

CHAPTER 91

**PROCEDURAL RULES OF THE NEW JERSEY
COUNCIL ON AFFORDABLE HOUSING**

Authority

N.J.S.A. 52:27D-301 et seq., specifically 52:27D-308.

Source and Effective Date

R.2003 d.172, effective April 2, 2003.
See: 34 N.J.R. 3604(a), 35 N.J.R. 1957(a).

Chapter Expiration Date

Chapter 91, Procedural Rules of the New Jersey Council on Affordable Housing, expires on April 2, 2008.

Chapter Historical Note

Chapter 91, Procedural Rules of the New Jersey Council on Affordable Housing, was adopted as R.1986 d.221, effective June 16, 1986. See: 18 N.J.R. 821(a), 18 N.J.R. 1267(a).

Pursuant to Executive Order No. 66(1978), Chapter 91, Procedural Rules of the New Jersey Council on Affordable Housing, was readopted as R.1991 d.119, effective February 7, 1991. See: 22 N.J.R. 3610(b), 23 N.J.R. 688(a).

Pursuant to Executive Order No. 66(1978), Chapter 91, Procedural Rules of the New Jersey Council on Affordable Housing, was repealed and a new Chapter 91, Procedural Rules of the New Jersey Council on Affordable Housing, was adopted by R.1992 d.491, effective December 7, 1992. See: 24 N.J.R. 2671(a), 24 N.J.R. 4344(b).

Pursuant to Executive Order No. 66(1978), Subchapter 14, Interim Substantive Certification, was repealed and a new Subchapter 14, Interim Procedures, was adopted by R.1993 d.407, effective August 16, 1993. See: 25 N.J.R. 1118(a), 25 N.J.R. 3753(a).

Pursuant to Executive Order No. 66(1978), Chapter 91, Procedural Rules of the New Jersey Council on Affordable Housing, was readopted as R.1997 d.511, effective November 5, 1997. See: 34 N.J.R. 3604(a), 35 N.J.R. 1957(a).

Chapter 91, Procedural Rules of the New Jersey Council on Affordable Housing, was readopted as R.2003 d.172, effective April 2, 2003. See, Source and Effective Date.

Case Notes

Use by Department of Environmental Protection (DEP) of its proposed impervious cover percentages for its coastal centers did not conflict with Fair Housing Act. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

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APPENDIX (RESERVED)

SUBCHAPTER 1. GENERAL PROVISIONS

5:91-1.1 Short title

The provisions of this chapter shall be known as "the procedural rules of the New Jersey Council on Affordable Housing."

Case Notes

Township could adopt housing element of master plan at properly noticed open meeting. Hills Development Co. v. Township of Bernards, 229 N.J.Super. 318, 551 A.2d 547 (A.D.1988).

5:91-1.2 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.).

"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 this State.

"Days" means calendar days.

"Fair Share Plan" means that plan or proposal, which is in a form that may readily be converted into an ordinance, by which a municipality proposes to satisfy its obligation to create a realistic opportunity to meet the low and moderate income housing need of its region, and which details the affirmative measures the municipality proposes to undertake to achieve its fair share of low and moderate income housing, as provided in sections 9 and 14 of the Act, and as further described and defined in N.J.A.C. 5:93.

"Filed" means accepted for filing by the Council in conformance with this chapter and N.J.A.C. 5:93.

"Housing element" means that portion of a municipality's master plan, consisting of reports, statements, proposals, maps, diagrams and text, designed to meet the municipality's fair share of its region's present and prospective housing needs, particularly with regard to low and moderate income housing, as further described by N.J.A.C. 5:93.

"Housing region" means a geographic area, determined by the Council, of no less than two nor more than four contiguous, whole counties which exhibit significant social, economic and income similarities, and which constitute to the greatest extent practicable the primary metropolitan statistical areas as last defined by the United States Census Bureau prior to July 2, 1985.

"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.

"OAL" means the Office of Administrative Law.

"Objector" means a person who files objections to a municipal housing element and fair share plan in accordance with N.J.A.C. 5:91-4.1 or is the owner of record of a site designated for low and moderate income housing in a municipal housing element and fair share plan in accordance with N.J.A.C. 5:91-7.2(e).

"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. A participant to mediation is not to be considered an objector to the municipality's petition for substantive certification.

“Petition for Substantive Certification” means that petition which a municipality files, or is deemed to have filed, which engages the Council’s mediation and review process.

(b) All of the information required by (a)1 through 4 above shall be filed with the Council by the municipality at the time of filing of its petition for amendment. The information required by (a)5 above shall be filed with the Council within seven days of the date of the municipality's filing of its petition.

Amended by R.1998 d.21, effective January 5, 1998.
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).
In (a)3, substituted "review and approval" for "approval".

5:91-13.3 Amendment by motion

(a) A motion to amend the terms of a certification by a municipality or other party shall follow the requirements of N.J.A.C. 5:91-12, and shall include, at a minimum, the following information, as well as such other information as the Council may request:

1. A summary of, and detailed reasons for, the proposed amendment; and
2. Proof of service of the motion on all objectors, interested parties, and owners of sites contained in both the certified and proposed fair share plans.

5:91-13.4 Notice of amendment petition

(a) A municipality which has petitioned to amend its substantive certification shall publish a notice of said petition in a newspaper of general circulation within the municipality and the county, using this format:

NOTICE OF AMENDMENT TO SUBSTANTIVE CERTIFICATION

Notice is hereby given that the (name of municipality) Planning Board, adopted a housing element/fair share plan on (date) which was certified by the Council on Affordable Housing (COAH) on (date). Now, the (name of municipality) is proposing to amend its certified housing element and fair share plan.

(INSERT BRIEF DESCRIPTION OF AMENDMENT)

A copy of the amendment to the housing element/fair share plan is available for public inspection at the office of (Municipal Clerk, etc.) Municipal Building, located at (street address), during the hours of _____. Any interested party must file comments or objections to the plan with the Council on Affordable Housing, 101 South Broad Street, PO Box 813, Trenton, NJ 08625-0813 and with the (name of municipality) within 30 days of publication of this notice.

(b) Where a party other than the municipality moves to amend the terms of certification, the Council may 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 file with the Council proof of publication within seven days of

its receipt of notification from the Council of the necessity of publishing notice.

(c) The Council shall publish a monthly list of all petitions for amendments to certification it has received in newspapers of general circulation within the State.

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).
Amended address.

5:91-13.5 Objections to amendment petitions

(a) Within 30 days of the publication of a notice of a petition to amend the terms of 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 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;
3. Copies of all expert reports, studies and data relied upon;
4. Proposed modifications, changes, or other measures which will resolve the objection consistent with the Council's criteria and guidelines; and
5. A statement documenting all efforts at premediation, participation in conferences, or public hearings and a summary of the results of any such efforts.

5:91-13.6 Review of objections

(a) The Council shall review objections subject to the criteria in N.J.A.C. 5:91-13.5. An objector that has met these criteria shall participate in the Council's administrative process beginning with mediation as set out at N.J.A.C. 5:91-7.

(b) Objections that are determined to be incomplete shall be returned to the objectors and they will be given 14 days to amend their objections and resubmit them in a manner conforming to 5:91-13.5.

SUBCHAPTER 14. INTERIM PROCEDURES

Authority

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

Source and Effective Date

R.1999 d.378, effective November 1, 1999.
See: 31 N.J.R. 2319(a), 31 N.J.R. 3290(a).

Subchapter Historical Note

Subchapter 14, Interim Procedures, was repealed and Subchapter 14, Interim Procedures, was adopted as new rules by R.1999 d.378, effective November 1, 1999. See: Source and Effective Date.

5:91-14.1 Municipalities that petition on or before June 6, 2000

A municipality that has not addressed its cumulative 1987-1999 fair share obligation may file an adopted housing element and fair share plan together with a petition for substantive certification on or before June 6, 2000. The Council shall grant a six-year certification if the housing element and fair share plan meet the criteria of N.J.A.C. 5:93.

5:91-14.2 Municipalities that petition after June 6, 2000

(a) A municipality that has not addressed its cumulative 1987-1999 fair share obligation may file an adopted housing element and fair share plan together with a petition for substantive certification after June 6, 2000. The Council shall grant an Interim Substantive Certification if the housing element and fair share meet the criteria of N.J.A.C. 5:93.

(b) This Interim Substantive Certification will be valid for up to one year after the effective date of the adoption of the Council's third round methodology and rules.

(c) To remain under the jurisdiction of the Council after receiving Interim Substantive Certification, a municipality shall petition before the one-year date to receive a third round certification.

5:91-14.3 Municipalities with expiring substantive certifications

(a) A municipality that has a second round substantive certification that shall expire prior to or within one year after the adoption of the Council's third round methodology and rules may have its second round substantive certification extended for up to one year after the effective date of the adoption of the Council's third round methodology and rules provided there is a resolution from the governing body that:

1. Requests the extension;
2. Commits to continuing to implement the certified second round plan; and
3. Commits to addressing a third round fair share obligation with a newly adopted housing element and fair share plan.

(b) To remain under the jurisdiction of the Council, on or before the expiration of the Council's extension of the second round certification, 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.

SUBCHAPTER 15. RETENTION OF DEVELOPMENT FEES**5:91-15.1 Procedures for retaining development fees**

(a) Municipalities that collected development fees prior to December 13, 1990, as outlined in N.J.A.C. 5:92-18.4 and 18.5, and 5:93-8.4 and 8.5 may retain at least some portion of such fees by conforming to the requirements of N.J.A.C. 5:92-18.8(a) and 5:93-8.8(a) (Development fee ordinance review).

(b) In addition, municipalities that collected development fees prior to December 13, 1990 shall provide notice to each developer that paid a development fee of its request for Council review of the development fee ordinance. The municipality shall provide each developer with a copy of all information required in N.J.A.C. 5:92-18.8(a)9 and 5:93-8.8(a)9 within seven days of the governing body's resolution to request review of its development fee ordinance.

(c) Municipalities that fail to provide all information to the Council, or fail to provide information to developers that paid development fees prior to December 13, 1990 within the time limits imposed by the Council, may be required by the Council to return the development fees to the developers that paid them.

(d) Developers shall have 14 days from the receipt of the information provided in (b) above to submit comments to the Council regarding the submissions made by the municipality. The developer shall simultaneously serve the municipality with a copy of the comments.

(e) Following the submissions from municipalities and developers, the Council shall review and approve or disapprove the ordinance. The Council may also determine the revenues that the municipality must return to the developers that paid the fees. Municipalities shall be able to retain fees that conform to the standards in this subchapter and N.J.A.C. 5:92-18 and 5:93-8.

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

Law Review and Journal Commentaries

COAH Rules Permit Retroactive fee Ordinances, Thomas F. Carroll, III, 135 N.J.L.J. No. 7, 56 (1993).