this statute of local governments may be repealed, diminished, impaired or suspended only by the enactment of a statute by the legislature with the approval of the governor at its regular session in one

calendar year and the re-enactment and approval of such statute in the following calendar year.

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## **Article 2. Grants of Powers to Local Governments**

### **§ 10. Grants of powers to local governments**

Except as otherwise specifically provided in this section, each of the following powers, which shall include but not be limited to those of local legislation and administration, is hereby granted to each local government which shall at all times be subject to such purposes, standards and procedures as the legislature may have heretofore prescribed or may hereafter prescribe:

1. The power to adopt, amend and repeal ordinances, resolutions and rules and regulations in the exercise of its functions, powers and duties.
2. The power to acquire real and personal property or any interest therein for its purposes, and to construct, reconstruct, equip, maintain, repair and operate the same for such purposes.
3. The power to acquire, establish, construct, reconstruct, equip, maintain, repair and operate recreational facilities on park or other lands, including but not limited to self-supporting, self-sustaining or revenue-producing recreational facilities.
4. The power to dispose of its real or personal property or any interest therein when no longer required for its purposes, except that this power shall not be applicable to inalienable real or personal property or any inalienable interest therein.
5. The power to fix, levy, impose, collect and administer rents, charges, rates and fees, penalties and rates of interest thereon, liens on local property in connection therewith and charges thereon.
6. In the case of a city, village, or town with respect to the area thereof outside the village or villages therein, the power to adopt, amend and repeal zoning regulations.
7. The power to perform comprehensive or other planning work relating to its jurisdiction.

### **§ 11. Reservation of power by legislature**

The legislature hereby excludes from the scope of the grants of powers to local governments in this statute and reserves to itself the right and power to enact any law described in this section notwithstanding the fact that it repeals, diminishes, impairs or suspends a power granted to one or more local governments in this statute:

1. Any law relating to the defense or protection of the state or to the continuity of state or local governmental operations during periods of emergency caused by enemy attack, actual or imminent, or by disaster.

2. Any law enacted as provided by paragraph two of subdivision (b) of section two of article nine of the constitution on request of the legislative body of each affected local government, on request of the chief executive officer of each affected local government concurred in by its legislative body or, except in the case of the city of New York, on certificate of necessity from the governor.

3. Any law amending an alternative form of county government which is subject to referendum pursuant to paragraph one or paragraph two of subdivision (h) of section one of article nine of the constitution.

4. Any law relating to a matter other than the property, affairs or government of a local government.

5. Any law authorizing the voluntary transfer of a power by a local government to another local government or other governmental agency.

6. Any law authorizing the voluntary exercise of a power by a local government in cooperation with another local government or other governmental agency.

## **§ 12. Effective date provisions of bills requiring re-enactment and approval**

1. Where a bill introduced in the legislature would have the effect of repealing, diminishing, impairing or suspending a power granted by this statute of local governments and thus would be ineffective unless re-enacted and approved in the following calendar year as provided by paragraph one of subdivision (b) of section two of article nine of the constitution, the effective date provision thereof shall read substantially as follows: "This act shall take effect (specify effective date in event of re-enactment by legislature and approval by governor in next calendar year), provided that it is approved by the governor in accordance with paragraph one of subdivision (b) of section two of article nine of the constitution and provided that it is re-enacted by the legislature and approved by the governor in the next calendar year in accordance with such paragraph."

2. Where a statute enacted in one year is introduced in the legislature in the next calendar year for re-enactment by the legislature and approval thereafter by the governor in accordance with paragraph one of subdivision (b) of section two of article nine of the constitution, the effective date provision thereof shall refer to the enactment in the previous year and shall, in addition, provide substantially as follows: "This act shall take effect (set forth the effective date), provided that it is approved by the governor in accordance with paragraph one of subdivision (b) of section two of article nine of the constitution."

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### **Article 3.**

#### **§ 20. Construction**

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2. Nothing in this statute shall operate to restrict the meaning of or diminish or impair any power granted to a local government by the constitution or by any other law; nor shall the failure to include a power of a local government in this statute operate to restrict the meaning of or diminish or impair such power.

3. No power granted in this statute shall be deemed repealed, diminished, impaired or suspended by the enactment of any subsequent act of the legislature, unless such act shall be enacted and re-enacted as prescribed in paragraph one of subdivision (b) of section two of article nine of the constitution and section twelve of this statute and unless such act shall contain a specific reference to this statute.

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5. Powers granted to local governments by this statute shall be liberally construed.

#### **New York State Land Use Enabling Acts**

##### **Municipal Home Rule Law**

##### **Chapter 36-A of the Consolidated Laws**

#### **Article 2. General Powers of Local Governments to Adopt and Amend Local Laws; Restrictions**

#### **§ 10. General powers of local governments to adopt and amend local laws**

1. In addition to powers granted in the constitution, the statute of local governments or in any other law,

(i) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law relating to its property, affairs or government and,

(ii) every local government, as provided in this chapter, shall have power to adopt and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law, relating to the following subjects, whether or not they relate to the property, affairs or government of such local government, except to the extent that the legislature shall restrict the adoption of such a local law relating to other than the property, affairs or government of such local government:

a. A county, city, town or village:

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**(11)** The protection and enhancement of its physical and visual environment.

**(12)** The government, protection, order, conduct, safety, health and well-being of persons or property therein. This provision shall include but not be limited to the power to adopt local laws providing for the regulation or licensing of occupations or businesses provided, however, that:

**(a)** The exercise of such power by a town shall relate only to the area thereof outside the village or villages therein.

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**(14)** The powers granted to it in the statute of local governments.