

CHAPTER 93

SUBSTANTIVE RULES OF THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING FOR THE PERIOD BEGINNING JUNE 6, 2004

Authority

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

Source and Effective Date

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Chapter Expiration Date

Chapter 93, Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning June 6, 2004, expires on October 14, 2009.

Chapter Historical Note

Chapter 93, Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning June 6, 1994, was adopted as R.1994 d.290, effective June 6, 1994. See: 25 N.J.R. 5763(a), 26 N.J.R. 2300(a).

Pursuant to Executive Order No. 66(1978), Chapter 93, Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning June 6, 1994, was readopted as R.1999 d.171, effective May 5, 1999. See: 31 N.J.R. 578(a), 31 N.J.R. 1479(a).

Chapter 93, Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning June 6, 2004, was readopted as R.2004 d.425, effective October 14, 2004. See: Source and Effective Date.

Law Review and Journal Commentaries

Ruling Could Trigger New *Mount Laurel* Skirmishes. Ann Snider, 146 N.J.L.J. No. 6, 477 (1996).

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SUBCHAPTER 1. GENERAL PROVISIONS

5:93-1.1 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 June 6, 1994."

(b) The purpose of this chapter will be the provision of criteria to be used by municipalities in addressing their constitutional obligation to provide a fair share of affordable housing for moderate and low income households.

(c) All municipalities within the jurisdiction of the Council are subject to evaluation, in accordance with the provisions of this chapter, for the period beginning on June 6, 1994.

5:93-1.2 Severability clause

If any part of this chapter shall be held invalid, the holding shall not affect the validity of remaining parts of these rules. If a part of these rules is held invalid in one or more of their applications, the rules shall remain in effect in all valid applications that are severable from the invalid application.

(b) Age restricted low and moderate income units may utilize a modified bedroom distribution. At a minimum, the number of bedrooms shall equal the number of age restricted low and moderate income units within the inclusionary development. The standard can be met by creating all one bedroom units or by creating a two bedroom unit for each efficiency unit. Applications to waive this standard shall be made in accordance with N.J.A.C. 5:93-15.

Amended by R.1995 d.491, effective September 5, 1995.

See: 27 N.J.R. 2134(a), 27 N.J.R. 3329(a).

Amended by R.1998 d.21, effective January 5, 1998.

See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).

Substituted "Age restricted low" for "low" and "restricted to senior citizens".

5:93-7.4 Establishing rents and prices of units

(a) The following criteria, in conjunction with realistic market information, shall be used in determining maximum rents and sale prices:

1. Efficiency units shall be affordable to one person households;
2. One bedroom units shall be affordable to 1.5 person households;
3. Two bedroom units shall be affordable to three person households; and
4. Three bedroom units shall be affordable to 4.5 person households.

(b) Median income by household size shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households with the county. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households in each region. The quotient represents the regional weighted average of median income for a household of four. This regional weighted average is adjusted by household size based on multipliers used by HUD to adjust median income by household size. For municipalities that petition for substantive certification or amend a plan that includes a new inclusionary development on or before January 1, 2001, the maximum average rent and price of low and moderate income units within each inclusionary development shall be affordable to households earning 57.5 percent of median income. The municipal ordinance shall require moderate income sales units to be available for at least three different prices and low income sales units to be available for at least two different prices.

(c) For municipalities that meet the criteria in (b) above, in averaging 57.5 percent, developers and/or municipal sponsors of rental units may establish one rent for a low income unit and one rent for a moderate income unit for each bedroom distribution.

(d) Municipalities that petition for substantive certification or amend a plan that includes a new inclusionary development on or after January 2, 2001 shall establish by municipal ordinance that the maximum rents of low and moderate-income units within each inclusionary development shall be affordable to households earning no more than 60 percent of median income. In averaging an affordability range of 52 percent for rental units, developers and/or municipal sponsors of rental units may establish one rent for a low income unit and one rent for a moderate-income unit for each bedroom distribution.

(e) Municipalities that petition for substantive certification or amend a plan that includes a new inclusionary development on or after January 2, 2001 shall establish by municipal ordinance that the maximum sales prices of low and moderate income units within each inclusionary development shall be affordable to households earning no more than 70 percent of median income. In averaging an affordability range of 55 percent for sales units, the municipal ordinance shall require moderate income sales units to be available for at least two different prices and low income sales units to be available for at least two different prices.

(f) Municipal ordinances regulating owner occupied and rental units shall require that low and moderate income units utilize the same heating source as market units within the inclusionary development.

(g) Municipalities shall require that the initial price of a low and moderate income owner-occupied single family housing unit be established so that after a downpayment of five percent, the monthly principal, interest, homeowner and private mortgage insurances, property taxes (property taxes shall be based on the restricted value of low and moderate income units) and condominium or homeowner fees do not exceed 28 percent of the eligible gross monthly income. Municipalities shall, by ordinance, require that master deeds of inclusionary developments regulate condominium or homeowner association fees or special assessments of low and moderate income purchasers at a specific percentage of those paid by market purchasers. The percentage that shall be paid by low and moderate income purchasers shall be at least one-third of the condominium or homeowner association fees paid by market purchasers. Once established within the master deed, the percentage shall not be amended without prior approval from the Council.

(h) Municipalities shall require that gross rents, including an allowance for utilities, be established so as not to exceed 30 percent of the gross monthly income of the appropriate household size referenced in (a) above. Those tenant-paid utilities that are included in the utility allowance shall be so stated in the lease. The allowance for utilities shall be consistent with the utility allowance approved by HUD for use in New Jersey.

(i) Low income housing units shall be reserved for households with a gross household income less than or equal to 50

percent of the median income approved by the Council. Moderate income housing units shall be reserved for households with a gross household income less than 80 percent of the median income approved by the Council. For example, a household earning 48 percent of median income may be placed in any low income unit; however, a household earning 53 percent may not qualify for a low income unit. A household earning 67 percent of median may be placed in any moderate income housing unit. A household earning less than 50 percent of median may be placed in a moderate income housing unit. Low and moderate income units shall not be offered to households that are not income eligible without Council approval pursuant to N.J.A.C. 5:93-9.16.

Amended by R.1995 d.491, effective September 5, 1995.

See: 27 N.J.R. 2134(a), 27 N.J.R. 3329(a).

Amended by R.2000 d.404, effective October 2, 2000.

See: 32 N.J.R. 2180(a), 32 N.J.R. 3557(a).

In (b), rewrote the seventh sentence; rewrote (c); inserted new (d) and (e); and recodified former (d) through (g) as (f) through (i).

SUBCHAPTER 8. DEVELOPMENT FEES

5:93-8.1 Purpose

(a) The New Jersey Supreme Court, in *Holmdel Builder's Ass'n v. Holmdel Township*, 121 N.J. 550 (1990) (issued December 13, 1990), determined that mandatory development fees are both statutorily and constitutionally permissible. The Court further anticipated that the Council would promulgate appropriate development fee rules specifying, among other things, the standards for these development fees. The purpose of this subchapter is to provide such guidance.

(b) Except as otherwise provided in these rules, a municipality may only impose, collect and spend development fees through participation in the Council's substantive certification process or through a comprehensive review designed to achieve a judgment of repose. The exceptions to this rule are set forth in N.J.A.C. 5:93-8.3 through 8.6 inclusive. These exceptions are permitted because some communities have already received substantive certification; others have achieved a judgment of repose; and still others are litigating exclusionary zoning cases. Some of these municipalities have already collected fees. The Council has created a

process for these municipalities to collect and/or retain fees. However, in the future, the ability to impose, collect and spend development fees shall be limited to municipalities that petition for substantive certification. Urban aid municipalities are also considered a special case. These municipalities have historically housed a disproportionate share of New Jersey's poor and, as a result, may have exceedingly high fair share obligations that would be extremely difficult to address in a six year period. Therefore, the Council will allow these municipalities to impose, collect and spend fees outside of substantive certification provided the municipality adheres to the rules in this subchapter. The rules that follow provide basic requirements for imposing, collecting and spending development fees. They then provide additional requirements for municipalities in various categories.

(c) While the rules that follow shall govern those municipalities that petition for substantive certification and urban aid cities, the Council will review development fee ordinances and plans to spend money upon the request of the court with jurisdiction in an exclusionary zoning lawsuit.

Amended by R.1995 d.491, effective September 5, 1995.

See: 27 N.J.R. 2134(a), 27 N.J.R. 3329(a).

Amended by R.1998 d.21, effective January 5, 1998.

See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).

5:93-8.2 Basic requirements

(a) Except as set forth in N.J.A.C. 5:93-8.3 through 8.6 inclusive, the Council shall not review or approve any development fee ordinance unless the municipality has petitioned for substantive certification.

(b) No municipality except urban aid municipalities complying with N.J.A.C. 5:93-8.3, shall impose or collect development fees unless the municipality has adopted a housing element and the Council has approved its development fee ordinance.

(c) No municipality shall spend development fees unless the Council has approved a plan for spending such fees. With the exception provided for in N.J.A.C. 5:93-8.3, municipalities that have not received substantive certification or a judgment of repose shall not spend development fees until they have received substantive certification or a judgment of repose.

Amended by R.1995 d.491, effective September 5, 1995.

See: 27 N.J.R. 2134(a), 27 N.J.R. 3329(a).

Amended by R.1998 d.21, effective January 5, 1998.
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).

5:93-8.3 Urban aid municipalities

Municipalities that qualify for State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) may impose, collect or spend development fees by filing a development fee ordinance and spending plan and requesting approval by the Council. Council approval of the municipal development fee ordinance shall allow the municipality to impose and collect development fees for a period specified by the Council, not to exceed six years, commencing with the Council's approval of the development fee ordinance. Notwithstanding any other provision of this chapter, these municipalities shall have one year from the Council's approval of their development fee ordinance to submit a plan for spending development fees. These municipalities may impose, collect and spend development fees without petitioning for substantive certification.

Amended by R.1995 d.491, effective September 5, 1995.
See: 27 N.J.R. 2134(a), 27 N.J.R. 3329(a).
Amended by R.1998 d.21, effective January 5, 1998.
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).

Inserted language detailing development fees.

5:93-8.4 Municipalities that collected fees and received certification

(a) This rule deals with the category of municipalities that have collected development fees prior to December 13, 1990 and have received substantive certification. These municipalities may petition the Council to review and approve an ordinance regarding development fees collected prior to December 13, 1990. The Council may approve such ordinance, provided it conforms to the procedures in N.J.A.C. 5:93-8.8, Development fee ordinance review, and N.J.A.C. 5:91-15, Procedures for retaining development fees.

(b) The municipalities in this category shall not resume collecting development fees or spending development fees without conforming to N.J.A.C. 5:93-8.2.

(c) Notwithstanding any other provision of this chapter, the municipalities in this category shall submit plans to spend the development fees (regardless of when these fees were collected) prior to the expiration of their substantive certification periods.

Amended by R.1995 d.491, effective September 5, 1995.
See: 27 N.J.R. 2134(a), 27 N.J.R. 3329(a).

5:93-8.5 Municipalities that collected fees and are proceeding toward certification

(a) This rule deals with the category of municipalities that have collected development fees prior to December 13, 1990 and have petitioned for substantive certification.

These municipalities may petition the Council to review and approve an ordinance regarding development fees collected prior to December 13, 1990. The Council may approve such ordinances provided they conform to the procedures in N.J.A.C. 5:93-8.8, Development fee ordinance review, and N.J.A.C. 5:91-15, Procedures for retaining development fees.

(b) The municipalities in this category shall not resume collecting development fees or spending development fees without conforming to N.J.A.C. 5:93-8.2.

(c) Notwithstanding any other provision of this chapter, municipalities in this category shall submit plans to spend the development fees and receive approval of these plans prior to receiving substantive certification.

Amended by R.1995 d.491, effective September 5, 1995.
See: 27 N.J.R. 2134(a), 27 N.J.R. 3329(a).

5:93-8.6 Municipalities that have not imposed or collected fees that have received substantive certification, or are proceeding toward substantive certification

(a) This rule deals with municipalities that have not imposed or collected development fees and that have received substantive certification or are proceeding toward substantive certification. Municipalities in this category shall not impose or collect fees until they have received the Council's approval of their development fee ordinance. No municipality in this category shall spend development fees unless the Council has approved a plan for spending such fees.

(b) Municipalities that have not received substantive certification shall submit plans for spending the development fees and receive approval for these plans prior to receiving substantive certification.

(c) Notwithstanding any provision of this chapter, municipalities in this category that have received substantive certification shall submit plans for spending the development fees prior to the expiration of the substantive certification period or period of repose.

Amended by R.1995 d.491, effective September 5, 1995.
See: 27 N.J.R. 2134(a), 27 N.J.R. 3329(a).

5:93-8.7 Other municipalities that have not imposed or collected fees

(a) Except as provided for in N.J.A.C. 5:93-8.3 through 8.6 inclusive, municipalities that have not imposed or collected fees shall not impose or collect fees until they have adopted a housing element, petitioned for substantive certification and received the Council's approval of their development fee ordinance.