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**RULE PROPOSALS**

**COMMUNITY AFFAIRS  
NEW JERSEY COUNCIL ON AFFORDABLE HOUSING**

40 N.J.R. 6265(a)

**Proposed Amendment: N.J.A.C. 5:97-2.5**

**Substantive Rules of the New Jersey Council on Affordable Housing for the Period  
Beginning on June 2, 2008**

**Measuring the Actual Growth Share Obligation**

Authorized By: New Jersey Council on Affordable Housing, Lucy Vandenberg,  
Executive Director.

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

Calendar Reference: See Summary below for explanation of exception to calendar  
requirement.

Proposal Number: PRN 2008-356.

Submit comments by January 2, 2009 to:  
Lucy Vandenberg, Executive Director  
NJ Council on Affordable Housing  
PO Box 813  
Trenton, NJ 08625-0813

All comments should be identified by the applicable N.J.A.C. citation and  
submitted in the following format:

"5:97-1.4 Comment: The definition of household should be changed to delete  
the reference to persons under age 18." This may be followed with any supporting  
reasons, references, and any other additional information that the commenter  
wishes to provide.

The Council encourages comments to be submitted in electronic form to  
COAHmail@dca.state.nj.us to enable an expeditious review and response. Such  
comments should include the words "Rule Comments" in the subject box. The

Council will also accept written comments sent via mail and/or fax at (609) 633-6056, but requests a follow-up PC-formatted disk in Microsoft Word to be delivered as soon as possible thereafter to enable comments to be processed electronically. Fax copies shall also be followed by a mailed copy if a disk is not possible.

The agency proposal follows:

#### **Summary**

As required by the Fair Housing Act (FHA) at *N.J.S.A. 52:27D-307.5*, the Council must adopt all rules necessary for effectively carrying out the provisions and purposes of the act. To that end, the Council enacted *N.J.A.C. 5:92* (first round rules), effective August 4, 1986, with subsequent amendments; *N.J.A.C. 5:93* (second round rules), effective June 6, 1994, with subsequent amendments; and *N.J.A.C. 5:94* (third round rules), effective December 20, 2004, and amended May 15, 2006 and August 20, 2007. On January 22, 2008, the Council proposed new substantive and procedural rules, which became effective on June 2, 2008 as *N.J.A.C. 5:97* and *N.J.A.C. 5:96* and were subsequently amended on October 20, 2008. During the comment period to the Council's October 20, 2008 amendments, it was noted that residential demolitions of owner-occupied homes, even when the demolition is related to a catastrophic event such as fire or natural disaster, will incur an affordable housing obligation when the house destroyed is replaced with a new residence on the same lot. The Council did not intend for the equity issues that arise as a result of this particular situation to create an affordable housing obligation, when there is no change in ownership or use for at least one year prior to demolition. Therefore, the rule is proposed for amendment to address any inequity while at the same time upholding the methodology used in determining municipal affordable housing obligations.

#### **Summary of Amendment**

*N.J.A.C. 5:97-2.5* is amended to allow certificates of occupancy issued for certain owner-occupied residential structures to be subtracted from growth for the purpose of determining the growth share obligation. This subtraction is limited to residential structures that have been occupied by the current owner for at least one year prior to the demolition, where no change in use has occurred. Redevelopment, rental properties, previously vacant properties and properties with a change of use or intensity of use, among other categories, would continue to generate a growth share obligation under the proposed amendment. The Council will work cooperatively with the New Jersey Department of Community Affairs to track exemptions generated under the proposed amendment to monitor the impact of these exemptions on the growth share methodology.

The amendment also requires municipalities choosing to subtract these units from actual growth to impose a development fee based on the increase in equalized assessed value that results from re-construction. Reconstruction that results from fire or natural disaster would be exempt from the imposition of development fees.

As the Council has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to *N.J.A.C. 1:30-3.3(a)5*.

#### **Social Impact**

The Council's rules have had an impact on a majority of the 566 municipalities in the State of New Jersey. The public will continue to benefit since the Council's rules have been the basis for the creation of additional housing affordable to low- and moderate-income households. The proposed amendment insulates New Jersey residents who are reconstructing a personal residence from State and local requirements that link growth to municipal affordable housing obligations.

**Economic Impact**

The proposed amendment will have a positive economic impact on residents who are rebuilding a personal residence and the municipalities in which these residences are located by replacing a growth share obligation with a significantly less costly development fee. Homes that are rebuilt after fire or natural disaster would be exempt from the imposition of a development fee.

**Federal Standards Statement**

No Federal standards analysis is required because this amendment is not being proposed in order to implement, comply with, or participate in any program established under Federal law or under a State law that incorporates or refers to Federal law, standards, or requirements.

**Jobs Impact**

The Council does not anticipate that the proposed amendment will result in the generation or loss of any jobs in New Jersey.

**Agriculture Industry Impact**

The Council does not anticipate that the proposed amendment will result in any impact on the agricultural industry in New Jersey.

**Regulatory Flexibility Statement**

This rule amendment regulates municipalities, not small businesses, as defined by the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16 et seq.*, and, therefore, the proposed amendment will not have an impact on small businesses.

**Smart Growth Impact**

This rule amendment is consistent with the New Jersey State Development and Redevelopment Plan, which fosters smart growth. The proposed amendment recognizes that occupied personal residences replaced by their current occupants should not trigger a growth share obligation.

**Housing Affordability Impact**

The rule amendment will have a positive impact on an individual homeowner if there is a fire, flood or natural disaster. In recognition of the equity issues associated with losses due to fire, flood or natural disaster, the amendment requires municipalities to exempt residences re-built following such an occurrence from residential development fees thus reducing the cost of rebuilding an existing home that has been lost.

The rule amendment will not have a negative affect housing affordability. The

issuance of a certificate of occupancy for a re-built existing residence for the personal use by the current occupants does not create an opportunity for municipalities to create affordable units.

**Smart Growth Development Impact**

As indicated in the Smart Growth Impact statement, this proposed amendment recognizes that occupied personal residences replaced by their current occupants should not trigger a growth share obligation. As such, there is an extreme unlikelihood that the amendments would evoke a [page=6266] change in the housing production within Planning Area 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

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.-ii. (No change.)

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[.]; **and**

**v. Certificates of occupancy issued for owner-occupied residential structures that have been issued a demolition permit provided the unit for which the demolition permit has been issued was occupied by its current owner for at least one year prior to the demolition and no change in use has occurred. Municipalities choosing to subtract these units from actual growth shall impose a development fee pursuant to *N.J.A.C. 5:97-8.3(c)* based on the increase in equalized assessed value that results from re-construction, but shall exempt reconstruction that results from fire, flood or natural disaster.**

2. (No change.)

(b)-(e) (No change.)