

CHAPTER 92

SUBSTANTIVE RULES OF THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING FOR THE PERIOD AUGUST 4, 1986 THROUGH JUNE 5, 1994

Authority

N.J.S.A. 52:27D-301 et seq., specifically 52:27D-307.

Source and Effective Date

R.2001 d.80, effective February 7, 2001.
See: 32 N.J.R. 4327(a), 33 N.J.R. 781(b).

Executive Order No. 66(1978) Expiration Date

Chapter 92, Substantive Rules of the New Jersey Council on Affordable Housing for the Period August 4, 1986 through June 5, 1994, expires on February 7, 2006.

Chapter Historical Note

Chapter 92, Substantive Rules of the New Jersey Council on Affordable Housing, was adopted as R.1986 d.333, effective August 4, 1986. See: 18 N.J.R. 1124(b), 18 N.J.R. 1527(a).

Subchapter 14, Inclusionary Developments, and Subchapter 15, Affirmative Marketing Within Inclusionary Developments, were adopted as R.1986 d.479, effective December 15, 1986. See: 18 N.J.R. 2442(a).

Subchapter 16, Accessory Apartments, was adopted as R.1988 d.84, effective February 16, 1988. See: 19 N.J.R. 2089(b), 20 N.J.R. 385(b).

Subchapter 17, Rehabilitation of Indigenous Need, was adopted as R.1988 d.295, effective July 5, 1988. See: 20 N.J.R. 864(b), 20 N.J.R. 1539(b).

Pursuant to Executive Order No. 66(1978), Chapter 92, Substantive Rules for the Period August 4, 1986 through June 5, 1994, was readopted as R.1991 d.120, effective February 7, 1991. See: 22 N.J.R. 3671(a), 23 N.J.R. 688(b).

Subchapter 18, Development Fees, was adopted as R.1992 d.45, effective January 21, 1992. See: 23 N.J.R. 2813(b), 24 N.J.R. 235(a).

The Executive Order No. 66(1978) expiration date for Chapter 92, Substantive Rules of the Council on Affordable Housing for the Period August 4, 1986 through June 5, 1994, was extended by gubernatorial directive from February 7, 1996 to June 1, 1996. See: 28 N.J.R. 1378(a).

Pursuant to Executive Order No. 66(1978), Chapter 92, Substantive Rules of the Council on Affordable Housing for the Period August 4, 1986 through June 5, 1994, was readopted as R.1996 d.254, effective May 8, 1996. See: 28 N.J.R. 1455(a), 28 N.J.R. 2854(a).

Pursuant to Executive Order No. 66(1978), Chapter 92, Substantive Rules for the Period August 4, 1986 through June 5, 1994, was readopted as R.2001 d.80, effective February 7, 2001. See: Source and Effective Date.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 5:92-1.1 Short title; purpose; scope
- 5:92-1.2 Severability clause
- 5:92-1.3 Definitions
- 5:92-1.4 Housing element
- 5:92-1.5 Substantive certification
- 5:92-1.6 Interim substantive certification

SUBCHAPTER 2. HOUSING REGIONS

- 5:92-2.1 Regions defined
- 5:92-2.2 Uses of regions

SUBCHAPTER 3. POPULATION AND HOUSEHOLDS

- 5:92-3.1 Purpose
- 5:92-3.2 Population and household estimates and projections

SUBCHAPTER 4. ESTIMATED PRESENT AND PROSPECTIVE NEED

- 5:92-4.1 Need

SUBCHAPTER 5. MUNICIPAL DETERMINATION OF PRESENT AND PROSPECTIVE NEED

- 5:92-5.1 General
- 5:92-5.2 Indigenous need (as of 1987)
- 5:92-5.3 Distribution of need
- 5:92-5.4 Reallocated present need
- 5:92-5.5 Present needs (as of 1987)
- 5:92-5.6 Prospective need: 1987-1993
- 5:92-5.7 Total need
- 5:92-5.8 Demolitions
- 5:92-5.9 Filtering
- 5:92-5.10 Residential conversion
- 5:92-5.11 Spontaneous rehabilitation
- 5:92-5.12 Pre-credited need
- 5:92-5.13 Calculation of indigenous need: selected urban aid cities
- 5:92-5.14 Low and moderate income split

SUBCHAPTER 6. CREDITS

- 5:92-6.1 Credits
- 5:92-6.2 Rehabilitation
- 5:92-6.3 New construction

SUBCHAPTER 7. DRASTIC ALTERATION OF THE ESTABLISHED PATTERN OF DEVELOPMENT

- 5:92-7.1 Drastic alteration

SUBCHAPTER 8. MUNICIPAL ADJUSTMENTS

- 5:92-8.1 General
- 5:92-8.2 Adjustment process
- 5:92-8.3 Adequate recreation, conservation and open space
- 5:92-8.4 Vacant sites
- 5:92-8.5 Adequate public facilities and infrastructure capacities
- 5:92-8.6 Prohibitive costs of infrastructure

SUBCHAPTER 9. PRIORITIZING

- 5:92-9.1 Prioritizing vacant and developable sites

SUBCHAPTER 10. PHASING OF PRESENT AND PROSPECTIVE NEED

- 5:92-10.1 Phasing plans
- 5:92-10.2 Phasing schedules
- 5:92-10.3 Commencement date of phasing schedule
- 5:92-10.4 General provisions
- 5:92-10.5 Priority of sites
- 5:92-10.6 Adjustments to phasing schedule

SUBCHAPTER 11. REGIONAL CONTRIBUTION AGREEMENTS (RCAs)

- 5:92-11.1 General provisions
- 5:92-11.2 Terms
- 5:92-11.3 Credits

- 5:92-11.4 Review by county planning board or other county designated agency
- 5:92-11.5 Amount and duration of contributions
- 5:92-11.6 Enforcement

SUBCHAPTER 12. CONTROLS ON AFFORDABILITY

- 5:92-12.1 General provisions; new construction of sales units
- 5:92-12.2 General provisions concerning uniform deed restriction liens and enforcement through certificates of occupancy or reoccupancy on sales units
- 5:92-12.3 Option to buy sales units
- 5:92-12.4 Municipal option
- 5:92-12.5 State option
- 5:92-12.6 Non-profit option
- 5:92-12.7 Seller option
- 5:92-12.8 Municipal rejection of repayment option
- 5:92-12.9 Continued application of options to create, rehabilitate or maintain low and moderate income units
- 5:92-12.10 Rehabilitation, rentals, conversion of non-residential structure
- 5:92-12.11 Administrative mechanism
- 5:92-12.12 Initial pricing
- 5:92-12.13 Annual indexed increases while controls are in place
- 5:92-12.14 Subsidy to ensure affordability prior to the expiration of controls
- 5:92-12.15 Procedures for initial sales, resale prior to the expiration of controls, and rentals
- 5:92-12.16 Eligible capital improvements prior to the expiration of controls
- 5:92-12.17 Impact of foreclosure on resale while controls are in place
- 5:92-12.18 Excess proceeds upon foreclosure

APPENDIX AFFORDABLE HOUSING AGREEMENT

SUBCHAPTER 13. WAIVER

- 5:92-13.1 Waiver

SUBCHAPTER 14. INCLUSIONARY DEVELOPMENTS

- 5:92-14.1 Bedroom distribution
- 5:92-14.2 Range of affordability for purchased housing
- 5:92-14.3 Age restricted units and alternative living arrangements
- 5:92-14.4 Rental housing

SUBCHAPTER 15. AFFIRMATIVE MARKETING WITHIN INCLUSIONARY DEVELOPMENTS

- 5:92-15.1 Occupancy preference
- 5:92-15.2 Affirmative Marketing Program
- 5:92-15.3 Exemption from occupancy preference and Affirmative Marketing Program

SUBCHAPTER 16. ACCESSORY APARTMENTS

- 5:92-16.1 General provisions
- 5:92-16.2 Unit creation
- 5:92-16.3 Conversion standards
- 5:92-16.4 Occupancy and marketing
- 5:92-16.5 Terms
- 5:92-16.6 Applicability of subchapter

SUBCHAPTER 17. REHABILITATION OF INDIGENOUS NEED

- 5:92-17.1 Rehabilitation cost standards
- 5:92-17.2 Annual monitoring reports
- 5:92-17.3 Rehabilitation costs less than \$8,000

SUBCHAPTER 18. DEVELOPMENT FEES

- 5:92-18.1 Purpose
- 5:92-18.2 Basic requirements
- 5:92-18.3 Urban aid municipalities
- 5:92-18.4 Municipalities that collected fees and received certification

- 5:92-18.5 Municipalities that collected fees and are proceeding toward certification
- 5:92-18.6 Municipalities that have not collected fees that have received substantive certification, or are proceeding toward substantive certification
- 5:92-18.7 Other municipalities that have not collected fees
- 5:92-18.8 Development fee ordinance review
- 5:92-18.9 Content of plans to spend development fees
- 5:92-18.10 Development fees; residential
- 5:92-18.11 Development fees; non-residential
- 5:92-18.12 Eligible exactions, ineligible exactions and exemptions
- 5:92-18.13 Collection of fees
- 5:92-18.14 Housing trust fund
- 5:92-18.15 Use of money
- 5:92-18.16 Monitoring
- 5:92-18.17 Penalties
- 5:92-18.18 Designation of entities to receive development fees
- 5:92-18.19 Ongoing collection of fees
- 5:92-18.20 Severability

TECHNICAL APPENDIX

APPENDIX A THROUGH APPENDIX F

SUBCHAPTER 1. GENERAL PROVISIONS

5:92-1.1 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 August 4, 1986 through June 5, 1994."

(b) The purpose of this chapter will be the crediting of past actions taken by municipalities in addressing their obligations to house low and moderate income households.

(c) These rules can be applied to all municipalities within the Council's jurisdiction.

Amended by R.1994 d.290, effective June 6, 1994.
See: 25 N.J.R. 5763(a), 26 N.J.R. 2900(a).

Case Notes

Regulations pertaining to determining municipal fair shares of low and moderate income housing were entitled to presumption of validity. *Bi-County Development Corp. v. Mayor and Council of Borough of Oakland*, 224 N.J.Super. 455, 540 A.2d 927 (L.1988).

Superior Court, Law Division had no authority to invalidate regulations of the Council on Affordable Housing dealing with determining municipal fair shares of low and moderate housing units. *Bi-County Development Corp. v. Mayor and Council of Borough of Oakland*, 224 N.J.Super. 455, 540 A.2d 927 (L.1988).

5:92-1.2 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.