

Resolution #R-39-25

RESOLUTION OF THE BOROUGH OF MONMOUTH BEACH, COUNTY OF MONMOUTH COMMITTING TO ITS FOURTH ROUND PRESENT NEED AND PROSPECTIVE NEED AFFORDABLE HOUSING OBLIGATIONS

WHEREAS, the Borough of Monmouth Beach, County of Monmouth, State of New Jersey, (hereinafter, "Borough" or "Monmouth Beach") has a demonstrated history of voluntary compliance with its constitutional affordable housing obligations and in fact obtained a Final Round Three Judgment of Compliance and Repose on July 18, 2019 from the Court in the matter captioned In the Matter of the Application of the Borough of Monmouth Beach, County of Monmouth, Superior Court of New Jersey, Law Division, Docket No. MON-L-2538-15 thereby immunizing the Borough from builder remedy litigation until July 1, 2025 (the "Third Round Litigation"); and

WHEREAS, on March 20, 2024, Governor Murphy signed into law P.L. 2024, c.2, an Amendment to the 1985 Fair Housing Act (hereinafter "Amended FHA" or "Act") establishing the statutory calculation of the state-wide fair share obligation for the Fourth Round of affordable housing for the time period 2025-2035; and

WHEREAS, the Amended FHA requires the Department of Community Affairs ("DCA") to provide its calculation of every municipality's Fourth Round fair share affordable housing obligations based upon the criteria on the Amended FHA and the DCA issued a report on October 18, 2024 (the "DCA Report") wherein it supplied its calculation of the fair share affordable housing obligation for all municipalities, including the Borough of Monmouth Beach; and

WHEREAS, the DCA Report calculated Monmouth Beach's Fourth Round fair share obligations as follows: Present Need (Rehabilitation) Obligation of zero and a Fourth Round Prospective Need (New Construction) Obligation of 47; 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 municipalities to secure an adjustment to their rehabilitation obligation through a windshield survey and empowers municipalities to secure vacant land adjustments, durational adjustments, and other adjustments to its Prospective Need obligation; and

WHEREAS, the Court approved a Vacant Land Adjustment in the Third Round Litigation thereby substantially reducing the Borough's Prospective Need obligation through the establishment of a Realistic Development Potential; and

WHEREAS, the Borough intends to accept its Present Need Obligation of zero units and a Fourth Round Prospective Need obligation of 47 units as reported by the DCA in its October 18, 2025 Report subject to various other rights; and

WHEREAS, in accordance with N.J.S.A 52:27D-311 of the Amended Act, the Borough invokes its right to a vacant land adjustment, which will result in a reduction to the new construction portion of its fair share obligation; and

WHEREAS, substantial legislative and legal activity has occurred and is ongoing since the enactment of the Amended FHA that warrants the reservation of certain rights to avoid any claim that the Borough has waived them; and

WHEREAS, a number of municipalities, initiated by the Borough of Montvale, have filed suit (MER-L-1778-24) seeking to stay the implementation of the Amended FHA for a number of legal reasons and have also challenged the newly implemented NJHMFA regulations amending the Housing Affordability Control rules (the "Municipal Legal Challenge") and at the time of this Resolution, the outcome of the Municipal Legal Challenge is uncertain; 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 issued Directive #14-24 dated December 13, 2024 and pursuant to that Directive, a municipality seeking a certification of compliance with the Act is required to file a legal 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 Mayor and Borough Council believes it is in the best interest of the Borough to declare its Fourth-Round affordable housing obligation in accordance with the Act and direct its affordable housing counsel to file a declaratory judgment action within 48 hours of the adoption of this resolution in order to retain immunity from builder's remedy litigation; and

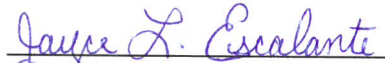
NOW, THEREFORE, BE IT RESOLVED on this 14th day of January, 2025 by the Governing Body of the Borough of Monmouth Beach, County of Monmouth, State of New Jersey, as follows:

1. The preamble of this resolution is incorporated into the operative clauses of this resolution as if set forth in full.
2. The Borough of Monmouth Beach commits to a Fourth Round Present Need ("Rehabilitation") Obligation of zero units and a Prospective Need "(New Construction)" obligation of 47 units 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 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 of Monmouth Beach response thereto.
3. The Borough hereby directs its Affordable Housing Counsel to file a declaratory judgment complaint within 48 hours after adoption this resolution attaching this resolution.
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.

Certification

The foregoing is a true copy of a resolution passed by the Governing Body of the Borough of Monmouth Beach at a meeting held on January 22, 2025.



Joyce L. Escalante, RMC
Municipal Clerk
Borough of Monmouth Beach

