

RESOLUTION 33-25: COMMITTING THE BOROUGH OF ROCKAWAY TO COMPLY WITH AFFORDABLE HOUSING OBLIGATIONS

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 “Amended FHA”); and

WHEREAS, the Amended FHA requires the Department of Community Affairs (“DCA”) to produce non-binding estimates of need 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 based upon its interpretation of the standards in the Amended FHA; and

WHEREAS, the DCA Report calculates the Borough of Rockaway Round 4 (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of 195 and a Prospective Need or New Construction Obligation for Round 4 of 73; and

WHEREAS, the Amended FHA provides that the DCA Report is non-binding, thereby inviting municipalities to demonstrate that the Amended FHA would support a lower fair share calculation; and

WHEREAS, substantial activity has occurred surrounding the Amended FHA and is ongoing since the Amended FHA was signed into law that warrants the Borough of Rockaway explicitly reserving certain rights to avoid any claim that it has waived them; and

WHEREAS, for example, the Borough of Rockaway notes that the New Jersey Institute of Local Government Attorneys (“NJILGA”) has expressed its support for legislation (hereinafter the “NJILGA Legislation”) which, if adopted would reduce the Borough of Rockaway Round 4 prospective Need from 73 to 13 and which further provides that municipalities would have “90 days from receipt of revised fair share obligations from the [DCA] to provide amended Housing Element and Fair Share Plans addressing the new number; and

WHEREAS, the Borough of Rockaway supports the NJILGA Legislation and would have the right to reduce its Round 4 obligation in the event that the Legislature enacts the NJILGA Legislation; and

WHEREAS, the Amended FHA specifically provides that “[a]ll parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by 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, COAH regulations authorize the award of a durational adjustment and vacant land adjustment; and

WHEREAS, based on the foregoing, the Borough of Rockaway commits to a fair share of 195 units present need and 73 units prospective need subject to a durational adjustment and vacant land adjustment; and

WHEREAS, the Borough of Rockaway reserves the right to comply with the NJILGA Legislation if the Legislature enacts it; and

WHEREAS, the Borough of Rockaway also reserves all rights to adjust its position in the event of any rulings in Borough of Montvale, et al. v. State of New Jersey, et al., Docket No. MER-L-1778-24 (hereinafter the "Montvale Case") or any other such action that alters the deadlines and/or requirements of the Amended FHA; and

WHEREAS, in the event that a third-party challenge the calculations provided for in this Resolution, the Borough of Rockaway reserves the right to take such position as it deems appropriate in response thereto including that its Round 4 Present or Prospective Need Obligations should be lower than described herein; and

WHEREAS, in light of the above, the Mayor and Council of the Borough of Rockaway finds that it is in the best interest of the Borough of Rockaway to declare its commitment to the obligations reported by the DCA on October 18, 2024 subject to the reservations set forth herein; 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 FHA shall file an action in the form of a declaratory judgment complaint in the county in which the municipality is located 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 of Rockaway seeks a certification of compliance with the FHA and, therefore, directs its affordable housing Counsel to file a declaratory relief action in the Superior Court of New Jersey, Morris County within 48 hours of the adoption of this resolution.

NOW, THEREFORE, BE IT RESOLVED, on this 23rd day of January, 2025 by the Mayor and Council of the Borough of Rockaway, Morris County, State of New Jersey, as follows:

- 1) All of the Whereas Clauses set forth above are incorporated into the operative clauses of this resolution.
- 2) The Mayor and Council of the Borough of Rockaway hereby commits to the DCA Round 4 Present Need Obligation of 195 units and the Round 4 Prospective Need Obligation of 73 units described in this Resolution, subject to all reservations of rights, which specifically include:
 - a. The right to a durational adjustment in accordance with COAH regulations;
 - b. The right to comply with the NJILGA Legislation if the Legislature enacts it;
 - c. The right to adjust its obligation in the event of any future legislation, including but not limited to the NJILGA Legislation, that adjusts the obligations the DCA reported on October 18, 2024;
 - d. The right to adjust its obligations based upon any ruling in the Montvale Case or other litigation; and
 - e. The right to adjust its obligations in the event of a third-party challenge to the obligations and the Borough's response thereto.

- 3) The Mayor and Council of the Borough of Rockaway hereby directs its Affordable Housing Counsel to file a declaratory judgment complaint in Morris County within 48 hours after adoption of this resolution attaching this resolution.
- 4) The Mayor and Council of the Borough of Rockaway 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.

DATE: January 23, 2025


BOROUGH OF ROCKAWAY

ATTEST: Kimberly Cuspilich, Borough Clerk

BY: Thomas Mulligan, Mayor

CERTIFICATION

I, Kimberly Cuspilich, Borough Clerk of the Borough of Rockaway, in the County of Morris, do hereby certify that the foregoing is a true and correct copy of a resolution duly adopted by the Mayor and Council at a meeting held on January 23, 2025.


Kimberly Cuspilich, RMC
Borough Clerk