



**Township of Delaware
Resolution #25-30**

Adopting the Township's Affordable Housing Present and Prospective Need Obligations for the Period of July 1, 2025 Thru July 1, 2035 in Accordance with P.L. 2024 C.2, and Reserving All Rights

WHEREAS, on March 20, 2024, Governor Murphy signed into law, P.L. 2024, c.2, which among other things, amended various provisions of the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq. ("FHA"), abolished the Council on Affordable Housing ("COAH") and established the Affordable Housing Dispute Resolution Program ("Program"); and

WHEREAS, P.L. 2024, c.2, sets forth that Fourth Round period of affordable housing obligations shall run from July 1, 2025 through June 30, 2035 ("Fourth Round" or "Round Four"); and

WHEREAS, pursuant to P.L. 2024, c.2, the Township is located in Region 3, which is comprised of Hunterdon, Middlesex and Somerset counties; and

WHEREAS, the amendments to the FHA require the Department of Community Affairs ("DCA") to prepare and publish a report on the calculations of the regional need and each municipality's non-binding present and prospective need affordable housing obligations for the Fourth Round within seven months of March 20, 2024; and

WHEREAS, on October 18, 2024 the DCA published its report that includes its estimate of the obligations for all municipalities based on the calculations with respect to Statewide regional need and municipal present and prospective need affordable housing obligations for the Fourth Round (the "DCA Report"); and

WHEREAS, pursuant to P.L. 2024, c.2, the DCA has calculated the total statewide prospective need obligation to be 84,698 units, which equates to a statewide new construction obligation of over 8,400 affordable units per year; and

WHEREAS, the DCA Report calculates the Township's non-binding Round 4 obligations as follows: 1) a Present Need or Rehabilitation obligation of 0; and 2) a Prospective Need or New Construction Obligation of 60; and

WHEREAS, the calculations in the DCA Report are not binding on municipalities, thereby inviting municipalities to demonstrate that the Amended FHA would support lower calculations of the Fourth Round affordable housing obligations; and

WHEREAS, rather, pursuant to N.J.S.A. 52:27D-304.1 of the FHA, each municipality is required to determine its respective Fourth Round present and prospective need fair share obligations, and adopt a binding resolution describing the basis for the municipality's determination on or before January 31, 2025; and

WHEREAS, P.L. 2024, c.2, each municipality shall determine its Fourth Round present and prospective need fair share obligations, with consideration of the calculations in the DCA Report, and in accordance with the formulas established in N.J.S.A. 52:27D-304.2 and -304.3 of the FHA using "necessary datasets that are updated to the greatest extent practicable"; and



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WHEREAS, the Township and its professionals have reviewed the DCA Report along with the underlying data and data sets relied upon by the DCA in reaching its non-binding calculations for the Township against the most up-to-date land use approvals, site specific information, construction permits, and MOD-IV data maintained and on file with the Township with regard to the land capacity and equalized non-residential valuation factor; and

WHEREAS, the Township accepts the estimate set forth in the DCA Report with respect to Present Need of 0; and

WHEREAS, the Township accepts the estimate set forth in the DCA Report with respect to the Prospective Need of 60; and

WHEREAS, pursuant to N.J.S.A. 52:27D-304.1f(1)(b) 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 P.L. 2024, c.2 ... [;]" and

WHEREAS, the Township's calculation of its Present Need and Prospective Need obligations is/are entitled to a "presumption of validity" because it complies with Sections 6 and 7 of P.L. 2024, c.2; and

WHEREAS, the Township, however, specifically reserves the right to adjust its present need and prospective need obligation, including for any of the foregoing adjustments: 1) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; and/or 2) a Durational Adjustment (whether predicated upon lack of sewer or lack of water); and

WHEREAS, in addition to the foregoing, the Township specifically reserves all rights to revoke this resolution and commitment in the event of: 1) a successful challenge to P.L. 2024, c.2 as a result of the pending litigation entitled: Township of Montvale et al, v. State of New Jersey, et al., Docket No.: MER-L-1778-24; (2) any other such action challenging P.L. 2024, c.2; and/or (3) any subsequent legislative or regulatory enactment which alters or changes the deadlines, calculations, methodology and/or requirements of P.L. 2024, c.2; and

WHEREAS, the Township further specifically reserves the right to take a position that its Round 4 Prospective Need Obligation is 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 addition to the foregoing, nothing in P.L. 2024, c. 2 requires or can require an increase in the Township's Round 4 Present or Prospective Need Obligations based on a successful downward challenge of any other municipality in the region since the plain language and clear intent of P.L. 2024, c.2, is to establish, for example, unchallenged numbers by default as of March 1, 2025; and



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WHEREAS, in light of the above, the Township Committee of the Township of Delaware finds that it is in the best interest of the Township to declare its obligations in accordance P.L. 2024, c.2 in accordance with this resolution.

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Delaware, in the County of Hunterdon, and State of New Jersey as follows:

1. All of the Whereas Clauses set forth above are hereby incorporated into the operative clauses of this resolution by reference.
2. The Township Committee hereby commits to a Round 4 Present Need Obligation of 0 and the Round 4 Prospective Need Obligation of 60, as described in this resolution subject to all reservations of rights, which specifically include:
 - a) The right to adjust the prospective need obligation based on lack of available vacant and developable land, sewer, and/or water, or any combination thereof;
 - b) All rights to revoke this resolution in the event of a successful legal challenge, or legislative or regulatory change to P.L. 2024, c. 2;
 - c) All rights to take a position that Township's 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; and
 - d) All rights to take a position that the Township's Round 4 Present or Prospective Need Obligations are lower than described herein in the event a third-party claims the Township's Round 4 Present or Prospective Need Obligations require an increase based on a reallocation or modification of the Regional Present or Prospective Need Obligations allegedly due from successful reduction of the allocated present and prospective need obligations assigned to another municipality in the Region.
3. In accordance with N.J.S.A. 52:27D-304.1, the Township hereby directs the Township Attorney to file an action with the Affordable Housing Dispute Resolution Program along with this resolution and take all necessary and proper steps to address any challenges to same by any interested parties.
4. The Township's calculation of Present and Prospective Need Obligations is/are entitled to a "presumption of validity" because it complies with Sections 6 and 7 of P.L. 2024, c.2.
5. The Township further commits to adopt its housing element and fair share plan pursuant to N.J.S.A. 52:27D-304.1f(2) based on this determination on or before June 30, 2025, and hereby further directs the Township Attorney, Township Affordable Housing Planner and Township Engineer to begin taking steps to prepare same.



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6. A copy of this resolution shall be uploaded, along with the filing date of the Township's action with the Program , shall be uploaded to the Township website.
7. A copy of the resolution shall remain on file in the Township Clerk's office and available for public inspection.
8. This resolution shall take effect immediately, according to law.

ATTEST:

Diana Rumage
Diana Rumage
Township Clerk

Joseph Vocke
Joseph Vocke
Mayor

Approved: January 13, 2025

I certify the foregoing to be a true copy of a Resolution adopted by the Township Committee of the Township of Delaware, County of Hunterdon at an Official Meeting held January 13, 2025.

Diana Rumage
Diana Rumage
Township Clerk

