

CITY OF CAPE MAY, COUNTY OF CAPE MAY, STATE OF NEW JERSEY

RESOLUTION NO. 67-01- 2025

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPE MAY
COMMITTING TO FOURTH ROUND PRESENT AND PROSPECTIVE NEED
AFFORDABLE HOUSING OBLIGATIONS**

WHEREAS, the City of Cape May (hereinafter the “City” or “Cape May”) has a demonstrated history of voluntary compliance as evidenced by its Third Round 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 8, 2015, the City of Cape May (hereinafter “Cape May” or the “City”) filed a Declaratory Judgment Complaint in Superior Court, Law Division seeking, among other things, a judicial declaration that its Third Round Housing Element and Fair Share Plan, to be amended as necessary, satisfied 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 Third Round Housing Element and Fair Share Plan and a Final Judgment of Compliance and Repose, which precludes all Mount Laurel lawsuits, including builder’s remedy lawsuits, until July 1, 2025; and

WHEREAS, on March 20, 2024, Governor Murphy signed into law P.L. 2024, c.2, which amended the 1985 New Jersey Fair Housing Act (hereinafter the “Amended FHA”); and

WHEREAS, the Amended FHA required the Department of Community Affairs (“DCA”) to provide an estimate of the Fourth Round affordable housing obligations for all municipalities on or before October 20, 2024, based upon the criteria described in the Amended FHA; and

WHEREAS, the DCA issued a report on October 18, 2024 (“DCA Report”) wherein it reported its estimate of the Fourth Round affordable housing obligations for all municipalities based upon its interpretation of the standards in the Amended FHA; and

WHEREAS, the DCA Report calculates the City’s Fourth Round (2025-2035) obligations as follows: a Present Need (Rehabilitation) Obligation of 46 and a Prospective Need (New Construction) Obligation of 48; and

WHEREAS, the Amended FHA further provides that, irrespective of the DCA’s calculations, municipalities have the ability to either accept, or provide alternate calculations for, the DCA’s “present and prospective fair share obligation(s)...by binding resolution no later than January 31, 2025”, a deadline which was later extended to February 3, 2025 by the Administrative Office of the Courts (“AOC”) via a directive issued on December 19, 2024; and

WHEREAS, this Resolution satisfies the requirements of the Amended FHA by accepting the DCA estimate of need as described in the DCA Report; and

WHEREAS, Section 3 of the Amended FHA 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 the Amended FHA; and

WHEREAS, the City’s acceptance of the Fourth Round obligations calculated by the DCA are entitled to a “presumption of validity” because it complies with Sections 6 and 7 of A4; and

WHEREAS, in addition to the foregoing, the City specifically reserves the right to adjust its fair share obligations in accordance with applicable Council on Affordable Housing (“COAH”) regulations or other applicable law based on one or more of the foregoing adjustments if applicable: 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 Council Regional Master Plan and its build out, or the Pinelands Commission or Meadowlands Commission regulations and planning documents; and

WHEREAS, in addition to the foregoing, the City specifically reserves all rights to revoke this Resolution and commitment in the event of a successful challenge to the Amended FHA in the context of the case The Borough of Montvale v. the State of New Jersey (MER-L-1778-24), any other such action challenging the Amended FHA, or any legislation adopted and signed into law by the Governor of New Jersey that alters the deadlines and/or requirements of the Amended FHA; and

WHEREAS, in addition to the foregoing, the City reserves the right to take a position that its Fourth Round 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 addition to the foregoing, nothing in the Amended FHA requires or can require an increase in the City’s Fourth Round 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 the Amended FHA is to establish unchallenged numbers by default on March 1, 2025; and

WHEREAS, in addition to the foregoing, the Acting Administrative Director of the AOC issued Directive #14-24 on December 19, 2024; and

WHEREAS, pursuant to Directive #14-24, a municipality seeking a Fourth Round Compliance Certification from the entity created by the Amended FHA known as the Affordable Housing Dispute Resolution Program (hereinafter “the Program”), shall file an action in the appropriate venue with the Program, in the form of a Declaratory Judgment Complaint within 48 hours after adoption of the municipal resolution accepting or challenging its Fourth Round fair share obligations, or by February 3, 2025, whichever is sooner; and

WHEREAS, the City seeks a Compliance Certification from the Program and, therefore, wishes to file a Declaratory Judgment Complaint in the appropriate venue with the Program, along with a copy of this Resolution, within 48 hours of the adoption of this Resolution; and

WHEREAS, in light of the above, the Mayor and City Council finds that it is in the best interest of the City to declare its obligations in accordance with this Resolution; and

NOW, THEREFORE, BE IT RESOLVED on this 22nd day of January 2025, by the City Council of the City of Cape May, Cape May County, State of New Jersey, as follows:

1. All of the Whereas Clauses are incorporated into the operative clauses of this Resolution as if set forth in full.

2. For the reasons set forth in this Resolution, the Mayor and City Council hereby commit to the DCA Fourth Round Present Need (Rehabilitation) Obligation of 46 and the DCA Fourth Round Prospective Need (New Construction) Obligation of 48 as described in this Resolution, subject to all reservations of rights, which specifically include, without limitation, the following:

a) The right to adjust the City’s fair share obligations based on a windshield survey or similar survey, a Vacant Land Adjustment, a Durational Adjustment, and all other applicable adjustments, permitted in accordance with applicable COAH regulations or other applicable law; and

b) The right to revoke this Resolution in the event of a successful legal challenge, or legislative change, to the Amended FHA; and

c) The right to take any contrary position, or adjust its fair share obligations, in the event of a third party challenge to the City’s fair share obligations.

3. Pursuant to the requirements of the FHA as amended, and the Administrator of the Court’s (AOC) Directive #14-24 issued on December 19, 2024, the City hereby directs its Affordable Housing Counsel to file a Declaratory Judgment Complaint, along with this Resolution and a Case Information Statement (Civil CIS), in the appropriate venue with the Program or any other such entity as may be determined to be appropriate, to initiate an action within 48 hours of the adoption of this Resolution, so that the City’s Fourth Round Housing Element and Fair Share Plan can be reviewed and approved.

4. This Resolution shall take effect immediately, according to law.

I, Erin C. Burke, City Clerk of the City of Cape May, County of Cape May, State of New Jersey, do hereby certify the foregoing is a correct and true original Resolution adopted by the City Council of the City of Cape May at a meeting held on January 22, 2025.



Erin C. Burke, City Clerk

Roll Call	Ayes	Nays	Absent	Abstain	Motion	Second
Meier	X				X	
McDade	X					
Bodnar	X					
Baldwin	X					X
Mullock	X					

cc: Erik C. Nolan, Esq.
City Manager