

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).

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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: