

**CHAPTER 95**

**PROCEDURAL RULES OF THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING FOR THE PERIOD BEGINNING ON DECEMBER 20, 2004**

**Authority**

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

**Source and Effective Date**

R.2004 d.483, effective December 20, 2004.  
See: 36 N.J.R. 3851(a), 36 N.J.R. 5895(a).

**Chapter Expiration Date**

Chapter 95, Procedural Rules of the New Jersey Council on Affordable Housing for the Period Beginning on December 20, 2004, expires on December 20, 2009.

**Chapter Historical Note**

Chapter 95, Procedural Rules of the New Jersey Council on Affordable Housing for the Period Beginning on December 20, 2004, was adopted as R.2004 d.483, effective December 20, 2004. See: Source and Effective Date.

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## SUBCHAPTER 1. GENERAL PROVISIONS

## 5:95-1.1 Short title; purpose; scope

(a) The provisions of this chapter shall be known as the "Procedural Rules of the New Jersey Council on Affordable Housing for the period beginning December 20, 2004."

(b) The purpose of this chapter is to establish procedures to be used by Buena Borough in Atlantic County, Washington Township in Morris County, and White Township in Warren County, for which substantive certification was granted by the Council prior to January 25, 2007 and upheld in *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 N.J. Super. 1, cert. denied, 192 N.J. 71 (2007), in addressing their constitutional obligation to provide a fair share of affordable housing for low- and moderate-income households pursuant to N.J.S.A. 52:27D-301 et seq.

(c) Municipalities that did not receive third round substantive certification prior to January 25, 2007 shall be governed by the provisions of N.J.A.C. 5:96.

(d) 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 its applications, the rules shall remain in effect in all valid applications that are severable from the invalid application.

Amended by R.2008 d.146, effective June 2, 2008.  
See: 40 N.J.R. 515(a), 40 N.J.R. 3161(a).

Rewrote (b) and (c).

## 5:95-1.2 Definitions

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

"Act" means the Fair Housing Act of 1985, P.L. 1985, c.222 (N.J.S.A. 52:27D-301 et seq.).

"Agency" means the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c.530 (N.J.S.A. 55:14k-1 et seq.).

"Amendment" means the municipal submission of a revision to a certified Housing Element and Fair Share Plan that

has been adopted by the planning board and endorsed by the governing body.

"Council" means the New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in the State.

"Days" means calendar days.

"Fair Share Plan" means that plan that describes the projects, strategies and the funding sources, if applicable, by which a municipality proposes to address its fair share of affordable housing obligation as set forth in N.J.A.C. 5:94-2.4, and also includes the draft Fair Share ordinances necessary to implement that plan, and addresses the requirements of N.J.A.C. 5:94.

"Filed Housing Element and Fair Share Plan" means the municipal submission of a Housing Element and Fair Share Plan accompanied by a duly adopted resolution from the governing body endorsing the Housing Element and the Fair Share Plan adopted by the planning board, but not necessarily including a request or petition for Council review or certification of the plan per N.J.A.C. 5:95-3.

"Housing Element" means that portion of a municipality's master plan, as required by N.J.S.A. 40:55D-28b(3), consisting of at least those items identified in N.J.S.A. 52:27D-310 and the supporting information pursuant to N.J.A.C. 5:94-2.2(b) when part of a petition for substantive certification.

"Housing region" means a geographic area, determined by the Council, of no less than two nor more than four contiguous, whole counties which exhibits significant social, economic and income similarities, and which constitutes to the greatest extent practicable, a Primary Metropolitan Statistical Area (PMSA) as last defined by the United States Census Bureau.

"Mediation" means that process established by N.J.S.A. 52:27D-315 whereby objectors to a municipality's petition for substantive certification and other parties meet with the municipality under the direction of a Council-appointed mediator to attempt to resolve disputes.

"Objector" means a person who files objections to a municipal Housing Element and Fair Share Plan in accordance with N.J.A.C. 5:95-4.1.

"OAL" means the Office of Administrative Law.

"Participant to mediation" means any party the mediator deems necessary to conduct mediation and resolve any objections to a municipality's petition for substantive certification. The Council, or its designee conducting mediation, shall determine the extent of participation of each participant to mediation.

"Petition for Substantive Certification" means a request made by municipal resolution which a municipality files, or is

deemed to have filed in accordance with this chapter, which engages the Council's review process seeking a determination as to whether the Housing Element and Fair Share Plan of the

municipality are consistent with the Act and compliant with rules promulgated by the Council.

**(INSERT BRIEF DESCRIPTION OF AMENDMENT)**

A copy of the amended and adopted Housing Element and Fair Share Plan and supporting documentation is available for public inspection at the office of the (MUNICIPAL CLERK, etc.), Municipal Building, located at (STREET ADDRESS), during the hours of \_\_\_\_\_. Comments or objections to said petition to amend shall be filed with the Council on Affordable Housing, 101 South Broad Street, PO Box 813, Trenton, New Jersey 08625-0813 and with the municipal clerk by (DATE), which is within 45 days of publication of this notice.

\_\_\_\_\_  
Municipal Clerk

(b) Where a party other than the municipality moves to amend the terms of certification, the Council's Executive Director shall direct the municipality to publish notice of this motion and the municipality may require the moving party to pay the cost of publishing the required notice. The municipality shall submit proof of publication to the Council within seven days of its receipt of notification from the Council of the requirement to publish notice.

(c) An updated list of all petitions for amendments to substantive certification received by the Council shall be published monthly on its website.

**5:95-13.5 Objections to petitions to amend**

(a) Within 45 days of the publication of a notice of a petition to amend the terms of substantive certification, any person may file objections to the terms of the proposed amendment with the Council. These objections shall be in a form acceptable to the Council's Executive Director and shall include, at a minimum, the following:

1. A clear and complete statement as to each aspect of the municipality's proposed amendment to its Housing Element and Fair Share Plan to which an objection is made;
2. An explanation of the basis for each objection including, where appropriate, citations to expert reports, studies or other data relied upon to support each objection;
3. Copies of all referenced expert reports, studies or other data relied upon by the objector;
4. Proposed modifications, changes or other measures which the objector contends will resolve the objection and an explanation of how the objector's proposals are consistent with the Council's criteria and guidelines;
5. A statement documenting the objector's prior efforts at premediation, participation in conferences or public hearings and a summary of the results of any such efforts; and
6. A demonstration that any site proposed for inclusion in the Housing Element and Fair Share Plan is suitable in accordance with N.J.A.C. 5:94.

**5:95-13.6 Review of objections**

(a) The Council's Executive Director shall review objections subject to the criteria in N.J.A.C. 5:95-13.5. An objector who has filed a complete objection shall be permitted to participate in the Council's administrative process beginning with mediation as set forth in N.J.A.C. 5:95-7. The mediator may, in his or her discretion, permit any person to participate in mediation upon a determination that such participation may facilitate mediation and/or help resolve an objection to a municipality's petition for substantive certification.

(b) Objections that are determined to be incomplete shall be returned to the objectors who shall have 14 days to correct deficiencies and resubmit them in conformance with N.J.A.C. 5:95-13.5. If the objections are not resubmitted within the 14 days, the Council shall consider the objections to be withdrawn.

(c) Objections shall be reviewed and summarized in the premediation report that is issued by the Council's Executive Director.

**SUBCHAPTER 14. WAIVER PROVISIONS****5:95-14.1 Waiver**

(a) Any party may request a waiver from a specific requirement of the Council's rules at any time. Such a waiver may be requested as part of a municipal petition, by motion in conformance with N.J.A.C. 5:95-12, or in such other form as the Council may determine, consistent with its procedural rules in this chapter.

(b) The Council shall grant waivers from specific provisions of its rules if it determines that the strict application of the rule would create an unnecessary financial, environmental or other hardship; or

1. That such a waiver fosters the production of affordable housing;
2. That such a waiver fosters the intent of, if not the letter of, its rules; and
3. That the Housing Element and Fair Share Plan provides a mix of housing options.

**SUBCHAPTER 15. TRANSITIONAL PROCEDURES****5:95-15.1 Municipalities under the Council's jurisdiction that have not received substantive certification**

(a) As of December 20, 2004, the Council shall no longer grant second round substantive certification. The Council

shall continue to review and approve RCAs, conduct mediation that is in progress, and review and approve amendments to second round certified plans.

(b) To remain under the jurisdiction of the Council, a municipality that petitioned but has not received second round substantive certification as of the effective date of this chapter shall be required to submit a resolution from the governing body by February 20, 2005 that commits to file or petition for third round substantive certification in accordance with this chapter and N.J.A.C. 5:94 by December 20, 2005.

(c) To remain under the jurisdiction of the Council, a municipality shall either file the newly adopted Housing Element and Fair Share Plan addressing the third round obligation with the Council or petition for a third round substantive certification by December 20, 2005.

#### **5:95-15.2 Municipalities with expiring substantive certification**

(a) A municipality whose second round substantive certification will expire prior to or by December 20, 2005, may move before the Council to extend the substantive certification of its 1987-1999 Housing Element and Fair Share Plan until December 20, 2005. Such motion shall be filed prior to the expiration date of its substantive certification.

(b) A municipality that submits a motion for extended substantive certification pursuant to (a) above shall have its second round substantive certification continue in full force and effect for the period of review of such motion by the Council. The Council shall complete its review and issue its decision on such motion in a reasonable period of time.

(c) The motion submitted by a municipality pursuant to (a) above shall:

1. Comply with the requirements of N.J.A.C. 5:95-12;
2. Be served upon the service list maintained by the Council; and
3. Be accompanied by:
  - i. Proof of public notice in a newspaper of general circulation within the municipality and county that the municipality has moved before the Council to extend its 1987-1999 substantive certification of the municipality's Housing Element and Fair Share Plan. The public notice shall be published simultaneously with the submission of the motion to the Council and to the service list. The public notice shall be in the legal newspaper as well as one that is widely circulated within the county if the legal newspaper is not widely circulated within the county. If the Council's Executive Director determines that notice was not published in a newspaper of general circulation, it shall require the municipality to republish in another newspaper. Notice shall be provided in the following format:

#### **Notice of Motion before the Council on Affordable Housing for Extended Substantive Certification**

NOTICE is hereby given that (MUNICIPALITY) has moved before the New Jersey Council on Affordable Housing ("Council") in accordance with N.J.A.C. 5:91-12 to extend its 1987-1999 substantive certification of its Housing Element and Fair Share Plan. The Council is accepting comments to the municipality's motion for extended substantive certification in conformance with N.J.A.C. 5:95-12.3 for a period of 20 days from the publication of this notice. The comment shall set forth how the municipality has failed to comply with the terms of the substantive certification. The comment shall be served upon the Council and (MUNICIPALITY). A copy of the motion and supporting documentation are available for public inspection at the office of the (MUNICIPAL CLERK, etc.), Municipal Building, located at (STREET ADDRESS), during the hours of \_\_\_\_\_

\_\_\_\_\_  
Municipal Clerk

On the date of publication, the municipality shall make copies of the motion and supporting documentation available for public inspection during regular business hours within the municipality;

ii. The municipality's adopted current Housing Element and Fair Share Plan;

iii. A resolution from the governing body that requests the extension, commits to continue to implement the certified second round plan, and commits to file or petition for third round substantive certification in accordance with N.J.A.C. 5:94 and 5:95 by December 20, 2005;

iv. A proposed schedule for the submission of the filing or petition for third round substantive certification;

v. A statement describing the progress of the municipality's compliance with the terms of its 1987-1999 substantive certification; and

vi. The municipality's current monitoring report and development fee monitoring report.

(d) If the municipality received an adjustment pursuant to N.J.A.C. 5:93-4, the municipality shall also submit the following:

1. Documentation on the issuance of all building permits since the grant of the 1987-1999 substantive certification;
2. A statement describing how the municipality has captured or attempted to capture affordable housing opportunities since the grant of the 1987-1999 substantive certification; and

3. Certification that there have been no substantive changes in the availability of land, water and/or sewer within the municipality.

(e) Comments to the municipality's motion for extended substantive certification shall be accepted by the Council in conformance with N.J.A.C. 5:95-12.3 for a period of 20 days from the publication of this notice. The comment shall set forth how the municipality has failed to comply with the terms of the substantive certification. The comment shall be served upon the Council and the municipality.

(f) In conformance with N.J.A.C. 5:95-12.4(a), the municipality shall have 10 days to respond to any comments received pursuant to (e) above.

(g) If the Council determines that the municipality is complying with the terms of its 1987-1999 substantive certification, the Council shall grant extended substantive certification of the municipality's Housing Element and Fair Share Plan for a period of time not beyond December 20, 2005. The Council may condition its grant of extended substantive certification with any conditions it deems necessary or appropriate in order to insure continued compliance with the terms of substantive certification and the satisfaction of the affordable housing obligation.

(h) When extended substantive certification is granted, a municipality shall leave all ordinances implementing its original substantive certification in effect for the extended substantive certification, unless the municipality can demonstrate good cause why the ordinances should not remain in effect.

(i) If a municipality received a judgment of compliance that expires by December 20, 2005, the municipality shall move before the Court that issued the judgment of compliance for an extension prior to the expiration of its judgment of compliance. The Council shall consider a motion for extended substantive certification if the Court transfers the request to the Council. In such cases, the procedures and criteria shall apply.

**5:95-15.3 Municipalities that received substantive certification prior to December 20, 2004 that expires subsequent to December 20, 2005**

(a) To remain under the jurisdiction of the Council for the third round fair share obligation, a municipality that received substantive certification that expires subsequent to July 14, 2006 shall be required to submit a resolution from the governing body by July 14, 2006 that commits to file or petition for third round substantive certification in accordance with this chapter and N.J.A.C. 5:94 by the earlier of the expiration date of its second round substantive certification or May 15, 2007.

(b) To remain under the jurisdiction of the Council for the third round fair share obligation, a municipality shall either file the newly adopted Housing Element and Fair Share Plan addressing the third round obligation with the Council or petition for third round substantive certification by the earlier of the expiration date of its second round substantive certification or May 15, 2007.

New Rule, R.2006 d.176, effective May 15, 2006.  
See: 37 N.J.R. 4610(a), 38 N.J.R. 2124(a).