

CHAPTER 96

PROCEDURAL RULES OF THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING FOR THE PERIOD BEGINNING ON JUNE 2, 2008

Authority

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

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Chapter Historical Note

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SUBCHAPTER 1. GENERAL PROVISIONS

5:96-1.1 Short title; purpose; scope

(a) The provisions of this chapter shall be known as the "Procedural Rules of the New Jersey Council on Affordable Housing for the Period Beginning June 2, 2008."

(b) This chapter establishes procedures to be used by municipalities in addressing their constitutional obligation to provide a fair share of affordable housing for low- and moderate-income households pursuant to N.J.S.A. 52:27D-301 et seq.

(c) Municipalities filing or petitioning the Council on or after December 20, 2004 shall be governed by the provisions of this chapter.

(d) 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 its applications, the rules shall remain in effect in all valid applications that are severable from the invalid application.

5:96-1.2 Jurisdiction

(a) A municipality shall fall within the jurisdiction of the Council if:

1. The municipality has filed a Housing Element and Fair Share Plan and petitioned for substantive certification simultaneously or within two years of such filing;

2. The municipality has filed a Housing Element and Fair Share Plan and is the defendant to an exclusionary zoning suit within two years of such filing;

3. The municipality has been granted substantive certification pursuant to N.J.A.C. 5:96-6.3; or

4. A court transfers jurisdiction of the case to the Council pursuant to N.J.A.C. 5:96-2.3.

(b) If a municipality fails to petition for substantive certification within two years after filing a Housing Element and Fair Share Plan in accordance with N.J.S.A. 52:27D-313, the filing shall automatically expire.

5:96-1.3 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.).

"Administrative agent" means the entity responsible for the administration of affordable units in accordance with this chapter, N.J.A.C. 5:97 and UHAC.

"Affordable housing program(s)" means any mechanism in a municipal Fair Share Plan proposed or implemented to address a municipality's fair share obligation.

"Affordable unit" means a housing unit proposed or created pursuant to the Act, credited pursuant to N.J.A.C. 5:97, and/or funded through an affordable housing trust fund.

"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.).

"Amendment" means the municipal submission of a revision to a certified Housing Element and Fair Share Plan that has been adopted by the planning board and endorsed by the governing body that requires a change in site, substantial change in density, a change in other zoning requirements that result in a change of housing type on a specific site, or a

5:96-7.2 Municipalities that petition for substantive certification simultaneously with or within two years of filing their Housing Element and Fair Share Plan

(a) After the expiration of the 45-day public review period pursuant to N.J.A.C. 5:96-3.6 for municipalities that petition for substantive certification simultaneously with or within two years of filing their Housing Element and Fair Share Plan, the Council's Executive Director shall conduct an in-depth review of the petition and prepare a premediation report within 45 days which shall be circulated to the municipality and to the service list. The Council's Executive Director may extend the time in the event that the number of petitions for substantive certification exceeds the resources of the Council's staff to process the petitions. Public notice of any such extension shall be provided to the municipality and to the service list.

(b) If the premediation report requires additional information and/or necessary revisions to the Housing Element and Fair Share Plan, which may require a re-petition, the municipality shall provide the requested information to the Council and notify the service list within 60 days of issuance of the report. If a re-petition is required, the municipality shall follow the procedures outlined in N.J.A.C. 5:96-3.4.

(c) The mediation process shall commence in accordance to the procedures set forth in N.J.A.C. 5:96-8.

5:96-7.3 Other municipalities

(a) The class of other municipalities includes those sued for exclusionary zoning either prior to filing a Housing Element and Fair Share Plan or after filing a Housing Element and Fair Share Plan where a petition for substantive certification was not submitted within two years, and municipalities transferred by the court to the Council.

(b) Once a petition is filed pursuant to N.J.A.C. 5:96-2.3, the Council's Executive Director shall prepare a premediation report as described in N.J.A.C. 5:96-7.2(a). The report shall indicate that the litigant is entitled to site-specific relief pursuant to N.J.A.C. 5:96-3.8(b).

(c) If the premediation report requires additional information and/or necessary revisions to the Housing Element and Fair Share Plan, which may require a re-petition, the municipality shall provide the requested information to the Council and notify the service list within 60 days of issuance of the report. If a re-petition is required, the municipality shall follow the procedures outlined in N.J.A.C. 5:96-3.4.

(d) The mediation process shall commence in accordance with the procedures set forth in N.J.A.C. 5:96-8.

(e) If mediation concludes unsuccessfully and the Council determines there are contested issues of material fact regarding the suitability of a site pursuant to N.J.A.C. 5:97-3.13, the Council may elect to either consider the contested

issues of material fact at a scheduled Council meeting and render a final decision in the matter or refer the matter to OAL pursuant to N.J.A.C. 5:96-9.

5:96-7.4 Substantive certification

(a) Upon review of a Housing Element and Fair Share Plan that responds to a mediation report pursuant to N.J.A.C. 5:96-8.5 or an initial decision from OAL pursuant to N.J.A.C. 5:96-9.2, the Council may grant substantive certification in accordance with 5:96-6.3.

(b) In conducting its review set forth in this section, the Council's Executive Director may meet with the municipality and/or any objector thereto.

SUBCHAPTER 8. MEDIATION

5:96-8.1 General

Once an objection to a municipality's petition for substantive certification is deemed valid and complete pursuant to N.J.A.C. 5:96-4.2(a), the Council's Executive Director may engage in mediation. The Executive Director may appoint a designee to act as the mediator in his or her place. The mediator shall meet with the representatives of the municipality and/or the objectors and attempt to mediate a resolution of the objections.

5:96-8.2 Participants to mediation

(a) The mediator shall have full and complete discretion to permit any person to participate in mediation upon a determination that such participation may facilitate mediation and/or help resolve an objection to a municipality's petition for substantive certification. A person invited to participate pursuant to this subsection shall be deemed a participant to mediation and shall be permitted to participate in mediation to the extent the mediator determines appropriate.

(b) An objector or site owner in accordance with N.J.A.C. 5:96-3.7 shall be permitted to have a mediation team of not more than three representatives unless otherwise permitted by the mediator.

(c) A municipality shall have a mediation team comprised of two representatives in addition to a member of the municipal planning board and a member of the municipal governing body (who shall not be the same individual).

(d) Prior to the commencement of mediation, objectors and owners of sites in accordance with N.J.A.C. 5:96-3.7 and the municipality shall designate their representatives, authorize the representatives to negotiate on their behalf, and also authorize one or more of the representatives to execute any written agreement reached during mediation on their behalf.

1. Objectors and owners of sites in accordance with N.J.A.C. 5:96-3.7 shall submit such designations and authorization to the Council in writing.

2. Municipalities shall submit such designations and authorization to the Council in the form of a duly adopted resolution of the governing body.

(e) Additions or replacements to mediation teams shall be made only with the approval of the mediator and shall be immediately submitted to the Council in writing by the objector or property owner, and in the form of a duly adopted resolution by the municipality.

5:96-8.3 Scope of mediation

(a) If the Council's Executive Director finds that the objections raised are not relevant to the compliance mechanisms included in the municipality's Fair Share Plan to address the municipal affordable housing obligation, mediation may be scheduled as quickly as practicable after the end of the 45-day objector period and prior to the issuance of the premediation report.

(b) If the Council's Executive Director finds that the objections raised are relevant to the compliance mechanisms included in the municipality's Fair Share Plan to address the municipal affordable housing obligation, mediation shall be scheduled after the municipality has responded to the Premediation Report and as often thereafter as the mediator shall determine necessary. Deadlines for the submission of information, reports, studies or other documentation may be imposed as the mediator finds necessary.

(c) The mediator may, upon notice to the participants during the course of mediation, rely upon or use any interim adjudications previously entered by a trial court in the matter or any stipulations previously entered into by the participants in any such litigation.

(d) During mediation the Council may choose to hear and decide an issue itself if, in the Council's determination such an inquiry would facilitate a satisfactory conclusion to the mediation process.

(e) Mediation may be conducted for a period of 90 days after the first scheduled mediation date. The period for mediation may be extended by the mediator for good cause shown.

(f) The mediator shall have the widest possible discretion as to the manner by which mediation is conducted.

5:96-8.4 Conclusion of mediation; mediation report

(a) The mediator may, for any reason, including, but not limited to, a lack of progress in the mediation proceedings or a determination that mediation cannot resolve a dispute, declare an end to mediation.

(b) At the conclusion of mediation, the Council's Executive Director may, in appropriate instances, require all participants to submit affidavits or certifications from individuals with personal knowledge of the facts at issue. If the Council determines there are contested issues of material fact, the Council may elect to either consider the contested issues of material fact at a scheduled Council meeting and render a final decision in the matter or refer the matter to OAL pursuant to N.J.A.C. 5:96-9.

(c) At the conclusion of mediation, if the participants have reached an agreement, the participants shall submit the executed agreement to the Council within 45 days from the last mediation session. If the executed agreement is not submitted within 45 days, the Council may issue an Order to Show Cause at the next scheduled Council meeting to explain why the agreement has not been executed. The Council shall take whatever action it deems appropriate.

(d) The mediator shall prepare a mediation report within 60 days of the conclusion of mediation or the date the Council receives the executed agreement between the participants, whichever is later. The report shall, at a minimum:

1. Review any objections that have been successfully resolved and the status of any remaining unresolved issues, including a recommendation as to whether there are contested issues of material fact that necessitate consideration by the Council or the transfer to OAL;

2. Describe whether the municipality has included the objector's proposed site in a re-petition, or has addressed any shortfall noted in the premediation report pursuant to N.J.A.C. 5:96-7.2(b) through the addition of other compliance mechanisms; and

3. Present the stipulations or other agreements reached by the municipality and the objectors.

(e) The mediation report shall be submitted to the municipality and all participants to the mediation, including owners of sites in accordance with N.J.A.C. 5:96-3.7 and owners of sites in any proposed revision resulting from mediation for a 14-day comment period. At the conclusion of the 14-day comment period, the mediation report and any comments thereto shall be presented to the Council at the next scheduled Council meeting.

(f) The participants shall be bound by any agreements entered into during mediation when formally reduced to writing and signed by the participants.

5:96-8.5 Revision of Housing Element and Fair Share Plan as a result of mediation

(a) If an amendment and/or revision to the municipality's Housing Element and Fair Share Plan is required as a result of mediation, at the close of mediation, the municipality shall submit a resolution from the governing body committing to

amend and/or revise its Housing Element and Fair Share Plan within 60 days of the conclusion of mediation.

(b) Revisions to the originally filed municipal Housing Element and Fair Share Plan that are determined to be substantial in accordance with N.J.A.C. 5:96-3.4(a) shall require a re-petition pursuant to N.J.A.C. 5:96-3.2.

(c) If the revisions to the municipal Housing Element and Fair Share Plan are not substantial in accordance with N.J.A.C. 5:96-3.4(b), the municipality may request that the revision be done by motion pursuant to N.J.A.C. 5:96-13.

(d) If mediation occurs subsequent to a municipal re-petition and the mediation proceedings fail to progress or mediation cannot resolve a dispute and the objector's site is in conformance with N.J.A.C. 5:97-3.13, the Council may direct the municipality to amend its Housing Element and Fair Share Plan to include the objector's site to address any shortfall noted in the premediation report.

(e) If the municipality fails to revise its Housing Element and Fair Share Plan as a result of mediation within 60 days from the conclusion of mediation, the Council shall dismiss the municipal submission by administrative order or deny it pursuant to N.J.A.C. 5:96-6.2(d).

5:96-8.6 Reopened mediation

(a) If during the public review period pursuant N.J.A.C. 5:96-3.6, an objection is filed to a previously mediated and revised Housing Element and Fair Share Plan, mediation may be reopened for a period not to exceed 60 days.

(b) The mediator shall consider only those objections to the portions of the Housing Element and Fair Share Plan that have been revised following mediation.

(c) If mediation is reopened, the municipality and objectors to both the initial Housing Element and Fair Share Plan and to the proposed mediated Housing Element and Fair Share Plan shall be given the opportunity to participate in the reopened mediation.

(d) At the end of the reopened mediation or the date the Council receives the executed agreement between the participants, whichever is later, the mediator shall prepare another mediation report within 30 days. The report shall list all issues that remain in dispute between the municipality and the objectors and shall present the stipulations or other agreements reached by the municipality and the objectors. The mediation report shall be open for comment pursuant to N.J.A.C. 5:96-8.4(e).

(e) Following a reopened mediation and the presentation of the second mediation report to the Council, the procedures in N.J.A.C. 5:96-8.5 shall be followed.

SUBCHAPTER 9. REFERRAL TO THE OFFICE OF ADMINISTRATIVE LAW

5:96-9.1 General

(a) In the event contested issues of material fact remain following mediation, the Council, upon the motion of any party or in its own discretion, shall determine whether to consider the issues at a scheduled Council meeting or refer the matter to the Office of Administrative Law (OAL) for resolution as a contested case, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) Upon determining that the matter shall be referred to OAL for adjudication as a contested case, the Council shall transmit the matter to OAL together with the mediation report, the municipality's petition for substantive certification and any objections thereto, and any other documentation pertinent to the adjudication.

(c) The cost of the transcript of all oral testimony transmitted to OAL from the Council shall be shared equally by the municipality and the objectors.

5:96-9.2 Review

Within 45 days after the issuance of an initial decision from OAL, the Council shall review the initial decision of the Administrative Law Judge, the record upon which it is based and all exceptions to the initial decision. The Council shall then accept, reject or modify the decision and issue its final decision on the matter. The decision of the Administrative Law Judge shall be deemed adopted and shall become the final decision of the Council unless the Council modifies or rejects the initial decision within this period of time. For good cause shown the time limit established under this subchapter may be extended pursuant to N.J.A.C. 1:1-16.6.

SUBCHAPTER 10. PLAN EVALUATION

5:96-10.1 Plan evaluation report

(a) The Council shall conduct biennial plan evaluations upon substantive certification of a municipality's Housing Element and Fair Share Plan. The purpose of the plan evaluation is to verify that the construction or provision of affordable housing has been in proportion to the actual residential growth and employment growth in the municipality and to determine that the mechanisms addressing the projected growth share obligation continue to present a realistic opportunity for the creation of affordable housing. The Council's Executive Director may also review a municipality's Housing Element and Fair Share Plan at any time to determine if a municipal plan addresses the affordable housing obligation set forth in N.J.A.C. 5:97-2.

(b) The Council's Executive Director shall issue a report to the municipality and the service list based on a review that considers, at a minimum, the following information:

1. The actual residential growth-related need, measured from January 1, 2004 up to and including the date that the review period ended based on the provisions of N.J.A.C. 5:97-2.5;
2. The actual employment growth-related need measured from January 1, 2004 up to and including the date that the review period ended based on the provisions of N.J.A.C. 5:97-2.5;
3. The status of the mechanisms included in a municipality's Housing Element and Fair Share Plan and funding sources, if applicable, designed to meet the total affordable housing obligation (1987 through 2018), including:
 - i. The number of affordable units for which certificates of occupancy have been issued that were needed to address the growth share obligation;
 - ii. The number of affordable units for which certificates of occupancy have been issued that were needed to address the municipality's prior round obligation;
 - iii. The number of units that have been rehabilitated to address the municipality's rehabilitation share; and
 - iv. The implementing ordinances designed to address the fair share obligation, including the ongoing viability of the mechanisms pursuant to N.J.A.C. 5:97-6; and
4. An accounting of any housing trust fund activity, including the source and amount of funds collected, the amount and purpose for which any funds have been expended, and the status of the plan to spend the remaining balance pursuant to N.J.A.C. 5:97-8.10(a)8;
5. The amount of funds transferred pursuant to any RCAs;
6. A comparison of the projected growth share and the actual need on the date of the report and any supporting documentation citing the reasons for any shortfall;
7. Any revisions to the Fair Share Plan that are needed to address any shortfall between the actual growth-related need and the number of affordable units actually provided;
8. If applicable, the status of the municipality's application for plan endorsement from the State Planning Commission;
9. An evaluation of the results of the municipality's affirmative marketing activities;
10. Any other information pertaining to the review of the municipality's progress in addressing its fair share obligation.

5:96-10.2 Notice

(a) Within seven days of the issuance of the results of the Council's review, the municipality shall publish notice that the results of the Council's review are available for public inspection at the offices of the municipality. The public notice shall be in the legal newspaper of the municipality as well as one that is widely circulated within the county if the legal newspaper is not widely circulated within the county. If the Council's Executive Director determines that notice was not published in a newspaper of general circulation, it shall require the municipality to re-publish in another newspaper.

(b) Notice shall be provided in the following format:

Notice of the Council on Affordable Housing Plan Review

NOTICE is hereby given that (MUNICIPALITY) has filed monitoring with the New Jersey Council on Affordable Housing pursuant to N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:96-11 et seq. The Council on Affordable Housing has reviewed the Housing Element and Fair Share Plan and monitoring and issued a report. A copy the Council on Affordable Housing report is available for public inspection at the office of the (MUNICIPAL CLERK, etc.), Municipal Building, located at (STREET ADDRESS), during the hours of _____.

Municipal Clerk

5:96-10.3 Public review

The municipality shall make copies of the results of the Council's review available for public inspection during regular business hours within the municipality. The Council shall publish the results on its website.

5:96-10.4 Enforcement

(a) If upon any biennial review the difference between the number of affordable units constructed or provided in a municipality and the number of units required pursuant to N.J.A.C. 5:97-2.4 results in a pro-rated production shortage of 10 percent or greater, the municipality is not adhering to its implementation schedule pursuant to N.J.A.C. 5:97-3.2(a), or the mechanisms addressing the projected growth share obligation no longer present a realistic opportunity for the creation of affordable housing, the Council may direct the municipality to amend its plan in conformance with N.J.A.C. 5:96-14 to address the affordable housing obligation set forth in N.J.A.C. 5:97-2.5. Upon a finding that a municipality is no longer meeting its affordable housing obligation, the report issued pursuant to N.J.A.C. 5:96-10.1(b) shall set forth the reasons for such finding and provide a 90-day period for the submission of an amended Housing Element and Fair Share Plan that will meet the affordable housing obligation.

(b) If upon review of a Housing Element and Fair Share Plan that has been amended in response to (a) above, the

quired by the Council at any time if it is determined that the municipality is no longer meeting the affordable housing obligation set forth in N.J.A.C. 5:97.

(b) A municipality seeking an amendment to substantive certification that requires a change in site, substantial change in density, a change in other zoning requirements that results in a change of housing type on a specific site, or a fundamental change in approach to its low- and moderate-income housing obligation shall petition for such an amendment pursuant to N.J.A.C. 5:96-14.2. However, if the amendment alters the plan to address the municipality's fair share obligation by 10 percent or less, it may be considered a minor technical amendment pursuant to (c) below.

(c) A municipality seeking a minor technical amendment to its certified Housing Element and Fair Share Plan that does not substantially alter the terms of certification pursuant to (b) above may request such an amendment by motion pursuant to N.J.A.C. 5:96-14.3. Examples include, but are not limited to, changing the number of units in an existing mechanism, adding a program that is not site specific, or altering the plan to address the municipality's fair share obligation by 10 percent or less.

(d) Requests for amendments of the terms of substantive certification may be made by motion by any party other than a municipality pursuant to N.J.A.C. 5:96-14.3. If the motion requests a change in site, a substantial change in density, a change in other zoning requirements that results in a change of housing type on a specific site, or a fundamental change in how the municipal low- and moderate-income housing obligation is addressed, and if the municipality does not object to the motion, the Council may direct the municipality to seek a plan amendment by petition pursuant to N.J.A.C. 5:96-14.2.

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

(f) A municipality shall not amend zoning on sites included in the certified Housing Element and Fair Share Plan without notice to the affected property owner. In amending zoning, a municipality shall adhere to the criteria outlined in N.J.A.C. 5:97-6.4.

5:96-14.2 Municipal petition to amend

(a) A municipal petition to amend the terms of its certification shall at a minimum include the following information, as well as any other information requested by the Council's Executive Director:

1. A summary of, and detailed reasons for, the proposed amendment;
2. A duly adopted resolution of the municipal planning board adopting the amended Housing Element and Fair Share Plan, conditioned upon approval by the Council;

3. A duly adopted resolution of the municipal governing body endorsing the amended Housing Element and Fair Share Plan and requesting Council review and approval of the amended petition;

4. A copy of the amended Housing Element in conformance with N.J.A.C. 5:97-2.3(a) and Fair Share Plan with all necessary information and documentation as required by the Council in conformance with N.J.A.C. 5:97-3.2(a);

5. Proof of notice of the petition to the service list pursuant to N.J.A.C. 5:96-3.7; and

6. Proof of public notice pursuant to N.J.A.C. 5:96-14.4(a).

(b) The information required in (a)1 through 4 above shall be submitted to the Council by the municipality at the time it petitions for an amendment. The information required in (a)5 above shall be submitted to the Council within seven days of the date of the municipality's petition to amend.

5:96-14.3 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. 5:96-13 and shall at a minimum include, the following information, as well as any other information requested by the Council's Executive Director:

1. A summary of, and detailed reasons for, the proposed amendment;

2. Proof of notice of the motion to the service list pursuant to N.J.A.C. 5:96-3.7; and

3. If a party other than the municipality moves to amend the terms of certification, the municipality shall publish notice of the motion in a form required by the Council. The municipality may require the moving party to pay the cost of publishing the required notice. The municipality shall submit proof of publication to the Council within seven days of the Council's issuance of notification to publish notice.

5:96-14.4 Notice of petition to amend

(a) A municipality that has petitioned to amend its substantive certification shall publish notice of the amended petition in a newspaper of general circulation within the municipality and the county in the following format:

NOTICE OF PETITION TO AMEND SUBSTANTIVE CERTIFICATION

NOTICE is hereby given that (MUNICIPALITY) has petitioned the New Jersey Council on Affordable Housing to amend its Substantive Certification pursuant to N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:96-14 et seq. The (MUNICIPALITY) Planning Board, subsequent to public hearing, adopted a revi-

sion to its Housing Element and Fair Share Plan on (DATE). The adopted plan is a revision of a previously adopted Housing Element and Fair Share Plan for which the (TOWNSHIP/BOROUGH/TOWN/CITY) received substantive certification on (DATE).

(INSERT BRIEF DESCRIPTION OF AMENDMENT)

A copy of the amended and adopted Housing Element and Fair Share Plan and supporting documentation is available for public inspection at the office of the (MUNICIPAL CLERK, etc.), Municipal Building, located at (STREET ADDRESS), during the hours of _____. Comments or objections to said petition to amend shall be filed with the Council on Affordable Housing, 101 South Broad Street, PO Box 813, Trenton, New Jersey 08625-0813 and with the municipal clerk by (DATE), which is within 45 days of publication of this notice.

Municipal Clerk

(b) An updated list of all petitions for amendments to substantive certification received and granted by the Council shall be published monthly on its website.

5:96-14.5 Objections to petitions to amend

(a) Within 45 days of the publication of a notice of a petition to amend the terms of substantive certification, any person may file objections to the terms of the proposed amendment with the Council. Objections shall be filed with the Council and the municipality. The Council shall not consider any objection to its rules and regulations as a valid objection. An objection shall be in a form as may be determined by the Council's Executive Director 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 to support each objection;
3. Copies of all referenced expert reports, studies or other data relied upon by the objector;
4. Proposed modifications, changes or other measures which the objector contends will resolve the objection and an explanation of how the objector's proposals are consistent with the Council's criteria and guidelines;
5. A statement documenting the objector's prior efforts at premediation, participation in conferences or public hearings and a summary of the results of any such efforts; and
6. Identification and a description of any site proposed by the objector, including a history of development appli-

cations (if any), for inclusion in the Housing Element and Fair Share Plan and demonstration that the site proposed for inclusion in the Housing Element and Fair Share Plan is suitable in accordance with N.J.A.C. 5:97-3.13.

5:96-14.6 Review of objections

(a) The Council's Executive Director shall review objections subject to the requirements of N.J.A.C. 5:96-14.5 to determine completeness and validity. The Council shall notify the objector who has filed an objection and the service list that the objection is complete and valid and that the objector is permitted to participate in the Council's administrative process beginning with mediation as set forth in N.J.A.C. 5:96-8.

(b) Objections that are determined to be incomplete or invalid shall be returned to the objector who shall have 14 days to correct deficiencies and resubmit them in a manner conforming to N.J.A.C. 5:96-14.5. If the objections are not resubmitted within the 14 days, the Council shall consider the objections to be withdrawn.

(c) The municipality shall submit a written response to all items delineated in the objector's objection, including, if applicable, the reason(s) the objector's proposed site was not included in the Housing Element and Fair Share Plan. Such written response shall be submitted to the Council and service list within 20 days of the notification letter issued in accordance with (a) above.

(d) After the expiration of the 45-day public review period pursuant to N.J.A.C. 5:96-14.5, the Council's Executive Director shall conduct an in-depth review of the amendment, each objection, and the municipal response and prepare a pre-mediation report which shall be circulated to the municipality and to the service list.

(e) The mediation process shall commence in accordance to the procedures set forth in N.J.A.C. 5:96-8.

SUBCHAPTER 15. WAIVERS

5:96-15.1 General

Any person may request a waiver from a specific requirement of the Council's rules at any time. Such a waiver may be requested as part of a municipal petition, by motion in conformance with N.J.A.C. 5:96-13, or in such other form as the Council may determine, consistent with this chapter.

5:96-15.2 Waiver requirements

(a) The Council may grant waivers from specific provisions of its rules if the person demonstrates that:

1. The strict application of the rule would create an unnecessary financial, environmental or other hardship;

2. Granting the waiver fosters the production of affordable housing;
3. Granting the waiver fosters the intent of, if not the letter of, the Council's rules; and
4. The Housing Element and Fair Share Plan provide a mix of housing options.

SUBCHAPTER 16. JURISDICTIONAL AND TRANSITIONAL PROCEDURES

5:96-16.1 Municipalities that received second round substantive certification prior to December 20, 2004 that expires subsequent to June 2, 2008

(a) The Council shall continue to review and approve RCAs, conduct mediation that is in progress, and review and approve amendments to second round certified plans for municipalities that received second round substantive certification prior to December 20, 2004 that expires subsequent to June 2, 2008 until the expiration of substantive certification.

(b) To remain under the jurisdiction of the Council for the third round fair share obligation, a municipality with second round substantive certification that expires subsequent to June 2, 2008 shall file or petition with a third round Housing Element and Fair Share Plan by the earlier of the expiration date of its second round substantive certification or the date set forth in N.J.A.C. 5:96-16.2.

5:96-16.2 Municipalities that petitioned for but did not receive third round substantive certification

(a) To remain under the jurisdiction of the Council, a municipality that petitioned for but did not receive third round substantive certification shall re-petition with an amended third round Housing Element and Fair Share Plan in accordance with the following schedule:

1. On or before September 30, 2008: Municipalities located in Atlantic, Bergen, Burlington, Essex, Mercer, Passaic and Union Counties;
2. On or before November 14, 2008: Municipalities located in Camden, Cape May, Hudson, Middlesex, Monmouth, Morris and Salem Counties; and
3. On or before December 31, 2008: Municipalities located in Cumberland, Gloucester, Hunterdon, Ocean, Somerset, Sussex and Warren Counties.

SUBCHAPTER 17. MUNICIPAL HOUSING LIAISON

5:96-17.1 Requirement for a municipal housing liaison

(a) All municipalities that have created or will create affordable housing programs and/or affordable units shall es-

tablish the position of a municipal housing liaison by ordinance and, subject to the approval of the Council's Executive Director, appoint a municipal employee to serve in this position.

(b) The municipal housing liaison is responsible for oversight and coordination of all the activities of the municipal government as it relates to the creation, preservation and administration of affordable housing programs and/or affordable units.

5:96-17.2 Responsibilities of the municipal housing liaison

(a) The following responsibilities of the municipal housing liaison may not be contracted out:

1. Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, administrative agents, and interested households;
2. Monitoring the status of all proposed and completed affordable housing programs and affordable units in the municipality's Fair Share Plan;
3. Compiling, verifying, and providing monitoring information at such time and in such form as the Council requires;
4. Coordinating meetings with affordable housing providers and administrative agents, as applicable; and
5. Where applicable, providing to an administrative agent a copy of the adopted municipal operating manual(s), Housing Element and Fair Share Plan and ordinances relating to the creation and administration of the municipality's affordable housing programs and/or affordable units.

(b) The municipal housing liaison may also serve as the administrative agent pursuant to N.J.A.C. 5:96-18 for some or all of the affordable units in the municipality. These duties shall be outlined in the municipal ordinance establishing the position of the municipal housing liaison. All applicable tasks not performed by the municipal housing liaison, shall be contracted to an administrative agent pursuant to N.J.A.C. 5:96-18.

5:96-17.3 Approval of the municipal housing liaison

(a) The appointment of the municipal housing liaison is subject to review and approval by the Council's Executive Director.

(b) Upon petitioning the Council for substantive certification, the municipality shall submit its ordinance establishing the position of the municipal housing liaison and a resolution by the governing body or a letter from the chief executive appointing a municipal employee to serve as the municipal housing liaison.

(c) If the municipal housing liaison is to perform the duties of an administrative agent, the municipality shall also submit evidence of the municipal housing liaison's history of successful management of affordable housing units, particularly those produced as a result of the New Jersey Fair Housing Act or through a *Mount Laurel* court settlement, which shall include:

1. A resume;
2. A statement of qualifications; and
3. A statement of intent to attend continuing education opportunities related to the creation, preservation and administration of affordable housing programs and/or affordable units provided by the Council.

(d) The Council shall monitor the performance of the approved municipal housing liaison. In the event the municipal housing liaison does not administer the municipality's affordable housing program and/or affordable units in accordance with the Council's rules, the Council may revoke its approval.

5:96-17.4 Education requirements

(a) In order to receive approval, all appointed municipal housing liaisons shall successfully complete the Council's Education Program for Municipal Housing Liaisons as described in N.J.A.C. 5:96-20 in the timeframes set forth below:

1. Any municipal employee already serving as municipal housing liaison as of June 2, 2008 shall be required to successfully complete the Education Program for Municipal Housing Liaisons by the later of December 2, 2008, or the date of the next Education Program for Municipal Housing Liaisons.

2. Any municipal employee appointed to serve as municipal housing liaison subsequent to June 2, 2008 shall be required to successfully complete the Education Program for Municipal Housing Liaisons by the later of six months from the date of appointment, or the date of the next Education Program for Municipal Housing Liaisons.

(b) If the municipal housing liaison is to perform the duties of an administrative agent, in order to receive approval, the municipal housing liaison shall also successfully complete the Council's Education Program for Administrative Agents as described in N.J.A.C. 5:96-20 in the timeframes set forth below:

1. Any municipal employee already serving as municipal housing liaison as of June 2, 2008 shall be required to successfully complete the Education Program for Administrative Agents by the later of June 2, 2009, or one year after the date of the first Education Program for Administrative Agents.

2. Any municipal employee appointed to serve as municipal housing liaison subsequent to June 2, 2008 shall be required to successfully complete the Education Program for Administrative Agents by the later of one year from the date of appointment, or the date of the next Education Program for Administrative Agents.

from the date of appointment, or the date of the next Education Program for Administrative Agents.

(c) Approved municipal housing liaisons shall also attend continuing education opportunities related to the creation, preservation and administration of affordable housing programs and/or affordable units provided by the Council.

SUBCHAPTER 18. ADMINISTRATIVE AGENT

5:96-18.1 Requirement for an administrative agent

(a) All municipalities that have created or will create affordable housing programs and/or affordable units may designate one or more administrative agent(s) to administer the affordable housing program and/or affordable units in accordance with the Council's rules and UHAC.

(b) The administrative agent may be the municipal housing liaison, the RCA administrator, or a person or entity selected pursuant to UHAC.

(c) The administrative agent may perform some or all of the duties and responsibilities of an administrative agent as set forth in UHAC.

5:96-18.2 Approval of administrative agent

(a) The designation of the administrative agent is subject to review and approval by the Council's Executive Director.

(b) An administrative agent may apply directly to the Council for approval by submitting the following:

1. All documentation required for designation of an administrative agent as set forth in UHAC;
2. A sample contract;
3. A sample operating manual for each type of program and/or unit the administrative agent seeks to administer;
4. Evidence of satisfactory completion of the Council's Education Program for Administrative Agents as described in N.J.A.C. 5:96-20; and
5. Any additional documentation required by the Council's Executive Director.

(c) The Council shall maintain and publish on its website a list of approved administrative agents, which includes the Agency in accordance with N.J.S.A. 52:27D-324.

(d) If the administrative agent is not currently approved, evidenced by (c) above, the municipality shall submit to the Council all documentation required for designation of each administrative agent as set forth in UHAC.

(e) The Council shall monitor the performance of all approved administrative agents. In the event the adminis-