

RESOLUTION 68-25

A RESOLUTION OF THE TOWNSHIP OF UPPER FREEHOLD, COUNTY OF MONMOUTH COMMITTING TO ITS FOURTH ROUND PRESENT NEED AND PROSPECTIVE NEED AFFORDABLE HOUSING OBLIGATIONS SUBJECT TO THE RIGHT TO ASSERT A DURATIONAL ADJUSTMENT

WHEREAS, the Township of Upper Freehold, County of Monmouth, State of New Jersey, (hereinafter, "Township" or "Upper Freehold") has a demonstrated history of voluntary compliance with its constitutional affordable housing obligations and in fact obtained a Third Round Judgment of Compliance and Repose on from the Court in the matter captioned In the Matter of the Application of the Township of Upper Freehold, County of Monmouth, Superior Court of New Jersey, Law Division, Docket No. MON-L-2536-15 thereby immunizing the Township 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 Township of Upper Freehold; and

WHEREAS, the DCA Report calculated Upper Freehold's Fourth Round fair share obligations as follows: Present Need (Rehabilitation) Obligation of 15 units and a Fourth Round Prospective Need (New Construction) Obligation of 70 affordable housing units; and

WHEREAS, the Amended FHA further provides that "[all] 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 their Prospective Need obligation; and

WHEREAS, the Court approved a durational adjustment in the Third Round Litigation thereby deferring the Township's Prospective Need obligation until adequate sewer infrastructure and capacity are available in the Township; and

WHEREAS, the Township intends to accept its Present Need Obligation of 15 units and a Fourth Round Prospective Need obligation of 70 units as reported by the DCA in its October 18, 2025 Report subject to a durational adjustment and various other rights; and

WHEREAS, in accordance with N.J.S.A 52:27D-311 of the Amended Act, the Township invokes its right to a durational adjustment due to the continuing absence of adequate sewer infrastructure and capacity, which will result in a deferral of its new construction or Prospective Need 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 Township has waived them; and

WHEREAS, a number of municipalities, initiated by the Township of Montvale, have filed suit (Docket No. 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

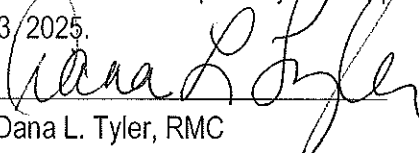
WHEREAS, the Mayor and Township Council believes it is in the best interest of the Township to declare its Fourth-Round affordable housing obligation in accordance with the Act and direct the Township's Affordable Housing Attorney to file a declaratory judgment action within 48 hours of the adoption of this resolution in order to retain immunity from builder's remedy litigation; and

NOW, THEREFORE, BE IT RESOLVED by the Township Council of the Township of Upper Freehold, 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 Township of Upper Freehold commits to a Fourth Round Present Need ("Rehabilitation") Obligation of 15 units and a Prospective Need "(New Construction)" obligation of 70 units subject to all reservations of all rights, which specifically include, without limitation, the following:
 - a. The right to a durational adjustment, and all other applicable adjustments and crediting 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 Township of Upper Freehold response thereto.
3. The Township hereby directs the Township's Affordable Housing Attorney to file a declaratory judgment complaint within 48 hours after adoption this resolution attaching this resolution.

4. The Township also hereby authorizes the Township's Affordable Housing Attorney to file this resolution with the Program or any other such entity as may be determined to be appropriate.

I hereby certify the above to be a true copy of a Resolution adopted by the Upper Freehold Township Committee at a meeting held January 23, 2025.



Dana L. Tyler, RMC
Municipal Clerk/Administrator