

Borough of Fair Lawn



January 21, 2025

RESOLUTION NO. 91-2025

Resolution Addressing the 4th Round Affordable Housing Present and Prospective Need Obligations for the Borough of Fair Lawn

WHEREAS, the State Legislature of the State of New Jersey passed, and on March 18, 2024 Governor Phil Murphy signed, a Bill commonly known as A4/S50 or P.L. 2024, c.2, hereinafter referred to as the 4th Round Rules; and

WHEREAS, the 4th Round rules abolished the Council on Affordable Housing ("COAH") and delegated its responsibilities to the New Jersey Department of Community Affairs ("DCA"), the New Jersey Housing and Mortgage Finance Agency, and the Affordable Housing Dispute Resolution Program (the "Program"), ordered to be formed by the same law; and

WHEREAS, the 4th Round rules ordered the DCA to calculate and publish, not later than October 20, 2024, the "Prospective Need" and "Present Need" housing obligations for each municipality in the State of New Jersey according to a methodology based largely upon the methodology approved by the Honorable Mary C. Jacobsen, A.J.S.C. of Mercer County on March 8, 2018 for the 3rd Round; and

WHEREAS, the Prospective Need represents the need for newly constructed or preserved affordable housing units projected over the next 10 years, calculated for "regions" consisting of three to four counties and allocated to each municipality based upon factors that consider their available vacant land, median household income, and growth in equalized assessed non-residential property value relative to their region; and

WHEREAS, the Borough of Fair Lawn is located in Region 1, identified in the 4th Round rules as consisting of all municipalities in Hudson, Bergen, Passaic and Sussex Counties; and

WHEREAS, the Present Need represents the need for rehabilitation of substandard homes in the municipality, occupied by low- and moderate-income households, based upon publicly available local estimates of housing that lacks adequate plumbing or kitchens, is overcrowded, is more than 50 years old, and is likely to be occupied by low- and moderate-income households; and

WHEREAS, on October 18, 2024, the DCA published its non-binding calculations of the Prospective and Present Needs for every municipality in New Jersey, which included, for the Borough of Fair Lawn, a Prospective Need of 412 units and a Present Need of 65 units; and

WHEREAS, the 4th Round rules require that every municipality adopt before January 31, 2025, and upload onto the Program's website within 48 hours, a binding resolution identifying their affordable housing obligations; and

WHEREAS, the rules permit municipalities to either accept the calculations published by DCA or alternative numbers which are based upon the methodology laid out in the 4th Round rules; and

WHEREAS, the Borough of Fair Lawn's affordable housing consultants have reviewed the data utilized by the DCA and determined that the land area considered by the DCA in the land capacity factor for allocating regional affordable housing need to the Borough of Fair Lawn may in fact include certain acres of lands that have been preserved for open space and recreation purposes but which were not included in the State-level mapping used in DCA's calculations; and

WHEREAS, correcting the land capacity factor to account for those these preserved acres, once confirmed, will reduce the Borough of Fair Lawn's Prospective Need as calculated by DCA to be 412 units; and

WHEREAS, the 4th Round rules, as written at Section 23 of P.L.2024, c.2 (C.52:27D-310.1), allow built-out communities to seek an adjustment of their Prospective Need obligations based on a lack of vacant, available, and environmentally unconstrained land on which to build new homes, called a vacant land adjustment, with the caveat that any municipality seeking a vacant land adjustment shall be required to prepare a Housing Element and Fair Share Plan providing for the satisfaction of not less than 25% of its Prospective Need, which, in the case of the Borough of Fair Lawn, is 103 units; and

WHEREAS, the Borough of Fair Lawn's affordable housing consultants, upon conclusion of the confirmation of the vacant land analysis calculations completed by DCA, shall determine whether the Prospective Need, taking into account the correct vacant land analysis, exceeds the statutory minimum of 25% of the Prospective Need; and

WHEREAS, the Borough of Fair Lawn Planning Board shall adopt not later than June 30, 2025 a Housing Element and Fair Share Plan addressing its Prospective Need and Present Need, with the Prospective Need to be adjusted to reflect the results of the vacant land analysis but not below 103 units, pursuant to section 23 of P.L.2024, c.2 (C.52:27D-310.1); and

WHEREAS, the Governing Body of the Borough of Fair Lawn shall adopt not later than March 15, 2026, all ordinances necessary to implement that Housing Element and Fair Share Plan, as required by the 4th Round rules passed by the Legislature and signed by the Governor; and

WHEREAS, failure to comply with the 4th Round rules, including but not limited to meeting the deadlines stated herein or declaring affordable housing obligations that are not consistent with the methodologies dictated and endorsed in the 4th Round rules, would leave the Borough of Fair Lawn vulnerable to exclusionary zoning or builders' remedy lawsuits that, if successful, would strip the Borough of Fair Lawn of the zoning

powers that enable it to control the location, intensity, and design of multi-unit residential development that would produce affordable housing.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Fair Lawn, in the County of Bergen and State of New Jersey:

1. The Borough of Fair Lawn declares that it has a 412-unit Prospective Need for the 4th Affordable Housing Round, as calculated by the DCA, subject to the Borough of Fair Lawn completing its conducting an analysis of its vacant, available land based upon section 23 of P.L.2024, c.2 (C.52:27D-310.1) in order to determine its eligibility to adjust its Prospective Need to reflect the results of the vacant land analysis but not below 103 units, pursuant to section 23 of P.L.2024, c.2 (C.52:27D-310.1) and the Borough of Fair Lawn reserves the right and opportunity to update this calculation prior to the adoption of its Fourth Round Housing Element and Fair Share Plan;
2. The Borough of Fair Lawn declares that it has a 65 unit Present Need for the 4th Affordable Housing Round, as calculated by the DCA;
3. The Borough of Fair Lawn Planning Board shall adopt, and the Mayor and Council shall endorse, a Housing Element and Fair Share Plan, not later than June 30, 2025, that addresses the affordable housing obligations above, as may be adjusted in accordance with the N.J.S.A. 52:27D-301 et seq., P.L. 2024, c.2, and applicable case law and determinations of the Affordable Housing Dispute Resolution Program;
4. The Borough of Fair Lawn specifically reserves all rights and positions, without prejudice, to revoke this resolution and commitment in the event of a successful challenge to P.L. 2024 c.2 in the context of Borough of Montvale, et al. v. State of New Jersey, Docket No. MER-L-1778-24 or any other such action challenging P.L. 2024 c.2 or calculations of Fourth Round Present Need or Prospective Need Obligations, or any legislation adopted and signed into law by the Governor of New Jersey altering the deadlines and/or requirements of P.L. 2024 c.2;
5. The Borough of Fair Lawn's Legal Counsel, within 48 hours of the passing of this resolution, is directed to file an action with the Program regarding this resolution in order to maintain the Borough of Fair Lawn's immunity from exclusionary zoning litigation;
6. The Borough Clerk shall publish the filing materials and this resolution on a publicly accessible page of the Borough of Fair Lawn's website; and
7. This Resolution shall take effect immediately.

	Motion	Second	Aye	Nay	Abstain	Absent
Salinas			X			
Krause		X	X			
Reinitz			X			
Cutrone	X		X			
Rottenstrich			X			

The within Resolution was duly adopted by the Borough Council at their meeting of January 7, 2025.



Nicholas J. Magarelli, RMC
Municipal Clerk