

CHAPTER 94

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

Authority

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

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Chapter Expiration Date

Chapter 94, Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning December 20, 2004, expires on December 20, 2009.

Chapter Historical Note

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SUBCHAPTER 1. GENERAL PROVISIONS

5:94-1.1 Introduction

(a) The New Jersey Supreme Court stated in *Mount Laurel II* that, "The lessons of history are clear, even if rarely learned. One of those lessons is that unplanned growth has a price. . . ." Further, the Court stated that, "Communities that are growing and creating jobs have a responsibility to house the poor who will arrive in these locations in pursuit of jobs." The Court wanted municipalities to depend on long range land use planning rather than on purely economic forces to drive development.

(b) The Council's third round rules in this chapter which implement a "growth share" approach to affordable housing represent a significant departure from the Council's first and second round methodologies in that they link the actual production of affordable housing with municipal development and growth. The Council believes that this approach will hew more closely to the doctrinal underpinning of *Mount Laurel* in that municipalities will provide a realistic opportunity for construction of a fair share of low and moderate income housing based on sound land use and long range planning. These rules will harness future growth to produce affordable housing by deeming that all growth-related construction generates an obligation.

(c) Both the Court and the Legislature wanted to establish a system that would provide a realistic opportunity for housing, not litigation. As the Court stated in upholding the Fair Housing Act, "The legislative history of the Act makes it clear that it had two primary purposes: first, to bring an administrative agency into the field of lower income housing to satisfy the *Mount Laurel* obligation; second, to get the courts out of that field." The Council's "growth share" methodology allows each municipality to determine its capacity and desire for growth in a way that is consistent with the policies of the State Development and Redevelopment Plan; its *Mount Laurel* obligation arises as a share of that growth. These rules are, therefore, designed to be both more flexible and less negotiable.

(d) There are three components to the Third Round Methodology: the rehabilitation share, any remaining Prior Round obligation for the period 1987-1999, and the "growth share." Growth share is generated by Statewide residential and non-residential growth during the period from 1999 through 2014, and delivered from January 1, 2004 to January 1, 2014. As a result, for every eight market-rate residential units constructed, the municipality shall be obligated to provide one unit that is affordable to households of low or moderate income. Job creation carries a responsibility to provide housing as well. For every 25 newly created jobs as measured by new or expanded non-residential construction within the municipality in accordance with Appendix E, the municipality shall be obligated to provide one unit that is affordable to households of low and moderate income. This method tightens the working definition of "realistic oppor-

tunity" to meet the constitutional obligation with not merely a good faith attempt, but with the actual provision of housing for low and moderate income households.

5:94-1.2 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 on December 20, 2004."

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

(c) All municipalities within the jurisdiction of the Council are subject to evaluation in accordance with the provisions of this chapter.

(d) For a municipality's 1999-2014 rehabilitation share, the remaining balance of the prior rounds portion of any affordable housing obligation assigned by the Council for the 1987 through 1999 cumulative period, and the growth share obligation from 1999 through 2014, the following shall apply:

1. A municipality's rehabilitation share as of April 1, 2000, based on the 2000 census, shall be governed by the provisions of this chapter.

2. A municipality's remaining balance of the prior rounds portion of any affordable housing obligation previously assigned by the Council for the 1987 through 1999 cumulative period shall be governed by the provisions of N.J.A.C. 5:93. However, municipal minimum subsidy amounts for accessory apartments, buy-down units, and regional contribution agreements shall be governed by the provisions of this chapter if:

- i. The municipality has not petitioned the Council for second round (1993-1999) substantive certification or interim substantive certification; or
- ii. The municipality is including one of these housing activities for the first time to address a 1987-1999 affordable housing obligation.

3. The growth share obligation from 1999 through 2014 shall be governed by the provisions of this chapter.

5:94-1.3 Severability clause

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

5:94-1.4 Definitions

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

(e) Each municipality shall develop a Housing Element that meets the requirements of this section to determine the municipal fair share of affordable housing for the 1987-2014 cumulative period. All components of a Housing Element shall be in accordance with the standards established by this subchapter and the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. The contents of a Fair Share Plan describing how the municipality intends to address the obligation determined in its Housing Element are described in N.J.A.C. 5:94-4. Appendix B, incorporated herein by reference, provides a "Number Calculation Example" for a municipality to follow to determine its total affordable need for the period 1987 to 2014.

5:94-2.2 Preparing a Housing Element

(a) The Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., requires a municipal master plan to include a Housing Element. The Housing Element shall be adopted by the Planning Board and endorsed by the governing body prior to the municipal filing pursuant to N.J.A.C. 5:95-2 or the municipal petition for substantive certification pursuant to N.J.A.C. 5:95-3. A municipality's Housing Element shall be designed to achieve the goal of providing affordable housing to meet the total 1987-2014 affordable housing need comprised of estimated growth share, the remaining balance of Prior Round Obligation from the municipality's 1987-1999 affordable housing obligation that has not been addressed (if any), and the rehabilitation share. The Housing Element submitted to the Council shall include the minimum requirements prescribed by N.J.S.A 52:27D-310.

(b) Supporting information to be submitted with the Housing Element shall include:

1. A projection of the municipality's probable future construction of housing for 10 years covering the period January 1, 2004 through January 1, 2014 based upon the following minimum information for residential development:

- i. Certificates of occupancy issued since January 1, 2004;
- ii. Construction and demolition permits issued and projected;
- iii. Approvals of applications for development; and
- iv. Historic trends, of, at least, the past 10 years, which shall include demolitions and certificates of occupancy issued;

2. An analysis of the existing jobs and employment characteristics of the municipality, and a projection of the probable future jobs and employment characteristics of the municipality for 10 years covering the period January 1, 2004 through January 1, 2014 based upon the following minimum information for non-residential development:

- i. Certificates of occupancy issued since January 1, 2004;
- ii. Construction and demolition permits issued and projected;
- iii. Approvals of applications for development including a breakdown of non-residential projections by use group as outlined in Appendix E, incorporated herein by reference; and
- iv. Historic trends, of, at least, the past 10 years, which shall include demolitions, certificates of occupancy issued and absorption rates;

3. An analysis of how existing zoning or planned changes in zoning provide adequate capacity to accommodate residential and non-residential growth projections consistent with the municipal growth projections calculated pursuant to (b)1 and 2 above. This analysis should include the availability of existing and planned necessary infrastructure, the anticipated demand for the types of uses permitted by zoning based on present and anticipated future demographic characteristics of the municipality, anticipated land use patterns, municipal economic development policies and constraints on development including State and Federal regulations, land ownership patterns, presence of incompatible land uses or sites needing remediation and existing or planned measures to address these constraints;

4. Plan Projections for 2015 or growth projections for 2015 in an endorsed plan approved by the State Planning Commission, whichever is later, after December 20, 2004. If Plan Projections for 2015 are not available when a municipality petitions for substantive certification, a municipality may substitute the most recent municipal population, household, and employment growth projections published by the municipality's metropolitan planning organization as a minimum replacement for the State Planning Commission Plan Projections. Where no metropolitan planning organization household growth projections are available, population projections shall be converted to households using the most recently published municipal household size data available from the Bureau of the Census.

5. If the municipal population, household and employment growth projections used to determine the municipal growth share obligations pursuant to N.J.A.C. 5:94-2.4 are not consistent with the municipal Plan Projections for 2015 required pursuant to (b)4 above, the municipality shall provide the following:

- i. A demonstration that the capacity of existing or planned zoning to accommodate the Plan Projections pursuant to (b)4 above renders those Plan Projections inaccurate;
- ii. An analysis of the reasons for the differences between the municipal growth projections calculated

pursuant to (b)1 and 2 above and the Plan Projections calculated pursuant to (b)4 above; and

iii. A detailed justification as to why the Council should accept the alternate projections.

6. A copy of the most recently adopted municipal master plan and, when less than three years old, the immediately preceding, adopted master plan;

7. A copy of the most recently adopted municipal zoning ordinance;

8. A general description of any specific sites slated for affordable housing, including but not limited to the following: acreage, owner, block and lot, current zoning, surrounding land uses, and street access;

9. A copy of the most up-to date tax maps of the municipality, electronic if available, with legible dimensions; and

10. Any other documentation pertaining to the review of the municipal Housing Element as may be required by the Council.

(c) The Housing Element shall include the number of newly constructed affordable housing units the municipality was obligated to provide during the period 1987 to 1999 (from Appendix C), the number of low and moderate income units the municipality is obligated to rehabilitate as of April 1, 2000, the projected growth share need based upon residential and non-residential development patterns that are likely to occur pursuant to N.J.A.C. 5:94-2.4, and the number of affordable housing units actually provided to address the 1987 to 1999 cumulative municipal fair share obligation.

5:94-2.3 Growth projection consistency with the State Development and Redevelopment Plan; Plan endorsement

(a) Municipal growth projections that are consistent with the projections provided pursuant to N.J.A.C. 5:94-2.2(b)4 shall have a presumption of validity in a petition for substantive certification.

(b) If the growth projections in a municipality's Housing Element and Fair Share Plan used to determine the municipal growth share obligations pursuant to N.J.A.C. 5:94-2.4 are not consistent with the projections provided pursuant to N.J.A.C. 5:94-2.2(b)4, the Council may reject the municipality's petition for substantive certification unless the municipality demonstrates to the Council the validity of the analyses required in N.J.A.C. 5:94-2.2(b)5. The Council shall obtain a recommendation from the Executive Director of the Office of Smart Growth on the validity of the alternate projections.

(c) A municipality that has received a grant of substantive certification from the Council shall obtain initial plan endorsement from the State Planning Commission by the

three-year anniversary review. A municipality that has not received initial plan endorsement may be subject to Council action, including revocation of the municipality's substantive certification.

5:94-2.4 Projecting growth share obligations

(a) Municipalities shall project the residential component of growth share obligations for the period January 1, 2004 to January 1, 2014 based on the data and analysis of growth projections pursuant to N.J.A.C. 5:94-2.2. Residential growth share obligations shall be projected as follows:

1. For every eight market-rate residential certificates of occupancy projected to be issued, the municipality shall plan for an obligation of one affordable housing unit. A municipality may adjust its projections based on projected or actual market-rate residential demolitions in calculating net residential growth share obligation. The residential growth share obligation shall not go below zero. Residential demolitions shall not be applied as a credit against the non-residential growth share.

2. Affordable housing units that received credit in a first or second round certified plan or a court judgment of compliance that are projected to be constructed after January 1, 2004 shall be excluded from projected residential growth for the purposes of projecting the growth share.

3. Affordable housing units included in the municipality's third round Fair Share Plan shall be excluded from projected residential growth for the purposes of projecting the growth share.

4. Market-rate units in an inclusionary or mixed-use development that received credit in a first or second round certified plan or a court judgment of compliance or are eligible for credit pursuant to N.J.A.C. 5:93 toward a municipality's prior round obligation, that are projected to be constructed after January 1, 2004 shall be excluded from residential growth for the purposes of projecting the growth share, provided these sites are zoned without conditions to produce affordable housing units. The Council shall assume, for crediting purposes, that market-rate units are constructed at a rate of four times the number of affordable units (this is a 20 percent set-aside) constructed on that particular site, unless the municipality demonstrates to the Council that a lower set-aside percentage was used to produce the affordable units using the gross density and set-aside standards pursuant to N.J.A.C. 5:93-5.6 or the set-aside standards for constructing affordable rental units pursuant to N.J.A.C. 5:93-5.15. A municipality shall not receive an exclusion of market-rate units from residential growth at a rate above 5.67 times the number of affordable units (this is a 15 percent set-aside) constructed on that particular site.

(b) Municipalities shall project the non-residential component of growth share obligations for the period January

1, 2004 to January 1, 2014 based on the data and analysis of growth projections pursuant to N.J.A.C. 5:94-2.2. Non-residential growth share obligations shall be projected as follows:

1. For every 25 newly created jobs as measured by new or expanded non-residential construction within the municipality in accordance with Appendix E the municipality shall plan for an obligation of one affordable housing unit. A municipality may adjust its projections based on projected or actual non-residential demolition permits issued by square footage in calculating net non-residential growth share obligation. The non-residential growth share obligation shall not go below zero. When adjusting non-residential growth projections by demolitions, any resulting job loss calculation shall be based upon the most recent use group of the building prior to its demolition. The non-residential growth share obligation shall not go below zero. Non-residential demolitions and any resultant job loss shall not be applied as a credit against the residential growth share. Job growth shall be projected by applying the appropriate factor by use group as listed in Appendix E, to the gross square footage of non-residential development projected to be created.

2. Non-residential development that, as a condition of preliminary or final site plan approval granted prior to January 1, 2004 or as a stipulation included in a developers agreement executed prior to January 1, 2004, was required to specifically address a portion of a municipality's first or second round obligation or an obligation determined by the court, may be fully or partially excluded from non-residential growth for the purposes of projecting growth share. Such non-residential development may be excluded at a rate of 25 jobs for every one affordable unit addressed within the municipality as measured by new or expanded non-residential construction. Jobs shall be measured by use group pursuant to Appendix E.

(c) The net residential component of growth share projections shall be added to the net non-residential growth share projections to determine a total projected growth share obligation.

Amended by R.2006 d.175, effective May 15, 2006.
See: 37 N.J.R. 4608(a), 38 N.J.R. 2121(a).

Inserted "market-rate" in the second sentence of (a)1; and in (a)4 inserted "or are eligible . . . obligation" in the first sentence, rewrote the former second and third sentences as the present second sentence, and added the present third sentence.

5:94-2.5 Comparing growth share projections to actual growth

(a) A municipality's actual growth share obligation shall be calculated based upon permanent residential and non-residential certificates of occupancy issued between January 1, 2004 and January 1, 2014 within the municipality. Growth share obligations shall be based upon actual residential and non-residential growth pursuant to the procedures described in N.J.A.C. 5:94-2.4.

(b) On an annual basis, pursuant to N.J.A.C. 5:94-9, the municipality shall provide a comparison of its pro-rated growth share projection with its actual pro-rated growth share obligation and the actual number of affordable units that have been constructed or provided for between January 1, 2004 and the date that the review period ended. On the third, fifth and eighth anniversary of each municipal filing of a Housing Element and Fair Share Plan that has received substantive certification, the Council shall compare the actual growth share obligation with the actual number of affordable units constructed or provided for the purposes of enforcing monitoring and remedies described in N.J.A.C. 5:95-9.

SUBCHAPTER 3. CREDITS, REDUCTIONS AND MUNICIPAL ADJUSTMENTS

5:94-3.1 General

(a) Credits, reductions and adjustments for prior housing activity may be applied against total municipal fair share (1987-2014). All credits, reductions and adjustments shall be subject to verification and validation at the time a municipality submits its petition for certification pursuant to N.J.A.C. 5:95.

1. Credits include units that were built, units transferred to another municipality within the housing region pursuant to the terms of a regional contribution agreement (RCA), rental bonus credits pursuant to N.J.A.C. 5:93-5.15(d) and units that were rehabilitated pursuant to N.J.A.C. 5:93 subsequent to April 1, 2000.

2. Reductions include duly adopted zoning that has been put in place by a municipality to create affordable housing that complies with the Council's regulations and was part of a Fair Share Plan that was certified by the Council or was subject to a judgment of compliance.

3. Adjustments include the 20 percent cap described in N.J.A.C. 5:93-2.16, vacant land and durational adjustments granted pursuant to N.J.A.C. 5:93-4 and the 1,000-unit limitation described in N.J.A.C. 5:93-14 that are only applied to the prior round obligation (1987-1999).

5:94-3.2 Credits

(a) A municipality shall receive credits for housing activity prior to the date of its petition for substantive certification, provided such activity complies with criteria in N.J.A.C. 5:93. A municipality shall document eligible new construction with certificates of occupancy, eligible rehabilitation with final inspections, and transferred RCA units with evidence of the required transfer of funds to the receiving municipality.

(b) A municipality may address its growth share with surplus credits from its prior Fair Share Plan that addressed its 1987-1999 total housing need and which received

substantive certification or a judgment of compliance as follows:

1. Units that have been built and a certificate of occupancy for each unit has been issued;
2. Bonus credits generated by units that have been built; and
3. Units transferred through an RCA when all funds required by the RCA contract have been disbursed to the receiving municipality.

(c) Sites from the municipality's 1987-1999 Fair Share Plan that have been zoned for affordable housing but remain undeveloped shall comply with the review requirements of N.J.A.C. 5:94-3.3(a) to be included in a municipality's third round plan.

(d) A municipality may receive credit for rehabilitation of low and moderate income deficient housing units performed subsequent to April 1, 2000.

1. Units shall be eligible for crediting if:
 - i. They were rehabilitated up to the applicable code standard and the average capital cost expended on rehabilitating the housing units was at least \$8,000;
 - ii. The unit is currently occupied by the occupants who resided within the unit at the time of rehabilitation or by other eligible low or moderate income households; and
 - iii. Except for units rehabilitated before December 20, 2004, which shall be governed by the provisions of N.J.A.C. 5:93-5.2(g), the units shall have the appropriate controls on affordability pursuant to N.J.A.C. 5:94-4.3(e).

2. Credits for rehabilitation shall not exceed the rehabilitation share and shall only be credited against the rehabilitation component.

5:94-3.3 Reductions for unbuilt affordable housing sites

(a) A municipality shall receive reductions for unbuilt affordable housing sites that were part of its prior Fair Share Plan that addressed its 1987-1999 housing need and which received substantive certification or a judgment of compliance, subject to the provisions of (a)1 below. Reductions for unbuilt housing units shall not exceed the adjusted 1987-1999 affordable housing obligation listed for each municipality in Appendix C.

1. A site that has been zoned but remains unbuilt shall be evaluated by the Council at the time the municipality petitions for the third round to determine if the site

continues to present a realistic opportunity for the construction of affordable housing. The municipality shall submit all decisions on applications for development on any unbuilt sites included in the 1987-1999 certified Fair Share Plan. In evaluating an unbuilt site, the Council shall consider whether the site meets the following criteria:

- i. The site is a suitable site pursuant to N.J.A.C. 5:94-4.5;
- ii. Market conditions create a realistic opportunity for the affordable housing to be constructed; and
- iii. Unconditional zoning on the site has been adopted prior to the filing of a third round Housing Element and Fair Share Plan

2. Sites that no longer present a realistic opportunity shall not be eligible to receive a reduction toward any portion of a municipal Fair Share Plan. If the Council determines that the site continues to present a realistic opportunity, but can realistically accommodate a lower number of units than proposed in the 1987-1999 Fair Share Plan, the municipality shall receive a reduction for the lower number.

3. Sites that address the 1987-1999 housing need and are found to present a realistic opportunity pursuant to the provisions above shall be reviewed again at the three-year anniversary review pursuant to N.J.A.C. 5:95-9. If a site has not developed, a municipality may be required to amend its plan to address the shortfall created in the plan in accordance with the mechanisms described in N.J.A.C. 5:94-4.

5:94-3.4 Adjustments

(a) A municipality may address its first and second round obligation through a vacant land adjustment or include a durational adjustment as provided in N.J.A.C. 5:93 and in compliance with the following:

1. A municipality that received a vacant land or durational adjustment pursuant to N.J.A.C. 5:93-4 or by Court order shall be deemed to have met its 1987-1999 cumulative affordable housing obligation provided it has implemented all of the terms of the substantive certification granted by the Council or the judgment of compliance ordered by the Court. All components of said certification or judgment that are designed to address unmet need pursuant to N.J.A.C. 5:93-4.1(b) shall continue in full force and any affordable housing units created thereunder shall be deemed to be credited toward unmet need until such time as the municipality has provided for its entire unmet need prior to being used to address the growth share obligation.

2. A municipality that received a durational adjustment pursuant to N.J.A.C. 5:93-4.3 or by Court order may continue to rely on the adjustment to address its 1987-1999 cumulative fair share obligation provided it has implemented all the terms of the substantive certification granted by the Council or the Judgment of compliance ordered by the Court. If the conditions that warranted the imposition of the durational adjustment still exist, all components of said certification or judgment that are designed to assure affordable housing development on the site(s) affected by the durational adjustment shall continue in full force and any affordable housing units created hereunder shall be deemed to be credited toward the municipality's second round obligation until such time as the municipality has provided for its entire second round obligation associated with the affected site(s) prior to being used to address the growth share obligation.

SUBCHAPTER 4. PREPARING A FAIR SHARE PLAN

5:94-4.1 Overview of a Fair Share Plan

(a) A municipality shall develop a Fair Share Plan that meets the requirements of this subchapter to address the municipality's total 1987-2014 fair share obligation, including implementing ordinances designed to ensure that the fair share of affordable housing for the 1987-2014 period is met. The Fair Share Plan shall include the estimated growth share need based upon residential and non-residential development patterns that are likely to occur that are outlined in the Housing Element pursuant to N.J.A.C. 5:94-2.

(b) The Fair Share Plan shall be adopted by the Planning Board and endorsed by the governing body prior to the municipal petition for substantive certification.

(c) The Fair Share Plan shall include a strategy for ensuring the development of one affordable housing unit for every eight market-rate units of new construction and/or one affordable unit for every 25 newly created jobs as measured by new or expanded non-residential construction within the municipality in accordance with Appendix E, pursuant to N.J.A.C. 5:94-2.4.

(d) The Fair Share Plan shall be reviewed by the Council to verify the construction or provision of affordable housing in proportion to the actual residential growth and employment growth, and to verify compliance with P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.), at the end of three years, five years and eight years after the date on which the municipality had filed for substantive certification in accordance with N.J.A.C. 5:94-9 and 5:95-9, and the municipality shall be directed to adjust its plan as necessary.

Amended by R.2007 d.270, effective August 20, 2007.
See: 38 N.J.R. 4971(a), 39 N.J.R. 3505(b).

In (d), inserted “, and to verify compliance with P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.),”.

5:94-4.2 Fair Share Plan

(a) A Fair Share Plan describes the projects, strategies and funding sources, if applicable, that will be utilized to address a municipality's affordable housing obligation as set forth in N.J.A.C. 5:94-2.4. The Fair Share Plan shall include at least the following requirements:

1. Descriptions of the operational and financial feasibility of any specific project(s) intended to provide for the total 1987-2014 municipal fair share of affordable housing, which shall include rehabilitation programs, municipally sponsored construction projects, regional contribution agreements, alternative living arrangements, buy-down programs, accessory apartments, municipally sponsored rental programs, ECHO programs, assisted living residences, affordable housing partnership programs and expanded crediting opportunities. The municipality shall also submit a municipal resolution appropriating funds from general revenue or a resolution of intent to bond in the event there is a shortfall of funding from the initial identified source(s). Zoning pursuant to N.J.A.C. 5:94-4.4 shall be exempt from this requirement;

2. Draft fair share ordinances necessary for the implementation of the programs and projects designed to satisfy the fair share need. The governing body shall formally adopt the final version of the fair share ordinances within 45 days of the Council's grant of substantive certification;

3. An accounting of any development fees collected and the amount and purpose for which any fees have been expended current to the date of petition; and

4. An accounting of funds collected in accordance with N.J.A.C. 5:94-4.21 from affordable housing developers sufficient to adapt 10 percent of the affordable units in that developer's affordable housing development that have not been constructed with accessible entrances.

(b) The Fair Share Plan may include the collection of development fees pursuant to N.J.A.C. 5:94-6. Any municipality that includes the collection of development fees in its Fair Share Plan shall prepare a plan to spend development fees pursuant to N.J.A.C. 5:94-6.5.

(c) The Fair Share Plan shall include a plan for the rehabilitation component pursuant to N.J.A.C. 5:94-4.3, and may include any of the new construction options outlined in N.J.A.C. 5:94-4.

Amended by R.2007 d.270, effective August 20, 2007.
See: 38 N.J.R. 4971(a), 39 N.J.R. 3505(b).

In (a)2, deleted “and” from the end; in (a)3, substituted “; and” for a period at the end; and added (a)4.

5:94-4.3 Rehabilitation

(a) The estimate of each municipality's substandard units occupied by low and moderate income households as determined through the methodology provided in Appendix A incorporated herein by reference is provided in Appendix C.

This rehabilitation number may also be provided through a survey of the municipal housing stock conducted in accordance with the provisions of N.J.A.C. 5:93. Where the municipality or objector performs the structural conditions survey, the Council shall review the results of the data collected and shall modify the rehabilitation share number if it determines a modification is warranted.

(b) The purpose of a rehabilitation program is to renovate deficient housing units as defined in N.J.A.C. 5:94-1.4 that are occupied by low and moderate income households. Upon rehabilitation, housing deficiencies shall be corrected and the unit shall comply with the New Jersey State Housing Code, N.J.A.C. 5:28. For construction projects that require the issuance of a construction permit pursuant to the Uniform Construction Code, the unit must also comply with the requirements of the Rehabilitation Subcode (N.J.A.C. 5:23-6). In these instances, the more restrictive requirements of the New Jersey State Housing Code or the Rehabilitation Subcode shall apply. For projects that require construction permits, the rehabilitated unit shall be considered complete at the date of final approval pursuant to the Uniform Construction Code.

(c) The municipality shall demonstrate the capability to administer the program. The municipality shall either designate an experienced employee to administer the program or enter into an agreement for a governmental agency or private consultant to administer all or some of the program.

(d) Rental units shall not be excluded from a municipal rehabilitation program.

(e) The Council shall require 10-year controls on affordability on both owner-occupied units and rental units. On owner-occupied units, the controls on affordability may be in the form of a lien filed with the appropriate property's deed. For rental units, the controls on affordability shall be in the form of a deed restriction and may also include a lien. If a unit is vacant upon initial rental subsequent to rehabilitation, or if a renter-occupied unit is re-rented prior to the end of controls on affordability, the deed restriction shall require the unit to be rented to a low or moderate income household at an affordable price and affirmatively marketed pursuant to the N.J.A.C. 5:94-7. Rents in rehabilitated units may increase annually based on the standards in N.J.A.C. 5:94-7.

(f) Municipal rehabilitation investment shall average at least \$10,000 per unit, of which no more than \$2,000 may be used toward administration costs. The municipality shall submit documentation demonstrating funding source(s).

(g) Municipalities shall provide sufficient dollars to fund no less than half of the municipal rehabilitation component by the fifth year anniversary review pursuant to N.J.A.C. 5:95-9. At the time of the fifth year anniversary review, the Council may require the municipality to enact its municipal resolution appropriating funds from general revenue or its resolution of

intent to bond, as provided by the municipality pursuant to N.J.A.C. 5:94-4.2(a) 1, in the event there is a shortfall.

(h) Financing of rehabilitation programs shall be structured to encourage rehabilitation and continued occupancy. Low interest rates and forgivable loans are encouraged. Leveraging of private financing is also encouraged if the result is low interest loans that encourage rehabilitation. If an owner-occupied housing unit is sold prior to the end of the controls on affordability, at least part of the loan shall be recaptured and used to rehabilitate another housing unit, unless the unit is sold to a low or moderate income household at an affordable price pursuant to N.J.A.C. 5:94-7.

(i) If the municipality structures a loan program to recapture funds, recaptured funds shall be used for another low and moderate income housing purpose or to repay a municipal bond issued to finance a low and moderate income housing activity.

(j) The municipality shall submit a rehabilitation manual to the Council that complies with the requirements of this section and summarizes the administration of the rehabilitation program, including the affirmative marketing plan.

(k) The administrator of the rehabilitation program shall maintain files on each program applicant. The files may be used in responding to monitoring requests and periodic programmatic and fiscal audits conducted by the Council, and to protect the municipality against charges of irregularity. The files shall include:

1. The name of each applicant;
2. If the applicant is not approved, the reasons for the disapproval; and
3. If the applicant is approved:
 - i. Proof of income eligibility (Federal tax return);
 - ii. The initial inspection by the building inspector;
 - iii. Bids by contractors;
 - iv. The final contract to do the work;
 - v. Progress reports;
 - vi. A copy of the final inspection; and
 - vii. The lien and/or deed on the property.

(l) Municipalities that adopt a rehabilitation program shall complete monitoring reports in accordance with N.J.A.C. 5:94-9.2. Failure to submit monitoring reports to the Council or respond to direction designed to increase rehabilitation activity may result in further Council action.

(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 share through rehabilitation in one 10-year period of substantive certification. A municipality seeking such a waiver shall demonstrate that it is

not feasible to meet the entire need through rehabilitation in 10 years.

(n) If a municipality received a rehabilitation credit for the rehabilitation of a unit prior to April 1, 2000, as part of a previous round Fair Share Plan, and the controls on affordability have expired, but that same unit currently meets the criteria for rehabilitation set forth in this section, including rehabilitation of a major system, the municipality may earn another rehabilitation credit if it brings the unit back

to code standard and new controls on affordability are put in place pursuant to N.J.A.C. 5:94-4.3(e).

(o) A municipality can claim a rehabilitation credit if it renovates a deed restricted affordable unit that was built between 1987 and 1993 for which it claimed a new construction credit in its first round plan. If rehabilitation of a major system is necessary and the unit meets the rehabilitation criteria, then that rehabilitation is consistent with the Council's regulations and shall receive a rehabilitation credit.



5:94-4.4 Municipal zoning options

(a) A municipality may adopt a land use ordinance permitting zoning for residential and/or mixed-use development to address the growth share obligation that would apply to all or some zones within the municipality. The municipality shall provide the Council with a draft or adopted ordinance. The zoning may provide for equal or fewer than one unit for every eight market-rate units or one unit for every 25 jobs created in a non-residential development to be affordable to households of low and moderate income in an inclusionary development, provided that the Fair Share Plan demonstrates the units lost shall be constructed or provided pursuant to other components of the plan. Alternatively, the zoning may provide for greater than one unit for every eight market-rate units or one unit for every 25 jobs created in a non-residential development to be affordable to households of low and moderate income in an inclusionary development. The municipality shall take into consideration the economic feasibility of such zoning. The following shall apply:

1. If the zoning has not allowed an increase in density to accommodate affordable housing and requires a maximum of one for every eight market-rate residential units or one unit for every 25 jobs created in a non-residential development to be affordable to low and moderate income households, the zoning shall be exempt from the State Development and Redevelopment Plan provisions of N.J.A.C. 5:94-4.5(a)1 and 2.

2. If the zoning requires more than one for every eight market-rate residential units or one unit for every 25 jobs created in a non-residential development to be affordable to low and moderate income households, or if there has been a density increase on the site to accommodate affordable housing, the zoning shall conform to the criteria in N.J.A.C. 5:94-4.5.

(b) The affordable housing obligation is cumulative and accrues to the municipality regardless of the size of each development. Through the zoning ordinance, a municipality shall require a developer to construct the affordable units on site or elsewhere in the municipality or, alternatively, allow the option of a payment in lieu of constructing the units on site. Any development or portion of a development zoned for the production of affordable housing that generates an affordable housing obligation, but does not provide for those affordable housing units on site or elsewhere in the municipality in proportion to the market-rate units or jobs on site shall be subject to a payment in lieu. Zoning that does not require a growth share set-aside or payment in lieu may be subject to a development fee under the Fair Share Plan unless exempted pursuant to N.J.A.C. 5:94-6.8.

1. A zoning ordinance may contain a development size threshold below which the construction of affordable units shall not be required on site. Sites falling below such threshold shall be required to make a payment in lieu of

constructing the proportional number of affordable units associated with the number of market-rate units or jobs.

(c) The amount of payments in lieu of constructing affordable units on site shall be negotiated between the municipality and the developer.

(d) Payments in lieu of constructing affordable units on site shall only be used to fund eligible affordable housing activities within the municipality pursuant to a spending plan in accordance with N.J.A.C. 5:94-6.12.

(e) Payments in lieu of constructing affordable units shall be deposited in a separate, interest-bearing housing trust fund or deposited in the housing trust fund established pursuant to N.J.A.C. 5:94-6.11(a) and shall at all times be identifiable from development fees.

(f) Such zoning shall require affordable housing units to be built in accordance with the following schedule:

| Percentage of Market-rate Units Completed | Minimum Percentage of Low and Moderate Income Units Completed |
|---|---|
| 25 | 0 |
| 25 + 1 unit | 10 |
| 50 | 50 |
| 75 | 75 |
| 90 | 100 |

(g) The Council encourages the design of inclusionary and mixed-use developments providing affordable housing to be in conformance with the design guidelines in the State Development and Redevelopment Plan.

(h) The Council encourages a design of inclusionary and mixed-use developments providing affordable housing that integrates the low and moderate income units with the market units.

(i) Municipal ordinances regulating owner-occupied and rental units in inclusionary and mixed-use developments providing affordable housing shall require that affordable units utilize the same heating source as market units within the inclusionary development.

(j) The municipality shall:

1. Demonstrate capacity to administer the units in accordance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26;

2. Demonstrate that the units will have a low/moderate income split in accordance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26;

3. Demonstrate that the units will be affirmatively marketed in accordance with N.J.A.C. 5:94-7;

4. Demonstrate that the units will have the appropriate controls on affordability in accordance with N.J.A.C. 5:94-7; and

5. Demonstrate that the units will have the appropriate bedroom distributions in accordance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.

5:94-4.5 New construction, site suitability criteria, and conformance with the State Development and Redevelopment Plan

(a) Except as exempted in N.J.A.C. 5:94-4.4(a)1, sites zoned to produce affordable housing shall conform to the following criteria to determine site suitability:

1. Sites that are located in Planning Areas 1 or 2 or located within a designated center, shall have a presumption of validity regarding consistency with the State Development and Redevelopment Plan. These sites are the preferred location for a municipality to address its growth share obligation.

2. Municipalities or developers proposing sites located in Planning Areas 3, 4, 4B, 5 or 5B that are not within a designated center shall have the burden of demonstrating to the Council that the site is consistent with sound planning principles and the goals, policies and objectives of the State Development and Redevelopment Plan. The Council shall obtain a recommendation from the Executive Director of the Office of Smart Growth on the consistency of the site with sound planning principles and the goals, policies and objectives of the State Development and Redevelopment Plan.

3. Within the areas of the State regulated by the Pinelands Commission, Highlands Water Protection and Planning Council, Division of Coastal Resources of the DEP and the New Jersey Meadowlands Commission, the Council shall adhere to the land use policies delineated in The Pinelands Comprehensive Management Plan, N.J.A.C. 7:50; The Highlands Water Protection and Planning Act and the regulations promulgated thereunder; the Coastal Permit Program Rules, N.J.A.C. 7:7; the Coastal Resource and Development Rules, N.J.A.C. 7:7E; and the Zoning Regulations of the New Jersey Meadowlands Commission, N.J.A.C. 19:3.

4. The portions of sites slated for construction shall adhere to regulations concerning wetland constraints as delineated on the New Jersey Freshwater Wetlands Maps, or when unavailable, the U.S. Fish and Wildlife Service National Wetlands Inventory; or as delineated on-site by the U.S. Army Corps of Engineers or DEP, whichever agency has jurisdiction; Category One waterway constraints pursuant to N.J.S.A. 58:11A-1 et seq. and the rules promulgated thereunder, N.J.A.C. 7:15; flood hazard constraints as defined in N.J.A.C. 7:13; and steep slope constraints in excess of 15 percent if the municipality has an ordinance in place that uniformly regulates steep slope development throughout the municipality.

5. Historic and architecturally important sites and districts listed on the State or National Register of Historic Places shall be reviewed by the New Jersey Historic Preservation Office for a recommendation pertaining to the appropriateness and size of buffer areas that will protect the integrity of the site. The review and written recommendation by the New Jersey Historic Preservation Office shall be included in the Housing Element and Fair Share Plan that is the subject of any petition before the Council. Within historic districts, a municipality may regulate low and moderate income housing to the same extent it regulates all other development.

6. The Council shall consider the availability of infrastructure and vacant developable land when determining site suitability.

5:94-4.6 Municipally sponsored and 100 percent affordable programs

(a) A municipality may elect to provide low and moderate income units through a municipally sponsored or 100 percent affordable construction program. The following minimum documentation shall be submitted:

1. The municipality or the developer 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. The municipality shall demonstrate that the selected site is suitable pursuant to N.J.A.C. 5:94-4.5;

3. The municipality shall demonstrate the capability to administer the project in accordance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26. Administering the project includes affirmative marketing, income qualifying the applicants and continuing to administer the units once they are occupied. The municipality shall designate an experienced employee to administer the project or may enter into an agreement for a governmental agency or private consultant to administer all or some of the project;

4. The municipality shall demonstrate that the units will have a low/moderate income split in accordance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26;

5. The municipality shall demonstrate that the units will be affirmatively marketed in accordance with N.J.A.C. 5:94-7;

6. The municipality shall demonstrate that the units will have the appropriate controls on affordability in accordance with N.J.A.C. 5:94-7;

7. Demonstrate that the units will have the appropriate bedroom distributions in accordance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26;

(b) When used in conjunction with an accessory apartment program or other program targeted to only low-income households, the rental program may be exempt from the low/moderate income split pursuant to the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26, provided the municipality meets the provisions of N.J.A.C. 5:94-4.18.

5:94-4.12 ECHO units

(a) Municipalities shall receive one credit against their rehabilitation share for each Elder Cottage Housing Opportunities (ECHO) housing unit in which a low or moderate income occupant will reside.

(b) The municipality shall purchase the ECHO housing or lease ECHO housing for a minimum of 10 years. The municipality shall submit documentation demonstrating source(s) of funding.

(c) Municipalities may receive credit for up to 10 ECHO units.

(d) ECHO units shall be exempt from the affirmative marketing requirement of N.J.A.C. 5:94-7.

5:94-4.13 Assisted living residence

(a) Bedrooms in assisted living residences may address a municipal housing obligation. To be eligible for affordable housing credits:

1. A private pay resident shall qualify as low or moderate income, or the resident shall be a recipient of a Medicaid waiver;

2. At least half of the affordable units in the assisted living residence shall be affordable to low income households, or all of the affordable units may be affordable to households at 60 percent of median income;

3. Assisted living units are considered age-restricted housing in a Fair Share Plan and shall be included with the maximum number of units that may be age-restricted pursuant to N.J.A.C. 5:94-4.19(a);

4. Up to 80 percent of an applicant's gross income may be used for rent, food and services based on occupancy type and the affordable unit must receive the same basic services as required by the Agency's underwriting guidelines and financing policies;

5. The unit of credit is the bedroom. A two-bedroom unit is eligible for two units of credit only if it is occupied by two unrelated individuals;

6. The municipality shall execute a Memorandum of Understanding with the Agency to be eligible for credits pursuant to N.J.A.C. 5:94-7;

7. The units shall have the appropriate controls on affordability in accordance with N.J.A.C. 5:94-7. The deed restriction is on the facility, not individual rooms pursuant to N.J.A.C. 5:94-7;

8. Low and moderate income residents cannot be charged any upfront fees;

9. The units shall be affirmatively marketed pursuant to N.J.A.C. 5:94-7; and

10. The Agency shall monitor the affordable units for the Council's annual monitoring report.

5:94-4.14 Affordable housing partnership program

(a) The Council shall grant credit for units when two or more municipalities cooperate to build low and moderate income housing units provided the following conditions are met:

1. The municipalities shall voluntarily enter into an agreement with municipalities located within the same housing region. In the agreement, municipalities shall set forth the number of credits each municipality will be allotted. No credit shall be given to more than one municipality for the same unit;

2. Each municipality shall, subject to the agreement, contribute resources, including, but not limited to, funding, sewer, water, and land;

3. The municipality providing the funding shall submit documentation 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;

4. The municipality providing the sewer and/or water shall submit documentation demonstrating adequate capacity;

5. The municipality providing the land 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;

6. The municipalities shall demonstrate that the site is suitable pursuant to N.J.A.C. 5:94-4.5;

7. The municipalities shall demonstrate the capability to administer the project in accordance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26. Administering the project includes affirmative marketing, income qualifying the applicants and continuing to administer the units once they are occupied. The municipality shall designate an experienced employee to administer the project

or may enter into an agreement for a governmental agency or private consultant to administer all or some of the project;

8. The municipalities shall demonstrate that the units will have a low/moderate income split in accordance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26;

9. The municipalities shall demonstrate that the units will be affirmatively marketed in accordance with N.J.A.C. 5:94-7;

10. The municipalities shall demonstrate that the units will have the appropriate controls on affordability in accordance with N.J.A.C. 5:94-7;

11. The municipality shall demonstrate that the units shall be affordable to low and moderate income households pursuant to N.J.A.C. 5:94-7;

12. The municipality shall demonstrate that the units will have the appropriate bedroom distributions in accordance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26;

13. The municipalities shall provide a construction schedule or timetable 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 three years of the municipal petition for substantive certification. The municipality shall indicate the entity responsible for monitoring the construction and overall development activity; and

14. Units constructed in another municipality pursuant to such agreement shall fall within the maximum number of units permitted to be provided through an RCA, consistent with the provisions of N.J.A.C. 5:94-5.1(a).

5:94-4.15 Expanded crediting opportunities

(a) The Council shall permit a municipality to petition for affordable housing credits for innovative programs or approaches, provided that the following performance standards can be achieved and clearly demonstrated:

1. Units shall be affordable to income-eligible households;

2. Units shall have the appropriate controls on affordability in accordance with N.J.A.C. 5:94-7;

3. Units shall be affirmatively marketed in accordance with N.J.A.C. 5:94-7;

4. Units shall not be restricted to youth under 18 years of age;

5. Sites to be developed with new units shall be suitable pursuant to N.J.A.C. 5:94-4.5;

6. Rehabilitated and converted units shall meet all local building codes; and

7. The municipality shall submit documentation demonstrating source(s) of funding.

5:94-4.16 Extension of expiring controls

(a) A municipality shall receive a new construction credit for each low or moderate income for-sale housing unit that is subject to affordability controls that are scheduled to expire during the 1999-2014 period if the affordability controls are extended in accordance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.

(b) A municipality shall be required to obtain a continuing certificate of occupancy or a certified statement from the municipal building inspector stating that the restricted ownership unit meets all code standards upon the first transfer of title following a 30-year interval from the date of the issuance of the initial certificate of occupancy or a 10-year interval in the case of a municipality that receives State aid pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.).

(c) If a unit requires repair and/or rehabilitation work in order to receive a continuing certificate of occupancy or such certified statement from the municipal building inspector, the municipality shall fund and complete such work prior to receiving a new construction credit. A municipality may use development fees to purchase the unit and/or complete the necessary repair and/or rehabilitation work.

5:94-4.17 Status of sites addressing 1987-1999 municipal obligation

(a) Sites zoned for inclusionary development in addressing the 1987-1999 housing obligation shall retain such zoning in the 1999-2014 Fair Share Plan if:

1. The Council determines that the site continues to meet the site suitability standards pursuant to N.J.A.C. 5:94-4.5;

2. The Council determines that the site continues to present a realistic opportunity pursuant to N.J.A.C. 5:94-3.3; and

3. The site meets one of the following conditions:

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

ii. The developer of the site has filed a development application with the municipality prior to the expiration of the 1987-1999 substantive certification period or the municipal petition for substantive certification for the 1999-2014 period, whichever is later.

(b) Notwithstanding the provisions of (a) above, pursuant to N.J.S.A. 52:27-311(g), a municipality that has received substantive certification for the 1987-1999 period and which has effected the construction of its entire affordable housing obligation of that period may amend its Housing Element or zoning ordinances with respect to sites being used to address its 1987-1999 affordable housing obligation. Prior to amending the Housing Element or zoning ordinances, the municipality shall obtain a determination from the Council as to whether the municipality has effected construction of its entire affordable housing obligation. To make such a determination, the Council shall require the municipality to submit the filed deeds with the appropriate deed restrictions, certificates of occupancy for units constructed and evidence of the transfer of RCA funds, if applicable.

5:94-4.18 Low/moderate income split of the growth share obligation

(a) With the exception of affordable housing developments constructed under the low income tax credit regulations pursuant to Internal Revenue Code Section 42h, at least 50 percent of a municipality's growth share obligation shall be affordable to low income households.

(b) An odd number shall always be split in favor of the low income unit.

5:94-4.19 Age-restricted housing

Not more than 50 percent of the growth share obligation addressed within a municipality may be met with age-restricted housing in the Fair Share Plan. In no event shall a municipality receive credit for age-restricted units in excess of 50 percent of the municipality's actual growth share obligation addressed within a municipality at the end of the certification period.

5:94-4.20 Rental housing

(a) In addressing the housing need, the Fair Share Plan shall create a realistic opportunity to construct rental units. At least 25 percent of a municipality's growth share obligation shall be addressed with rental housing. This rental obligation shall be provided in proportion to the growth share obligation generated by the actual growth as monitored at the third, fifth and eighth year anniversary pursuant to N.J.A.C. 5:95-9.

(b) Any rental obligation pursuant to N.J.A.C. 5:93-5.15 that was a condition of substantive certification in addressing the 1987-1999 municipal fair share shall be considered as an ongoing obligation in addressing the total 1987-2014 housing need pursuant to this chapter.

(c) The plan for a rental housing component may include, but not necessarily be limited to, any combination of the following:

1. Creation of alternative living arrangements pursuant to N.J.A.C. 5:94-4.8;

2. A municipally sponsored, for-profit or non-profit sponsored affordable rental development;

3. Agreements with developers for the municipality to purchase affordable units and maintain them as rental units;

4. The creation of accessory apartments pursuant to N.J.A.C. 5:94-4.9;

5. Municipally sponsored rental program units pursuant to N.J.A.C. 5:94-4.11;

6. Assisted living residences pursuant to N.J.A.C. 5:94-4.13;

7. Density bonuses that encourage the construction of affordable rental housing; and

8. Agreements with developers to construct and administer affordable rental units as part of an inclusionary development.

(d) A municipality shall receive two units of credit for each affordable rental unit provided in the municipality and available to the general public in excess of the rental obligation pursuant to (a) above. No rental bonuses shall be granted for rental units that address the municipality's rental obligation.

(e) Municipalities that choose to transfer the rental obligation via an RCA shall do so by creating new rental units in the receiving municipality. Reconstruction of units as defined in N.J.A.C. 5:94-1.4 may address the rental component. Municipalities that transfer the rental obligation shall receive a one-unit credit for each rental unit transferred.

(f) Not more than 50 percent of the rental housing obligation addressed within a municipality may be met with age-restricted housing in the Fair Share Plan.

5:94-4.21 Accessible and adaptable affordable units

(a) The first floor of all townhouse dwelling units and of all other multistory dwelling units for which credit is sought pursuant to P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.), on or after October 1, 2006, the effective date of P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.), and for which an application for a construction permit has not been declared complete by the enforcing agency pursuant to P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and which were included in a prior round fair share plan or in a third round fair share plan and for which credit continues to be sought shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

(b) To receive Council credit for a townhouse unit or other multistory dwelling unit that is attached to at least one other dwelling unit, a municipality shall show that:

1. Townhouses or other multistory dwelling units that are attached to at least one other dwelling unit for which

credit is sought for low or moderate income housing shall have the following features:

- i. An adaptable toilet and bathing facility on the first floor;
- ii. An adaptable kitchen on the first floor;
- iii. An accessible route of travel;

(1) An interior accessible route of travel shall not be required between stories;

iv. An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and

v. An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7, or evidence that the municipality has collected funds from the development sufficient to make 10 percent of the adaptable entrances in the development accessible;

2. In the case of a unit or units which are constructed with an adaptable entrance pursuant to this subsection, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed;

3. The builder of the unit or units shall deposit funds, sufficient to adapt 10 percent of the affordable units in the projects which have not been constructed with accessible entrances, with the municipality in which the units are located, for deposit into the municipal affordable housing trust fund;

4. The funds under (b)3 above shall be available for the use of the municipality for the purpose of making the adaptable entrance of any affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance;

5. The developer of the affordable project subject to P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) shall submit the design with a cost estimate for conversion to the local enforcing agency; and

6. Once the local enforcing agency has determined that the plans to adapt the entrances of the townhouse or other multistory unit meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, the municipal office with jurisdiction over the affordable housing trust fund shall ensure that the funds are deposited into that fund.

(c) Full compliance with this section shall not be required where an entity can demonstrate that it is impracticable for the site to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7.

Repeal and New Rule, R.2007 d.270, effective August 20, 2007.
See: 38 N.J.R. 4971(a), 39 N.J.R. 3505(b).

Section was "Accessible townhouse units".

5:94-4.22 Bonus credit for very low income units

Notwithstanding the provisions of N.J.A.C. 5:94-4.20(d), a municipality shall receive two units of credit for affordable units available to households of the general public earning 30 percent or less of median income by region.

5:94-4.23 Credits

In no event shall a municipality receive more than two units of credit for one unit.

SUBCHAPTER 5. REGIONAL CONTRIBUTION AGREEMENTS

5:94-5.1 General provisions

(a) Municipalities may propose the transfer of up to 50 percent of their growth share obligation based on the procedures in N.J.A.C. 5:95-11.

(b) A municipality may propose such a transfer to another municipality within its housing region by means of a contractual agreement into which two municipalities voluntarily enter. A municipality may not transfer any portion of its rehabilitation share.

(c) The Council shall maintain current lists of municipalities which have notified it of an intent to enter into regional contribution agreements (RCAs) as receiving municipalities and shall provide copies of such lists to potential sending municipalities as requested.

Amended by R.2007 d.269, effective August 20, 2007.
See: 39 N.J.R. 137(a), 39 N.J.R. 3505(a).

In (c), deleted the former last sentence.

5:94-5.2 Terms

(a) At least 50 percent of the units accepted by a receiving municipality shall be affordable to low income households. The Council may modify this requirement if it determines that the sending municipality has adequately provided for its low income housing obligation elsewhere in its Housing Element. In the case of RCAs for scattered site rehabilitation of occupied units, the receiving community shall ensure, as best as practicable, that 50 percent of the rehabilitated units are occupied by low income households.

(b) Not more than 50 percent of the units transferred via an RCA may be met with age-restricted units in the receiving municipality's project plan.

(c) A receiving municipality may use revenues collected as a result of an RCA for any activity approved by the Council for addressing the low and moderate income obligation. Eligible activities shall include, but are not necessarily limited