

CHAPTER 97

**SUBSTANTIVE RULES OF THE NEW JERSEY
COUNCIL ON AFFORDABLE HOUSING FOR
THE PERIOD BEGINNING JUNE 2, 2008**

Authority

N.J.S.A. 52:27D-301 et seq.

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See: 40 N.J.R. 237(a), 40 N.J.R. 2690(a).

Chapter Expiration Date

Chapter 97, Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning June 2, 2008, expires on June 2, 2013.

Chapter Historical Note

Chapter 97, Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning June 2, 2008, was adopted as new rules by R.2008 d.145, effective June 2, 2008. See: Source and Effective Date.

Administrative correction. See: 40 N.J.R. 3991(c).

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 5:97-1.1 Introduction
- 5:97-1.2 Short title; purpose; scope
- 5:97-1.3 Severability
- 5:97-1.4 Definitions

**SUBCHAPTER 2. PREPARING A HOUSING ELEMENT
AND DETERMINING MUNICIPAL FAIR SHARE
OBLIGATION**

- 5:97-2.1 General
- 5:97-2.2 Determining the fair share obligation
- 5:97-2.3 Content of a Housing Element
- 5:97-2.4 Projecting the growth share obligation
- 5:97-2.5 Measuring the actual growth share obligation

SUBCHAPTER 3. PREPARING A FAIR SHARE PLAN

- 5:97-3.1 General
- 5:97-3.2 Content of a Fair Share Plan
- 5:97-3.3 Low/moderate income split of the fair share obligation
- 5:97-3.4 Rental housing requirement
- 5:97-3.5 Rental bonuses for the prior round obligation
- 5:97-3.6 Rental bonuses for the growth share obligation
- 5:97-3.7 Very low income bonuses for the growth share obligation
- 5:97-3.8 Age-restricted housing
- 5:97-3.9 Family housing
- 5:97-3.10 Formulas for municipalities that have not included a vacant land adjustment in any previous or pending Fair Share Plan
- 5:97-3.11 Formulas for municipalities that have been granted a vacant land adjustment as part of a second round substantive certification or judgment of compliance
- 5:97-3.12 Formulas for municipalities seeking a vacant land adjustment that was not granted as part of a second round substantive certification or judgment of compliance
- 5:97-3.13 Site suitability criteria and consistency with the State Development and Redevelopment Plan

- 5:97-3.14 Accessible and adaptable affordable units
- 5:97-3.15 Affordable housing and State-funded smart growth initiatives
- 5:97-3.16 Coordination with other State agencies
- 5:97-3.17 Compliance bonus
- 5:97-3.18 Smart growth bonus
- 5:97-3.19 Redevelopment bonus
- 5:97-3.20 Bonus caps

SUBCHAPTER 4. CREDITS

- 5:97-4.1 General
- 5:97-4.2 Prior cycle credits
- 5:97-4.3 Post-1986 credits
- 5:97-4.4 RCA credits
- 5:97-4.5 Rehabilitation credits

SUBCHAPTER 5. ADJUSTMENTS

- 5:97-5.1 Vacant land adjustment applicability
- 5:97-5.2 Vacant land adjustment procedures
- 5:97-5.3 Unmet need
- 5:97-5.4 Durational adjustment
- 5:97-5.5 20 percent cap
- 5:97-5.6 Adjustment of household and employment growth projections
- 5:97-5.7 Potential growth share opportunities
- 5:97-5.8 1,000-unit limitation

**SUBCHAPTER 6. MECHANISMS FOR ADDRESSING THE
FAIR SHARE OBLIGATION**

- 5:97-6.1 General
- 5:97-6.2 Rehabilitation
- 5:97-6.3 ECHO units
- 5:97-6.4 Zoning for inclusionary development
- 5:97-6.5 Status of sites addressing the 1987 through 1999 obligation
- 5:97-6.6 Redevelopment
- 5:97-6.7 Municipally sponsored and 100 percent affordable developments
- 5:97-6.8 Accessory apartment program
- 5:97-6.9 Market to affordable program
- 5:97-6.10 Supportive and special needs housing
- 5:97-6.11 Assisted living residence
- 5:97-6.12 Regional contribution agreement
- 5:97-6.13 Affordable housing partnership program
- 5:97-6.14 Extension of expiring controls
- 5:97-6.15 Other innovative approaches

**SUBCHAPTER 7. REGIONAL CONTRIBUTION
AGREEMENTS**

- 5:97-7.1 General provisions
- 5:97-7.2 Submission requirements
- 5:97-7.3 Terms
- 5:97-7.4 Sending municipality
- 5:97-7.5 Receiving municipality
- 5:97-7.6 Review by the Agency
- 5:97-7.7 Review and approval by county planning board(s)
- 5:97-7.8 Review and approval by the Council
- 5:97-7.9 Monitoring
- 5:97-7.10 Enforcement

**SUBCHAPTER 8. AFFORDABLE HOUSING TRUST
FUNDS**

- 5:97-8.1 Purpose
- 5:97-8.2 Account requirements
- 5:97-8.3 Development fee ordinances
- 5:97-8.4 Payments in lieu of constructing affordable units on site
- 5:97-8.5 Barrier free escrow
- 5:97-8.6 Other funds

- 5:97-8.7 Use of funds for housing activity
- 5:97-8.8 Use of funds for affordability assistance
- 5:97-8.9 Use of funds for administrative expenses
- 5:97-8.10 Spending plans
- 5:97-8.11 Consideration for mechanisms not in the adopted Fair Share Plan
- 5:97-8.12 Monitoring
- 5:97-8.13 Enforcement
- 5:97-8.14 Ongoing collection of fees and maintenance of the affordable housing trust fund

SUBCHAPTER 9. ADMINISTRATION OF AFFORDABLE UNITS

- 5:97-9.1 Applicability of UHAC
- 5:97-9.2 Regional income limits
- 5:97-9.3 Establishing sale prices and rents of units

SUBCHAPTER 10. COST GENERATION AND DEVELOPMENT REVIEW PROCESS

- 5:97-10.1 Purpose and scope
- 5:97-10.2 Unnecessary cost generating requirements
- 5:97-10.3 Development application procedures
- 5:97-10.4 Special studies/escrow accounts
- 5:97-10.5 Developer relief

APPENDIX A. GROWTH SHARE RATIO METHODOLOGY

APPENDIX B. REHABILITATION SHARE METHODOLOGY

APPENDIX C. PRIOR ROUND AFFORDABLE NEED UPDATED METHODOLOGY

APPENDIX D. UCC USE GROUPS FOR PROJECTING AND IMPLEMENTING NON-RESIDENTIAL COMPONENTS OF GROWTH SHARE

APPENDIX E. CRITERIA FOR POST-1986 CREDITS

APPENDIX F. CONSULTANT REPORTS

SUBCHAPTER 1. GENERAL PROVISIONS

5:97-1.1 Introduction

(a) The New Jersey Supreme Court stated in *Southern Burlington County NAACP v. Mt. Laurel*, 92 N.J. 158, 238 (1983) (*Mount Laurel II*): "There is nothing in our Constitution that says that we cannot satisfy our constitutional obligation to provide lower income housing and, at the same time, plan the future of the state intelligently." The Council's third round rules in this chapter implement a "growth share" approach to affordable housing by linking the actual production of affordable housing with municipal development and growth. The Council believes that this approach will hew more closely to the doctrinal underpinning of *Southern Burlington County NAACP v. Mt. Laurel*, 67 N.J. 151 (1975) (*Mount Laurel*) in that municipalities will provide a realistic opportunity for construction of a fair share of low- and moderate-income housing based on sound land use and long range planning.

(b) In the *Matter of the Adoption of N.J.A.C. 5:94 and 5:95*, 390 N.J. Super. 1, 56 (App. Div. 2007), *certif. denied* 192 N.J. 72 (2007), the New Jersey Appellate Division stated

that, "If municipalities with substantial amounts of vacant land and access to infrastructure can decide for themselves whether and how much to grow, it is highly likely that housing opportunity will fall far short of identified housing need." Therefore, the revised growth share approach relies in part on independent household and employment growth projections, which each municipality will utilize in its long range planning for affordable housing.

(c) The Council's "growth share" methodology requires that each municipality's provision of affordable housing coincide with its obligation generated by actual residential and non-residential growth. Because each municipality must also develop a plan to address its growth share obligation based on the Council's established projections, the realistic opportunity for affordable housing will address the overall need estimated by the Council, through this combined approach.

(d) There are three components to the third round Methodology: the rehabilitation share, the prior round obligation, and the "growth share." Growth share is generated by Statewide residential and non-residential growth during the period January 1, 2004 to December 31, 2018 based on individuals projected to need affordable housing from 1999 through 2018. As a result, for every five residential units constructed, the municipality shall be obligated to include one unit that is affordable to households of low or moderate income (one affordable unit for every four market rate units). Job creation carries a responsibility to provide housing as well. For every 16 newly created jobs as measured by new or expanded non-residential construction within the municipality in accordance with chapter Appendix D, incorporated herein by reference, the municipality shall be obligated to provide one unit that is affordable to households of low- and moderate-income. This method requires that municipalities meet the actual growth share obligation with not merely a good faith attempt, but with the actual provision of housing for low- and moderate-income households, while continuing to provide a realistic opportunity for affordable housing to address the projected growth share obligation.

5:97-1.2 Short title; purpose; scope

(a) The provisions of this chapter shall be known as the "Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning on June 2, 2008."

(b) The purpose of this chapter is to establish criteria to be used by municipalities in determining and addressing their 1987 through 2018 constitutional obligation to provide a fair share of affordable housing for low- and moderate-income households.

(c) All municipalities within the jurisdiction of the Council are subject to evaluation in accordance with the provisions of this chapter.

(d) A municipality's Fair Share Plan to address its 1987 through 2018 obligation shall be governed by the provisions of this chapter as follows: