

the projected growth share obligation, the municipality shall divide the resulting total units by five. The projected residential growth share obligation shall not go below zero.

(b) A municipality shall determine the non-residential component of its projected growth share obligation for the period January 1, 2004 to December 31, 2018 based on the employment projections provided in Appendix F, unless municipal projections are utilized pursuant to N.J.A.C. 5:97-2.3(d). If municipal projections are utilized, the growth share obligation shall be determined pursuant to N.J.A.C. 5:97-2.5(a) through (c).

1. In determining its projected non-residential growth share obligation, a municipality may fully or partially subtract from its employment projection, 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 developer's 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. Such non-residential development may be excluded at a rate of 16 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 chapter Appendix D.

2. After subtracting any exclusions permitted in (b)1 above, the municipality shall have an obligation of one affordable housing unit for every 16 jobs projected. For the purpose of calculating the growth share obligation, the municipality shall divide the resulting total jobs by 16. The non-residential projected growth share obligation shall not go below zero.

(c) The projected residential growth share obligation calculated pursuant to (a) above shall be added to the projected non-residential growth share obligation calculated pursuant to (b) above to determine a total projected growth share obligation.

Amended by R.2008 d.316, effective October 20, 2008.
See: 40 N.J.R. 3374(a), 40 N.J.R. 5965(a).

Inserted "projected" throughout; in the introductory paragraph of (a), (a)1ii and the introductory paragraph of (b), updated the N.J.A.C. references; and in (a)1ii, inserted "or constructed off-site but within the municipality" twice.

5:97-2.5 Measuring the actual growth share obligation

(a) A municipality's actual residential growth share obligation shall be measured based upon permanent market-rate residential certificates of occupancy issued within the municipality between January 1, 2004 and December 31, 2018.

1. In determining the actual residential growth share obligation, the following may be subtracted from the number of market rate certificates of occupancy issued:

i. Units included in the exclusions permitted by N.J.A.C. 5:97-2.4(a)1ii that have been issued certificates of occupancy;

ii. Certificates of occupancy issued for continuing care retirement communities, dormitories, hotels and motels classified as R1 or R2 by the Uniform Construction Code (UCC). These certificates of occupancy shall be included in the non-residential growth share obligation calculated pursuant to (b) below;

iii. Certificates of occupancy issued for graduate student housing owned and/or operated by an institution of higher education and farm labor housing constructed on a commercial farm as defined by the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., and classified as R2, R3, or R5 by the Uniform Construction Code (UCC); and

iv. Additional market-rate rental units in an inclusionary or mixed-use development pursuant to N.J.A.C. 5:97-6.4(b)6ii where the affordable housing units are rental units that are addressing a municipality's growth share obligation.

2. After subtracting any exclusions permitted in (a)1 above, the municipality shall have an obligation of one affordable housing unit for every four market-rate residential units constructed. For the purpose of calculating the growth share obligation, the municipality shall divide the resulting total units by four. The residential growth share obligation shall not go below zero.

(b) A municipality's actual non-residential growth share obligation shall be measured based upon the square footage of non-residential development converted to jobs based on the use group ratios provided in chapter Appendix D.

1. In determining the actual non-residential growth share obligation, the municipality shall measure the jobs gained based on the square footage authorized by permanent certificates of occupancy issued for new or expanded non-residential development for each use group in Appendix D, including continuing care retirement communities, dormitories, hotels and motels classified as R1 or R2 within the municipality between January 1, 2004 and December 31, 2018.

2. In determining the actual non-residential growth share obligation, the following may be subtracted from the total jobs in (b)1 above:

i. Jobs based on the square footage authorized by certificates of occupancy issued for developments excluded by N.J.A.C. 5:97-2.4(b)1;

ii. Jobs resulting from an increase in floor area for a mixed-use development pursuant to N.J.A.C. 5:97-6.4(b)9 that occurs after January 1, 2004, provided the required affordable units were constructed on-site;

iii. Jobs resulting from an increase in floor area for a non-residential development pursuant to N.J.A.C. 5:97-6.4(b)8 that occurs after January 1, 2004;

iv. Jobs lost based on demolition permits issued by square footage of non-residential structures for each use group in Appendix D, provided the structure was occupied at least one year prior to demolition; and

v. The equivalent number of jobs, as measured by use group in Appendix D, associated with the relocation of a hospital and/or nursing home from another municipality within the same housing region based upon the replacement square footage. Additional jobs, as measured by use group in Appendix D, resulting from an expansion and/or addition of the relocated hospital and/or nursing home shall not be exempt from a municipality's growth share obligation.

3. The municipality shall have an obligation of one affordable housing unit for every 16 newly created jobs. For the purpose of calculating the growth share obligation, the municipality shall divide the resulting total jobs by 16. The non-residential growth share obligation shall not go below zero.

(c) The residential growth share obligation calculated pursuant to (a) above shall be added to the non-residential growth share obligation calculated pursuant to (b) above to determine a total growth share obligation.

(d) At such time and in such form as the Council requires, the municipality shall provide a comparison of its actual prorated growth share obligation and the actual number of affordable units that have been constructed or provided since January 1, 2004. At plan evaluation review pursuant to N.J.A.C. 5:96-10, the Council shall compare the actual growth share obligation with the actual number of affordable units constructed or provided for the purposes of enforcing remedies described in N.J.A.C. 5:96-10.4.

(e) If the actual growth share obligation determined in (c) above is less than the growth share obligation projected pursuant to N.J.A.C. 5:97-2.4, the municipality shall continue to provide a realistic opportunity for affordable housing to address the projected growth share, through inclusionary zoning or any of the mechanisms permitted by N.J.A.C. 5:97-6.

Amended by R.2008 d.316, effective October 20, 2008.

See: 40 N.J.R. 3374(a), 40 N.J.R. 5965(a).

In (a)1i, updated the N.J.A.C. reference; deleted former (a)1ii; recodified former (a)1iii and (a)1iv as (a)1ii as (a)1iii; in (a)1ii, inserted "continuing care retirement communities, dormitories," and deleted "and" from the end; in (a)1iii, inserted "graduate student housing owned and/or operated by an institution of higher education and" and substituted "; and" for a period at the end; added new (a)1iv; rewrote (b)1; in (b)2ii and (b)2iii, updated the N.J.A.C. references; in (b)2iii, deleted "and" from the end; rewrote (b)2iv; and added (b)2v.

SUBCHAPTER 3. PREPARING A FAIR SHARE PLAN

5:97-3.1 General

(a) A municipality shall develop a Fair Share Plan that meets the requirements of this subchapter to address the municipality's total 1987 through 2018 fair share obligation, including implementing ordinances designed to ensure that the fair share of affordable housing for the 1987 through 2018 period is met.

(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.

5:97-3.2 Content of a Fair Share Plan

(a) A Fair Share Plan describes the completed or proposed mechanisms and funding sources, if applicable, that will be utilized to specifically address a municipality's rehabilitation share, prior round obligation, and growth share obligation. The Fair Share Plan shall be in a form provided by the Council and include at least the following:

1. Descriptions of any credits intended to address any portion of the fair share obligation, which shall include all information and documentation required by N.J.A.C. 5:97-4 for each type of credit;

2. Descriptions of any adjustments to any portion of the fair share obligation, which shall include all information and documentation required by N.J.A.C. 5:97-5 for each adjustment sought;

3. Descriptions of any mechanisms intended to address the prior round obligation, the rehabilitation share, and the growth share obligation;

4. An implementation schedule that sets forth a detailed timetable that demonstrates a "realistic opportunity" as defined under N.J.A.C. 5:97-1.4 and a timetable for the submittal of all information and documentation required by N.J.A.C. 5:97-6, based on the following:

- i. Documentation for mechanisms to address the prior round obligation, the rehabilitation share, and the growth share obligation up to the first plan review pursuant to N.J.A.C. 5:96-10 shall be submitted at the time of petition;

- ii. Documentation for zoning for inclusionary development, an accessory apartment program, or a market to affordable program shall be submitted at the time of petition and implemented within 45 days of substantive certification;

- iii. Documentation for the extension of expiring controls shall be submitted at the time of petition and implemented in accordance with an implementation schedule pursuant to (a)4iv below; and