

# An Unconstitutional Proposal:

## The New Jersey Governor's Housing Policy

This morning, Gov. Christie proposed a new housing policy. It was telling that the governor welcomed municipal representatives into the press conference, including the head of the NJ League of Municipalities, while his staff excluded housing advocates from entering the room.

The reason that the municipal representatives were invited is that the proposal was written in an effort to appeal to towns that want to exclude lower-income families and others who need affordable housing.

FSHC has obtained a copy of Gov. Christie's affordable housing proposal, which is not yet available on the Governor's website. It is available [here](#). We issued this [press release](#) in response to the governor's proposal.

The governor's proposal is consistent with the report issued by the Karrow Housing Task Force and shares many of S-1's flaws. Under the governor's proposal, as with S-1, new residential construction, and only new residential construction, triggers an obligation for affordable housing. The proposal is framed to claim that ten percent of all residential development permitted by a municipality must be affordable - but the details say that a developer can avoid this obligation by simply paying a 2.5 percent fee that can be used in another town altogether (think Mendham's fees going to Newark). That means that any town in the state can avoid building a single new home affordable to low- and moderate-income families, seniors, and people with special needs.

There is no calculation or allocation of need and no check on municipal discretion. Municipalities that discourage new housing or focus on the development of commercial and office uses, thus minimize or eliminate their affordable housing obligations, an approach that was plainly invalidated in the Appellate Division's January 2007 decision on the first version of the Third Round regulations.

The governor's proposal also limits the ability of public interest organizations, non-profits, and developers who want to develop affordable housing to challenge municipalities that have not met their minimal affordable housing obligations. According to the gover-

nor's proposal:

Challenges to municipal plans are first made to the Dept. of Community Affairs (DCA) which will determine whether or not the plan is factually accurate and consistent with the law. The DCA engages in fact-finding only. It cannot force a municipality to change its Master Plan and it does not engage in mediation between the municipality and the challenger. Appeals from DCA's determination are made directly to the Appellate Division, pursuant to the provisions of the Administrative Procedures Act.

Finally, the governor proposes to bring back regional contribution agreements without using that term and to permit all of a municipality's obligation to be transferred. His proposal permits a municipality to collect development fees on residential developments only and then to avoid developing within the municipality by transferring the funding to another municipality or the state. His proposal states that:

Municipalities may use funds in their affordable housing trust funds to underwrite rehabilitation projects in other municipalities which have significant rehabilitation needs but limited resources. Alternatively, municipalities can make payments to the State Affordable Housing Trust Fund, which can undertake rehabilitation projects on behalf of other towns.

In short, the governor has proposed to reduce affordable housing obligations, to return all control to municipalities and thus to permit them to exclude lower-income housing, and to permit municipalities to transfer 100 percent of whatever minimal obligations they have to other municipalities. The governor's proposal is unconstitutional and, we expect, will not go very far in the Legislature or be supported by any legislator who supports fair housing policies. [5/13/10]

Fair Share Housing Center, founded in 1975, is the only public interest organization devoted entirely to defending the housing rights of New Jersey's poor through implementing the Mount Laurel doctrine.

