

CHAPTER 93

**SUBSTANTIVE RULES OF THE NEW JERSEY
COUNCIL ON AFFORDABLE HOUSING FOR
THE PERIOD BEGINNING JUNE 6, 2004**

Authority

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

Source and Effective Date

R.2004 d.425, effective October 14, 2004.
See: 35 N.J.R. 5467(a), 36 N.J.R. 5095(a).

Chapter Expiration Date

Chapter 93, Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning June 6, 2004, expires on October 14, 2009.

Chapter Historical Note

Chapter 93, Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning June 6, 1994, was adopted as R.1994 d.290, effective June 6, 1994. See: 25 N.J.R. 5763(a), 26 N.J.R. 2300(a).

Pursuant to Executive Order No. 66(1978), Chapter 93, Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning June 6, 1994, was readopted as R.1999 d.171, effective May 5, 1999. See: 31 N.J.R. 578(a), 31 N.J.R. 1479(a).

Chapter 93, Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning June 6, 2004, was readopted as R.2004 d.425, effective October 14, 2004. See: Source and Effective Date.

Law Review and Journal Commentaries

Ruling Could Trigger New *Mount Laurel* Skirmishes. Ann Snider, 146 N.J.L.J. No. 6, 477 (1996).

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 5:93-1.1 Short title; purpose; scope
- 5:93-1.2 Severability clause
- 5:93-1.3 Definitions

**SUBCHAPTER 2. MUNICIPAL DETERMINATION OF
PRESENT AND PROSPECTIVE NEED**

- 5:93-2.1 General provisions
- 5:93-2.2 Indigenous need—1993
- 5:93-2.3 Distribution of need 1993; 1993-1999
- 5:93-2.4 Reallocated present need—1993
- 5:93-2.5 Present need—1993
- 5:93-2.6 Prospective need: 1993-1999
- 5:93-2.7 Total need—1993; 1993-1999
- 5:93-2.8 Prior-cycle prospective need: 1987-1993
- 5:93-2.9 Demolitions
- 5:93-2.10 Filtering
- 5:93-2.11 Residential conversion
- 5:93-2.12 Spontaneous rehabilitation
- 5:93-2.13 Pre-credited need: 1987-1999
- 5:93-2.14 Reduction
- 5:93-2.15 Prior-cycle credits
- 5:93-2.16 Twenty-percent (20%) cap
- 5:93-2.17 Calculated need: 1987-1999

- 5:93-2.18 Vacant land adjustment communities; prior cycle
- 5:93-2.19 Calculation of indigenous need: selected urban aid cities
- 5:93-2.20 Low- and moderate-income split

SUBCHAPTER 3. CREDITS/REDUCTIONS

- 5:93-3.1 General
- 5:93-3.2 Credits for units constructed between April 1, 1980 and December 15, 1986
- 5:93-3.3 Credits for housing activity subsequent to December 15, 1986
- 5:93-3.4 Rehabilitation subsequent to the 1990 census
- 5:93-3.5 Reductions for unbuilt housing
- 5:93-3.6 Reductions for substantial compliance

SUBCHAPTER 4. MUNICIPAL ADJUSTMENTS

- 5:93-4.1 Purpose and background
- 5:93-4.2 Lack of land
- 5:93-4.3 Lack of water and sewer
- 5:93-4.4 Application for grants
- 5:93-4.5 Waivers

SUBCHAPTER 5. PREPARING A HOUSING ELEMENT

- 5:93-5.1 Overview of a housing element
- 5:93-5.2 Rehabilitation
- 5:93-5.3 New construction; site criteria and general requirements
- 5:93-5.4 New construction; conformance with the State Development and Redevelopment Plan (SDRP)
- 5:93-5.5 Municipally sponsored construction and gut rehabilitation
- 5:93-5.6 Zoning for inclusionary development
- 5:93-5.7 Regional contribution agreements (RCAs)
- 5:93-5.8 Alternative living arrangements
- 5:93-5.9 Accessory apartments
- 5:93-5.10 Purchase of housing units that have never been occupied and vacant housing units
- 5:93-5.11 Write-down/buy-down of previously owned units
- 5:93-5.12 ECHO (elder cottage housing opportunities) housing units
- 5:93-5.13 Status of sites addressing the 1987-1993 municipal obligation
- 5:93-5.14 Age restricted housing
- 5:93-5.15 Rental housing
- 5:93-5.16 Assisted living residence

**SUBCHAPTER 6. REGIONAL CONTRIBUTION
AGREEMENTS (RCA)**

- 5:93-6.1 General provisions
- 5:93-6.2 Terms
- 5:93-6.3 Credits
- 5:93-6.4 RCA recipient certification
- 5:93-6.5 Amount and duration of contributions
- 5:93-6.6 Monitoring and enforcement

SUBCHAPTER 7. INCLUSIONARY DEVELOPMENTS

- 5:93-7.1 Purpose and scope
- 5:93-7.2 Distribution of low and moderate income units
- 5:93-7.3 Bedroom distribution
- 5:93-7.4 Establishing rents and prices of units

SUBCHAPTER 8. DEVELOPMENT FEES

- 5:93-8.1 Purpose
- 5:93-8.2 Basic requirements
- 5:93-8.3 Urban aid municipalities
- 5:93-8.4 Municipalities that collected fees and received certification
- 5:93-8.5 Municipalities that collected fees and are proceeding toward certification
- 5:93-8.6 Municipalities that have not imposed or collected fees that have received substantive certification, or are proceeding toward substantive certification

- 5:93-8.7 Other municipalities that have not imposed or collected fees
- 5:93-8.8 Development fee ordinance review
- 5:93-8.9 Content of plans to spend development fees
- 5:93-8.10 Development fees; residential
- 5:93-8.11 Development fees; non-residential
- 5:93-8.12 Eligible exactions, ineligible exactions and exemptions
- 5:93-8.13 Collection of fees
- 5:93-8.14 Contested fees
- 5:93-8.15 Housing trust fund
- 5:93-8.16 Use of money
- 5:93-8.17 Monitoring
- 5:93-8.18 Amendment to approved development fee ordinance
- 5:93-8.19 Penalties
- 5:93-8.20 Designation of entities to receive development fees
- 5:93-8.21 Ongoing collection of fees
- 5:93-8.22 Severability

SUBCHAPTER 9. CONTROLS ON AFFORDABILITY

- 5:93-9.1 Purpose and scope
- 5:93-9.2 Length of controls
- 5:93-9.3 General provisions concerning uniform deed restriction liens and enforcement through certificates of occupancy or reoccupancy on sales units
- 5:93-9.4 Option to buy sales units
- 5:93-9.5 Municipal option; sales units
- 5:93-9.6 State option; sales units
- 5:93-9.7 Non-profit option; sales units
- 5:93-9.8 Seller option; sales units
- 5:93-9.9 Municipal rejection of repayment option; sales units
- 5:93-9.10 Continued application of options to create, rehabilitate or maintain low and moderate income units; sales units
- 5:93-9.11 Eligible capital improvements prior to the expiration of controls; sales units
- 5:93-9.12 Subsidy to ensure affordability prior to the expiration of controls; sales units
- 5:93-9.13 Impact of foreclosure on resale while controls are in place; sales units
- 5:93-9.14 Excess proceeds upon foreclosure; sales units
- 5:93-9.15 Annual indexed increases while controls are in place; sales and rentals
- 5:93-9.16 Procedures for initial sales, resale prior to the expiration of controls, and rentals
- 5:93-9.17 Applicability

SUBCHAPTER 10. COST GENERATION

- 5:93-10.1 Purpose and scope
- 5:93-10.2 Standards
- 5:93-10.3 Special studies/escrow accounts
- 5:93-10.4 Relief subsequent to substantive certification
- 5:93-10.5 Revocation of substantive certification

SUBCHAPTER 11. AFFIRMATIVE MARKETING

- 5:93-11.1 The affirmative marketing plan; definition and contents
- 5:93-11.2 Training and general responsibilities
- 5:93-11.3 Marketing program
- 5:93-11.4 Marketing for initial sales and/or rent up; composition of marketing pool
- 5:93-11.5 Continuing marketing activities
- 5:93-11.6 Monitoring and reporting requirements
- 5:93-11.7 Residency preference

SUBCHAPTER 12. MONITORING

- 5:93-12.1 Completion of monitoring forms

SUBCHAPTER 13. SITE SPECIFIC RELIEF AND THE STATE DEVELOPMENT AND REDEVELOPMENT PLAN (SDRP)

- 5:93-13.1 Purpose and scope
- 5:93-13.2 Site-specific relief in Planning Areas 1 and 2
- 5:93-13.3 Site-specific relief in Planning Area 3

- 5:93-13.4 Site-specific relief in Planning Areas 4 and 5

SUBCHAPTER 14. ONE THOUSAND UNIT LIMITATION

- 5:93-14.1 General

SUBCHAPTER 15. WAIVER PROVISIONS

- 5:93-15.1 Waiver

APPENDIX A METHODOLOGY

APPENDIX B ESTIMATING UNDEVELOPED LAND IN NEW JERSEY USING THEMATIC MAPPER SATELLITE DATA, 1990 CENSUS DATA AND THE TIGER FILES

APPENDIX C STRUCTURAL CONDITIONS SURVEY

APPENDIX D THE COST OF PROVIDING INFRASTRUCTURE

APPENDIX 1 DATA SOURCES

APPENDIX 2 DATA DEFINITIONS

APPENDIX E DEED RESTRICTION AND LIEN

APPENDIX F STATE PLANNING COMMISSION MEMORANDUM OF UNDERSTANDING AND FLOW CHARTS

APPENDIX G REGIONAL CONTRIBUTION AGREEMENT COUNTY REVIEW CHECKLIST

APPENDIX H AFFORDABLE HOUSING AGREEMENT—RENTAL PROPERTIES

SUBCHAPTER 1. GENERAL PROVISIONS

Law Reviews and Journal Commentaries

Mount Laurel II A Ten Year Retrospective. Peter Buchsbaum, 156 N.J.L.J. 13 (1993).

5:93-1.1 Short title; purpose; scope

(a) The provisions of this chapter shall be known as the "Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning June 6, 1994."

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

(c) All municipalities within the jurisdiction of the Council are subject to evaluation, in accordance with the provisions of this chapter, for the period beginning on June 6, 1994.

5:93-1.2 Severability clause

If any part of this chapter shall be held invalid, the holding shall not affect the validity of remaining parts of these rules. If a part of these rules is held invalid in one or more of their applications, the rules shall remain in effect in all valid applications that are severable from the invalid application.