

**RESOLUTION OF THE BOROUGH OF TINTON FALLS, COUNTY OF MONMOUTH,
STATE OF NEW JERSEY SEEKING AN ADJUSTMENT TO ITS PRESENT AND
PROSPECTIVE NEED AFFORDABLE HOUSING OBLIGATION IN COMPLIANCE
WITH THE REQUIREMENTS OF THE AMENDED FAIR HOUSING ACT**

WHEREAS, the Borough of Tinton Falls, County of Monmouth, State of New Jersey, (hereinafter, "Borough" or "Tinton Falls") has a demonstrated history of voluntary compliance with its constitutional affordable housing obligations and in fact obtained a Final Round Three Judgment of Compliance and Repose on from the Court in the matter captioned In the Matter of the Application of the Borough of Tinton Falls, County of Monmouth, Superior Court of New Jersey, Law Division, Docket No. MON-L-2475151 thereby immunizing the Borough from builder's remedy litigation until July 1, 2025 (the "Third Round Litigation") ; and

WHEREAS, all Third Round projects were conceived, planned, and designed through a comprehensive negotiated planning process and are currently under various stages of development from pre-construction to completion and occupancy; and

WHEREAS, the Borough continues to actively implement its Court-approved Third Round Housing Element and Fair Share Plan and will continue to do so moving forward; and

WHEREAS, on March 20, 2024, Governor Phil Murphy signed into law P.L. 2024, c.2, an Amendment to the 1985 Fair Housing Act (hereinafter "Amended FHA" or "Act"); and

WHEREAS, the Amended FHA requires the Department of Community Affairs ("DCA") to provide an estimate of the present need, also referred to as the rehabilitation obligation, and the Round 4 prospective need of all municipalities by October 20, 2024 based upon the criteria on the Amended FHA; and

WHEREAS, the DCA issued a report on October 18, 2024 ("DCA Report") wherein it reported its estimate of the present need and the Round 4 prospective need obligation for all municipalities based upon its interpretation of the standards in the Act; and

WHEREAS, the DCA Report calculates Tinton Falls's Round 4 (2025-2035) Present Need (Rehabilitation) Obligation as 413 and its Round 4 Prospective Need Obligation as 219; and

WHEREAS, the Amended FHA provides that the DCA Report is non-binding, thereby inviting municipalities to demonstrate that the Amended FHA would support revised calculations of Round 4 fair share affordable housing obligations; and

WHEREAS, the Amended FHA 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, the Borough does not accept the DCA's Fourth Round Present Need (Rehabilitation) calculation of 413 units and also does not accept the DCA's calculation of the Borough's Land Capacity Allocation Factor, which is a factor that is part of the DCA's calculation of the Borough's Fourth Round Prospective Need (New Construction) calculation of 219; 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 ... 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 Borough maintains that the areas the DCA identified as developable are overinclusive and, consequently, the Borough's Planner, has prepared an expert report, attached hereto as Exhibit A; and

WHEREAS, correcting the Land Capacity Allocation Factor from 1.58% to 1.31 % results in the reduction of Tinton Falls Fourth Round Prospective Need (New Construction) Obligation from 219 to 181; 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, therefore, the Borough's determination of its Fourth Round Prospective Need (New Construction) Obligation is entitled to a "presumption of validity" because it complies with Sections 6 and 7 of the Amended FHA; and

WHEREAS, in addition to the foregoing, the Borough 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; 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 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 Borough 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 Borough'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 Borough reserves the right to adjust its Fourth Round Prospective Need (New Construction) Number if the updated State Plan is adopted by the State and the Borough goes through the State Plan Cross-Acceptance Process; 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 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)

WHEREAS, the process established by the Amended FHA creates an opportunity to object by interested parties opposing the obligations to which a municipality commits, thereby creating the potential for litigation over the obligations of the municipality; and

WHEREAS, the Amended FHA requires municipalities to adopt a binding resolution no later than January 31, 2025 as to its obligations.

WHEREAS, in light of the above, the Borough of Tinton Falls finds that it is in its best interest to declare its obligations in accordance with this binding resolution 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, the Borough Council of the Borough of Tinton Falls believes it is in the best interest of its residents to maintain immunity from builder's remedy litigation, and therefore seeks a certification of compliance with the Act and directs its Affordable Housing Counsel to file a declaratory relief action within 48 hours of the adoption of this resolution.

NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Tinton Falls, County of Tinton Falls, 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 at length herein.

2. For the reasons set forth in this Resolution, the Borough Council hereby does not accept the DCA Fourth Round Present Need (Rehabilitation) Obligation of 419 and will conduct a windshield survey to establish the appropriate obligation and it accepts the adjusted Fourth Round Prospective Need (New Construction) Obligation of 181 as described in this Resolution, subject to all reservations of rights, which specifically include, without limitation, the following:

- a) The right to adjust the Borough'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 or amend 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 Borough'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, the Borough Council hereby directs its Affordable Housing Counsel to file a Declaratory Judgment Complaint with this Resolution and supporting expert report so that the Borough may maintain immunity from builder's remedy litigation.

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

Risa Clay, Council President

BOROUGH OF TINTON FALLS COUNCIL

Council Member	Moved	Second	Ayes	Nays	Absent	Abstain
Mr. Alessi						
Ms. Buckley						
Dr. Dobrin						
Mr. Nesci						
Mrs. Clay						

CERTIFICATION

I, Michelle Hutchinson, Borough Clerk of the Borough of Tinton Falls, hereby certify the foregoing to be a true copy of a resolution adopted by the Tinton Falls Borough Council at their meeting held January 21, 2025.

WITNESS, my hand and the seal of the Borough of Tinton Falls this 21st day of January 2025.

Michelle Hutchinson
Borough Clerk