

**RESOLUTION 71-2025
BOROUGH OF ALLENTOWN
COUNTY OF MONMOUTH, STATE OF NEW JERSEY**

**RESOLUTION COMMITTING TO THE BOROUGH OF ALLENTOWN'S
FOURTH ROUND (2025-2035) PRESENT AND PROSPECTIVE NEED
AFFORDABLE HOUSING OBLIGATION**

WHEREAS, on March 20, 2024, Governor Philip D. Murphy signed into law an Amendment to the Fair Housing Act (N.J.S.A. 52:27D-301 et. seq.) (hereinafter the "Amended FHA"); and

WHEREAS, the Amended FHA established a new framework for determining and enforcing municipalities' affordable housing obligations under the Mount Laurel Doctrine for the years 2025 through 2035 (the "Fourth Round"); and

WHEREAS, the Amended FHA abolished the Council on Affordable Housing, also known as COAH, and delegated its responsibilities to the New Jersey Department of Community Affairs (hereinafter "DCA"), the New Jersey Housing and Mortgage Finance Agency, and the Affordable Housing Dispute Resolution Program (hereinafter "DRP"), created by the same law; and

WHEREAS, the Amended FHA required the DCA to calculate non-binding estimates of present and prospective need for low-and-moderate-income housing in each municipality for the Fourth Round on or before October 20, 2024; and

WHEREAS, the DCA issued a report on October 18, 2024 ("DCA Report") wherein it reported its estimate of the obligation for all municipalities, including the Borough of Allentown (hereinafter the "Borough"), based upon its interpretation of the Amended FHA; and

WHEREAS, the DCA Report calculates the Borough's Fourth Round (2025-2035) obligations as a Present Need ("Rehabilitation") Obligation of **Zero (0) Units** and a Prospective Need ("New Construction") Obligation of **Twenty-Eight (28) Units**; and

WHEREAS, the Amended FHA provides that the DCA Report is non-binding, thereby inviting municipalities to demonstrate that the Amended FHA would support lower calculations of the Fourth Round affordable housing obligations; and

WHEREAS, the Amended FHA further provides that "[a]ll parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by the Council on Affordable Housing ("COAH") unless those regulations are contradicted by statute, including P.L. 2024, c.2, or binding court decisions." (N.J.S.A. 52:27D-31(m)); and

WHEREAS, COAH regulations authorize vacant land adjustments, durational adjustments and other adjustments; and

WHEREAS, COAH regulations authorize municipalities to secure an adjustment to their rehabilitation obligation through a windshield survey; and

WHEREAS, the Borough intends to accept the DCA calculations of the Borough's Present Need Obligation of **Zero (0) Units** and a Prospective Need ("New Construction") Obligation of **Twenty-Eight (28) Units** as reported by the DCA in its October 18, 2024 Report, subject to any vacant land, windshield survey and/or any other additional authorized adjustments the Borough may seek as part of the Housing Plan element and Fair Share Plan element it subsequently submits in accordance with the Amended FHA; and

WHEREAS, the Borough reserves the right to comply with any additional amendments to the FHA that the Legislature may enact; and

WHEREAS, for example, the New Jersey Institute of Local Government Attorneys ("NJILGA") has expressed its support for Legislation that has now been introduced as bill S-4065 that, if enacted, would reduce the Borough's Round 4 Prospective Need to Six (6) Units and would give the Township "90 days from receipt of revised fair share obligations from the [DCA] to provide an amended Housing Element and Fair Share Plan addressing the new number"; and

WHEREAS, the Borough supports S-4065 and would have the right to reduce its Fourth Round obligation in the event that the Legislature enacts said Legislation; and

WHEREAS, similarly, a number of municipalities, led by the Township of Montvale, have filed suit (MER-L-1778-24) (hereinafter "Montvale Litigation") challenging the Amended Fair Housing Act and Directive #14-24 of the Acting Administrative Director of Office of the Courts issued to implement the Amended FHA; and the ultimate outcome of that litigation has yet to be determined; and

WHEREAS, the Borough reserves the right to adjust its position in the event of any rulings in the Montvale Litigation or any other such litigation or legislative action that alters the deadlines and/or requirements of the Amended FHA; and

WHEREAS, in the event that a third party challenges the calculations provided for in this Resolution, the Borough reserves the right to take such position as it deems appropriate in response thereto, including that its Fourth Round Present or Prospective Need Obligations should be lower than described herein; and

WHEREAS, in addition to the foregoing, nothing in the Amended FHA requires or can require an increase in the Borough's Fourth Round Present or Prospective Need Obligations based on a successful downward challenge of any other municipality in the region since the plain language and clear intent of the Amended FHA is to establish, for example, unchallenged numbers by default on March 1, 2025; and

WHEREAS, the Amended FHA obligates municipalities to adopt a binding resolution as to its Fourth Round affordable housing obligations by no later than January 31, 2025 or lose immunity from builder's remedy litigation; and

WHEREAS, in addition to the above, the Acting Administrative Director of the Administrative Office of the Court issued Directive #14-24, dated December 13, 2024 and pursuant to that Directive, a municipality seeking a certification of compliance with the Amended FHA is required to file a legal action in the form of a declaratory judgment complaint within 48 hours after adoption of the municipal resolution, or by February 3, 2025, whichever is sooner, in order to retain immunity from builder's remedy litigation; and

WHEREAS, given the foregoing, the Borough finds that it is in the best interest of its residents and taxpayers to declare its commitment its Fourth Round affordable housing obligation in accordance with the Amended FHA to obtain immunity from builder's remedy litigation; and

WHEREAS, the Borough seeks a certification of compliance with the Amended FHA and, therefore, authorizes the filing of a declaratory judgment action pursuant to the Directive #14-24 within 48 hours after the adoption of this Resolution to seek compliance with the Amended FHA;

NOW, THEREFORE, BE IT RESOLVED on this 28th day of January, 2025 by the Mayor and Council of the Borough of Allentown as follows:

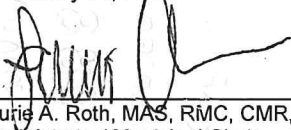
1. The foregoing recitals are hereby incorporated into the operative clauses of this Resolution.
2. For the reasons set forth in this Resolution, the Borough of Allentown hereby commits to the DCA Fourth Round Present Need Obligation of **Zero (0) Units** and Prospective Need ("New Construction") Obligation of **Twenty-Eight (28) Units** described in this Resolution, subject to all reservations of rights, including but not limited to:
 - A. The right to adjust the number of units based on one or any of the following: a windshield survey, vacant land assessment, durational adjustments, and all other applicable adjustments permitted in accordance with COAH; and
 - B. The right to adjust its fair share obligation in the event of any future legislation that adjusts the fair share obligations reported by the DCA on October 18, 2024; and
 - C. The right to adjust its fair share obligations based upon any ruling in the Montvale Litigation or any other litigation; and
 - D. The right to adjust its fair share obligations in the event of a third party challenge to the fair share obligations and the Borough's response thereto.

3. The Borough hereby directs its professionals to file a declaratory judgment complaint in Monmouth County within 48 hours after adoption of this Resolution.
4. The Borough authorizes its professionals to attach this Resolution as an exhibit to the declaratory judgment action and to submit and/or file this Resolution with the DRP or any other such entity as may be determined to be appropriate.
5. This Resolution shall take effect immediately, according to law.

	Offered	Second	Ayes	Nays	Abstain	Absent
			Done	Done	Done	Done
Council President Elder			X			
Councilman Drennan		X	X			
Councilwoman Johnson			X			
Councilman Payson			X			
Councilwoman DeKranes			X			
Councilwoman Darling	X		X			
Mayor Fritts						

CERTIFICATION

I, Laurie A. Roth, Municipal Clerk of the Borough of Allentown do hereby certify this to be a true and exact copy of a resolution adopted by the Governing Body of the Borough of Allentown, County of Monmouth, State of New Jersey at the Council meeting held on January 28, 2025.



Laurie A. Roth, MAS, RMC, CMR, CPM
 Administrator/ Municipal Clerk