

**Resolution 78-25 Committing To Round 4 Present An Prospective Need
Affordable Housing Obligations**

WHEREAS, the Borough has a demonstrated history of voluntary compliance as evidenced by its Round 3 record; and,

WHEREAS, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), on July 2, 2015, the Borough of Franklin Lakes (hereinafter “Franklin Lakes” or the “Borough”) filed a Declaratory Judgment Complaint in Superior Court, Law Division seeking, among other things, a judicial declaration that its Housing Element and Fair Share Plan (hereinafter “Fair Share Plan”), to be amended as necessary, satisfies its “fair share” of the regional need for low and moderate income housing pursuant to the “Mount Laurel doctrine,” and,

WHEREAS, that culminated in a Court-approved Housing Element and Fair Share Plan and a Final Judgment of Compliance and Repose, which precludes builder’s remedy lawsuits until July 1, 2025; and,

WHEREAS, on March 20, 2024, Governor Murphy signed into law P.L. 2024, c.2 (hereinafter “A4” or “Amended FHA”); and,

WHEREAS, A4 calculates the size of the regional affordable housing need as follows “projected household change for a 10-year round in a region shall be estimated by establishing the household change experienced in the region between the most recent federal decennial census, and the second-most recent federal decennial census. This household change, if positive, shall be divided by 2.5 to estimate the number of low- and moderate-income homes needed to address low- and moderate-income household change in the region, and to determine the regional prospective need for a 10-year round of low- and moderate-income housing obligations...”; and,

WHEREAS, this means that the regional need equates to 40% of regional household growth; and,

WHEREAS, the 1985 version of the Fair Housing Act and A4 both prohibit a result that would compel a municipality to spend its own money on compliance; and,

WHEREAS, the theory which permits a municipality to meet its obligations without municipal subsidy is zoning for “inclusionary zoning”; and,

WHEREAS, inclusionary zoning most typically requires a 15% or 20% set aside; and,

WHEREAS, it is not clear how a regional need predicated upon 40% of anticipated growth can be met with 15-20% set asides and without municipal subsidy; and,

WHEREAS, this is exacerbated by the fact that certain other municipalities in the region have an allocation of 0% of the prospective need (new construction obligation), irrespective of the growth in that particular municipality; and,

WHEREAS, A4 yields a statewide new construction obligation of over 8,400 affordable units per year; and,

WHEREAS, this is a substantially higher annual number than was imposed by COAH in the “Prior Round” or any iteration of its Round 3 regulations; and,

WHEREAS, A4 determines the size of the regional need, but does not calculate allocation of the need to individual municipalities; and,

WHEREAS, instead, A4 required the Department of Community Affairs (“DCA”) to produce non-binding estimates of need on or before October 20, 2024, which it did provide on October 18, 2024 (“DCA Report”); and,

WHEREAS, the DCA Report calculates the Borough’s Round 4 (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of 65 units and a Prospective Need or New Construction Obligation of 497 units; and,

WHEREAS, the Borough accepts the conclusions in the DCA Report, except regarding the land capacity allocation factor; and,

WHEREAS, as to the **Land Capacity Allocation Factor**, the Borough notes that the DCA belatedly provided the data it used to establish this factor, i.e., on or about November 27, 2024 instead of by October 20, 2024; and,

WHEREAS, the Borough further notes that the link to the DCA GIS data that the DCA belatedly made available to municipalities includes the following language: The land areas identified in this dataset are based on an the best available data using publicly available data enumerated in N.J.S.A. 52:27D-304.3c.(4) to estimate the area of developable land, within municipal and regional boundaries, that may accommodate development. **It is important to note that the identified areas could be over or under inclusive depending on various conditions and that municipalities are permitted to provide more detailed mappings as part of their participation in the Affordable Housing Dispute Resolution Program.**” (emphasis added); and,

WHEREAS, the DCA maintains that the areas the DCA identified as developable are indeed overinclusive and, consequently, the Borough’s Professional Planner has prepared a report, attached hereto as Exhibit A; and,

WHEREAS, correcting the allocation factors results in the Borough’s Round 4 Prospective Need Obligation being 463 units rather than the 497 units the DCA calculated; and,

WHEREAS, Section 3 of A4 provides that: “the municipality’s determination of its fair share obligation shall have a presumption of validity, if established in accordance with sections 6 and 7” of A4; and,

WHEREAS, Borough’s calculation of need is entitled to a “presumption of validity” because it complies with Sections 6 and 7 of A4; and,

WHEREAS, the Borough specifically reserves the right to adjust those numbers based on one or any of the foregoing adjustments: 1) a windshield survey or similar survey which accounts for a higher-resolution estimate of present need; 2) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; 3) a Durational Adjustment (whether predicated upon lack of sewer or lack of water); and/or 4) an adjustment predicated upon regional planning entity formulas, inputs or considerations, including, but not limited to the Highlands Regional Master Plan and its build out, the Pinelands or Meadowlands regulations and planning document; and,

WHEREAS, in addition to the foregoing, the Borough specifically reserves all rights to revoke or amend this resolution and commitment, as may be necessary, in the event of a successful challenge to A4 in the context of the Montvale case (MER-L-1778-24), any other such action challenging A4, or any legislation adopted and signed into law by the Governor of New Jersey that alters the deadlines and/or requirements of A4; and,

WHEREAS, in addition to the foregoing, the Borough reserves the right to take a position that its Round 4 Present or Prospective Need Obligations are lower than described herein in the event that a third party challenges the calculations provided for in this Resolution (a reservation of all litigation rights and positions, without prejudice); and,

WHEREAS, in light of the above, the Mayor and Council finds that it is in the best interest of Borough to declare its obligations in accordance with this binding resolution and in accordance with the Act 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 Act shall file an 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, nothing in this Resolution shall be interpreted as an acknowledgment of the legal validity of the AOC Directive and the Borough reserves any and all rights and remedies in relation to the AOC Directive; and,

WHEREAS, the Borough seeks a certification of compliance with the Act and, therefore, directs its Affordable Housing Counsel to file a declaratory relief action within 48 hours of the adoption of this resolution; and,

NOW, THEREFORE, BE IT RESOLVED on this ___ day of January, 2025, by the Council of the Borough of Franklin Lakes, Bergen County, State of New Jersey, as follows:

1. All of the Whereas Clauses are incorporated into the operative clauses of this resolution.

2. The Mayor and Council hereby commit to a Present Need Obligation of 65 units and the Round 4 Prospective Need Obligation of 463 units as described in this resolution subject to all reservations of rights, which specifically include:

- a) The right to adjust the number based on a windshield survey, lack of land, sewer, water, regional planning inputs, or any combination thereof;
- b) As described in the WHEREAS section, all rights to revoke or amend this resolution in the event of a successful legal challenge, or legislative change, to A4;
- c) All rights to take any contrary position in the event of a third party challenge to the obligations.

3. The Borough hereby directs its Affordable Housing Counsel to file a declaratory judgment complaint within 48 hours after adoption this resolution attaching this resolution.

4. The Borough hereby directs its Affordable Housing Counsel to (a) file this Resolution with the "Program" pursuant to the requirements on A4.

5. The Borough hereby directs that this Resolution be published on the municipal website within 48 hours of its passage, pursuant to A4.

6. This resolution shall take effect immediately, according to law.

I, Gail M. Rulli, Municipal Clerk for the Borough of Franklin Lakes, do hereby certify that the above is a certified true copy of a resolution passed by the Mayor and Council on the 21st day of January 2025, at 7:30 P.M. in the Council Chambers of the Municipal Building, a quorum being present.



Gail M. Rulli, Municipal Clerk

January 22, 2025

Date