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OFFICE OF LOCAL PLANNING SERVICES
Basic Course in Land Use Law and Planning
Training Program

Proposed Readoption with Amendments: N.J.A.C. 5:87

Authorized By: Lieutenant Governor Sheila Y. Oliver,
 Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 40:55D-8, 23.3, and 23.4; and P.L. 2005, c. 133.

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

Proposal Number: PRN 2021-062.

Submit written comments by September 17, 2021, to:

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The agency proposal follows:

Summary

The Basic Course in Land Use Law and Planning Training Program rules, N.J.A.C. 5:87, were scheduled to expire on May 20, 2021, pursuant to N.J.S.A. 52:14B-5.1.c. Pursuant to Executive Order No. 127 (2020) and P.L. 2021, c. 104, any chapter of the New Jersey Administrative Code that would otherwise have expired during the Public Health Emergency originally declared in Executive Order No. 103 (2020) was extended through January 1, 2022. Therefore, this chapter has not yet expired and is extended 180 days from the later of the existing expiration date or the date of publication of this notice of proposed readoption, whichever is later, which date is January 15, 2022, pursuant to N.J.S.A. 52:14B-5.1.c, Executive Order No. 244 (2021), and P.L. 2021, c. 104.

The Department of Community Affairs (Department) has reviewed these rules and finds that they continue to be necessary in order to provide standards to implement P.L. 2005, c. 133 (N.J.S.A. 40:55D-23.3 and 23.4), which requires that all members of municipal planning boards and zoning boards of adjustment in the State receive training necessary to provide a basic understanding of the role and duties of members and alternate members of municipal planning boards, zoning boards of adjustment, and combined boards, and is, therefore, proposing that the chapter be readopted with amendments.

The chapter proposed for readoption consists of the following subchapters and sections.

Subchapter 1, General Provisions, includes heading and scope, authority, intent and purpose, severability, definitions, applicability, fees, Board membership, exemptions, and compliance period.

Subchapter 2, Delivery of the Training Program, includes course providers, written proposal for course approval, more extensive course offerings, Commissioner approval, periodic review of approved courses, and revocation of approval.

Subchapter 3, Mandatory Curriculum of Training Program, including Training Program curriculum, overview of board responsibilities and differences between the boards, municipal master plan, and development application review process.

Subchapter 4, Training Program Administration, including standards for instructors, standards for determining satisfactory completion of the Training Program, waivers, and record retention.

The Department is proposing that the chapter be readopted with the following proposed amendments:

A proposed amendment at N.J.A.C. 5:87-1.6(c) will update the website for the List of Planning/Zoning Officials form and the email address where the form can be sent. The Office of Local Planning Services currently administers the Land Use Law and Planning Training Program.

A proposed amendment at N.J.A.C. 5:87-2.4 will update where the list of approved courses is located.

Proposed new N.J.A.C. 5:87-3.1(c) would be added to state that course providers must periodically update their Training Program curriculum when changes occur to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. (MLUL), the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (LRHL), or other relevant land use and planning laws and rules. This ensures that the Training Program stays up to date with the current laws.

A proposed amendment at N.J.A.C. 5:87-3.3(a)3 adds that an overview of the LRHL and New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq., must be included in the Training Program curriculum. These topics were not previously required to be included in the Training Program curriculum, but are important land use topics that planning and zoning boards encounter frequently.

Proposed amendments at N.J.A.C. 5:87-3.4 clarify that the topics to be reviewed in the Training Program are mandatory by including the word "shall." In addition, a proposed amendment updates the name of a regulatory land use authority and adds two other regulatory land use authorities (the Casino Reinvestment Development Authority and the Fort Monmouth Economic Revitalization Authority) to the section.

The Department has provided for a 60-day public comment period on this notice of proposal; therefore, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

Members of local planning boards and zoning boards of adjustment have the duty to provide for, and protect, the orderly development of their communities. The relationship between the decisions they make and the changes in the landscape of their communities, including the location, size, and density of housing and commercial development and the infrastructure that such development entails has a direct impact on society as a whole. The rules proposed for readoption with amendments are intended to enable board members to better understand these relationships, as well as the impact of their decisions upon neighboring municipalities, the region, and the State.

From Training Program inception through the end of March 2021, approximately 11,085 planning and zoning board members have successfully completed a course delivered by one of the Department of Community Affairs' nine approved course providers.

The proposed amendments to clarify, correct, and update the rules proposed for readoption may be expected to have a positive social impact, as the intent of the proposed amendments are to keep up with current land use planning laws and rules.

Economic Impact

There are no changes proposed to the fees section of the chapter (N.J.A.C. 5:87-1.6). The Department continues to incur costs associated with the maintenance of records and for providing the certificates of completion. It is not anticipated that the proposed amendments would have any economic impact.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption with amendments are not being proposed under the authority of, or in order to implement, comply with, or participate in any program established under Federal law or a State statute that incorporates or refers to Federal law, standards, or requirements.

Jobs Impact

The Department expects that the rules proposed for readoption with amendments will continue to result in the creation and retention of jobs for persons involved in providing approved courses.

Agricultural Industry Impact

The Department does not anticipate that the rules proposed for readoption with amendments would have any impact on the agriculture industry. Training courses in which board members from municipalities in agricultural areas participate include discussion of Right-to-Farm issues.

Regulatory Flexibility Analysis

Some course providers may be small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Small businesses that seek to offer the Training Program prescribed under the

rules proposed for readoption with amendments must follow all of the compliance requirements of course providers, including: meeting the time limitations placed on the course, unless the course provider chooses to offer a more extensive program; seeking the approval of the Commissioner of the Department that the proposed course satisfies the mandatory curriculum set forth in the rules; and agreeing to periodic reviews of an approved course by the Commissioner to ensure the course conforms to the requirements of the chapter.

Course providers may incur upfront costs to prepare to offer a course, including preparing a curriculum, securing space in which to offer the course, and preparing course materials for students. Other costs may include the administrative costs of providing reports to the Commissioner of the Department, as well as employing outside licensed professional planners or licensed New Jersey attorneys experienced in land use matters, as instructors, if necessary.

The compliance requirements are the minimum necessary to provide education to planning and zoning board members required pursuant to N.J.S.A. 40:55D-23.3 and 23.4 and to allow the Department to have the information necessary to monitor compliance with the statute. In addition, the rules proposed for readoption with amendments do not regulate tuition fees charged by course providers, so the full costs of delivering the Training Program may be covered by those fees.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments govern the training of members of local planning boards and zoning boards of adjustment. It might continue to have an impact upon housing production costs or to affect the affordability of housing to the extent the properly trained board members are more likely to have an understanding of applicable laws. Any such impact, however, is conjectural, and cannot be quantified.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments would continue the positive impact upon the implementation of the State Development and Redevelopment Plan and the achievement of smart growth that results from having land use decisions made by board members who have proper training.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated the rules proposed for readoption with amendments and determined that they will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:87.

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

SUBCHAPTER 1. GENERAL PROVISIONS

5:87-1.6 Applicability; fees; board membership

(a)-(b) (No change.)

(c) Municipalities shall provide to the Commissioner [by September 15, 2006 and thereafter] biannually, every January and July, a current list of members, their addresses, the date of their appointment to the board, and the date of their term expiration, [using GovConnect at <http://www.nj.gov/dca/lgs/> or] by completing the List of Planning/Zoning Officials form available on the **Department of Community Affairs' Office of [Smart Growth] Local Planning Services' website**, [at www.state.nj.us/dca/osg/] **www.nj.gov/dca/divisions/lps and emailing it to the administrator of the course program. The administrator's email address is also available on the Office of Local Planning Services' website.**

SUBCHAPTER 2. DELIVERY OF THE TRAINING PROGRAM

5:87-2.4 Commissioner approval

(a) Upon determining that the course satisfies the requirements of the Training Program curriculum, the Commissioner shall:

1. (No change.)

2. Place the name of the person, institution, organization, or entity and the course on the Department's list of approved courses only after all terms or conditions of approval are satisfied. The list shall be made available to the public [at www.state.nj.us/dca/osg/] **on the Department of Community Affairs' Office of Local Planning Services' website, www.nj.gov/dca/divisions/lps.**

SUBCHAPTER 3. MANDATORY CURRICULUM OF TRAINING PROGRAM

5:87-3.1 Training Program curriculum

(a)-(b) (No change.)

(c) Course providers shall periodically update their Training Program curriculum based on changes to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. (MLUL), the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (LRHL), or other relevant land use and planning laws and rules.

5:87-3.3 [The municipal] **Municipal** master plan

(a) The purpose of the "municipal master plan" segment of the Training Program is to provide an overview of the elements of a master plan; development and reexamination of the master plan; the relationship of the master plan to the ordinances and regulations implemented by the boards, and the availability of certain planning tools to implement the vision of the master plan. Required areas for discussion in this segment shall include, but are not limited to:

1.-2. (No change.)

3. Discussion on smart growth planning principles, redevelopment, center-based development, transit villages, clustering and transfer of development rights, and zoning as planning concepts and tools available to planning boards to implement the vision of the master plan for balancing future development and conservation in the municipality. **An overview of the LRHL and the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq., shall be provided.** In addition, region-specific issues, such as the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., [should] **shall** be discussed for board members from municipalities that have substantial active commercial agriculture.

5:87-3.4 [The development] **Development** application review process

(a) The purpose of the development application review process segment of the Training Program is to provide an overview of the development applications that come before the boards pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., (MLUL), the administration of the applications, the review of the applications, and the hearing process. The mandatory topics to be covered in this segment of the Training Program **shall** include:

1. How to read, analyze, and review a land development plan. In addition to the technical aspects of reading a plan, the analysis shall explore site visits and the relationship of the plan to local design standards and regulations, including site plan, subdivision, zoning, and health regulations. The analysis shall also explore the relationship to county and [state] **State** regulations, including the Department of Environmental Protection environmental rules, the Department of Transportation highway access rules, and the Department of Community Affairs Residential Site Improvement Standards, and, where applicable, the land use and development rules of the Highlands Council, **the New Jersey [Meadowlands Commission] Sports and Exposition Authority, the Casino Reinvestment Development Authority, the Fort Monmouth Economic Revitalization Authority, and the Pinelands Commission.** In addition to discussing appropriate board questions, the overview of the review of the plan [should] **shall** include the role of reports from professionals representing the board, the applicant and the public;

2. The topics that [need to] **shall be** addressed when reviewing administration of an application, include, but are not limited to, notices, the determination of a complete application pursuant to a duly adopted checklist, the time periods in which boards must act, and automatic approvals; and

3. (No change.)