

**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.1997 d.511, effective November 5, 1997.
See: 29 N.J.R. 3918(a), 29 N.J.R. 5063(a).

Executive Order No. 66(1978) Expiration Date

Chapter 91, Procedural Rules of the New Jersey Council on Affordable Housing, expires on November 5, 2002.

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 was readopted as R.1991 d.119, effective February 7, 1991. See: 22 N.J.R. 3610(b), 23 N.J.R. 688(a). Chapter 91, Procedural Rules of the New Jersey Council on Affordable Housing, was repealed and a new Chapter 91, Procedural Rules of the New Jersey Council on Affordable Housing, was adopted by R.1992 d.491, effective December 7, 1992.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). Subchapter 14, Interim Substantive Certification, was repealed and a new Subchapter 14, Interim Procedures, was adopted by R.1993 d.407, effective August 16, 1993.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 was readopted as R.1997 d.511, effective November 5, 1997. See: Source and Effective Date.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 5:91-1.1 Short title
- 5:91-1.2 Definitions
- 5:91-1.3 Waiver

SUBCHAPTER 2. FILING A HOUSING ELEMENT/FAIR SHARE PLAN

- 5:91-2.1 Jurisdiction
- 5:91-2.2 Filing requirements
- 5:91-2.3 Transferred cases
- 5:91-2.4 Amendment

SUBCHAPTER 3. PETITIONS FOR SUBSTANTIVE CERTIFICATION

- 5:91-3.1 Petition
- 5:91-3.2 Action equivalent to a petition for substantive certification
- 5:91-3.3 Notice
- 5:91-3.4 Inspection
- 5:91-3.5 Owners of sites designated for low and moderate income housing
- 5:91-3.6 Municipal/developer incentives

SUBCHAPTER 4. OBJECTIONS TO A PROPOSED HOUSING ELEMENT AND FAIR SHARE PLAN

- 5:91-4.1 Objection
- 5:91-4.2 Review of objections

SUBCHAPTER 5. CONSIDERATION OF A MUNICIPALITY'S HOUSING ELEMENT AND FAIR SHARE PLAN WHEN NO OBJECTIONS ARE FILED

- 5:91-5.1 Overview
- 5:91-5.2 Council review
- 5:91-5.3 Grant of substantive certification
- 5:91-5.4 Dismissal
- 5:91-5.5 Denial

SUBCHAPTER 6. CONSIDERATION OF A MUNICIPALITY'S HOUSING ELEMENT AND FAIR SHARE PLAN WHEN OBJECTIONS ARE FILED

- 5:91-6.1 Overview
- 5:91-6.2 Municipalities that have petitioned for substantive certification within two years of filing their housing element and fair share plan
- 5:91-6.3 Municipalities that petition for substantive certification more than two years after filing a housing element and fair share plan
- 5:91-6.4 Other municipalities
- 5:91-6.5 Substantive certification action

SUBCHAPTER 7. MEDIATION

- 5:91-7.1 General
- 5:91-7.2 Scope of mediation
- 5:91-7.3 Mediation report
- 5:91-7.4 Publication of notice of housing element and fair share plan to be amended as a result of mediation
- 5:91-7.5 Request for hearing following mediation
- 5:91-7.6 Reopened mediation

SUBCHAPTER 8. REFERRAL TO OFFICE OF ADMINISTRATIVE LAW (OAL)

- 5:91-8.1 General

SUBCHAPTER 9. COUNCIL'S REVIEW OF THE INITIAL DECISION

- 5:91-9.1 Review

SUBCHAPTER 10. GENERAL POWERS

- 5:91-10.1 Restraining orders
- 5:91-10.2 Accelerated denial of substantive certification
- 5:91-10.3 Administrative orders

SUBCHAPTER 11. REGIONAL CONTRIBUTION AGREEMENTS (RCA)

- 5:91-11.1 Terms of agreement
- 5:91-11.2 Statements of intent
- 5:91-11.3 Project plan review by the New Jersey Housing and Mortgage Finance Agency
- 5:91-11.4 RCA recipient certification
- 5:91-11.5 Review by county planning board or agencies
- 5:91-11.6 Review by the Council
- 5:91-11.7 Monitoring and enforcement

SUBCHAPTER 12. MOTIONS

- 5:91-12.1 Form of motion
- 5:91-12.2 Oral argument
- 5:91-12.3 Affidavits, briefs and supporting statements
- 5:91-12.4 Time for serving and filing motions and affidavits or briefs
- 5:91-12.5 Orders

SUBCHAPTER 13. AMENDMENT OF SUBSTANTIVE CERTIFICATION

- 5:91-13.1 General
- 5:91-13.2 Municipal petition
- 5:91-13.3 Amendment by motion
- 5:91-13.4 Notice of amendment petition
- 5:91-13.5 Objections to amendment petitions
- 5:91-13.6 Review of objections

SUBCHAPTER 14. INTERIM PROCEDURES

- 5:91-14.1 Interim substantive certification
- 5:91-14.2 Municipalities that have not received substantive certification
- 5:91-14.3 Other municipalities

SUBCHAPTER 15. RETENTION OF DEVELOPMENT FEES

- 5:91-15.1 Procedures for retaining development fees

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

5:91-14.1 Interim substantive certification

(a) A municipality that has received substantive certification from the Council for a housing element and fair share

plan addressing the municipality's affordable housing obligation for 1987-1993 may move for an interim substantive certification if its certification expires prior to or by March 6, 1995. If a municipality's judgment of repose has expired, the municipality may, by October 6, 1994, also file such a motion providing no exclusionary zoning lawsuit has been filed against the municipality. The motion seeking interim certification must:

1. Comply with the requirements of N.J.A.C. 5:91-12;
2. Be served upon all objectors and/or litigants that participated in the substantive certification or court settlement process; and
3. Be accompanied by:
 - i. The municipality's current housing element and fair share plan;
 - ii. A resolution of the governing body of the municipality expressing the intention to submit to the Council, by March 6, 1995, a housing element and fair share plan addressing the municipality's fair share housing obligation;
 - iii. A proposed schedule for this submission;
 - iv. A statement as to the progress of the municipality's compliance with the terms of substantive certification; and
 - v. Any additional information the Council may require.

(b) The Council will issue interim substantive certification for a period of time not to exceed March 6, 1995 that responds to the submitted municipal schedule for filing its housing element and fair share plan if no objection is filed to the municipality's motion for interim substantive certification. The Council will condition its grant of substantive certification with any conditions it deems necessary or appropriate in order to insure continued compliance with the terms of substantive certification and the satisfaction of the municipal fair share obligation.

(c) Objections filed to a municipality's motion for interim substantive certification shall set out how the municipality has failed to comply with the terms of substantive certification or otherwise failed to satisfy its fair share obligation and also articulate what relief is requested of the Council.

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

(e) If a municipality received a judgment of repose that expires on or before March 6, 1995, the municipality should apply to the Court that issued the judgment for relief prior to the expiration of its judgment of repose. The Council will consider a motion for interim certification if the Court transfers the request to the Council. In such cases, the procedures and criteria set forth above shall apply.

Amended by R.1994 d.290, effective June 6, 1994.
See: 25 N.J.R. 5763(a), 26 N.J.R. 2300(a).

5:91-14.2 Municipalities that have not received substantive certification

(a) A municipality that has petitioned for substantive certification of a housing element and fair share plan designed to address its 1987-1993 obligation, but has not received a final determination of the Council on its plan by June 6, 1994, may either:

1. Move to amend its housing element and fair share plan to address its 1987-1999 obligation pursuant to N.J.A.C. 5:93 and repetition for certification of the amended plan; or
2. Choose to continue to seek substantive certification on its 1987-1993 obligation.

(b) A municipal motion to amend its housing element and fair share plan to address its 1987-1999 obligation pursuant to N.J.A.C. 5:93 shall be accompanied by a resolution of the governing body of the municipality expressing the intention to submit to the Council, by March 6, 1995, an amended housing element and fair share plan addressing the municipality's 1987-1999 obligation pursuant to N.J.A.C. 5:93; a proposed schedule for this submission; and the intention to repetition for substantive certification by March 6, 1995.

(c) When granting such motion, the Council will set out a schedule for the municipal submission of its housing element and fair share plan and will require the municipality to repetition for substantive certification of the new housing element and fair share plan upon this filing.

(d) The Council will condition any grant of substantive certification for a municipal housing element and fair share plan that addresses only the 1987-1993 fair share obligation by a requirement that the municipality file a housing element and fair share plan addressing its 1987-1999 obligation pursuant to N.J.A.C. 5:93 and petition for the substantive certification of that housing element and plan within two years of the date of the granting of substantive certification of the 1987-1993 plan.

Amended by R.1994 d.290, effective June 6, 1994.
See: 25 N.J.R. 5763(a), 26 N.J.R. 2300(a).

5:91-14.3 Other municipalities

(a) A municipality that filed its housing element and fair share plan with the Council on or before June 6, 1992, but did not petition for substantive certification prior to June 6, 1994, must file a new housing element and fair share plan addressing its 1987-1999 obligation pursuant to N.J.A.C. 5:93 and petition for substantive certification prior to an exclusionary lawsuit to re-enter the Council's process.

(b) A municipality that has filed a housing element and fair share plan after June 6, 1992 may seek to extend the period of protection afforded by N.J.S.A. 52:27D-313 for up to March 6, 1995 in order to address its 1987-1999 obligation pursuant to N.J.A.C. 5:93. To seek such an extension, the municipality shall file a resolution of the governing body within whichever of the following dates occurs earlier: two years of the initial filing of the municipal housing element and fair share plan; or October 6, 1994. In addition to a schedule for submitting a housing element and fair share plan, the governing body's resolution shall state an intent to petition for substantive certification upon filing the housing element and fair share plan.

(c) The Council shall review the municipality's resolution of intent and grant a schedule for the municipal submission of the housing element and fair share plan conditioned on the municipality's petitioning for substantive certification upon filing its submission. The schedule for submitting the housing element and fair share plan shall require the filing and petition to occur by March 6, 1995.

Amended by R.1994 d.290, effective June 6, 1994.
See: 25 N.J.R. 5763(a), 26 N.J.R. 2300(a).

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).

APPENDIX

(RESERVED)

Repealed by R.1998 d.21, effective January 5, 1998.
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).