

BOROUGH OF AVALON  
CAPE MAY COUNTY  
NEW JERSEY

RESOLUTION NO. 25 - 2025

**SUBJECT:** A RESOLUTION OF THE BOROUGH OF AVALON, COUNTY OF CAPE MAY AND STATE OF NEW JERSEY, ADOPTING THE BOROUGH'S AFFORDABLE HOUSING PRESENT AND PROSPECTIVE NEED OBLIGATION FOR THE PERIOD OF JULY 1, 2025 THRU JULY 1, 2035 IN ACCORDANCE WITH P.L. 2024 C.2, AND RESERVING ALL RIGHTS

**WHEREAS**, the Borough of Avalon (hereinafter "Borough") has a demonstrated history of voluntary compliance with the Mount Laurel doctrine and the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et seq.; and

**WHEREAS**, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), on July 7 2015, the Borough filed a Declaratory Judgment Action in Superior Court, Law Division, Cape May County, under Docket No. CPM-L-306-15 ("2015 Action") seeking, among other things, a judicial declaration that the Borough's Housing Element and Fair Share Plan (hereinafter "Fair Share Plan"), to be amended as necessary, satisfies its "fair share" of the regional need for low and moderate income housing pursuant to the "Mount Laurel doctrine;" and

**WHEREAS**, the Borough's 2015 Action ultimately culminated in a Court-approved Housing Element and Fair Share Plan and a Final Judgment of Compliance and Repose, entered August 7, 2020 which entitles the Borough to immunity and precludes Mount Laurel lawsuits and builder's remedy lawsuits from being filed against the Borough until after July 1, 2025; and

**WHEREAS**, on March 20, 2024, Governor Murphy signed into law, P.L. 2024, c.2, which among other things, amended various provisions of the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq. ("FHA"), abolished the Council on Affordable Housing ("COAH") and established the Affordable Housing Dispute Resolution Program ("Program"); and

**WHEREAS**, P.L. 2024, c.2, sets forth that Fourth Round period of affordable housing obligations shall run from July 1, 2025 through June 30, 2035 ("Fourth Round" or "Round Four"); and

**WHEREAS**, pursuant to P.L. 2024, c.2, the Borough is located in Region 6, which is comprised of Atlantic, Cape May, Cumberland and Salem counties; and

**WHEREAS**, the amendments to the FHA require the Department of Community Affairs ("DCA") to prepare and publish a report on the calculations of the regional need and each municipality's present and prospective need affordable housing obligations for the Fourth Round within seven months of March 20, 2024; and

**WHEREAS**, on October 18, 2024 the DCA published its report on the calculations with respect to Statewide regional need and municipal present and prospective need affordable housing obligations for the Fourth Round (the "DCA Report"); and

**WHEREAS**, pursuant to P.L. 2024, c.2, the DCA has calculated the total statewide prospective need obligation to be 84,698 units, which equates to a statewide new construction obligation of over 8,400 affordable units per year; and

**WHEREAS**, the DCA Report calculates the Borough's non-binding Round Four obligations as follows: 1) a Present Need or Rehabilitation obligation of 0; and 2) a Prospective Need or New Construction Obligation of 31; and

**WHEREAS**, the calculations in the DCA Report are not binding on municipalities; and

**WHEREAS**, rather, pursuant to N.J.S.A. 52:27D-304.1 of the FHA, each municipality is required to determine its respective Fourth Round present and prospective need fair share obligations, and adopt a binding resolution describing the basis for the municipality's determination on or before January 31, 2025; and

**EXHIBIT 1**

**WHEREAS**, P.L. 2024, c.2, each municipality shall determine its Fourth Round present and prospective need fair share obligations, with consideration of the calculations in the DCA Report, and in accordance with the formulas established in N.J.S.A. 52:27D-304.2 and -304.3 of the FHA using “necessary datasets that are updated to the greatest extent practicable”; and

**WHEREAS**, the Borough and its professionals have reviewed the DCA Report along with the underlying data and data sets relied upon by the DCA in reaching its non-binding calculations for the Borough against the most up-to-date land use approvals, site specific information, construction permits, and MOD-IV data maintained and on file with the Borough with regard to the land capacity and equalized non-residential valuation factor; and

**WHEREAS**, the Borough accepts the estimate set forth in the DCA Report with respect to Present Need of 0; and

**WHEREAS**, the Borough accepts the estimate set forth in the DCA Report with respect to the Prospective Need of 31; and

**WHEREAS**, pursuant to N.J.S.A. 52:27D-304.1f(1)(b) 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 P.L. 2024, c.2 ... [;]” and

**WHEREAS**, the Borough’s calculation of its Present Need and Prospective Need obligations is/are entitled to a “presumption of validity” because it complies with Sections 6 and 7 of P.L. 2024, c.2; and

**WHEREAS**, the Borough, however, specifically reserves the right to adjust its present need and prospective need obligation, including for any of the foregoing adjustments: 1) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; and/or 2) a Durational Adjustment (whether predicated upon lack of sewer or lack of water); and

**WHEREAS**, in addition to the foregoing, the Borough specifically reserves all rights to revoke this Resolution and commitment in the event of: 1) a successful challenge to P.L. 2024, c.2 as a result of the pending litigation entitled: Borough of Montvale et al, v. State of New Jersey, et al., Docket No.: MER-L-1778-24; (2) any other such action challenging P.L. 2024, c.2; and/or (3) any subsequent legislative or regulatory enactment which alters or changes the deadlines, calculations, methodology and/or requirements of P.L. 2024, c.2; and

**WHEREAS**, the Borough further specifically reserves the right to take a position that its Round Four Prospective Need Obligation is lower than described herein in the event that a third party challenges the calculations provided for in this Resolution (a reservation of all litigation rights and positions, without prejudice); and

**WHEREAS**, in addition to the foregoing, nothing in P.L. 2024, c. 2 requires or can require an increase in the Borough’s Round Four 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 P.L. 2024, c.2, is to establish, for example, unchallenged numbers by default as of March 1, 2025; and

**WHEREAS**, in light of the above, the Borough Committee of the Borough of Avalon finds that it is in the best interest of the Borough to declare its obligations in accordance P.L. 2024, c.2 in accordance with this resolution.

**NOW, THEREFORE, BE IT RESOLVED** by the Borough Committee of the Borough of Avalon, in the County of Cape May, and State of New Jersey as follows:

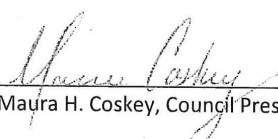
1. All of the Whereas Clauses set forth above are hereby incorporated into the operative clauses of this resolution by reference.

2. The Borough Committee hereby commits to a Round Four Present Need Obligation of 0 and the Round Four Prospective Need Obligation of 31, as described in this resolution subject to all reservations of rights, which specifically include:

a) The right to adjust the prospective need obligation based on lack of available vacant and developable land, sewer, and/or water, or any combination thereof;

- b) All rights to revoke or amend this Resolution in the event of a successful legal challenge, or legislative or regulatory change to P.L. 2024, c. 2;
  - c) All rights to take a position that Borough’s Round Four Present or Prospective Need Obligations are lower than described herein in the event that a third party challenges the calculations provided for in this Resolution; and
  - d) All rights to take a position that the Borough’s Round Four Present or Prospective Need Obligations are lower than described herein in the event a third-party claims the Borough’s Round Four Present or Prospective Need Obligations require an increase based on a reallocation or modification of the Regional Present or Prospective Need Obligations allegedly due from successful reduction of the allocated present and prospective need obligations assigned to another municipality in the Region.
3. In accordance with N.J.S.A. 52:27D-304.1, the Borough hereby directs the Borough Attorney or other designed Special Counsel, to file an action with the Affordable Housing Dispute Resolution Program along with this Resolution and take all necessary and proper steps to address any challenges to same by any interested parties.
4. The Borough’s calculation of Present and Prospective Need Obligations is/are entitled to a “presumption of validity” because it complies with Sections 6 and 7 of P.L. 2024, c.2.
5. The Borough Clerk is hereby directed to file a certified copy of this Resolution with the “Program” with forty-eight (48) hours of adoption as required by law.
6. The Borough further commits to adopt its housing element and fair share plan pursuant to N.J.S.A. 52:27D-304.1f(2) based on this determination on or before June 30, 2025, and hereby further directs the Borough Attorney, Borough Affordable Housing Planner and Borough Engineer to begin taking steps to prepare same.
7. A copy of this Resolution shall be uploaded, along with the filing date of the Borough’s action with the Program, shall be uploaded to the Borough website.
8. A copy of the Resolution shall remain on file in the Borough Clerk’s office and available for public inspection.
9. This Resolution shall take effect immediately, according to law.

COUNCIL	MOTION	SECOND	AYE	NAY	ABSTAIN	ABSENT
Coskey			✓			
Johnson			✓			
Juzaitis			✓			
McDermott		✓	✓			
Wierman	✓		✓			

  
 Maura H. Coskey, Council President

I HEREBY CERTIFY THAT the foregoing resolution was duly adopted by the Borough Council of the Borough of Avalon, New Jersey at the Council Meeting held on Wednesday, January 22, 2025 with the voting record as indicated above.

**CLERK’S CERTIFICATE**  
 I hereby certify that the foregoing is a true copy of a(n) Resolution adopted by the Borough Council of the Borough of Avalon in the County of Cape May, New Jersey at a meeting held on the 22nd day of January, 2025.  
C. Danielle Nollett  
 C. Danielle Nollett, Borough Clerk

  
 C. Danielle Nollett, Borough Clerk