

BOROUGH OF TOTOWA  
COUNTY OF PASSAIC  
STATE OF NEW JERSEY

RESOLUTION NO. 26-2025

RESOLUTION OF THE BOROUGH OF TOTOWA COMMITTING TO  
DCA'S FOURTH ROUND AFFORDABLE HOUSING PRESENT NEED  
AND PROSPECTIVE NEED NUMBERS  
AS MODIFIED UNDER PROTEST

WHEREAS, on March 20, 2024, Governor 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, pursuant to the Amended FHA at N.J.S.A. 52:27D-304.1(f)(1), a municipality is required to adopt a binding resolution containing a "determination of present and prospective fair share obligation" and submit to the jurisdiction of the Affordable Housing Dispute Resolution Program, in order to avoid the loss of immunity from exclusionary zoning litigation (formerly referred to as Builder's Remedy lawsuits) immediately thereafter; and

WHEREAS, the Amended FHA requires the Department of Community Affairs ("DCA") to produce non-binding estimates of fair share obligations 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 Totowa's Round 4 (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of 211 units and a Prospective Need or New Construction Obligation of 528 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 lower calculations of Round 4 affordable housing obligations; and

WHEREAS, pursuant to N.J.S.A. 52:27D-304.3, a municipality's average allocation factor is comprised of the equalized nonresidential factor, income capacity factor and land capacity factor and shall be averaged to yield the municipality's average allocation factor, 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 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 vacant land adjustments as well as durational adjustments; and

WHEREAS, the DCA has released a Geographic Information Systems spatial data representation of the Land Capacity Analysis for P.L. 2024, c.2 containing the Vacant and Developable land information that serves as the basis for calculating the land capacity factor; and

WHEREAS, the Borough of Totowa has reviewed the lands identified by the DCA for the land capacity factor with respect to the MOD-IV Property Tax List data, construction permit data, land use board approvals, configuration and accessibility, and environmental constraints to ascertain whether these identified developable lands may accommodate development; and

WHEREAS, based on the foregoing, the Borough of Totowa relies on the DCA calculations of Totowa's fair share obligations as modified herein to account for Totowa's review of the lands identified by the DCA for the land capacity factor with respect to the MOD-IV Property Tax List data, construction permit data, land use board approvals, configuration and accessibility to ascertain whether these identified developable lands may accommodate development and the Borough of Totowa seeks to commit to provide its fair share of 211 units present need and 89 units prospective need, subject to any vacant land and/or durational adjustments it may seek as part of the Housing Plan element and Fair Share Plan element it subsequently submits in accordance with the Amended FHA; and

WHEREAS, the Borough of Totowa reserves the right to comply with any additional amendments to the FHA that the Legislature may enact; and

WHEREAS, the Borough of Totowa is a named plaintiff in that certain litigation captioned as Borough of Montvale v. State of New Jersey, Superior Court of New Jersey, Docket No. MER-L-1778-24 ("Litigation"), which among other things asserts constitutional and legal challenges to numerous provisions of the Amended FHA; and

WHEREAS, the actions contained in this Resolution are taken under protest and are intended to comply with the Amended FHA while the Borough of Totowa continues to dispute its validity, such that the Borough of Totowa does not waive any legal rights or claims that it possesses relating to the Amended FHA as set forth in the Lawsuit by virtue of the adoption of the instant Resolution and the Borough of Totowa further reserves the right to alter its position contained in this Resolution based upon any rulings in the Litigation or in any other similar proceedings by a court of competent jurisdiction; and

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

WHEREAS, in light of the above, the Mayor and Council of the Borough of Totowa finds that it is in the best interest of the Borough of Totowa to commit to the modified present need and prospective need Fourth Round affordable housing fair share numbers set forth herein, subject to the reservations set forth herein; and

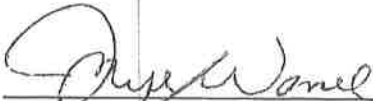
WHEREAS, in accordance with AOC Directive #14-24 dated December 13, 2024, the Mayor and Council of the Borough of Totowa finds that, as a municipality seeking a certification of compliance with the FHA, it is in the best interests of Borough of Totowa to direct the submission and/or filing of the within Resolution with the Program or any other such entity as may be determined to be appropriate.

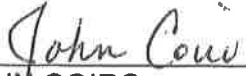
NOW, THEREFORE, BE IT RESOLVED on this 28<sup>th</sup> day of January, 2025, by the Mayor and Council of the Borough of Totowa, County of Passaic, State of New Jersey as follows:

1. All of the above Whereas Clauses are incorporated into the operative clauses of this Resolution.
2. The Borough of Totowa hereby commits to the DCA's Round 4 Present Need Obligation of 211 units and the DCA's Round 4 Prospective Need Obligation of 89 units, as explained above and subject to all reservations of rights set forth above.
3. The Borough of Totowa authorizes its Municipal Attorney to submit and/or file the within Resolution with the Program or any other such entity as may be determined to be appropriate.
4. This Resolution shall take effect immediately, according to law.

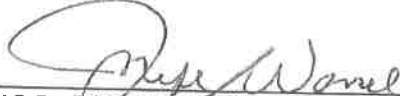
ATTEST:

BOROUGH OF TOTOWA

  
\_\_\_\_\_  
JOSEPH WASSEL, RMC  
MUNICIPAL CLERK

By:   
\_\_\_\_\_  
JOHN COIRO  
MAYOR

I, Joseph Wassel, Municipal Clerk of the Borough of Totowa, do hereby certify that the above is a true copy of a Resolution passed by the Municipal Council of the Borough of Totowa at a Regular Meeting held on January 28, 2025.

  
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JOSEPH WASSEL, RMC  
MUNICIPAL CLERK

Dated: January 28, 2025