

**CHAPTER 93**

**SUBSTANTIVE RULES OF THE NEW JERSEY  
COUNCIL ON AFFORDABLE HOUSING FOR  
THE PERIOD BEGINNING JUNE 6, 1994**

**Authority**

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

**Source and Effective Date**

R.1999 d.171, effective May 5, 1999.  
See: 31 N.J.R. 578(a), 31 N.J.R. 1479(a).

**Executive Order No. 66(1978) Expiration Date**

Chapter 93, Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning June 6, 1994, expires on May 5, 2004.

**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: 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.

**5:93-1.3 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

Amended by R.1999 d.106, effective April 5, 1999.

See: 31 N.J.R. 133(a), 31 N.J.R. 870(a).

Added the last sentence.

**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. 5:93-8.18 and 8.19. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activity approved by COAH.

Recodified from N.J.A.C. 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).

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 regarding interest accrued in housing trust fund and referencing N.J.A.C. 5:93-8.19.

#### 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, RCAs, ECHO housing, 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.

(b) Funds shall not be expended to reimburse municipalities for past housing activities.

(c) At least 30 percent of the revenues collected from development fees shall be devoted to render units more affordable. Examples of such activities include, but are not limited to, downpayment assistance, low interest loans, and rental assistance. Development fees collected to finance an RCA, a rehabilitation program or a new construction project shall be exempt from this requirement. This requirement may be waived in whole or in part when the municipality demonstrates the ability to address the requirement of affordability assistance from another source.

(d) Municipalities may contract with a private or public entity to administer the implementation of any part of its housing element, including the requirement for affordability assistance.

(e) No more than 20 percent of the revenues collected from development fees shall be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement: a rehabilitation program; a new construction program; an RCA; a housing element; and an affirmative marketing program. Administrative funds may be used for: income qualification of households; monitoring the turnover of sale and rental units; and compliance with Council monitoring requirements. Development fees shall not be used to defray the costs of existing staff. Development fee administrative costs are calculated and may be expended at the end of each year or upon receipt of the fees.

Recodified from N.J.A.C. 5:93-8.15 and 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 regarding development fee administrative costs.

#### 5:93-8.17 Monitoring

Municipalities that collect development fees shall complete and return all monitoring forms related to the collection of fees, expenditure of revenues and implementation of the plan certified by the Council or approved by the court. Financial reports, annual program implementation and monitoring reports shall be completed on forms designed by the Council.

Recodified from 5:93-8.16 and amended by R.1995 d.491, effective September 5, 1995.

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

#### 5:93-8.18 Penalties

(a) The municipality's ability to impose and collect fees and the Council's approval of an ordinance and spending plan shall be conditioned on compliance with all requirements of this subchapter. Occurrence of the following may result in the Council taking an action pursuant to (b) below:

1. Failure to submit a plan pursuant to N.J.A.C. 5:93-5.1(c) within the time limits imposed by the Council;
2. Failure to meet deadlines for information required by the Council in its review of a housing element, development fee ordinance, or plan for spending fees;
3. Failure to proceed through the Council's administrative process toward substantive certification in a timely manner;
4. Failure to address the Council's conditions for approval of a plan to spend development fees within the deadlines imposed by the Council;
5. Failure to address the Council's conditions for substantive certification within deadlines imposed by the Council;
6. Failure to submit accurate monitoring reports within the time limits imposed by the Council;
7. Failure to implement the plan to spend development fees within the time limits imposed by the Council, or within reasonable extensions granted by the Council;
8. Expenditure of development fees on activities not permitted by the Council;
9. Revocation of certification; or
10. Other good cause demonstrating that the revenues are not being used for the intended purpose.

(b) Consistent with this rule, any ordinance adopted by a municipality for the purpose of imposing and collecting development fees shall provide that, in the event that any of the conditions described in N.J.A.C. 5:93-8.18(a) occur, the Council shall be authorized, on behalf of the municipality, to direct the manner in which all development fees collected pursuant to that ordinance shall be expended. Such revenues shall immediately become available for expenditure once the Council has notified the municipal clerk and chief

financial officer that such a condition has occurred. In furtherance of the foregoing, any such municipality shall, in establishing a bank account pursuant to N.J.A.C. 5:93-8.15, ensure that the municipality has provided whatever express written authorization may be required by the bank to permit the Council to direct the disbursement of such revenues from the account following the delivery to the bank of the aforementioned written notification provided by the Council to the municipality's clerk and chief financial officer.

(c) The Council may, after a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., revoke development fee ordinance approval for any municipality that fails to comply with the requirements of this subchapter. Where such approval has been revoked, the Council shall not approve an ordinance permitting such municipality to impose or collect development fees for the remaining period of the substantive certification period or judgment of repose. With regard to municipalities that qualify for State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) the Council shall not approve any ordinance permitting such municipalities to impose or collect development fees for the remainder of the approval period (of up to six years) following a Council determination that they failed to comply with this subchapter.

(d) Neither loss of development fees, nor loss of the municipality's ability to impose and collect development fees shall alter the municipality's responsibilities pursuant to substantive certification or a court ordered judgment of repose.

Recodified from N.J.A.C. 5:93-8.17 and 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).

Changes reference from N.J.A.C. 5:93-8.17 to N.J.A.C. 5:93-8.18

#### **5:93-8.19 Designation of entities to receive development fees**

(a) The Council shall solicit plans from public sector entities and non-profit agencies to create or rehabilitate affordable housing.

(b) The Council shall designate such agencies to receive revenues from development fees when the Council takes an action pursuant to N.J.A.C. 5:93-8.18.

(c) To the extent practicable, when the Council takes an action pursuant to N.J.A.C. 5:93-8.18, the Council shall assign development fee revenues to projects planned within the municipality that generated the revenues or within close proximity to the municipality (such as within the county or region).

Recodified from N.J.A.C. 5:93-8.18 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).

Changes references from N.J.A.C. 5:93-8.17 to N.J.A.C. 5:93-8.18.

#### **5:93-8.20 Ongoing collection of fees**

(a) Municipalities that qualify for State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) and have received Council approval to impose and collect development fees, shall not impose or collect such fees for more than the period specified by the Council, not to exceed a six year period, unless the municipality has refiled an adopted housing element with the Council and received the Council's approval of its development fee ordinance. These municipalities shall submit a plan for spending development fees within one year of the Council's approval of their development fee ordinance. Municipalities that fail to renew their ability to impose and collect development fees within the six year period may resume the imposition and collection of development fees by complying with the requirements of this section.

(b) Except as provided for in (a) above, the ability for all other municipalities to impose, collect and expend development fees shall expire with their substantive certification or judgment of repose, unless the municipality has filed an adopted housing element with the Council; petitioned for substantive certification; and received the Council's approval of its development fee ordinance. Municipalities that fail to renew their ability to impose and collect development fees prior to the expiration of their substantive certification or judgment of repose may resume the imposition and collection of development fees by complying with the requirements of this section. A municipality shall not impose a development fee on a development that receives preliminary or final approval after the expiration of substantive certification or a judgment of repose; nor shall a municipality retroactively impose a development fee on such a development. Also, a municipality shall not expend development fees after the expiration of substantive certification or a judgment of repose.

Recodified from N.J.A.C. 5:93-8.19 and 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).

Added last two sentences.

#### **5:93-8.21 Severability**

If any part of this subchapter shall be held invalid, the holding shall not affect the validity of the remaining parts of this subchapter. If any part of this subchapter 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.

Recodified from 5:93-8.20 by R.1995 d.491, effective September 5, 1995.

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

1. Sell to a qualified low and moderate income household at a price not to exceed the maximum permitted sales price in accordance with existing Council rules, providing the unit is regulated by the deed restriction and lien adopted by the Council and included in Appendix E, incorporated herein by reference, for a period of at least 30 years; or

2. Exercise the repayment option and sell to any purchaser at market price, providing that 95 percent of the price differential is paid to the administrative entity, as an instrument of the municipality, at closing.

(c) If the sale will be to a qualified low and moderate income household, the administrative entity shall certify the income qualifications of the purchaser and shall ensure the housing unit is regulated by the deed restriction and lien required by the Council, which has been included in Appendix E, incorporated here by reference.

(d) The administrative entity shall examine any contract of sale containing a repayment option to determine if the proposed sales price bears a reasonable relationship to the housing unit's fair market value. In making this determination, the administrative entity may rely on comparable sales data or an appraisal. The administrative entity shall not approve any contract of sale where there is a determination that the sales price does not bear a reasonable relationship to fair market value. The administrative entity shall make a determination within 20 days of receipt of the contract of sale and shall calculate the repayment option payment.

(e) The administrative entity shall adopt an appeal procedure by which a seller may submit written documentation requesting the administrative entity to recompute the repayment obligation if the seller believes an error has been made, or to reconsider a determination that a sales price does not bear a reasonable relationship to fair market value. A repayment obligation determination made as a result of an owner's appeal shall be a final administrative determination of the administrative entity.

(f) The repayment shall occur at the date of closing and transfer of title for the first non-exempt transaction after the expiration of controls on affordability.

(g) Repayment proceeds shall be deposited in a housing trust fund (see N.J.A.C. 5:93-8.15 and may be used as per N.J.A.C. 5:93-8.16. Money deposited in housing trust funds may not be expended until the municipality submits and the Council approves a spending plan (See N.J.A.C. 5:93-5.1(c)).

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).

In (g), substituted a reference to N.J.A.C. 5:93-8.15 for a reference to N.J.A.C. 5:93-8.14, and substituted a reference to N.J.A.C. 5:93-8.16 for a reference to N.J.A.C. 5:93-8.15.

### **5:93-9.9 Municipal rejection of repayment option—sales units**

(a) A municipality shall have the right to determine that the most desirable means of promoting an adequate supply of low and moderate income housing is to prohibit the exercise of the repayment option and maintain controls on lower income housing units sold within the municipality beyond the period required by N.J.A.C. 5:93-9.2. Such determination shall be made by resolution of the municipal governing body and shall be effective upon filing with the Council and the authority. The resolution shall specify the time period for which the repayment option shall not be applicable. During such period, no seller in the municipality may utilize the repayment option permitted by N.J.A.C. 5:93-9.8.

(b) Municipalities that exercise the option outlined in (a) above shall:

1. Provide public notice in a newspaper of general circulation; and

2. Notify the administrative entity and Council of its governing body's action.

(c) The administrative entity shall ensure that the deed restriction on all affected housing units reflects the extended period of controls.

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

### **5:93-9.10 Continued application of options to create, rehabilitate or maintain low and moderate income units; sales units**

When a housing unit has been maintained as a low or moderate income unit after controls have been in effect for the period specified in N.J.A.C. 5:93-9.2, the deed restriction governing the housing units shall allow municipalities, the State, non-profit agencies and sellers of low and moderate income units to again exercise all the same options as provided in this subchapter.

### **5:93-9.11 Eligible capital improvements prior to the expiration of controls; sales units**

(a) Property owners of single family, owner-occupied housing may apply to the administrative entity for permission to increase the maximum price for eligible capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household. In no event shall the maximum price of an improved housing unit exceed the limits of affordability for the larger household. Property owners shall apply to the administrative entity if an increase in the maximum sales price is sought.

(b) At resale, all items of property which are permanently affixed to the units and/or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall to wall carpeting) shall be included

in the maximum allowable resale price. Other items of property may be sold to the purchaser at a reasonable price that has been approved by the administrative entity at the time of signing the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price has been approved by the administrative entity. Unless otherwise permitted by the Council, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at resale.

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

**5:93-9.12 Subsidy to ensure affordability prior to the expiration of controls; sales units**

If the use of median income data adopted by the Council to index the cost of housing renders a unit unaffordable to a low or moderate income household at the time of resale, a municipality shall not lose credit for the housing unit, provided that adequate controls on affordability remain in place, but the municipality may subsidize the housing unit to maintain affordability.

**5:93-9.13 Impact of foreclosure on resale while controls are in place; sales units**

A judgment of foreclosure or a deed in lieu of foreclosure to a financial institution regulated by State and/or Federal law or to a lender on the secondary mortgage market (including, but not limited to, the Federal National Mortgage Association, the Home Loan Mortgage Corporation, the Government National Mortgage Association or an entity acting on their behalf) shall extinguish controls on affordable housing units provided there is compliance with N.J.A.C. 5:93-9.14. Notice of foreclosure shall allow the administrative entity, the municipality, the DCA, the Agency or a non-profit entity to purchase the affordable housing unit at a negotiated price not to exceed the maximum sales price and maintain it as an affordable unit for the balance of the intended period of controls. Failure to purchase the affordable housing unit shall result in the Council adding that unit to the municipal present and prospective fair share obligation. Failure of the financial institution to provide notice of a foreclosure action to the administrative entity shall not impair any of the financial institution's rights to recoup loan proceeds; shall not negate the extinguishment of controls or the validity of the foreclosure; and shall create no cause of action against the financial institution.

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).

**5:93-9.14 Excess proceeds upon foreclosure; sales units**

In the event of a foreclosure sale, the owner of the affordable housing unit shall be personally obligated to pay to the administrative entity responsible for assuring affordability, any surplus funds, but only to the extent that such surplus funds exceed the difference between the sales price at the time of foreclosure and the amount necessary to redeem the debt to the financial institution, including costs of foreclosure.

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).

**5:93-9.15 Annual indexed increases while controls are in place; sales and rentals**

(a) The price of an owner-occupied housing unit may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative entity be lower than the last recorded purchase price.

(b) With the exception of rentals constructed pursuant to low income tax credit regulations, the rent of a low or moderate income housing unit may be increased annually based on the percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low income tax credit regulations shall be indexed pursuant to the regulations governing low income tax credits.

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).

**5:93-9.16 Procedures for initial sales, resale prior to the expiration of controls, and rentals**

(a) Low and moderate income sales units shall not be offered to non-income eligible households at initial sale without Council approval. Parties that petition the Council for such approval shall document efforts to sell housing units to income eligible households and shall adhere to the procedures outlined in N.J.A.C. 5:91-12.

(b) Persons wishing to sell affordable units shall notify the administrative entity responsible for assuring affordability of the intent to sell. If no eligible buyer enters a contract of sale for the unit within 90 days of notification, the administrative entity shall have the option to purchase the unit for a negotiated price that shall not exceed the maximum price permitted based on the regional increase in median income as defined by HUD or other recognized standard adopted by the Council. If the administrative entity does not purchase the unit, the seller may apply for permission to offer the unit to a non-income eligible household at the maximum price permitted. The seller shall document efforts to sell the unit to an income eligible household as part of this application. In reviewing the request, the administrative entity shall consider the specific reasons for any delay in selling the housing unit and the hardship to the seller in continuing to offer the affordable unit to an income eligible applicant. The inability to sell a unit for the maximum permitted resale price shall not, in itself, be considered an appropriate reason for allowing a housing unit to be sold to a non-income eligible household. If the request is granted, the seller may offer a low income housing unit to a moderate income household and a moderate income housing unit to a household earning in excess of 80 percent of median. In no case shall the seller be permitted to receive more than the maximum price permitted. In no case shall a sale pursuant to this section eliminate the resale controls on the unit or permit any subsequent seller to convey the unit except in full compliance with the terms of this subchapter. The over-income purchaser may pay the same condominium or homeowner association fee as the market purchaser if the master deed so provides. If an income eligible purchaser subsequently purchases a unit previously owned by an over-income purchaser, the condominium or homeowner association fee shall revert to the fee currently charged to all income eligible owners.

(c) Owners of low and moderate income rental units shall not offer rental units to non-income eligible households without prior approval of the Council. Parties that petition for such approval shall document all efforts to rent to income eligible households and demonstrate to the satisfaction of the Council that alternatives, such as a reduction in rent, is not feasible. Parties that petition the Council shall adhere to the procedures outlined in N.J.A.C. 5:91-12.

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

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

In (b), added the final sentences.

## SUBCHAPTER 10. COST GENERATION

### 5:93-10.1 Purpose and scope

(a) Section 14(b) of the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) incorporates the need to eliminate

unnecessary cost generating features from municipal land use ordinances as a requirement of substantive certification. In order to receive and retain substantive certification, municipalities shall eliminate development standards that are not essential to protect the public welfare and to expedite (or "fast track") municipal approvals/denials on inclusionary development applications. In order to expedite the review of development applications, municipalities shall cooperate with developers of inclusionary developments in scheduling pre-application conferences. Municipal boards shall schedule regular and special monthly meetings (as needed) and provide ample time at these meetings to consider the merits of the inclusionary development application. The goal of such a schedule is to act on a development application within time limits approximating those outlined in the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) Failure to expedite the approval/denial of an inclusionary development application shall be considered a reason for revoking substantive certification.

(b) Inclusionary developments that are included in a housing element and fair share plan have proceeded through a very public process. Therefore, the focus of municipal review shall not be whether the sites are properly zoned. Rather, the focus shall be whether the design of the inclusionary development is consistent with the zoning ordinance and the mandate of the Fair Housing Act regarding unnecessary cost generating features. Municipalities shall be expected to cooperate with developers of inclusionary developments in granting reasonable variances necessary to construct the inclusionary development.

### 5:93-10.2 Standards

(a) In reviewing the fair share plans, the Council shall use the standards promulgated pursuant to N.J.S.A. 40:55D-40.1 through 40.7 (P.L. 1993 c.32) as a frame of reference. Municipalities that wish to impose more stringent standards shall bear the burden of justifying the need for such standards. In its review of municipal ordinances, the Council shall give special attention to:

1. The combined impact of requirements that cumulatively prevent an inclusionary development from achieving the density and set-aside necessary to address the municipal fair share. Examples of such requirements include but are not limited to: building set-backs, spacing between buildings, impervious surface requirements and open space requirements;
2. Requirements to provide oversize water and sewer mains to accommodate future development without a reasonable prospect for reimbursement;
3. Excessive road width, pavement specifications and parking requirements;
4. Excessive requirements for sidewalks and paved paths;

5. Excessive culvert and pumping station requirements; and

6. Excessive landscape, buffering and reforestation requirements.

(b) Municipal housing elements and fair share plans shall allow for phased construction and phased bonding of on-site, off-site and off-tract improvements required of inclusionary developments.

(c) The Council shall not permit restrictions on the bedroom mix of the market rate units within an inclusionary development.

### 5:93-10.3 Special studies/escrow accounts

(a) It is common for municipalities to require inclusionary developers to conduct special studies related to the fiscal, traffic and environmental impacts of proposed inclusionary developments. These studies are then reviewed by municipal professionals who are paid from escrow accounts funded by the inclusionary developer as a requirement of the municipal review of the development application. The Council has determined that these studies shall not be used to alter the density of sites that are part of the municipal substantive certification. Such studies may be used to foster proper design and to determine pro-rata off-site and off-tract improvements. The Council has also determined that it is unnecessary for developers of inclusionary developments to pay for the initial preparation of such a study and for its review. Therefore, municipalities that receive substantive certification shall offer inclusionary developers the option of preparing fiscal, traffic and environmental impact studies or choosing a consultant from a list of at least six professionals (prepared by the municipality) to prepare the studies. If the developer chooses a consultant from the municipally prepared list, the developer and municipality shall rely on the consultant's recommendations.

(b) Fees to review development applications shall be estimated prior to payment of filing fees. Developers shall be entitled to review all charges against any escrowed fees and be provided with monthly accounting reports upon request.

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

### 5:93-10.4 Relief subsequent to substantive certification

(a) Developers may provide notice to the Council of the date they filed their development application with the municipality. The municipality need not have deemed the application complete for the developer to provide such notice.

(b) Developers and/or municipalities that cannot agree on specific standards that apply to a specific inclusionary development may request the Council to provide a mediator to resolve the dispute. The resulting mediation shall not require a transfer to the Office of Administrative Law pursuant to the Administrative Procedures Act.

(c) Inclusionary developers may seek an administrative order to expedite the municipal review of a development application by filing a motion pursuant to N.J.A.C. 5:91-12. Developers need not request mediation pursuant to (b) above in order to file such a motion; and the Council may hear such a motion concurrent with any such mediation.

(d) Inclusionary developers may request the Council to act as an advocate for inclusionary developments that require permits from DEPE and DOT.

### 5:93-10.5 Revocation of substantive certification

A Council determination, after a hearing conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., that a municipality has delayed action on an inclusionary development application, required unnecessary cost generating standards or obstructed the construction of an inclusionary development may result in Council action revoking substantive certification.

## SUBCHAPTER 11. AFFIRMATIVE MARKETING

### 5:93-11.1 The affirmative marketing plan; definition and contents

(a) The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of sex, age or number of children, to housing units which are being marketed by a developer or sponsor of affordable housing. It is a continuing program and covers the period of deed restriction.

(b) The affirmative marketing plan shall provide the following information:

1. The name and address of the project;
2. The number of units, including the number of sales and rental units;
3. The price of sales and/or rental units;
4. The name of the rental manager and/or sales agent;
5. A description of outreach efforts to groups that are not readily reached by commercial media efforts (See N.J.A.C. 5:92-11.3 for advertising program details); and
6. A description of the random selection method that will be used to select occupants of low and moderate income housing.

(c) The affirmative marketing plan shall be a part of the fair share plan and shall be referenced by ordinance.