

**BOROUGH OF HASBROUCK HEIGHTS**

**RESOLUTION NO. 32**

**DATED: January 14, 2025**

**RESOLUTION AUTHORIZING THE CURRENT OBLIGATIONS OF THE BOROUGH OF HASBROUCK HEIGHTS REGARDING ROUND 4 AFFORDABLE HOUSING**

**WHEREAS**, the Borough of Borough of Hasbrouck Heights, County of Bergen, State of New Jersey, (hereinafter, "Borough") has a demonstrated history of voluntary compliance with its constitutional affordable housing obligations; and

**WHEREAS**, on March 20, 2024, Governor Phil Murphy signed into law P.L. 2024, c.2, an Amendment to the 1985 Fair Housing Act (hereinafter "Amended FHA" or "Act"); and

**WHEREAS**, the Amended FHA requires the Department of Community Affairs ("DCA") to provide an estimate of the present need, also referred to as the rehab obligation, and the Round 4 prospective need of all municipalities by October 20, 2024, based upon the criteria on the Amended FHA; and

**WHEREAS**, the DCA issued a report on October 18, 2024 ("DCA Report") wherein it reported its estimate of the present need and the Round 4 prospective need obligation for all municipalities based upon its interpretation of the standards in the Act; and

**WHEREAS**, the DCA Report calculates the Present Need (Rehabilitation) Obligation of the Borough to be eight (8) and its Round 4 Prospective Need to be 149 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 revised calculations of Round 4 fair share affordable housing obligations; and

**WHEREAS**, the Amended FHA gives municipalities the opportunity to propose different obligations from those reported by the DCA on October 18, 2024, based upon the standards in Sections 6 and 7 of the Act; 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-311 (m)); and

**WHEREAS**, the Borough, through its professionals, has exercised its right to review the data that is the basis for the 3 allocation factors used to determine the Borough's share of the regional need; and

**WHEREAS**, more specifically, Burgiss Associates Inc. has reviewed the data that the DCA used to compute the **Land Capacity Allocation Factor** that the DCA belatedly provided on or about November 27, 2024, instead of by October 20, 2024; and

**WHEREAS**, the Borough further notes that the link to the DCA GIS data that the DCA belatedly made available to municipalities includes the following language:

"The land areas identified in this dataset are based on the best available data using publicly available data enumerated in N.J.S.A. 52:27D-304.3c.(4) to estimate the area of developable land, within municipal and regional boundaries, that may accommodate development. **It is important to note that the identified areas could be over or under inclusive depending on various conditions and that municipalities are permitted to provide more detailed mappings as part of their participation in the Affordable Housing Dispute Resolution Program.**" (emphasis added)

**WHEREAS**, the Borough accepted the DCA's invitation to examine the data it used to compute this allocation factor and found that the DCA had indeed been over inclusive in the land it found to be developable; and

**WHEREAS**, more specifically, based upon a report, prepared by its expert, Edward Snieckus PP, LLA, ALSA, which is attached hereto as Exhibit A, the Borough finds that only .078 acres are developable, not the 2.59 acres that the DCA reported in computing the Land Capacity factor; and

**WHEREAS**, upon correcting the data used to determine the Land Capacity Factor, the correct Round 4 prospective need number is 138 units not 149 units; and

**WHEREAS**, the Amended FHA provides that: "the municipality's determination of its fair share obligation shall have a presumption of validity, if established in accordance with sections 6 and 7" of the Act; and

**WHEREAS**, Borough's calculation of need is entitled to a "presumption of validity" because it complies with Sections 6 and 7 of the Act; and

**WHEREAS**, in addition to setting forth its Round 4 fair share affordable housing obligations for the reasons summarized above, substantial activity has occurred and is ongoing that warrants the reservation of certain rights to avoid any claim that it has waived them; and

**WHEREAS**, the process established by the Amended FHA creates an opportunity to object by interested parties opposing the obligations to which a municipality commits, thereby creating the potential for litigation over the obligations of the municipality; and

**WHEREAS** the court approved a vacant land adjustment and an RDP for the Borough in Round 3; and

**WHEREAS**, on September 27, 2019, Judge Padovano entered a final Judgment of Compliance and Repose in which he approved the Borough's application for a determination that the Borough's realistic development potential is eleven (11) units; and

**WHEREAS**, the Borough will be entitled to an adjustment in Round 4 since it lacked sufficient land to meet its fair share quota for Round 3; and

**WHEREAS**, the Borough will include the basis for its vacant land adjustment in in the HEFSP it submits by the June 30, 2025, deadline; and

**WHEREAS**, the Amended FHA requires municipalities to adopt a binding resolution no later than January 31, 2025, as to its obligations.

**WHEREAS**, in light of the above, the Borough finds that it is in its best interest to declare its obligations in accordance with this binding resolution in accordance with the Act. And

**WHEREAS**, in addition to the above, the Acting Administrative Director issued Directive #14-24, dated December 13, 2024, and made the directive available later in the week that followed; and

**WHEREAS**, pursuant to Directive #14-24, a municipality seeking a certification of compliance with the Act shall file an action in the form of a declaratory judgment complaint within 48 hours after adoption of the municipal resolution of fair share obligations, or by February 3, 2025, whichever is sooner; and

**WHEREAS**, the Borough seeks a certification of compliance with the Act and, therefore, directs its Affordable Housing Counsel to file a declaratory relief action within 48 hours of the adoption of this resolution.

**NOW, THEREFORE, BE IT RESOLVED** on this 14<sup>th</sup> day of January 2025, by the Governing Body of the Borough of Hasbrouck Heights, County of Bergen, State of New Jersey, as follows:

1. The preamble of this resolution is incorporated into the operative clauses of this resolution as if set forth in full.

2. For the reasons set for the in this resolution and its attachments, the Borough of Hasbrouck Heights commits to a Round 4 Present Need ("Rehabilitation") Obligation

of eight (8) units and a Round 4 Prospective Need "(New Construction)" obligation of 138 units, as set forth in the Exhibit(s) to this Resolution, subject to all reservations of all rights, which specifically include, without limitation, the following:

- a. The right to a vacant land adjustment, durational adjustments, and all other applicable adjustments permitted in accordance with COAH regulations;
- b. The right to adjust its fair share obligation in the event of any future legislation that adjusts the fair share obligations that the DCA reported on October 18, 2024;
- c. The right to adjust its fair share obligations in the event of a third-party challenge to the fair share obligations and the Borough of Hasbrouck Heights's response thereto.

3. The Borough hereby directs its Affordable Housing Counsel to file a declaratory judgment complaint in the appropriate venue after adoption this Resolution attaching this Resolution or to otherwise take such action as may be necessary to effectuate the same.

4. The Borough also hereby authorizes its Affordable Housing Counsel to file this resolution with the Program or any other such entity as may be determined to be appropriate.

5. This resolution shall take effect immediately, according to law



Ron Kistner  
Mayor

COUNCIL	MOTION	SECOND	AYE	NAY	ABSTAIN	PRESENT	ABSENT
Sickels			✓	✓			
Samperi	✓		✓				
Blng.			✓				
McGuire		✓	✓				
Sodora			✓	✓			
Blum			✓				

I, Anne Michelle Sery, Acting Borough Clerk of the Borough of Hasbrouck Heights, County of Bergen, State of New Jersey, do hereby certify that the foregoing Resolution is a certified copy of Resolution No. 32 adopted by the Governing Body on January 14, 2025.



Anne Michelle Sery  
Acting Borough Clerk