

Inserted (c). Former section recodified to N.J.A.C. 5:91-11.6

5:91-11.6 Review by the Council

(a) The Council shall approve an RCA upon finding that:

1. The agreement provides a realistic opportunity for low and moderate income housing within convenient access to employment opportunities;
2. The agreement is consistent with sound comprehensive regional planning; and
3. The receiving municipality's project plan is a feasible means of achieving the purposes of the agreement, as determined by the Agency. If the receiving municipality has been granted RCA recipient certification by the Council, such feasibility is established by N.J.A.C. 5:91-11.4.

(b) Upon recommendation of the Agency, the Council may approve as part of the RCA, a provision that the time limitations for contractual guarantees or resale controls for low and moderate income units included in the proposed project be for less than 30 years if the Agency determines that modification is necessary to assure the economic viability of the project.

(c) The Council shall approve all RCAs by resolution; the Council shall set forth in its resolution a schedule for the contributions to be appropriated annually by the sending municipality. A copy of the adopted resolution shall be filed promptly with the Division of Local Government Services of the Department of Community Affairs and the Director of the Division shall, pursuant to N.J.S.A. 52:27D-312(d), thereafter not approve an annual budget of a sending municipality if it does not include appropriations necessary to meet the terms of the resolution.

Recodified from N.J.A.C. 5:91-11.5 and amended by R.1998 d.21, effective January 5, 1998.
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).
Former section recodified to N.J.A.C. 5:91-11.7

5:91-11.7 Monitoring and enforcement

(a) All RCAs shall require receiving municipalities to file semi-annual reports with the Council and the Agency setting forth the progress in implementing the RCA project plan to be produced with the funds from the RCA. These reports shall be in such form as the Council and the Agency may from time to time require.

(b) The Council shall take such actions as may be necessary to enforce an RCA with respect to the timely implementation of a project plan by the receiving municipality. Such actions may include:

1. The initiation of a lawsuit to enforce a regional contribution agreement;

2. The prevention of a delinquent receiving municipality from entering into further regional contribution agreements for a specified period of time;

3. The recommendation that the Agency and the Department of Community Affairs withhold from the receiving municipality further assistance available under the Act; and

4. Such other actions as the Council may determine necessary including ordering a sending municipality for good cause to temporarily or permanently cease payments to a receiving municipality.

Amended by R.1995 d.491, effective September 5, 1995.
See: 27 N.J.R. 2134(a), 27 N.J.R. 3329(a).
Recodified from N.J.A.C. 5:91-11.6 and amended by R.1998 d.21, effective January 5, 1998.
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).

SUBCHAPTER 12. MOTIONS

5:91-12.1 Form of Motion

An application to the Council for an order shall be by motion. A motion shall be by notice of motion in writing, unless the Council permits it to be made orally. Every motion shall state the time and place when it is to be presented to the Council, the rounds upon which it is made and the nature of the relief sought. When a matter becomes a contested case, motions shall generally be made to the OAL pursuant to N.J.A.C. 1:1-12.

Amended by R.1998 d.21, effective January 5, 1998.
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).
Substituted "OAL" for "Office of Administrative Law".

5:91-12.2 Oral argument

A movant's request for oral argument shall be made either in the moving papers or the reply. A respondent's request for oral argument shall be made in the answering papers. All requests for oral argument shall state the reasons therefore.

Amended by R.1998 d.21, effective January 5, 1998.
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).
Substituted "the" for "his".

5:91-12.3 Affidavits, briefs and supporting statements

Motions and answering papers shall be accompanied by all necessary supporting affidavits, briefs and supporting documents. A party shall submit an original and 20 copies of all motions and answering papers, as well as all accompanying papers. All motions and answering papers shall be supported by affidavits for facts relied upon which are not of record or which are not subject to official notice. Such affidavits shall set forth only facts to which the affiants are competent to testify. Properly verified copies of all papers referred to in such affidavits may be annexed thereto.

Amended by R.1998 d.21, effective January 5, 1998.
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).
Substituted "20 copies" for "16 copies".

Case Notes

Agreement by which township funded lower income housing units was permissible under the Fair Housing Act. In re Township of Warren, 247 N.J.Super. 146, 588 A.2d 1227 (A.D.1991), certification denied 127 N.J. 557, 606 A.2d 369, reversed 132 N.J. 1, 622 A.2d 1257.

Agreement by which township funded lower income housing units was not racially discriminatory. In re Township of Warren, 247 N.J.Super. 146, 588 A.2d 1227 (A.D.1991), certification denied 127 N.J. 557, 606 A.2d 369, reversed 132 N.J. 1, 622 A.2d 1257.

Township's plan to meet lower income housing obligation did not violate Mount Laurel doctrine. In re Township of Warren, 247 N.J.Super. 146, 588 A.2d 1227 (A.D.1991), certification denied 127 N.J. 557, 606 A.2d 369, reversed 132 N.J. 1, 622 A.2d 1257.

5:91-12.4 Time for serving and filing motions and affidavits or briefs

(a) A notice of motion shall establish a return date at least 30 days from the date of service upon the opposing party. All motions, except for those which seek emergent relief, shall be made returnable on a regularly scheduled meeting day of the Council. A party seeking emergent relief shall contact the Executive Director to arrange for an emergency hearing by the Council. If a motion is supported by an affidavit or brief, the affidavit or brief shall be served and filed with the motion. Any opposing affidavits or briefs, or any cross-motions, shall be served and filed not later than 20 days after receipt of the moving papers. Answers or responses to any opposing affidavits or briefs, or to any cross-motions, shall be served and filed not later than 10 days after receipt of the opposing papers.

(b) All papers shall be accompanied by a certification of service.

5:91-12.5 Orders

The Council shall render a decision on the motion and may instruct the prevailing party to prepare and submit an appropriate order. If the Council has made findings of fact and conclusions of law explaining its disposition of the motion, the order shall so indicate.

SUBCHAPTER 13. AMENDMENT OF SUBSTANTIVE CERTIFICATION

5:91-13.1 General

(a) Amendments to the terms of substantive certification may be approved by the Council at any time following the granting of substantive certification. Amendments may be required by the Council as a result of facts that were not apparent at the time of substantive certification. Approval of any such amendment shall be solely at the discretion of the Council. Amendments may be requested by a municipality or any other party.

(b) A municipality seeking an amendment to substantive certification that requires a change in site, substantial increase in density or other zoning requirements that result in a change of housing structure on a specific site or a fundamental change in approach to its low and moderate income housing obligation shall file a petition for such an amendment.

(c) A municipality seeking a minor, technical amendment to its certified housing element and fair share plan that does not materially alter the terms of certification may request such an amendment by motion pursuant to N.J.A.C. 5:91-12.

(d) Requests for amendments of the terms of substantive certification may be made by any party other than a municipality by motion. If the motion requests a change in site, a substantial increase in density or other zoning requirements that result in a change of housing structure, on a specific site or a fundamental change in approach to the municipal low and moderate income housing obligation, and if the municipality does not object to the motion, the Council may direct the municipality to seek a plan amendment by filing a petition.

(e) All parties to the substantive certification, including the municipality and all objectors, shall be able to comment on any proposed amendment.

(f) In general, a municipality shall not be able to amend zoning on sites included in the certified housing element and fair share plan without the agreement of the affected property owner.

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

5:91-13.2 Municipal petition

(a) A municipal petition to amend the terms of its certification 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;
2. Evidence that the amendment was previously presented to, and endorsed by, the municipal planning board;
3. A duly adopted resolution of the municipal governing body requesting Council review and approval of the petition to amend;
4. Proof of service of the petition on all objectors and owners of sites contained in both the certified and proposed fair share plans; and
5. Proof of public notice in conformity with the requirements of N.J.A.C. 5:91-13.4.