

TOWNSHIP OF LOWER, COUNTY OF CAPE MAY, STATE OF NEW JERSEY

RESOLUTION #2025-63

Title: **A RESOLUTION COMMITTING THE TOWNSHIP OF LOWER 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 Township of Lower's Round 4 (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of 75 and a Prospective Need or New Construction Obligation for Round 4 of 56; 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, the Township of Lower commits to the present need number and Round 4 prospective need number that the DCA reported on October 18, 2024 and acknowledges that its fair share is cumulative, meaning it must address the prospective need obligations from Rounds 1, 2 and 3; and

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

WHEREAS, for example, the Township of Lower notes that the New Jersey Institute of Local Government Attorneys ("NJILGA") has expressed its support for legislation (hereinafter "NJILGA Legislation") which, if adopted, would reduce the Township of Lower's Round 4 prospective Need from 56 to 19 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 Township of Lower supports the NJILGA Legislation for the reasons set forth in the resolution attached hereto as Exhibit A 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 biding court decisions" (N.J.S.A 52:27D-311 (m)); and

WHEREAS, COAH regulations authorize the award of a durational adjustment; and

WHEREAS, based on the foregoing, the Township of Lower commits to a fair share of 75 units present need and 56 units prospective need subject to a durational adjustment; and

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

WHEREAS, the Township of Lower also reserves all rights to adjust its position in the event of any rulings in the Montvale case (MER-L-1778-24) 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 challenges the calculations provided for in this Resolution, the Township of Lower 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 Township Council of the Township of Lower finds that it is in the best interest of the Township of Lower 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

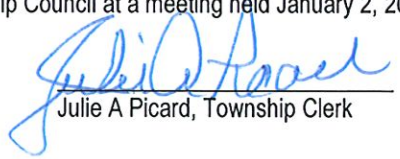
WHEREAS, the Township of Lower seeks a certification of compliance with the FHA and, therefore, directs its affordable housing Counsel to file a declaratory relief action within 48 hours of the adoption of this resolution in Cape May County.

NOW, THEREFORE, BE IT RESOLVED, on this 2nd day of January, 2025 by the Township Council of the Township of Lower, Cape May 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 Township Council of the Township of Lower hereby commits to the DCA Round 4 Present Need Obligation of 75 units and the Round 4 Prospective Need Obligation of 56 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 NJLGA Legislation if the Legislature enacts it;
 - c) The right to adjust its obligation in the event of any future legislation that adjusts the obligations the DCA reported on October 18, 2024;
 - c) The right to adjust its obligations based upon any ruling in the Montvale litigation or other litigation; and
 - c) The right to adjust its obligations in the event of a third-party challenge to the obligations and the Township's response thereto.
3. The Township Council of the Township of Lower hereby directs its Affordable Housing Counsel to file a declaratory judgment complaint in Cape May County within 48 hours after adoption this resolution attaching this resolution.
4. The Township Council of the Township of Lower 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.

	MOTION	SECOND	AYE	NAY	RECUSE	ABSTAIN	ABSENT
CONRAD	+		+				
<i>Abraham</i>			+				
ROY		+	+				
COOMBS			+				
SIPPEL			+				

I, Julie A. Picard, Township Clerk of the Township of Lower, County of Cape May, State of New Jersey, do hereby certify the foregoing to be a true and exact copy of a resolution duly authorized by the Township Council at a meeting held January 2, 2025.


Julie A. Picard, Township Clerk

TOWNSHIP OF LOWER, COUNTY OF CAPE MAY, STATE OF NEW JERSEY

RESOLUTION #2025-57

Title: **A RESOLUTION SUPPORTING AN AMENDMENT OF THE FAIR HOUSING ACT (FHA) AS PROPOSED BY THE NEW JERSEY INSTITUTE OF LOCAL GOVERNMENT ATTORNEYS (NJILGA)**

WHEREAS, the current standards embodied in the New Jersey Fair Housing Act ("FHA") impose unrealistic burdens on municipalities as demonstrated by the fact that the FHA calls for the imposition of a statewide affordable housing obligation of 84,698 just for Round 4 on municipalities that issued only 99,956 Certificates of Occupancy for all housing units in the 2010-2020 period that was used to establish prospective need obligations for Round 4; and

WHEREAS, the imposition of unrealistic obligations does not advance the realistic opportunity for the construction of more affordable housing, but instead encourages opposition and litigation; and

WHEREAS, the imposition of excessive obligations disincentivizes municipalities to voluntarily comply – an overarching goal of all three branches of government; forces municipalities to overdevelop, thereby turning our Garden State into the garden apartment state; and spikes the obligations on taxpayers as municipal governments are left no choice but to commit to expensive compliance techniques in order to try to ameliorate the concerns of their communities with overdevelopment; and

WHEREAS, even-handed justice requires that the obligations imposed by our laws must be realistic in order to justify imposing an obligation of constitutional dimension on municipalities to create a realistic opportunity for affordable housing; and

WHEREAS, the unrealistic obligations imposed by the current laws can be easily addressed by redefining the manner in which the regional need is calculated to be faithful to a principle embodied in the FHA despite its many changes over almost forty years; and

WHEREAS, more specifically, the FHA has consistently defined the prospective need to include "a projection of housing needs based on development and growth which is reasonably likely to occur in a region or a municipality, as the case may be, as a result of actual determination of public and private entities" N.J.S.A. 52:27D-304 (j); and

WHEREAS, a determination of the number of new residential housing units, adjusted to remove tear down/rebuilds, represents a far more solid foundation to project "development and growth which is reasonably likely to occur" than any other standard; and

WHEREAS, establishing prospective need for affordable units based on 20 percent of residential housing units actually constructed over a prior ten-year period accords with New Jersey's long-standing policies of empowering municipalities to cure the abuse of exclusionary zoning with traditional inclusionary zoning; and

WHEREAS, the demand for market-rate housing is a reasonable basis for determining whether and to what extent a realistic opportunity for the creation of affordable housing may exist, and the issuance of certificates of occupancy for new residential units is a reliable indicator of such demand; and

WHEREAS, a standard that ensures that as our state grows it grows with a commensurate number of affordable housing units will put the doctrine on a trajectory that will avoid the doctrine from crumbling under its own weight by forcing municipalities to try to address overwhelming obligations; and

WHEREAS, the New Jersey Institute of Local Government Attorneys ("NJILGA") has expressed its support for an amendment to the FHA by which "development and growth which is reasonably likely to occur" would be based upon the net number of new housing units constructed over each ten-year period for which the state's affordable housing rounds are established; and

WHEREAS, for the above reasons, the Mayor and Council of the Township of Lower has determined that its prospective need, and the prospective need for all New Jersey municipalities for the fourth round and all future rounds of affordable housing obligations, should be calculated using NJILGA's proposed net housing unit based on certificates of occupancy as a methodology rather than the current FHA methodology based on "household change."

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Township of Lower, in the County of Cape May, and State of New Jersey, that the New Jersey Legislature is hereby requested to enact the amendment to the Fair Housing Act that has been recommended by the New Jersey Institute of Local Government Attorneys; and

BE IT FURTHER RESOLVED, that the clerk of the Township of Lower is also hereby directed to send a copy of this signed, dated Resolution within five (5) days after its adoption, by mail and email to the following additional listed persons and entities:

New Jersey Institute for Local Government Attorneys
P.O. Box 5389
Clinton, New Jersey 08809
Attention: J. Peter Jost, Esq.
Executive Director
jpeter@jjlegal.com

Senator Michael L. Testa
610 East Landis Avenue
Vineland, New Jersey 08360

Assemblyman Antwan L. McClellan
Assemblyman Erik K. Simonsen
School House Office Park
211 South Main Street, Suite 104
Cape May Court House, New Jersey 08210

	MOTION	SECOND	AYE	NAY	RECUSE	ABSTAIN	ABSENT
CONRAD							
ROY							
COOMBS							
SIPPEL							

I, Julie A. Picard, Township Clerk of the Township of Lower, County of Cape May, State of New Jersey, do hereby certify the foregoing to be a true and exact copy of a resolution duly authorized by the Township Council at a meeting held January 2, 2025.

Julie A Picard, Township Clerk