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Lashway, Lisa

From: NJLM - Municipal Clerks [njlm-clerks@cityconnections.com]
Sent: Monday, July 26, 2010 3:52 PM
To: Lashway, Lisa
Subject: Legislative Alert - COAH/Affordable Housing Reform



**Municipal Clerks
for Mayors, Elected Officials
and Staff**



July 26, 2010

Re: Legislative Alert - COAH/Affordable Housing Reform

Dear Mayor:

Not to be lost in the midst of discussions regarding the 2% levy cap and the “toolkit” for local governments is the need for the Legislature to enact reforms to the Fair Housing Act and COAH.

If you recall, S-1 passed the State Senate on June 10 on bipartisan vote of 28-3. A week later, the Assembly Housing and Local Government held a hearing on S-1, but deferred action until the fall. Please see the League’s June 18 Dear Mayor letter for a summary. **We urge you to contact your Assembly representatives immediately, stress the importance of COAH reform and call on them to act swiftly.**

The League posted a section by section breakdown of S-1 on its website at: <http://www.njslom.org/letters/SCS-s1-summary060710.pdf>

To summarize, S-1 eliminates the statewide calculation of need and prior round obligations, and instead establishes a statewide set-aside of 10%. Contrary to what has been reported, no municipality is “exempt” from this obligation. In most cases, this means that every residential development in your municipality will have to set-aside 10% for affordable housing and in cases of developments of 5 units or less, 5%. For these smaller projects or when the set-aside is not economically viable, this obligation can be satisfied, at the discretion of the municipality, by on-site, off-site, or through other alternate means. Again, contrary to what has been reported, there is no “loophole” or “buyout” on the part of the developer. This false assertion stems from a misunderstanding of a provision in which a municipality may require a developer to satisfy the obligation through the rehabilitation of an existing unit, at a minimum cost of \$10,000. This provision is lifted from the existing COAH regulations.

S-1 does provide a definition and establishes the criteria of “inclusionary municipality.” As noted above, meeting this criteria does not exempt a municipality from the 10% set-aside nor does it define any municipality as “exclusionary.”

If a municipality meets this criterion, it would need to submit documentation demonstrating this with the Department of Community Affairs (DCA) for verification and pass an inclusionary zoning ordinance implementing the 10% set-aside.

If a municipality does not meet this criterion, it would have two options to be deemed inclusionary. The first would be for the municipality to adopt zoning ordinances or incorporates into its Master Plan standards outlined in Section 20 of S-1. These documents would then be submitted to the DCA for verification. The second option would be to adopt an ordinance that reserves 20% of its developable land for workforce housing.

If a municipality does not meet the criteria and opts not to enact one of the two measures to be deemed compliant, it is then subject to a variance procedure under the inherently beneficial use criteria.

S-1 authorizes a municipality of enacting a residency preference of up-to-50% for those who either live or work in the municipality.

The legislation also eliminates the 2.5% fee on commercial development, which went in effect again on July 1, and effectively de-links commercial development from a housing obligation. While S-1 prohibits any municipalities from enacting a fee on commercial development, municipalities will be authorized to enact 2.5% fee of the equalized assessed value for residential development projects. Municipalities must commit these funds within 4 years.

S-1 would abolish COAH six months from its effective date, and transfer responsibility for oversight to the Department of Community Affairs. Statements that S-1 provides no State oversight or allows unchecked power by municipalities over affordable housing are in error.

S-1 is designed to eliminate what is now universally viewed as Byzantine COAH regulatory structure, with a simpler, more cost-effective model. The Governor’s Housing Opportunity Task Force noted that if a 10% set-aside had been established in 1986, it would have produced more affordable housing than was produced under COAH, “...*without the complication, expense, bureaucratic and legal entanglements which have dominated the present and past systems of providing affordable housing.*” (See page 26 of the report.)

We expect there to be additional changes to S-1, and the League submitted suggestions and comments on what changes we believe need to be made. Please see the June 18 Dear Mayor letter for links to these comments.

Further, we would suggest consideration of the League's sample resolution calling for enactment of the "toolkit." While S-1 and COAH reform are not considered part of the "toolkit", they should be and that is reflected in the resolution. For more on this sample resolution, please see our [July 22 Dear Mayor letter](#).

Questions on this letter can be directed to Mike Cerra at mcerra@njslom.com or at 609-695-3481 x120.

Very truly yours,

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