5. Divide 1993 municipal median household income above the floor (unweighted) by the 1993 summed regional median household income above the floor (unweighted) for the housing region in which the municipality is located (see Table F, Column 4) to obtain the municipal share of regional household income above the floor (unweighted).

Example:

Johnsonville's 1993 Household Income (Unweighted) (above the floor) (Step 2 above)		1993 Aggregate Household Income (Unweighted) (above the floor) (Region 5) (Column L)		Johnsonville's Share of 1993 Aggregate Household Income (Unweighted) (above the floor)
$36,912	÷	$2,557,328	=	.01443

6. Multiply the weighted share of regional income times two and add it to the unweighted share. Divide this sum by three. Multiply the result by the spontaneous rehabilitation projections for the housing region in which the municipality is located (see Table F, Column 1). This yields the reduction to municipal total need (plus prior-cycle prospective need) due to spontaneous rehabilitation unless the result exceeds the indigenous need. In cases where the result exceeds the indigenous need, the reduction due to spontaneous rehabilitation shall equal the indigenous need. Example:

Johnsonville's Weighted Share of 1993 Aggregate Household Income × 2 (Step 4 above)		Johnsonville's Unweighted Share of 1993 Aggregate Household Income (Step 5 above)		1993-1999 Region 5 Spontaneous Rehabilitation Estimate (Column I)
[(.04630 + .04630	+	.01443) ÷ 3]	×	236 = 8

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

5:93–2.13 Pre-credited need: 1987–1999

Pre-credited need is total need and prior-cycle prospective need modified by secondary sources of demand and supply.

Total Need	+	Prior–Cycle Prospective Need	+	Demolitions	−	Filtering
695		248		9		89

Residential Conversions	−	Spontaneous Rehabilitation	=	Pre–Credited Need
16		8		839

5:93–2.14 Reduction

(a) The Council shall allow a one-for-one reduction of cumulative 1987 to 1999 need for affordable housing activities undertaken from 1987 to 1993 as part of a COAH certified or court settlement plan. It is a reduction for units zoned for or transferred, whether or not the units have been constructed, pursuant to N.J.A.C. 5:93–3. The reduction also includes rental bonus credits.

(b) Information for the reduction is derived from the Council, court, and other records of affordable housing activity. This information is specific to individual municipalities and is contained in Appendix A, Exhibit 3, Column 7. Municipal need at this point is pre-credited need minus the reduction. A municipality cannot take a reduction that will bring municipal need number below zero.

Pre–Credited Need	−	Reduction (Exhibit 3—Column 7)	=	Municipal Need After Reduction
839		439		400

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

5:93–2.15 Prior-cycle credits

A one-for-one credit shall be granted for low- and moderate-income housing constructed between April 1, 1980 and December 15, 1986 that conforms to the criteria in N.J.A.C. 5:93–3.1 and 3.2. Municipal need at this point is precredited need after the reduction, minus prior-cycle credits. Prior–cycle credits cannot reduce a municipal need number below zero.

Municipal Need After Reduction	(−)	Pre-1987 Credits – (Exhibit 3-Col. 8)	=	Municipal Need After Pre-1987 Credits
400	−	101	=	299

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

5:93–2.16 Twenty-percent (20%) cap

(a) A cap of 20 percent of the estimated 1993 occupied housing stock (community capacity) cannot be exceeded by a municipality's need for new construction. The need for new construction is the precredited need minus the reductions, prior-cycle credits, and the rehabilitation components. This is based on the premise that if the affordable housing was provided as a 20–percent set-aside of inclusionary housing, and if the planned affordable housing was more than 20 percent of existing units, then the new affordable housing and accompanying market units would exceed the number of existing housing units in the community.

(b) Community capacity is determined by multiplying the estimated 1993 occupied housing in the municipality (Appendix A, Exhibit 1, Column 4) by 0.20 and comparing this to the municipal need for new construction.

1. If the community capacity is larger than municipal need for new construction, the 20–percent cap is zero. This is the case for the present example.

2. If community capacity is smaller than municipal need for new construction, the difference between community capacity and the municipal need for new construction is subtracted from the latter to yield the 20–percent cap. The 20–percent cap is the difference between community capacity and the municipal need for new construction. Municipal need at this point equals pre-credited need minus the reduction, minus prior-cycle credits, minus the 20–percent cap.

Johnsonville's 1993 Occupied Housing Estimate		Twenty Percent (20%)	=	Community Capacity
12,695 units	×	0.20	=	2,539 units

Municipal Need for New Construction		Community Capacity	=	Twenty Percent (20%) Cap
274		2,539	=	0

Municipal Need After Prior–Cycle Credit	–	Twenty Percent (20% Cap)	=	Municipal Need After 20–Percent Cap
299		0		299

5:93–2.17 Calculated need: 1987–1999

Municipal calculated need is the sum of total need, prior-cycle prospective need, and demolitions; minus filtering, conversion, and spontaneous rehabilitation, yielding, pre-credited need; minus the reduction, prior-cycle credits, and 20–percent cap (see Appendix A).

		plus		*plus*		
	Total Need		Prior-cycle Prospective Need		Demolitions	
	695	+	248	+	9	
minus		*minus*			*equals*	
	Filtering		Residential Conversion	Spontaneous Rehabilitation		Pre–Credited Need
—	89	—	16	— 8	=	839
minus		*minus*		*minus*	*equals*	
	Reduction		Prior–Cycle Credits	20% Cap		Calculated Need
—	439	—	101	— 0	=	299

5:93–2.18 Vacant land adjustment communities; prior cycle

Municipalities that received an adjustment from the courts or the Council due to undeveloped land in the first affordable housing cycle have received a calculated need number. However, the Council has developed a streamlined process for these communities to receive substantive certification. The calculated need is retained in the system as a goal for future affordable housing efforts as development and redevelopment occur in the community.

5:93–2.19 Calculation of indigenous need: selected urban aid cities

(a) Selected municipalities receiving state aid (urban aid cities) pursuant to P.L. 1978, c.14 (N.J.S.A. 52:270–178 et seq.) that are exempt from the distribution of reallocated present need and prospective need as described in N.J.A.C. 5:93–2.3 (see Appendix A), Attachment shall determine their indigenous need as indicated below:

1. Follow the procedures delineated in N.J.A.C. 5:93–2.2(a)1 to 3. These calculations yield the count of actual low- and moderate-income deficient units in the selected urban aid city. This estimate of low- and moderate-income deficient units may also be determined through a survey of the municipality's housing stock when such survey is deemed adequate and accepted by the Council for identifying deficient housing units occupied by low- or moderate-income households.

2. Modify the number calculated in (a)1 above as instructed in N.J.A.C. 5:93–2.9, 2.10, 2.11, and 2.12 (demolitions, filtering, residential conversions and spontaneous rehabilitation.)

3. Perform the calculation required in N.J.A.C. 5:93–2.2(a)4.

4. Municipal Indigenous Need (for Urban Aid Cities) shall be the smaller number resulting from the calculations in (a)2 and 3 above.

5. If the calculation in (a)2 above is larger than the calculation in (a)3 above, the difference between the two shall be distributed throughout the housing region as reallocated present need (see Appendix A).

6. No additional calculations need be made by these cities at this point.

5:93–2.20 Low- and moderate-income split

The municipal calculated need obligation shall be divided equally between low- and moderate-income households.

Example:

Johnsonville's total obligation of 299 units would include 150 low-income and 149 moderate-income units.

(An odd number is always split in favor of the low-income unit.)

SUBCHAPTER 3. CREDITS/REDUCTIONS

5:93–3.1 General

(a) The Fair Housing Act provides that the Council determine municipal fair share, after crediting on a one for one basis each current unit of low and moderate income housing of adequate standard, including any such housing constructed or acquired as part of a housing program specifically intended to provide housing for low and moderate income households. Given the approach the Council has developed for determining calculated need, the Council has determined that it is appropriate to allow credits for units constructed after April 1, 1980. Since it was not until December 15, 1986 that the Council established criteria for an eligible low and moderate income unit, the crediting criteria for housing units created between April 1, 1980 (the date of the census) and December 15, 1986 shall be different than the period subsequent to December 15, 1986.

(b) In determining calculated need, COAH has granted prior-cycle credits. These are credits that have been granted by the Council for the construction of low and moderate income units between April 1, 1980 and December 15, 1986. In determining calculated need, the Council has also provided a reduction to the municipal housing obligation based on the realistic opportunity a municipality created in response to its 1987–1993 housing need through regional contribution agreements, plans for new construction, rental bonus credits, or through its zoning powers. The source for this information includes data from the Council's records, county planning boards and Masters appointed by the court. To the extent that this information is incomplete or incorrect, the Council shall modify the calculated need, in accordance with this chapter.

(m) A municipality receiving State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D–178 et seq.) may seek a waiver from addressing its entire rehabilitation component in one six year period of substantive certification. A municipality seeking such a waiver shall demonstrate that it cannot rehabilitate the entire rehabilitation component in six years and/or that an extraordinary hardship exists, related to addressing the entire rehabilitation component in six years.

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

5:93–5.3 New construction; site criteria and general requirements

(a) Municipalities may create new low and moderate income units within its borders by sponsoring their construction, with or without a non-profit corporation, or by zoning sites for inclusionary development.

(b) Municipalities shall designate sites that are available, suitable, developable and approvable, as defined in N.J.A.C. 5:93–1. In reviewing sites, the Council shall give priority to sites where infrastructure is available. All sites designated for low and moderate income housing shall receive approval for consistency review, as set forth in Section 208 of the Clean Water Act, 33 U.S.C. 1251 et seq., prior to substantive certification. Where a site is denied consistency review, the municipality shall apply for an amendment to its Section 208 plan to incorporate the denied site.

(c) For each site designated for new construction of low and moderate income units, the municipality shall provide the following minimum documentation:

1. A general description of each site to be used for inclusionary development, including, but not limited to, the following: acreage, current zoning, surrounding land uses, and street access. Maps shall be submitted showing the location of all sites;

2. A description of any environmental constraints, including steep slopes, wetlands and flood plain areas. The municipality shall include calculations of the amount of acreage that is environmentally constrained and any remaining buildable acreage. Documentation shall include the appropriate wetland and flood plain maps required pursuant to N.J.A.C. 5:93–5.1;

3. Information shall be submitted regarding location, size and capacity of lines and facilities within the service area, as well as the status of the 201/208 plans. Documentation shall include maps showing the location of the sewer and water facilities; and

4. For each site, the total number of housing units; the gross and net density of the proposed development; the total number of low and moderate income units; and the number of low and moderate income units that will be for sale and for rent.

(d) Municipalities shall structure plans for new construction, conversion and gut rehabilitation (including new construction, conversion and gut rehabilitation that is part of a regional contribution agreement) that conform to the Council's rules pertaining to bedroom mix, age restriction, price stratification, rental housing, controls on affordability and affirmative marketing.

(e) Unless otherwise permitted, the Council shall not provide credit for housing that is restricted in occupancy to any specific group.

5:93–5.4 New construction; conformance with the State Development and Redevelopment Plan (SDRP)

(a) In Planning Areas 1 and 2, as designated in the SDRP, the Council shall encourage inclusionary development within centers. However, municipalities may locate inclusionary developments within the environs as defined in the SDRP.

(b) In Planning Area 3, the Council shall encourage inclusionary development within centers. Where a municipality proposes an inclusionary site within Planning Area 3 outside of a center, the Council may permit such a site if infrastructure is available or can be easily extended from Planning Area 2.

(c) In Planning Areas 4 or 5, as designated in the SDRP, the Council shall require inclusionary development to be located in centers. Where the Council determines that a municipality has not created a realistic opportunity within the development boundaries of a center to accommodate that portion of the municipal inclusionary component that the municipality proposes to address within the municipality, the Council shall require the municipality to identify an expanded center(s) or a new center(s) and submit the expanded or new center(s) to the State Planning Commission for designation.

(d) In municipalities that are divided by more than one Planning Area, the following principles shall apply:

1. The Council shall encourage and may require the use of sites in Planning Areas 1 and 2 prior to approving inclusionary sites in Planning Areas 3, 4 and 5 that lack sufficient infrastructure;

2. The Council shall encourage and may require the use of sites within Planning Area 3 prior to approving inclusionary sites in Planning Areas 4 and 5 that would require the expansion of existing infrastructure; and

3. The Council shall encourage and may require the use of sites to which existing infrastructure can easily be extended prior to approving inclusionary sites that require the creation of new infrastructure in an area not presently serviced by infrastructure.

5:93–5.5 Municipally sponsored construction and gut rehabilitation

(a) A municipality may elect to provide low and moderate income units through a municipally sponsored construction program. A municipally sponsored construction program shall address four major areas of concern. It shall document that there is municipal control of the site(s); an administrative mechanism to construct the proposed housing; a funding plan and evidence of adequate funding capacity; and timetables for construction of the units. More specifically, the following minimum documentation shall be submitted.

1. The municipality shall demonstrate that it has control or has the ability to control the site(s). Control may be in the form of outright ownership or an option on the property;

2. An administrative mechanism shall be submitted for the development indicating who will income qualify applicants and administer the units once they are occupied. The municipality may contract with an outside agency to provide these functions, provided a written agreement between the administrative agency and the municipality is submitted to the Council.

3. The municipality shall submit detailed information demonstrating that it has adequate funding capabilities. The documentation shall include:

i. A pro forma statement for the project; and

ii. Evidence that the municipality has adequate and stable funding. If State or Federal funds will be used, the municipality shall provide documentation indicating the funding available to the municipality and any applications still pending. In the case where an application for outside funding is still pending, the municipality shall provide a stable alternative source, such as municipal bonding, in the event that the funding request is not approved. As outside funds become available, the municipality may reduce its reliance on municipal resources; and

4. A construction schedule, or timetable, shall be submitted for each step in the development process: including preparation of a site plan, granting of municipal approvals, applications for State and Federal permits, selection of a contractor and construction. The construction schedule shall provide for construction to begin within two years of substantive certification. The municipality shall indicate the entity responsible for monitoring the construction and overall development activity.

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

5:93–5.6 Zoning for inclusionary development

(a) Municipalities that choose to provide zoning for inclusionary development shall select sites that conform to the criteria in N.J.A.C. 5:93–5.3 and shall submit the information required in N.J.A.C. 5:93–5.3.

(b) The Council's review of municipal plans to zone for inclusionary development shall include, but not necessarily be limited to: the existing densities surrounding the proposed inclusionary site; the need for a density bonus in order to produce low and moderate income housing; whether the site is approvable, available, developable and suitable pursuant to N.J.A.C. 5:93–1.3; the site's conformance with the State Development and Redevelopment Plan pursuant to N.J.A.C. 5:93–5.4; the existence of steep slopes, wetlands and floodplain areas on the site; the present ability of a developer to construct low and moderate income housing at a specific density; the length of time an inclusionary site has been zoned at a specific density and set-aside without being developed; and the number of inclusionary sites that have developed within the municipality at specific densities and set-asides.

1. When a municipality is receiving an adjustment pursuant to N.J.A.C. 5:93–4.2, the municipality shall be required to zone inclusionary sites at a minimum gross density of six (6) units per acre with a 20 percent set-aside.

2. In all other municipalities, when the review described in (b) indicates that such densities are appropriate, the Council shall require that a substantial percentage of inclusionary sites be zoned to allow market units within an inclusionary development to be constructed as single family detached units. For these sites, the Council shall generally favor a gross density of four units per acre with a 15 percent set-aside. Municipalities may also seek to zone sites for a gross density of five (5) units per acre with a 17.5 percent set-aside and six (6) units per acre or more with a 20 percent set-aside. The Council shall determine set-asides for densities between four (4) and five (5) and between five (5) and six (6) through a process of interpolation.

(c) The Council may require higher densities in circumstances including, but not limited to:

1. Where the existing zoning exceeds the density proposed by the municipality; or

2. When the Council determines that higher densities are required to provide an opportunity for inclusionary development in a specific municipality, based on the particular circumstances of that municipality.

(d) Municipalities zoning for inclusionary development shall require low and moderate income housing units to be built in accordance with the following schedule:

Minimum Percentage of Low and Moderate Income Units Completed	Percentage of Market Housing Units Completed
0	25
10	25 + 1 unit
50	50
75	75

Minimum Percentage of Low and Moderate Income Units Completed	Percentage of Market Housing Units Completed
100	90
	100

(e) The Council encourages a design of inclusionary developments that integrates the low and moderate income units with the market units.

Amended by R.1994 d.563, effective November 7, 1994.
See: 26 N.J.R. 2514(a), 26 N.J.R. 4349(b).

5:93–5.7 Regional contribution agreements

A municipality may address its housing obligation by entering into a regional contribution agreement in accordance with N.J.A.C. 5:93–6.

5:93–5.8 Alternative living arrangements

(a) Alternative living arrangements may be used to address a municipal housing obligation by entering into an agreement for the location of such a facility with the provider of the facility or by granting preliminary approval to a developer of an alternative living arrangement.

(b) The unit of credit for an alternative living arrangement shall be the bedroom.

(c) Alternative living arrangements reserved for senior citizens shall be included with the 25 percent that may be reserved for senior citizens pursuant to N.J.A.C. 5:93–5.13.

(d) Controls on affordability on alternative living arrangements shall remain in effect for at least 10 years. To be eligible for a rental bonus (pursuant to N.J.A.C. 5:93–5.14), controls on affordability shall remain in effect for at least 30 years.

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

5:93–5.9 Accessory apartments

(a) Up to 10 accessory apartments may be used to address a municipal housing obligation. A municipality using an accessory apartment program shall:

1. Demonstrate that the housing stock lends itself to accessory apartments. The Council will favor a large (measured in square feet), older housing stock;

2. Provide at least $10,000 per unit to subsidize the creation of the accessory apartment;

3. Demonstrate that rents of accessory apartments will average 57.5 percent of median income, including utilities. The rent shall be based on the number of bedrooms in accordance with N.J.A.C. 5:93–7.4; and

4. Demonstrate that accessory apartments will be affirmatively marketed in accordance with N.J.A.C. 5:93–11.

(b) Accessory apartments shall be exempt from Council bedroom mix requirements (N.J.A.C. 5:93–7.3).

(c) Accessory apartments reserved for senior citizens shall be included with the 25 percent that may be reserved for senior citizens pursuant to N.J.A.C. 5:93–5.12.

(d) Controls on affordability on accessory apartments shall remain in effect for at least 10 years. To be eligible for a rental bonus (pursuant to N.J.A.C. 5:93–5.13), controls on affordability shall remain in effect for at least 30 years.

(e) The Council shall assess the municipality's accessory apartment program at the end of a two-year period from date of substantive certification and shall require any necessary changes to address a shortfall, including, but not limited to the zoning of an additional site.

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

5:93–5.10 Purchase of housing units that have never been occupied and vacant housing units

(a) Purchasing housing units that have never been occupied and offering them in sound condition at affordable prices and/or rents to low and moderate income households may be used to address a municipal housing obligation. The sales price or rent of affordable units shall conform to the standards in N.J.A.C. 5:93–7.2 and 7.4. Municipalities that propose to purchase more than 30 percent but less than 100 percent of the market units in any one development and restrict them to low and moderate income households shall consider the impact of such a purchase on the value of the market units within the development. Municipalities shall also consider the impact of the purchase on the economic viability of any condominium or homeowners association.

(b) Purchasing housing units that have been vacant for at least 18 months and offering them in sound condition at affordable prices and/or rents to low and moderate income households may be used to address a municipal housing obligation. To be eligible, the municipality shall demonstrate to the Council's satisfaction, that the housing has been vacant for at least 18 months. The sales price or rent of the affordable units shall be consistent with the standards in N.J.A.C. 5:93–7.2 and 7.4.

(c) The Council shall review plans to purchase housing units that have never been occupied and housing units that the municipality has determined to be vacant for at least 18 months in a manner similar to its review of municipally sponsored construction, conversion and gut rehabilitation. Affordable low and moderate income housing created pursuant to this section shall, as best as practicable, conform to the Council's bedroom mix rules (N.J.A.C. 5:93–7.3) and shall be affirmatively marketed pursuant to N.J.A.C. 5:93–11.

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

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

5:93–5.11 Write–down/buy–down of previously owned units

(a) Writing–down or buying-down the cost of previously owned market rate units and offering them in sound condition at affordable prices to low and moderate income households may be used to address a municipal housing obligation. A municipality utilizing this program shall:

1. Propose up to 10 units but no more than 25 percent of a municipality's net inclusionary or new construction component;

2. Demonstrate that there are sufficient for-sale market rate units within the municipality on the multiple listing service for a viable program;

3. Provide at least $20,000 per unit to subsidize the cost of the buy-down unit;

4. Ensure that the sales prices shall conform to the standards in N.J.A.C. 5:93–7.4;

5. Demonstrate that at least half of the proposed units will be affordable to low income households and that the sales prices will be affordable to households earning an average 57.5 percent of median or the range of affordability will be accommodated elsewhere in the housing plan. The sale prices shall be based on the number of bedrooms in accordance with N.J.A.C. 5:93–7.4;

6. Demonstrate that the program and buy-down units will be affirmatively marketed in accordance with N.J.A.C. 5:93–11;

7. Be exempt from bedroom mix requirements pursuant to N.J.A.C. 5:93–7.3;

8. Place the 30–year deed restriction and mortgage lien on each unit as per Technical Appendix E, N.J.A.C. 5:93;

9. Designate an administrative agency that will:

i. Maintain an up-to-date inventory of units that meet the requirements of a buy-down program;

ii. Qualify and place income eligible households in low and moderate income units upon initial occupancy;

iii. Place income eligible households in low and moderate income units as they become available during the 30–year term of affordability controls;

iv. Enforce the terms of the deed restriction and mortgage lien;

v. Set up a separate interest bearing escrow account for the buy-down funds from each municipality; and

vi. Sponsor a home ownership counselling program and post purchase session for prospective purchasers; and

10. Encourage the dispersement of these units throughout the municipality;

(b) The Council shall assess the municipality's write–down/buy–down program at the end of a two-year period from date of substantive certification and the municipality shall prepare a plan to address any unmet units at that time.

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

5:93–5.12 Status of sites addressing the 1987–1993 municipal obligation

(a) Municipalities that received substantive certification for their 1987–1993 obligation based, in part, on the municipal choice to sponsor the construction of low and moderate income housing are responsible for constructing the low and moderate income housing. Failure of the community to satisfy the conditions of substantive certification and construct the housing shall not absolve the municipality from its responsibility.

(b) Sites zoned for inclusionary development in addressing the 1987–1993 housing obligation shall retain such zoning in the petition addressing a 1987–1999 fair share obligation if:

1. The site was subject to an agreement pursuant to the Council's mediation process or part of a negotiated settlement in court; or

2. The developer of the site has filed a development application with the municipality prior to the expiration of the 1987–1993 substantive certification period or the municipal petition for substantive certification whichever is later.

(c) A municipality may propose to eliminate a site under N.J.A.C. 5:93–5.12(b) if there is a 12–year petition and a signed agreement between the municipality and the affected property owner of the site on a new, proposed zoning.

(d) When petitioning to address a 12–year obligation, a municipality seeking to replace or delete a site used in addressing the 1987–1993 housing obligation that does not meet the criteria in (b) above shall provide notice at the time of petition to the owner of the site that the site is being replaced or deleted.

(e) A developer seeking an amendment to the density requirements of an inclusionary site shall follow the procedures set forth in N.J.A.C. 5:91–13. In submitting such requests, the developer shall demonstrate:

1. An ability to construct low and moderate income units within a defined period of time; and

2. A plan to address the low and moderate income units required of the site as a condition of substantive certification.

Recodified from 5:93–5.11 and amended by R.1995 d.491, effective September 5, 1995.

(b) No municipality in this category may spend development fees unless the Council has approved a plan for spending such fees and granted substantive certification. Municipalities shall submit these plans when they petition for substantive certification. Municipalities that have petitioned for substantive certification prior to the effective date of this rule shall submit plans for spending development fees 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).

5:93–8.8 Development fee ordinance review

(a) The Council shall not review a development fee ordinance unless the municipality has submitted:

1. A copy of an adopted housing element that complies with the Municipal Land Use Law, N.J.S.A. 40:55D et seq.;

2. A copy of the proposed ordinance designed to collect development fees;

3. A description of any changes to the municipal zoning ordinance during the previous two years;

4. A request in the form of a resolution by the governing body for the Council to review the development fee ordinance;

5. A copy of the compliance plan, implementation ordinances information regarding the period of time encompassed by the judgment of repose and a request for review by the court if the municipality has received a court ordered judgment of repose. The court shall indicate if the Council is to monitor the development fees;

6. A description of the types of developments that will be subject to fees;

7. A description of the amount and nature of the fees imposed;

8. A statement regarding the use of density bonuses or other devices to counterbalance development fees; and

9. If development fees have been collected prior to December 13, 1990 and the municipality wishes to retain some or all of these fees, the following information must be submitted to the Council within 90 days of the effective date of this rule:

i. A copy of the ordinance pursuant to which the fees were collected; and the proposed ordinance, if any, designed to reimpose some or all of these fees;

ii. A request in the form of a resolution by the governing body for the Council to review the development fee ordinance used to collect the fees;

iii. The name of each developer that paid a development fee;

iv. The amount paid by each developer and the formula for the amount collected;

v. The equalized assessed value of each development at the time of collection;

vi. An accounting of all money collected and identification of the municipal account that houses all development fees;

vii. If any money collected through a development fee ordinance has been spent, an accounting of the expenditure; and

viii. Any other information the Council may require.

(b) Municipalities that collected fees prior to December 13, 1990, shall be able to retain such revenues or reimpose such fees to the extent that the fees collected by the municipality do not exceed the amount permitted by this chapter. Municipalities interested in retaining development fees collected prior to December 13, 1990 shall also conform to the procedures outlined in N.J.A.C. 5:91–15, Procedures for retaining development fees.

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

5:93–8.9 Content of plans to spend development fees

Plans to spend development fees shall consist of the information required in N.J.A.C. 5:93–5.1(c).

5:93–8.10 Development fees; residential

(a) Residential development fees shall be a maximum of one-half of one percent of the equalized assessed value for residential development, provided no increased density is permitted.

(b) In zones that permit increased residential development, the municipality may impose a development fee of up to six percent of the equalized assessed value for each additional unit that may be realized.

Example: if a rezoning allowed two extra units to be constructed, the fees could equal one-half of one percent of equalized assessed value on the first unit and six percent of equalized assessed value on the two incremental units.

(c) Municipalities may allow developers of sites zoned for inclusionary development to pay a fee in lieu of building low and moderate income units, provided the Council determines the municipal housing element and fair share plan provides a realistic opportunity for addressing the municipal fair share obligation. The fee may equal the cost of subsidizing the low and moderate income units that are replaced by the development fee. For example, an inclusionary development may include a 20 percent set-aside, no set-aside and a fee that is the equivalent of a 20 percent set-aside or a combination of a fee and set-aside that is the equivalent of a 20 percent set-aside.

(d) Municipalities may collect fees exceeding those permitted in this section, provided they enter into agreements with developers that offer a financial incentive for paying higher fees. The financial incentive may be in the form of a tax abatement. No agreement may provide for a voluntary developer fee without also providing for a comparable offsetting incentive. All agreements are subject to Council approval.

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

5:93–8.11 Development fees; non-residential

(a) Non-residential development fees shall be a maximum of one percent of the equalized assessed value for non-residential development.

(b) Municipalities may collect fees exceeding those permitted in this section provided they enter into agreements with developers that offer a financial incentive for paying higher fees. Such agreements may include, but are not limited to, a tax abatement, increased commercial/industrial square footage, increased commercial/industrial lot coverage and/or increased commercial/industrial impervious coverage in return for an increased fee. The fee negotiated must bear a reasonable relationship to the additional commercial/industrial consideration to be received. All agreements are subject to Council approval.

5:93–8.12 Eligible exactions, ineligible exactions and exemptions

(a) Except as provided for in N.J.A.C. 5:93–8.10, inclusionary developments shall be exempt from development fees. All other forms of new construction may be subject to development fees.

(b) Development fees may be imposed and collected when an existing structure is expanded or undergoes a more intense use. The development fee that may be imposed and collected shall be calculated on the increase in the equalized assessed value of the improved structure.

(c) Municipalities shall not reduce densities from pre-existing levels and then require developers to pay development fees in exchange for an increased density.

(d) Developments that have received preliminary or final approval prior to the imposition of a municipal development fee shall be exempt from development fees unless the developer seeks a major change in the approval. Municipalities that collected development fees prior to December 13, 1990 may not retain any fees imposed subsequent to granting preliminary or final development approval, unless the developer seeks a major change in the approval.

(e) Municipalities may exempt specific types of development from fees or may impose lower fees for specific types of development, provided each classification of development is addressed consistently. For example, all retail development may be exempt from fees.

(f) Municipalities may exempt specific areas of the municipality from the imposition of fees or reduce fees in order to promote development in specific areas of the municipality.

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

5:93–8.13 Collection of fees

Municipalities may collect up to 50 percent of the fee on any specific development at the time of issuance of the building permit. The remaining portion may be collected at the issuance of the certificate of occupancy.

5:93–8.14 Contested fees

Imposed and collected development fees that are challenged shall be placed in an interest bearing escrow account by the municipality. If all or a portion of the contested fees are returned to the developer, the accrued interest on the returned amount shall also be returned.

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

5:93–8.15 Housing trust fund

All development fees shall be deposited in a separate interest bearing housing trust fund. In establishing the housing trust fund, the municipality shall provide whatever express written authorization that may be required by the bank to permit the Council to direct the disbursement of development fees pursuant to N.J.A.C. 5:93–8.17 and 8.18.

Recodified from 5:93–8.14 by R.1995 d.491, effective September 5, 1995.
See: 27 N.J.R. 2134(a), 27 N.J.R. 3329(a).

5:93–8.16 Use of money

(a) A municipality may use revenues collected from development fees for any activity approved by the Council for addressing the municipal fair share. Such activities include, but are not limited to: rehabilitation, new construction, regional contribution agreements, purchase of land for low and moderate income housing, improvement of land to be used for low and moderate income housing, extensions and/or improvements of roads and infrastructure to low and moderate income housing sites, assistance designed to render units to be more affordable and administration of the implementation of the housing element. Municipalities are encouraged to use development fee revenues to attract other funds such as, but not limited to, available public subsidies and funds from private lending institutions.